



Revised Riparian Buffer Rules

June 2020



Riparian Buffer Rules Re-adoption

History

- N.C. Gen. Stat. §150B-21.3A, adopted in 2013, requires state agencies to review existing rules every 10 years. An initial review was to be completed during the first five years, and thereafter rules will be reviewed on a 10-year review cycle.
- The department was/is required to evaluate each of the existing rules and make an initial determination from one of these three classifications:
 - **Necessary with substantive public interest** – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
 - **Necessary without substantive public interest** – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
 - **Unnecessary** – the agency determines that the rule is obsolete, redundant or otherwise not needed.

Riparian Buffer Rules Re-adoption

History

2014 – 2017	Stakeholder input sessions and Departmental review.
March 2018	Draft Rules approved by EMC for Public Notice
May 2018	Notice of Text Published
May – June 2018	Public Hearings in Raleigh & Kernersville
July 2018	Comment Period ends
March 2019	EMC approves final rules
April – May 2019	Subset of rules reviewed/approved by RRC
June 2019	Majority of buffer rules subject to legislative review <ul style="list-style-type: none">• Associated rules held back for consistency• Minimum time for legislative review insufficient for 2019, must wait until 2020 legislative session
June 2020	Legislative review period complete, rules published

What's NOT changing?

- No changes to Jordan Lake Riparian Buffer Rules
 - Unable to revise rules per legislation
- Each Rule has retained its original scope, purpose, and applicability
- Retained all exemptions and existing uses
- No changes to what features are subject to the buffer rules
- No changes to the width or definition of Zone 1 or Zone 2
- Retained the Table of Uses to identify specific activities within the buffers
- No changes to local government delegation/designation authority

What's *NOT* changing?

- **No changes to who/what is subject to the rules**
- **APPLICABILITY.** This Rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers.
- **BUFFERS PROTECTED.** The following minimum criteria shall be used for identifying regulated riparian buffers:

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

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

The United States Geologic Survey's (USGS) National Map, available online at: <https://www.usgs.gov/core-science-systems/national-geospatial-program/national-map>; or

Other maps approved by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule.

Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506;

What is changing?

New terminology!

- New Categories for Uses for better clarity
- Definitions and approval process have not changed

Existing Category	New Category
Exempt	Deemed Allowable
Allowable	Allowable upon Authorization
Allowable with Mitigation	Allowable with Mitigation upon Authorization
Prohibited	Prohibited

- New category:
 - Allowable with Exception

What is changing?

Incorporate recent legislation, past rulings, and buffer clarification memos

- Incorporation of Agricultural Pond exemption legislation
- Published soil survey is now referenced in the rule
- Utilities – buffer clarification memo clarifying existing uses was incorporated into definitions, exemptions, and Table of Uses
- Include statement that a change of ownership is not a “change of use”
- Include a description of the “bubble” around start/stop points of stream in the definition Zones
- Changed where buffer begins in Coastal Zones per legislation
- Incorporation of allowance for buffer impacts for public safety per legislation
- Incorporation of allowances for residential properties per legislation
- Incorporation of slatted uncovered decks per clarification memo
- Pruning definition added to incorporate buffer clarification memo

What is changing?

Improve consistency, flexibility, and regulatory processing

- **Provide maximum consistency between individual Riparian Buffer Rules**
 - Consolidated common elements between Riparian Buffer Rules into new rules that are applicable across all Buffer Rules:
 - Definitions
 - Authorization Certifications
 - Forestry Harvesting Requirements
- **Reduce/Improve regulatory processes & provide more flexibility to the regulated community**
 - Increase items that are eligible under “Deemed Authorized (previously Exempt)”
 - Incorporate footnotes into Table of Uses to make it easier to see them
 - Provide clear information on how to apply for an Authorization Certificate
 - Create a new process “Allowable upon Exception” to simplify prior Variance process for unlisted activities
 - Increase allowances for stormwater runoff through the buffer

What is changing?

