SECTION .0100 - PURPOSE AND DEFINITIONS

15A NCAC 02R .0101  PURPOSE

This Subchapter establishes the policies, procedures and components of the North Carolina Ecosystem Enhancement Program Division of Mitigation Services and its in-lieu fee programs pursuant to G.S. 143-214.8 through 143-214.13.

History Note:  Authority G.S. 143-214.8; 143-214.9; 143-215.3;
Eff. August 1, 1998;

15A NCAC 02R .0102  DEFINITIONS

The definition of any word or phrase used in this Subchapter shall be the same as given in G.S. 143, Article 21. The following words and phrases, which are not defined by statute, shall be interpreted as follows:

(1) "Mitigation bank" means a site where wetlands or other aquatic resources are restored, created, enhanced, or preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

(2)(1) "Non-riparian wetlands" means Class WL wetlands as defined in 15A NCAC 2B .0101(c)(8) whose major source of water is precipitation. Wetland types generally considered to be non-riparian include wet flats, pocosins and ephemeral wetlands.

(3)(2) "Riparian area" means an area that does not meet the definition of wetlands found at 15A NCAC 2B .0202 and that is located within 300 feet of any perennial or intermittent water body as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographic map or other site specific data.

(4)(3) "Riparian wetlands" means Class WL wetlands as defined in 15A NCAC 2B .0101(c)(8) whose major source of water is ground water or surface water. Wetland types generally considered to be riparian include freshwater marshes, swamp forests, bottomland hardwood forests, headwater forests, bog forests, mountain bogs and seeps.

History Note:  Authority G.S. 143-214.8; 143-214.9; 143-214.11;143-215.3;
15A NCAC 02R .0201 PURPOSE
The purpose of the Basinwide Restoration Plans is to identify wetlands and riparian areas within each of the 17 major river basins of the state in order to identify and describe watershed improvement practices that have the potential, through restoration, enhancement, creation or preservation, to contribute to advance the functional restoration goals of the Ecosystem Enhancement Program, Division of Mitigation Services.

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

15A NCAC 02R .0202 COMPONENTS
(a) Each Basinwide Restoration Plan for each of the 17 major river basins shall consist of the following components:

(1) an assessment of the existing wetlands and riparian area baseline aquatic resource functions within each basin sub-basin;

(2) an assessment of the existing needs of the river potential functional improvement of aquatic resources within each basin sub-basin; as identified by the Department with input from other state and federal agencies, local governments, institutions of higher learning, non-profit organizations and the general public;

(3) identification of aquatic resource areas that have the potential, if restored or enhanced, to contribute to the functional goals of the Basinwide Restoration Plans;

(4) identification of wetland and riparian aquatic resource areas that have the potential, if preserved, to contribute to the functional goals of the Basinwide Restoration Plans;

(5) a summary of the sub-basin characteristics, identification of priority ecosystem functions that have been degraded or lost, and opportunities for functional improvement; prioritization of the areas identified in Subparagraphs (3) and (4) of this Paragraph based on the area's ability to contribute to the specific goals of the Basinwide Restoration Plans and the needs of each 8-digit sub-basin river basin as identified in Subparagraph (2) of this Paragraph, and

(6) an outline of the specific goal goals to be accomplished through implementation of the Basinwide Restoration Plan.

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

(1) an assessment of the existing needs of the river basin as identified by the Department with input from other state and federal agencies, local governments, institutions of higher learning, non-profit organizations and the general public;
(2) identification of areas that have the potential, if restored or enhanced, to contribute to the specific goals of the Basinwide Restoration Plans;

(3) prioritization of the areas identified in Subparagraph (2) of this Paragraph based on the area's ability to contribute to the goals of the Basinwide Restoration Plans and the needs of each river basin as identified in Subparagraph (b)(1) of this Rule;

(4) identification of wetland and riparian areas that have the potential, if preserved, to contribute to the goals of the Basinwide Restoration Plans; and

(5) an outline of the specific goals to be accomplished through implementation of the Basinwide Restoration Plan.

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

15A NCAC 02R .0203 PUBLIC INVOLVEMENT; AVAILABILITY

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

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


SECTION .0300 - COMPENSATORY MITIGATION

15A NCAC 02R .0301 GENERAL

All projects implemented for the purpose of satisfying compensatory mitigation requirements of certifications issued by the Department under 33 U.S.C. U.S.C. Section 1341; and permits or authorizations issued by the United States Army Corps of Engineers (Corps) under 33 U.S.C. U.S.C. Section 1344, shall be consistent with the Basinwide Restoration Plan for the appropriate river basin. A project is consistent with the Basinwide Restoration Plan if the project 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 demonstrates that it advances the functional improvement goals identified in the Basinwide Restoration Plan.

