

**SUBCHAPTER 02R – ECOSYSTEM ENHANCEMENT PROGRAM DIVISION OF MITIGATION
SERVICES**

SECTION .0100 - PURPOSE AND DEFINITIONS

15A NCAC 02R .0101 PURPOSE

This Subchapter establishes the North Carolina Ecosystem Enhancement Program 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;
Amended Eff. July 3, 2008.
Repealed Eff. XX, 1, 20XX.*

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~~ mean:

- (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.~~ "Aquatic resources" means wetlands, streams, lakes, rivers, springs, seeps, reservoirs, ponds, groundwater, riparian areas, and the fauna that reside within them. Aquatic resources may include permanent, seasonal, flowing, standing, natural, or man-made water bodies.
- (2) "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~~ Examples of non-riparian wetlands include wet flats, peecosins pocosins, and ephemeral wetlands.
- (3) "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 (available at <http://viewer.nationalmap.gov>) or other site-specific data.
- (4) "Riparian wetlands" means Class WL wetlands as defined in 15A NCAC 2B .0101(c)(8) whose ~~major~~ primary source of water is ground water or surface water. ~~Wetland types generally considered to be riparian~~ Examples of riparian wetlands include freshwater marshes, swamp forests, bottomland hardwood forests, headwater forests, bog forests, mountain ~~bogs~~ bogs, and seeps.

*History Note: Authority G.S. 143-214.8; 143-214.9; 143-214.11;143-215.3;
Eff. August 1, 1998.*

1
2 **SECTION .0200 - BASINWIDE RESTORATION PLANS**
3

4 **15A NCAC 02R .0201 PURPOSE**

5 ~~The purpose of the Basinwide Restoration Plans is to identify wetlands and riparian areas within each of the 17 major~~
6 ~~river basins of the state that have the potential, through restoration, enhancement, creation or preservation, to~~
7 ~~contribute to the goals of the Ecosystem Enhancement Program.~~
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 *Repealed Eff. XX, 1, 20XX.*
13

14 **15A NCAC 02R .0202 COMPONENTS**

15 ~~(a) The Each Basinwide Restoration Plans Plan for each of the 17 major river basins shall consist of the following~~
16 ~~components conducted by DMS staff and contractors:~~

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

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

- 36 ~~(1) an assessment of the existing needs of the river basin as identified by the Department with input~~
37 ~~from other state and federal agencies, local governments, institutions of higher learning, non-profit~~
38 ~~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; ~~143-214.9~~
Eff. August 1, 1998.

15A NCAC 02R .0203 PUBLIC INVOLVEMENT; AVAILABILITY

(a) The ~~Secretary, Secretary~~ or the Secretary's ~~designee, 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~~.

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

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 USC¹ U.S.C. Section ~~1344~~; 1341 and permits or authorizations issued by the United States Army Corps of Engineers (Corps) under 33 USC¹ U.S.C. Section ~~1344~~; shall be consistent with the Basinwide Restoration Plan for the appropriate river basin. A project ~~is~~ shall be 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;~~ demonstrates that it advances the functional improvement goals identified in the Basinwide Restoration Plan. ~~or is approved~~ determined to be consistent by the United States Army Corps of Engineers.