Reorganization / Relocation

- Relocation and subdivision of many Rules (Cross Reference Table available on website)

Current Rule Citation	New Citation
15A NCAC 02B .0233 Neuse Buffer Rules	<ul style="list-style-type: none">• 15A NCAC 02B .0714 Neuse Maintenance of Existing Riparian Buffers• 15A NCAC 02B .0610 Definitions• 15A NCAC 02B .0611 Authorization Certificates• 15A NCAC 02B .0612 Forest Harvesting Requirements
15A NCAC 02B .0241 Neuse Buffer Rules Delegation	<ul style="list-style-type: none">• 15A NCAC 02B .0715 Neuse Buffer Rule Delegation Authority
15A NCAC 02B .0259 Tar Pam Buffer Rules	<ul style="list-style-type: none">• 15A NCAC 02B .0734 Tar Pam Maintenance of Existing Riparian Buffers• 15A NCAC 02B .0610 Definitions• 15A NCAC 02B .0611 Authorization Certificates• 15A NCAC 02B .0612 Forest Harvesting Requirements
15A NCAC 02B .0261 Tar Pam Buffer Rules Delegation	<ul style="list-style-type: none">• 15A NCAC 02B .0735 Tar Pam Buffer Rule Delegation Authority
15A NCAC 02B .0243 Catawba Buffer Rules	<ul style="list-style-type: none">• 15A NCAC 02B .0614 Catawba Maintenance of Existing Riparian Buffers• 15A NCAC 02B .0610 Definitions• 15A NCAC 02B .0611 Authorization Certificates• 15A NCAC 02B .0612 Forest Harvesting Requirements

What is changing?

Reorganization / Relocation

- Relocation and subdivision of many Rules (Cross Reference Table available on website)

Current Rule Citation	New Citation
15A NCAC 02B .0250 Randleman Lake Buffer Rules	<ul style="list-style-type: none">• 15A NCAC 02B .0724 Randleman Lake Maintenance of Existing Riparian Buffers• 15A NCAC 02B .0610 Definitions• 15A NCAC 02B .0611 Authorization Certificates• 15A NCAC 02B .0612 Forest Harvesting Requirements
15A NCAC 02B .0251 Randleman Lake Stormwater Rules	<ul style="list-style-type: none">• 15A NCAC 02B .0721 Randleman Lake Stormwater Requirements
15A NCAC 02B .0605 Goose Creek Buffer Rules: Buffer Widths	<ul style="list-style-type: none">• 15A NCAC 02B .0605 Goose Creek Buffer Widths
15A NCAC 02B .0606 Goose Creek Variance Activities	<ul style="list-style-type: none">• 15A NCAC 02B .0606 Goose Creek Authorization Certificates
15A NCAC 02B .0607 Goose Creek Buffer Rules	<ul style="list-style-type: none">• 15A NCAC 02B .0607 Goose Creek Buffer Types and Managing Activities in Buffers
15A NCAC 02B .0608 Goose Creek Forest Harvesting Activities	<ul style="list-style-type: none">• 15A NCAC 02B .0608 Goose Creek Forest Harvesting Activities

What is changing?

Common Elements: 15A NCAC 02B .0610 Definitions

- Updated to reflect the most recent definitions in use
 - Airport Facilities updated to include recent legislation
- Updated to include citations to existing legislative definitions
 - Built Upon Area
 - Coastal Wetlands
 - Dam
 - Development
 - Forest Management Plan
 - Perched Water Table
- Updated to include citations to existing state regulations
 - Forest Vegetation
 - Freshwater
 - Local Government
 - Seasonal High Water Table
 - Stormwater Control Measure
 - Wetlands

What is changing?

Common Elements: 15A NCAC 02B .0610 Definitions

- Updated to include prior interpretations

"Pruning" means the removal of dead tree or shrub branches or live tree or shrub branches with a diameter of less than four inches.

(a) Pruning for Deciduous Trees: If pruning must be done on deciduous trees, then it shall only be performed once a year during the dormant season or following an "act of God" situation, such as a hurricane or ice storm that causes tree damage. Dead branches on trees may be removed any time.

(b) Pruning for Coniferous Trees: Conifers may be pruned any time of year. Dead branches on trees may be removed any time.

(c) Pruning for Shrubs: Shrubs may be pruned by selectively removing branches while maintaining the natural shape of the plant. Cutting the branches of a shrub down to its main trunk is not a selective removal of branches

- Provided new definitions where necessary

"Existing utility line maintenance corridor" means the portion of a utility right of way that was established as a permanent maintenance corridor prior to the effective date of the Rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the Authority, and in which the vegetation has been maintained (e.g. can be mowed without a chainsaw or bush-hog).

What is changing?

Common Elements: 15A NCAC 02B .0611 Authorization Certificates

- Updated to clarify the requirements for applying for, and securing, Authorization Certificates

AUTHORIZATION CERTIFICATES. Persons who wish to undertake uses designated in the applicable riparian buffer protection rule of this Section as allowable upon authorization or allowable with mitigation upon authorization shall submit an application requesting an Authorization Certificate from the Authority.