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

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

SECTION .0400 - ECOSYSTEM RESTORATION FUND

15A NCAC 02R .0401 PURPOSE

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


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

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

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

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

(d) Special Watershed Rate. The Program shall apply Special Watershed Rates for the following areas:
(1) Any 8-digit cataloging unit, mitigation service area, or smaller watershed where costs are 33 percent greater than costs than the general statewide rate shall have a surcharge equal to the difference between the general statewide rate and the actual cost of mitigation in that mitigation service area.

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

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

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

\[
Actual \text{Cost Rate} = 1.43 \frac{Actual \text{Project Costs}_{\text{Present Day}}}{Actual \text{Credits}_{\text{Present Day}}}
\]

Where:

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

(2) As used in this Rule:

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

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

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

(4) Watershed planning is a federal requirement under 33 CFR 332.3(c)(1) and 33 CFR 230.93(c)(1) and a state requirement under 15A NCAC 02R .0201-.0203 and 15A NCAC 02R .0301-.0302. Ten
percent of the Actual Cost Rate is reserved for Administrative Costs. Administrative Costs are costs associated with administration of the Program including staffing, supplies, rent, and watershed planning.

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

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

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

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

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

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

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

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

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

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

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

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

(A) Twenty-two thousand one hundred and thirteen dollars ($22,113) per acre for non-riparian wetlands.
(B) Thirty-three thousand six hundred and ninety-six ($33,696) per acre for riparian wetlands.

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

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

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

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

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

15A NCAC 02R .0403 DONATION OF PROPERTY

(a) If approved by the Council of State, donations or dedications of interests in real property, for the purposes of restoration, enhancement, or preservation, may be accepted by the Secretary, or the Secretary's designee, if the property is consistent with the Basinwide Restoration Plan for the appropriate river basin subject to the factors listed in Paragraphs (b) and (c) of this Rule, or if the property interest is being donated to satisfy a condition of a certification issued by the Department under 33 USC 33 U.S.C. Section 1341. The property is consistent with the Basinwide Restoration Plan if the property 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.
(b) The factors that shall be considered by the Secretary, or the Secretary's designee, in determining whether to accept donations or dedications of interests in real property for the purposes of wetland or riparian area restoration or enhancement include the following:

1. whether the property is adjacent to, or will become a part of, a Department approved restoration or preservation compensatory mitigation project; or is adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan; or is adjacent to or includes property with known occurrences of rare aquatic species as identified by the North Carolina Natural Heritage Program in the "Natural Heritage Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species of North Carolina"; or is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program in the "North Carolina Natural Heritage Program Biennial Protection Plan, List of Significant Natural Heritage Areas." Copies of these documents may be obtained from the Department of Environment and Natural Resources Natural and Cultural Resources Division of Parks and Recreation Land and Water Stewardship, Natural Heritage Program, PO Box 27687, Raleigh, North Carolina 27611; 1651 Mail Service Center Raleigh, NC 27603;

2. whether the size of the property is at least five contiguous acres;

3. the likelihood that the site can be successfully restored or enhanced, based on hydrology, soils, and vegetation;

4. the extent intensity of activities required to successfully restore or enhance the site. Sites requiring extreme measures for successful restoration, such as removal of structures or infrastructure, will not be accepted;

5. absence of cultural and historic resources;

6. prior, current, and future land use of the donated property and adjacent properties;

7. existence of federally or state-listed sensitive, endangered, or threatened species, or their critical habitat;

8. the potential for enhancement of natural resource values of public lands;

9. absence of hazardous substance and solid waste;

10. whether the property is adjacent to non-supporting, partially supporting, or support-threatened waters as designated by the Division of Water Quality Resources pursuant to 40 CFR 131.10(a) through (g). This material is available for inspection at the Department of Environment and Natural Resources Environmental Quality, Division of Water Quality Resources, Water Quality Planning Section, 512 North Salisbury Street, Raleigh, North Carolina;

11. absence of encumbrances and conditions on the transfer of the property interests; and

12. provisions have been made for the long term maintenance and management of the property.
(c) The factors that shall be considered by the Secretary, or the Secretary's designee, in determining whether to accept donations or dedications of interests in real property for the purpose of preservation of existing wetland and riparian areas include the following:

1. whether the property has clearly identifiable unique wetland or riparian area functions or values, such as federally or state-listed sensitive, endangered or threatened species, or their critical habitat;
2. the potential for enhancement of natural resource values of public lands;
3. whether the property is adjacent to, or will become a part of a Department approved restoration or preservation project; or is adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan; or is adjacent to or includes property with known occurrences of rare species as identified by the North Carolina Natural Heritage Program in the "Natural Heritage Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species of North Carolina"; or is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program in the "North Carolina Natural Heritage Program Biennial Protection Plan, List of Significant Natural Heritage Areas." Copies of these documents may be obtained from the Department of Natural and Cultural Resources Division of Parks and Recreation, Land and Water Stewardship, Natural Heritage Program, PO Box 27687, Raleigh, North Carolina 27611 1651 Mail Service Center Raleigh, NC 27603;
4. whether the size of the property is at least five contiguous acres;
5. whether the property is under imminent threat of degradation;
6. prior, current, and future land use of the donated property and adjacent properties;
7. absence of extensive structures and infrastructure;
8. absence of hazardous substance and solid waste;
9. absence of cultural and historic resources;
10. whether the property is adjacent to non-supporting, partially supporting, or support-threatened waters as designated by the Division of Water Quality Resources pursuant to 40 CFR 131.10(a) through (g). This material is available for inspection at the Department of Environment and Natural Resources Environmental Quality, Division of Water Quality Resources, Water Quality Planning Section, 512 North Salisbury Street, Raleigh, North Carolina;
11. absence of encumbrances and conditions on the transfer of the property interests; and
12. provisions have been made for the long term maintenance and management of the property.

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

1. documentation that the property meets the criteria outlined in Paragraph (b) and (c) of this Rule;
2. US Geologic Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location
of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements;

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

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

(5) a title certificate; and

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

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

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

(2) whether the adverse impacts of the permitted project are within the same subbasin as the property proposed for donation.

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

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

(h) Donation of real property interests to satisfy compensatory mitigation requirements shall only be accepted if such property meets the requirements of Paragraphs (a) through (i) of this Rule and 15A NCAC 2H .0506(h) and satisfies the compensatory mitigation requirements of the approved permit.
(i) The donation of conservation easements to satisfy compensatory mitigation requirements will only be
accepted if the conservation easement is granted in perpetuity and the property to be encumbered meets the
requirements of Paragraphs (a) through (j) of this Rule, or if the property interest is being donated to satisfy a condition
of a certification issued by the Department under 33 U.S.C. Section 1341.

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

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

SECTION .0500 - WETLANDS RESTORATION FUND

15A NCAC 02R .0501 PURPOSE
15A NCAC 02R .0502 DEFINITIONS
15A NCAC 02R .0503 SCHEDULE OF FEES
15A NCAC 02R .0504 PAYMENT

History Note: Authority G.S. 143-214.11; 143-214.12;
Temporary Adoption Eff. May 6, 1997;

SECTION .0600 – RIPARIAN BUFFER RESTORATION FUND

15A NCAC 02R .0601 RIPARIAN BUFFER MITIGATION FEES TO THE NC ECOSYSTEM
ENHANCEMENT PROGRAMDIVISION OF MITIGATION SERVICES

(a) The purpose of this Rule is to establish actual cost rates for the payment of riparian buffer mitigation fees to the
NC Division of Mitigation Services In-Lieu Fee Program, subsequently referred to as the Program, where rules
adopted by the Commission allow this option toward fulfillment of riparian buffer mitigation requirements. Wherever
the term "cost" or "costs" is used in this Rule, it means the Program's costs associated with riparian buffer mitigation
in a given rate area, as described below. For this purpose, the Program shall operate according to the requirements in
this Rule.
(b) The Program shall calculate and publish one general riparian buffer mitigation payment rate applicable to all river basins where Commission rules allow riparian buffer mitigation payments and Special rates for specific watersheds as identified in Paragraph (d) of this Rule. All rates shall be based on the actual and complete costs incurred by implementing mitigation in those watersheds.

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

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

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

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

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

\[
ActualCostRate = \frac{ActualCosts_{PresentDay}}{TotalRiparianBufferCredits_{PresentDay}} + AdjustmentFactor
\]

Where:

(1) Actual Costs\_Present\_Day means the sum of all costs adjusted for inflation as described in this Sub-Item. Costs are project costs and administrative costs. Projects in the calculation are completed projects, terminated projects and projects in process. At the time the rate is set, to ensure that collected payments are sufficient to implement new projects, all completed land acquisition contracts and expenditures shall be adjusted to present day values using the current North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other completed contracts and expenditures shall be adjusted to present day values using the annual composite USACE Civil Works Construction Cost Index. Future land acquisition contract costs for projects in process are calculated using the Program's per credit contract costs of the same type adjusted to the inflated future value when the contracts will be encumbered using the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values.
All other future contracts shall be calculated using the Program’s per credit contract costs of the same type adjusted to the inflated future value when the contracts will be encumbered using the current composite USACE Civil Works Construction Cost Index. For projects in process where the contract type has not been determined, the cost of the project shall be calculated using the Program’s average per credit cost adjusted to the future inflated value when the project will be initiated. Future year annual inflation rates shall be drawn from either the North Carolina Department of Agriculture and Consumer Services’ Agricultural Statistics Farm Real Estate Values or the USACE Civil Works Construction Cost Index. If not available from either source, they shall be calculated using the average annual percentage change over the last three-year period.