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

1 *Eff. August 1, 1998.*

2
3
4 **15A NCAC 02R .0302 MITIGATION BANKS**

5 (a) All sponsors of mitigation banks that submit a prospectus to the United States Army Corps of Engineers
6 after the effective date of this Rule must provide the Secretary, or the Secretary's designee documentation
7 that the proposed mitigation bank is consistent with the approved Basinwide Restoration Plan for the
8 appropriate river basin and meets the requirements of G.S. 143-214.11(f). A mitigation bank is consistent
9 with the Basinwide Restoration Plans if the mitigation bank is located within an area that is identified as a
10 priority for restoration in the Basinwide Restoration Plan; or is located at a site that is otherwise consistent
11 with the goals outlined in the Basinwide Restoration Plan for the appropriate river basin; or is approved by
12 the United States Army Corps of Engineers. The Secretary, or the Secretary's designee, shall provide
13 comments concerning this documentation through participation on the ~~Mitigation Bank~~ Interagency Review
14 Team in accordance with 33 CFR Part 332 Compensatory Mitigation for Losses of Aquatic Resources
15 "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks," found in Volume 60,
16 Number 228 of the Federal Register, November 28, 1995. The signature of the Secretary, or the Secretary's
17 designee, on the Mitigation Banking Instrument, described in the above guidance, shall be considered as a
18 finding by the Department that the mitigation bank is consistent with the Basinwide Restoration Plan.

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

21
22 *History Note: Authority G.S. 143-214.11; 143-214.12; 143-215.3;*
23 *Eff. August 1, 1998.*

24
25 **SECTION .0400 - ECOSYSTEM RESTORATION FUND**

26
27 **15A NCAC 02R .0401 PURPOSE**

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

29
30 *History Note: Authority G.S. 143-214.11; 143-214.12; 143-215.3;*
31 *Eff. August 1, 1998;*
32 *Amended Eff. July 3, 2008.*
33 *Repealed Eff. XX, 1, 20XX.*

34
35 **15A NCAC 02R .0402 SCHEDULE OF FEES RATE SCHEDULE- STREAM AND WETLAND RATES**
36 **FOR THE NC DIVISION OF MITIGATION SERVICES**

37 (a) For the purposes of this Rule:

1 (1) "cost" or "costs" shall mean the NC Division of Mitigation Services In-Lieu Fee Mitigation
2 Program's costs associated with stream or wetland projects in a given rate area, as described in this
3 Rule; and

4 (2) "credit" or "credits" shall mean the number of credits of stream or wetland compensatory mitigation
5 that have been

6 (A) requested by the applicant; and

7 (B) specified in the approved certifications issued by the Department and in the permits or
8 authorizations issued by the United States Army Corps of Engineers pursuant to 33 U.S.C.
9 Section 1344.

10 (b) The in-lieu fee shall be calculated by multiplying the rate, as established in this Rule, by the total number of
11 credits.

12 (c) The Program shall calculate and publish general statewide stream and wetland payment rates and premium stream
13 and wetland rates for watersheds as identified in Paragraph (d) of this Rule. Rates shall be published on the Division's
14 website (<https://deq.nc.gov/about/divisions/mitigation-services>).

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

19 (e) Special Premium Watershed Rate. The Program shall apply special premium watershed rates for the following
20 areas:

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

24 (2) The initial coastal wetland rate shall be \$825,000 per credit.

25 (f) Rate Adjustment Frequency. Initial rates shall be effective as of the effective date of this Rule. They shall be
26 calculated and adjusted on July 1 of each year and shall become effective on those dates. Rate adjustments shall be
27 published on the Program's website two weeks prior to the effective date. The rate shall be adjusted within two
28 business days if the Program suspends acceptance of payments at the current rate.

29 (g) Payment rates for streams and wetlands shall be determined for a rate area using the following equation and
30 presented in per-credit values:

31

$$32 \quad \text{ActualCostRate} = 1.43 \frac{\text{ActualProjectCosts}_{\text{PresentDay}}}{\text{ActualCredits}_{\text{PresentDay}}}$$

33 Where:

34 (1) "Actual Project Costs_{PresentDay}" means the sum of all full delivery project and mitigation bank credit
35 purchase costs, adjusted for inflation, as described in this Paragraph. Only the costs of full delivery
36 and mitigation bank credit purchase projects that were contracted within the last three years,

1 including completed projects, terminated projects, and projects in process, shall be included in the
2 calculation of Actual Project Costs. At the time the rate is calculated, all contracts and expenditures
3 shall be adjusted to present-day values using the annual composite USACE Civil Works
4 Construction Cost Index. This document is hereby incorporated by reference, including subsequent
5 amendments and editions. A copy of this document may be obtained at no cost at
6 [http://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM_1110-2-](http://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM_1110-2-1304.pdf)
7 [1304.pdf](http://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM_1110-2-1304.pdf). If the USACE Civil Works Construction Cost Index is not available, it shall be calculated
8 using the average annual percentage change over the last three-year period;

9 (2) "Project costs" means the total costs associated with development of stream or wetland
10 compensatory mitigation projects including identification, land acquisition, project design, project
11 construction, monitoring, maintenance, and long-term stewardship;

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

15 (4) "Actual Credits_{PresentDay}" means the total number of credits from Actual Project Costs_{PresentDay} at the
16 time of calculation. If the Actual Credits_{PresentDay} for an existing or completed project is reduced, the
17 Actual Costs_{PresentDay} for that existing or completed project shall be proportionally adjusted.

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

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

29 (1) Fees in Subparagraphs (3) and (4) shall be applied to the following 8 digit hydrologic units organized
30 by river basin: Broad: 03050105; Cape Fear: 03030002, 03030004, 03030005, 03030007; Catawba:
31 03050101, 03050102, 03050103; French Broad: 06010106, 06010105, 06010108; Hiwassee:
32 06020002; Little Tennessee: 06010202, 06010203, 06010204; Lumber 03040207; Neuse:
33 03020201; New: 05050001; Roanoke: 03010107; Savannah: 03060101, 03060102; Tar Pamlico:
34 03020101; Watauga: 06010103; White Oak: 03030001, 03020106; Yadkin: 03040102, 03040103,
35 03040105, 03040202

36 (2) Fees in Subparagraphs (5) and (6) shall be applied to all other 8 digit hydrologic units not listed in
37 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.~~

~~(e) 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 and 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;

Amended Eff. July 18, 2008; April 1, 2003.

15A NCAC 02R .0403 DONATION OF PROPERTY

(a) If approved by the Council of State, donations or dedications of interests in real ~~property~~, property for the purposes of restoration, enhancement, or ~~preservation~~, preservation may be accepted by the ~~Secretary~~, Secretary or the Secretary's ~~designee~~, 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~~ pursuant to 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~~, Secretary or the Secretary's ~~designee~~, 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

(A) adjacent to, or will become a part of, a Department compensatory mitigation project;

(B) adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan;

(C) adjacent to or includes property on which 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," is known to have been found; or

(D) is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program at <https://ncnhde.natureserve.org>. These documents are hereby incorporated by reference, including subsequent amendments and editions. Copies of these documents may be obtained from the Department of Natural and Cultural Resources Division of Land and Water Stewardship at <http://www.ncnhp.org/references/publications/rare-animal-list> and <http://www.ncnhp.org/references/publications/rare-plant-list>;

~~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 Environment and Natural Resources~~

~~Division of Parks and Recreation, Natural Heritage Program, PO Box 27687, Raleigh, North Carolina 27611;~~

- (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~~ shall not be accepted;
- (5) the absence of cultural and historic resources;
- (6) the prior, current, and future land use of the donated property and adjacent properties;
- (7) the 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) the 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~~ from the Department of ~~Environment and Natural Resources~~ Environmental Quality, Division of Water ~~Quality Resources~~, ~~Water Quality Section~~, ~~512 North Salisbury Street, Raleigh, North Carolina~~ at <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/surface-water-standards>;
- (11) the absence of encumbrances and conditions on the transfer of the property interests; and
- (12) whether provisions have been made by the landowner for the long term maintenance and management of the property.