(2) As used in this Rule:

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

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

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

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

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

Where:

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

(B) Actual Costs are the same as Actual Costs_{\text{PresentDay}} as defined in Subparagraph (1) of this Paragraph, except that existing contracts and completed land acquisitions are not adjusted for inflation;
(C) Actual Receipts are the sum of all riparian buffer mitigation payments made to the Program to date in the rate area at the time of calculation; and

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

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

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

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

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

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

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

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

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

(3) The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to requirements of other rules in this Subchapter.
15A NCAC 02R .0602 NUTRIENT OFFSET PAYMENT RATES FOR THE NC ECOSYSTEM ENHANCEMENT PROGRAM DIVISION OF MITIGATION SERVICES

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

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

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

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

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

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

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

(f) Rate Adjustment Frequency. Initial rates shall be effective as of the effective date of this Rule. They shall be adjusted quarterly whenever the rate increases ten percent above the existing rate. The rates shall also be adjusted annually. Annual calculations and adjusted rates shall be published by June 15 on the Program's Web site, www.nceep.net; website http://deq.nc.gov/about/divisions/mitigation-services, and shall become effective July 1. Any quarterly rate adjustments shall become effective on the first day of October, January, or April as applicable, and shall
be published on the same website two weeks prior to that date. The rate shall be adjusted immediately if the Program determines it must suspend acceptance of payments at the current rate per 15A NCAC 02B .0240 (e)(2).

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

\[ \text{Actual Cost Rate} = \frac{\text{Actual Costs}_{\text{Present Day}}}{\text{Total Pounds Offset}_{\text{Present Day}}} + \text{Adjustment Factor} \]

Where:

(1) Actual Costs\text{Present Day} means the sum of all costs adjusted for inflation as described in this Sub-item Subparagraph. Costs are project costs and administrative costs. Projects in the calculation are completed projects, terminated projects and projects in process. At the time the rate is set, to ensure that collected payments are sufficient to implement new projects, all completed land acquisition contracts and expenditures shall be adjusted to present day values using the current North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other completed contracts and expenditures shall be adjusted to present day values using the annual composite USACE Civil Works Construction Cost Index. Future land acquisition contract costs for projects in process are calculated using the Program's per credit contract costs of the same type adjusted to the inflated future value when the contracts will be encumbered using the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other future contracts shall be calculated using the Program's per credit contract costs of the same type adjusted to the inflated future value when the contracts will be encumbered using the current composite USACE Civil Works Construction Cost Index. For projects in process where the contract type has not been determined, the cost of the project shall be calculated using the Program's average per pound cost adjusted to the future inflated value when the project will be initiated. Future year annual inflation rates shall be drawn from either the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values or the USACE Civil Works Construction Cost Index. If not available from either source, they shall be calculated using the average annual percentage change over the last three-year period;

(2) As used in this Rule:

(A) Project Costs are the total costs associated with development of nutrient reduction projects including identification, land acquisition, project design, project construction, monitoring, maintenance and long-term stewardship;

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

(C) The cost for projects in process is the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program nutrient reduction obligations in the rate area;
(3) Total Pounds Offset\textsubscript{PresentDay} means the total number of pounds of a nutrient reduced by projects in the rate area at the time of calculation. If the Total Pounds Offset\textsubscript{PresentDay} for an existing or completed project is reduced, the Actual Costs\textsubscript{PresentDay} for that existing or completed project shall be proportionally adjusted; and

\[ \text{Adjustment Factor} = \frac{(\text{Actual Costs} - \text{Actual Receipts})}{\text{Number of Pounds Paid During Adjustment Period}} \]

Where:

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

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

(C) Actual Receipts are the sum of all offset payments made to the Program to date in the rate area at the time of calculation; and

(D) Number of Pounds Paid during Adjustment Period is the average number of pounds of a nutrient paid to the Program over the last three years in the rate area, multiplied by the adjustment period. If no payments have been made to the Program in a rate area, the number of pounds paid shall be set to 1,000 pounds until greater than 1,000 pounds have been purchased in that rate area.

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

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

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

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

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

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

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

Eff. September 1, 2010;

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