(c) The factors that shall be considered by the ~~Secretary~~, Secretary or the Secretary's ~~designee~~, 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~~ 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
 - (A) adjacent to, or will become a part of, a Department-approved restoration or preservation project;
 - (B) adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan;

1 (C) adjacent to or includes property on which rare aquatic species, as identified by the North
2 Carolina Natural Heritage Program in the "Natural Heritage Program List of Rare Animal
3 Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species
4 of North Carolina," is known to have been found; or

5 (D) is adjacent to or includes a Significant Natural Heritage Area as identified by the North
6 Carolina Natural Heritage Program at <https://ncnhde.natureserve.org/>. These documents
7 are hereby incorporated by reference, including subsequent amendments and editions.
8 Copies of these documents may be obtained from the Department of Natural and Cultural
9 Resources Division of Land and Water Stewardship at 1651 Mail Service Center Raleigh,
10 NC 27603 or at <http://www.ncnhp.org/references/publications/rare-animal-list> and
11 <http://www.ncnhp.org/references/publications/rare-plant-list>;

12 ~~whether the property is adjacent to, or will become a part of a Department approved restoration or~~
13 ~~preservation project; or is adjacent to or includes a sensitive natural resource, as identified in the~~
14 ~~Basinwide Restoration Plan; or is adjacent to or includes property with known occurrences of rare~~
15 ~~species as identified by the North Carolina Natural Heritage Program in the "Natural Heritage~~
16 ~~Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of~~
17 ~~the Rare Plant Species of North Carolina"; or is adjacent to or includes a Significant Natural Heritage~~
18 ~~Area as identified by the North Carolina Natural Heritage Program in the "North Carolina Natural~~
19 ~~Heritage Program Biennial Protection Plan, List of Significant Natural Heritage Areas." Copies of~~
20 ~~these documents may be obtained from the Department of Environment and Natural Resources,~~
21 ~~Division of Parks and Recreation, Natural Heritage Program, PO Box 27687, Raleigh, North~~
22 ~~Carolina 27611;~~

23 (4) whether the size of the property is at least five contiguous acres;

24 (5) whether the property is under imminent threat of degradation;

25 (6) the prior, current, and future land use of the donated property and adjacent properties;

26 (7) the absence of extensive structures and infrastructure;

27 (8) the absence of hazardous substance and solid waste;

28 (9) the absence of cultural and historic resources;

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, Division of Water Quality, Water Quality Section, 512 North Salisbury Street, Raleigh,~~
33 ~~North Carolina;~~

34 (11) the absence of encumbrances and conditions on the transfer of the property interests; and

35 (12) whether provisions have been made by the landowner for the long term maintenance and
36 management of the property.

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

- 3 (1) documentation that the property meets the criteria ~~outlined~~ in Paragraph (b) and (c) of this Rule;
- 4 (2) US Geologic Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural
5 Resource Conservation Service County Soil Survey Map, and county road map showing the location
6 of the property to be donated along with information on existing site conditions, vegetation types,
7 and the presence of existing structures and easements;
- 8 (3) a current property survey performed in accordance with the ~~procedures~~ requirements of the North
9 Carolina Department of Administration, State Property Office as identified by the ~~State Board of~~
10 ~~Registration for Professional Engineers and Land Surveyors~~ North Carolina Board of Examiners for
11 Engineers and Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies
12 may be obtained at no charge from the North Carolina State Board of ~~Registration for Professional~~
13 ~~Engineers and Land~~ Examiners for Engineers and Surveyors, 3620 Six Forks Road, Suite 300,
14 Raleigh, North Carolina 27609; www.ncbels.org;
- 15 (4) a current appraisal of the value of the property performed in accordance with the ~~procedures~~
16 requirements of the North Carolina Department of Administration, State Property Office as
17 identified by the Appraisal Board in the "Uniform Standards of Professional ~~North Carolina~~
18 Appraisal Practice." Copies may be obtained at no cost from the Appraisal Foundation, ~~Publications~~
19 ~~Department, PO Box 96734, Washington, D.C. 20090-6734; <http://www.appraisalfoundation.org>;~~
- 20 (5) a title certificate; and
- 21 (6) a Phase 1 Environmental Site Assessment documenting ~~documentation~~ that the property does not
22 contain structures that present health or safety problems to the general public. If wells, septic, water,
23 or sewer connections exist, they shall be filled, remediated, or closed at owner's expense, and in
24 accordance with ~~state~~ State and local health and safety regulations.

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

- 28 (1) whether restoration of the property will offset the adverse impacts of the permitted project; and
- 29 (2) whether the adverse impacts of the permitted project are within the same ~~subbasin~~ sub-basin as the
30 property proposed for donation.

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

35 (g) For the purposes of satisfying compensatory mitigation requirements through the donation of interests in real
36 property, ~~for property~~ requiring restoration, enhancement, or preservation, the size of property to be donated ~~must~~

1 shall equal or exceed the acreage of wetland required to be mitigated under the approved permit, and every parcel
2 ~~must~~ shall be a minimum of five contiguous acres in size.

3 (h) Donation of real property interests to satisfy compensatory mitigation requirements ~~will~~ shall only be accepted if
4 such property meets the requirements of Paragraphs (a) through (i) of this Rule and 15A NCAC 2H ~~.0506(h) and~~
5 .0506(h) and if it satisfies the compensatory mitigation requirements of the approved permit.

6 (i) The donation of conservation easements to satisfy compensatory mitigation requirements ~~will~~ shall only be
7 accepted if

8 (1) the conservation easement is granted in ~~perpetuity~~ perpetuity; and

9 (2) the property to be encumbered meets the requirements of Paragraphs (a) through (j) of this ~~Rule~~, Rule or
10 if the property interest is being donated to satisfy a condition of a certification issued by the Department
11 ~~under~~ pursuant to 33 USC U.S.C. Section 1341.

12 (j) Donation of interests in real property may contribute to or fulfill compensatory mitigation requirements that may
13 be satisfied through payment of a fee ~~as outlined in the Schedule of Fees~~ according to the Rate Schedule in Rule
14 ~~.0402(a)~~ .0402(c) of this Section. The value of the property interest shall be determined by an appraisal performed in
15 accordance with Subparagraph (d)(4) of this Rule. The required fee as calculated in accordance with Rule ~~.0402(a)~~
16 .0402(c) of this Section shall be satisfied if the appraised value of the donated property interest is equal to or greater
17 than the fee. If the appraised value of the donated property interest is less than the designated fee requirement as
18 calculated in accordance with Rule ~~.0402(a)~~ .0402(c) of this Section, the applicant shall pay the remaining balance
19 due.
20

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

23

24 **SECTION .0500 - WETLANDS RESTORATION FUND**

25

26 **15A NCAC 02R .0501 PURPOSE**

27 **15A NCAC 02R .0502 DEFINITIONS**

28 **15A NCAC 02R .0503 SCHEDULE OF FEES**

29 **15A NCAC 02R .0504 PAYMENT**

30

31 *History Note:* Authority G.S. 143-214.11; 143-214.12;
32 Temporary Adoption Eff. May 6, 1997;
33 Repealed Eff. August 1, 1998.

34

35 **SECTION .0600 – RIPARIAN BUFFER RESTORATION FUND**

36

1 **15A NCAC 02R .0601 RIPARIAN BUFFER MITIGATION FEES TO THE NC ECOSYSTEM**
2 **ENHANCEMENT PROGRAM DIVISION OF MITIGATION SERVICES**

3 (a) For the purposes of this Rule:

4 (1) "cost" or "costs" shall mean the NC Division of Mitigation Services In-Lieu Fee Mitigation
5 Program's costs associated with riparian buffer mitigation projects in a given rate area, as described
6 in this Rule; and

7 (2) "credit" or "credits" shall mean the number of credits of riparian buffer compensatory mitigation
8 that have been

9 (A) requested by the applicant; and

10 (B) specified in the approved certifications issued by the Department.

11 (b) The Program shall calculate and publish one general riparian buffer mitigation payment rate applicable to all river
12 basins where Commission rules allow riparian buffer mitigation payments and ~~special~~ premium rates for specific
13 watersheds, as identified in Paragraph (c) of this Rule. Rates shall be published on the Division's website
14 (<https://deq.nc.gov/about/divisions/mitigation-services>). All rates shall be based on the costs incurred by the program
15 in those watersheds.

16 (c) Premium Watershed Rates. The Program shall apply premium watershed rates to:

17 (1) The Randleman Lake Watershed;

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

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

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

26 (d) Rate Adjustment Frequency. Initial rates shall be effective as of the effective date of this Rule. They shall be
27 adjusted quarterly whenever the rate calculation set forth in Paragraph (e) of this Rule exceeds the existing rate by at
28 least ten percent. The rates shall also be adjusted annually. Annual calculations and adjusted rates shall be published
29 by June 15 on the Program's website, <http://deq.nc.gov/about/divisions/mitigation-services>, and shall become effective
30 July 1. Any quarterly rate adjustments shall become effective on the first day of October, January, or April, as
31 applicable, and shall be published on the same website two weeks prior to that date. The rate shall be adjusted within
32 two business days if the Program suspends acceptance of payments at the current rate.

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

34

$$35 \text{ ActualCostRate} = \frac{\text{ActualCosts}_{\text{PresentDay}}}{\text{TotalRiparianBufferCredits}_{\text{PresentDay}}} + \text{AdjustmentFactor}$$

36

1 Where:

2 (1) Actual Costs_{PresentDay} means the sum of all costs, adjusted for inflation, as described in this
3 Subparagraph. Costs shall mean project costs and administrative costs and shall include the costs of
4 completed projects, terminated projects, and projects in process. At the time the rate is set, all
5 completed land acquisition contracts and expenditures shall be adjusted to present-day values using
6 the current North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics
7 Farm Real Estate Values. All other completed contracts and expenditures shall be adjusted to present
8 day values using the annual composite USACE Civil Works Construction Cost Index. Future land
9 acquisition contract costs for projects in process shall be calculated using the Program's per-credit
10 contract costs of the same type adjusted to the inflated future value at the time the contracts will be
11 encumbered using the North Carolina Department of Agriculture and Consumer Services'
12 Agricultural Statistics Farm Real Estate Values. All other future contracts shall be calculated using
13 the Program's per-credit contract costs of the same type adjusted to the inflated future value at the
14 time the contracts will be encumbered using the current composite USACE Civil Works
15 Construction Cost Index. For projects in process where the contract type has not been determined,
16 the cost of the project shall be calculated using the Program's average per credit cost adjusted to the
17 future inflated value when the project will be initiated. Future year annual inflation rates shall be
18 drawn from the USACE Civil Works Construction Cost Index. If not available from either source,
19 they shall be calculated using the average annual percentage change over the last three-year period;

20 (2) As used in this Rule:

21 (A) “Project Costs” means the total costs associated with development of riparian buffer
22 mitigation projects including identification, land acquisition, project design, project
23 construction, monitoring, maintenance, and long-term stewardship.

24 (B) “Administrative Costs” are costs associated with administration of the Program including
25 staffing, supplies and rent.

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

30 (D) “Total Riparian Buffer Credits_{PresentDay}” means the total amount of credits provided by
31 projects in the rate area at the time of calculation. If the Total Riparian Buffer Credits_{PresentDay} for an
32 existing or completed project is reduced, the Actual Costs_{PresentDay} for that existing or completed
33 project shall be proportionally adjusted;

34 (3) The Adjustment Factor shall be applied only in those calculation periods where actual costs are
35 calculated to be greater than actual receipts.

$$36 \text{ AdjustmentFactor} = \frac{\text{ActualCosts} - \text{ActualReceipts}}{\text{NumberofRiparianBufferCreditsPaidDuringAdjustmentPeriod}}$$

37 The Adjustment Factor shall not comprise more than 60% of the overall rate;

1 (A) “Actual Costs” shall be the same as Actual Costs_{PresentDay} as defined in Subparagraph (1) of
2 this Paragraph, except that the existing contracts and completed land acquisitions are not
3 adjusted for inflation.

4 (B) “Actual Receipts” means the sum of all riparian buffer mitigation payments made to the
5 Program in the rate area at the time of calculation.

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

11 (4) Adjustment Period shall be one to four years determined as follows for a rate area.

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

13 (B) Two years if Actual Costs exceed Actual Receipts by 5 percent or more but less than 15
14 percent.

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

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

18 ~~The following is the process for payment of fees to the Riparian Buffer Restoration Fund administered by the North~~
19 ~~Carolina Ecosystem Enhancement Program as one option to mitigate riparian buffer impacts allowed under rules in~~
20 ~~15A NCAC 02B. Persons who wish to use this option shall first meet the criteria established for doing so in the buffer~~
21 ~~rules in 15A NCAC 02B that reference this Rule. Such buffer rules include, but may not be limited to 15A NCAC~~
22 ~~02B .0295. Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to~~
23 ~~the Riparian Buffer Restoration Fund as allowed here shall use the following procedure:~~

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

34 (2) ~~The required fee shall be submitted to the N.C. Ecosystem Enhancement Program (NC EEP), 1652~~
35 ~~Mail Service Center, Raleigh, NC 27699 1652 prior to any activity that results in the removal or~~
36 ~~degradation of the protected riparian buffer for which a "no practical alternatives" determination has~~
37 ~~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.~~

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

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

(a) For the purposes of this Rule the term “cost” or “costs” means the costs of ~~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~~ hereinafter in this Rule the “Program” associated with nutrient offset projects in a given rate area, as described in this Rule, ~~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 premium 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~~ the Program in those watersheds.

(c) Payment rates shall be developed for nitrogen, phosphorus, or other nutrients as dictated by Commission ~~rule requirements~~ rules for each river basin. Rates shall be published on the Division’s website (<https://deq.nc.gov/about/divisions/mitigation-services>).

(d) Special Premium Watershed Rates. The Program shall apply special premium 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~~ where that cataloging unit is located.

The initial rate for a special premium 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 premium watershed in the quarter following a quarter in which at least two nutrient reduction projects in that watershed have reached design stage.

1 (e) Once an area has been established as an area with ~~Special Watershed Rates~~, premium watershed rates, it shall
2 remain a ~~Special Watershed Rate~~-premium watershed rate area.

3 (f) Rate Adjustment Frequency. Initial rates shall be effective as of the effective date of this Rule. They Rates shall
4 be adjusted quarterly whenever the rate increases ten percent above the existing rate calculation set forth in Paragraph
5 (g) of this Rule exceeds the existing rate by at least ten percent. The rates shall also be adjusted annually. Annual
6 calculations and adjusted rates shall be published by June 15 on the Program's Web site, www.nceep.net; website
7 <http://deq.nc.gov/about/divisions/mitigation-services>, and shall become effective July 1. Any quarterly rate
8 adjustments shall become effective on the first day of October, January, or ~~April~~ April, as applicable, and shall be
9 published on the same ~~Web site~~ website two weeks prior to that date. The rate shall be adjusted within two business
10 days if the Program suspends acceptance of payments at the current rate pursuant to 15A NCAC 02B .0240 (e)(2).

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

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

13
14 Where:

15 (1) ~~Actual Costs_{PresentDay}~~ “Actual Costs_{PresentDay}” means the sum of all costs adjusted for inflation as
16 described in this ~~Sub-Item. Subparagraph.~~ Costs are shall mean project costs and administrative
17 costs and shall include the costs of, ~~Projects in the calculation are~~ completed projects, terminated
18 ~~projects projects,~~ and projects in process. At the time the rate is set, ~~to ensure that collected~~
19 ~~payments are sufficient to implement new projects,~~ all completed land acquisition contracts and
20 expenditures shall be adjusted to ~~present day~~ present-day values using the current North Carolina
21 Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values.
22 All other completed contracts and expenditures shall be adjusted to ~~present day~~ present-day values
23 using the annual composite USACE Civil Works Construction Cost Index. Future land acquisition
24 contract costs for projects in process ~~are shall be~~ calculated using the Program's ~~per credit~~ per-credit
25 contract costs of the same type adjusted to the inflated future value ~~when at the time~~ the contracts
26 will be encumbered using the North Carolina Department of Agriculture and Consumer Services'
27 Agricultural Statistics Farm Real Estate Values. All other future contracts shall be calculated using
28 the Program's ~~per credit~~ per-credit contract costs of the same type adjusted to the inflated future
29 value ~~when at the time~~ the contracts will be encumbered using the current composite USACE Civil
30 Works Construction Cost Index. For projects in process where the contract type has not been
31 determined, the cost of the project shall be calculated using the Program's average per pound cost
32 adjusted to the future inflated value ~~when at the time~~ the project will be initiated. Future year annual
33 inflation rates shall be drawn from ~~either the North Carolina Department of Agriculture and~~
34 ~~Consumer Services' Agricultural Statistics Farm Real Estate Values or~~ the USACE Civil Works
35 Construction Cost Index. If not available from either source, they shall be calculated using the
36 average annual percentage change over the last three-year period;

- (2) As used in this Rule:
- (A) ~~Project Costs~~ “Project Costs” ~~are means~~ the total costs associated with development of nutrient reduction projects including identification, land acquisition, project design, project construction, monitoring, ~~maintenance~~ maintenance, and long-term stewardship;
- (B) ~~Administrative Costs~~ “Administrative Costs” ~~are means~~ costs associated with administration of the Program including staffing, ~~supplies~~ supplies, and rent; and
- (C) ~~The cost~~ “costs” for projects in ~~process~~ process ~~is shall be~~ 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~~ “Total Pounds Offset_{PresentDay} Offset_{PresentDay}” means the total number of pounds of a nutrient reduced by the Program’s projects in the rate area at the time of calculation. If the Total Pounds Offset_{PresentDay} for an existing or completed project is reduced, the Actual Costs_{PresentDay} for that existing or completed project shall be proportionally adjusted; ~~and~~

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

~~Where:~~

- (A) ~~The Adjustment Factor~~ “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 calculated using the following formula:

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

- (B) The Adjustment Factor shall be applied ~~in~~ only in 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~~ “Actual Costs” ~~are shall be~~ the same as Actual Costs_{PresentDay} Costs_{PresentDay} as defined in Subparagraph (1) of this Paragraph, except that the existing contracts and completed land acquisitions are not adjusted for inflation;
- (C) ~~Actual Receipts~~ “Actual Receipts” ~~are means~~ the sum of all offset payments made to the Program ~~to date~~ in the rate area at the time of calculation; and
- (D) ~~Number~~ “Number of Pounds Paid during Adjustment Period Period” ~~is means~~ the average number of pounds of a nutrient paid to the Program over the last three years in the rate ~~area,~~ 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.

- 1 ~~(5)~~(4) Adjustment Period ~~is~~ shall be one to four years determined as follows for a rate area:
- 2 (A) One year if Actual Costs exceed Actual Receipts by less than five percent;
- 3 (B) Two years if Actual Costs exceed Actual Receipts by five percent or more but less than 15
- 4 percent;
- 5 (C) Three years if Actual Costs exceed Actual Receipts by 15 percent or more but less than 25
- 6 percent; and
- 7 (D) Four years if Actual Costs exceed Actual Receipts by 25 percent or more.

8 (h) When individual projects produce more than one type of nutrient reduction, the project costs shall be prorated for

9 each nutrient being offset by the project.

10 (i) In cases where an applicant is required to reduce more than one nutrient type and chooses to use the Program to

11 offset nutrients, the applicant shall make a payment pursuant to 15A NCAC 02B .0240 (e)(3) for each nutrient type.

12

13 *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,*

14 *c. 438; S.L. 2009, c. 337; S.L. 2009, c. 484; S.L. 2009, c. 486;*

15 *Eff. September 1, 2010;*

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