- Lists all items necessary for application submittal:

- Applicant Contact Info
- Property Owner Info
- Corporation Info
- Nature of the activity
- Location / Maps of activity
- Information related to avoidance and minimization
- BMPs / SCMs
- Mitigation plan if applicable
- BMPs / SCMs

- The applicant shall demonstrate that the project meets all the following criteria:

- The basic project purpose cannot be practically accomplished in a manner that would avoid or better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
- The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
- Best management practices shall be used to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

What is changing?

Common Elements: 15A NCAC 02B .0611 Authorization Certificates

- Retained timeframe for Authorities to take action on applications
 - The Authority shall issue an Authorization Certificate, deny the application, or request additional information within 60 calendar days after receipt of an application that meets the requirements as described in Subparagraphs (b)(1) and (b)(2) of this Rule. When the Authority requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Authority. Failure to issue the Authorization Certificate, deny the application, or request additional information within 60 calendar days shall be construed as issuance of an Authorization Certificate by the Authority to the applicant unless one of the following occurs:
 - The applicant agrees, in writing, to a longer period;
 - The applicant fails to furnish information necessary for the Authority's decision;
 - The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or
 - Information necessary for the Authority's decision is unavailable.

What is changing?

Common Elements: 15A NCAC 02B .0611 Authorization Certificates

- Created new category of Use: **Allowable with Exception** (Replaces Variance process for undesignated uses)
AUTHORIZATION CERTIFICATES WITH EXCEPTION. Persons who wish to undertake uses designated in the applicable riparian buffer protection rule of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception.
 - All of the following conditions must be met in order to qualify for an Authorization Certificate with Exception:
 - (A) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements.
 - (B) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the Authorization Certificate with Exception would allow a greater profit from the property shall not be considered adequate justification for an Authorization Certificate with Exception. Moreover, the Authority shall consider whether the Authorization Certificate with Exception is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;
 - (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography;
 - (D) The applicant did not cause the hardship;
 - (E) The requested Authorization Certificate with Exception is consistent with the general spirit, purpose, and intent of the State's riparian buffer protection requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.

What is changing?

Common Elements: 15A NCAC 02B .0611 Authorization Certificates

- **Allowable with Exception**

- Reviewed / Approved by the implementing Authority
- Mitigation specifically required for all activities within this category
- MINOR EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to allowable with exception activities that are proposed to impact equal to or less than one-third of an acre of riparian buffer.
- MAJOR EXCEPTIONS. An Authorization Certificate with Major Exception request pertains to allowable with exception activities that are proposed to impact greater than one-third of an acre of riparian buffer.
 - Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2), and (c)(1) of this Rule, the Authority shall prepare a preliminary finding as to whether the criteria in Subparagraphs (b)(2) and (c)(1) of this Rule have been met.
 - Notice of each pending complete application for an Authorization Certificate with Major Exception, including the preliminary finding prepared by the Authority, shall be posted on the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503(g), at least 30 calendar days prior to proposed final action by the Authority on the application. If the Authority is not the Division, then the Authority shall forward the required notice information to the Division for posting.
 - Within 60 calendar days following the notice as described in Part (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have been met, the Authority shall issue an Authorization Certificate with Major Exception. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Major Exception.

What is changing?

Stormwater – no longer diffuse flow

STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Stormwater runoff into the riparian buffer shall meet dispersed flow as defined in **15A NCAC 02H .1002** except as otherwise described in this Item.

- Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances.
- Stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, provided that they do not erode through the riparian buffer and do not cause erosion to the receiving waterbody.
- Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception.

What is changing?

Stormwater – no longer diffuse flow

- The following are Deemed Allowable:
 - New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and
 - New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.
- The following are Allowable upon Authorization:
 - New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not required to be approved under a state stormwater program or a state-approved local government stormwater program;
 - New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal [of the specific rule.]

What is changing?

Stormwater – no longer diffuse flow

- The following are Allowable upon Authorization:
 - New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;
 - New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;
 - Realignment of existing drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;
 - Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;
 - New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;
 - New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical; and
 - New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only

What is changing?

Activities in the Table of Uses

- Airport Facilities: Added allowance for vegetation removal necessary to comply with FAA
- Fences: Modified to promote fencing livestock out of surface waters
- Fences: Simplified to only require approvals for tree removal within Zone 1
- Expanded and combined: Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system
 - Incorporated prior clarification memos
 - Subcategorized by width of Built upon Area and Zones
- Expanded and combined: Pedestrian access trails to surface water/docks/piers
 - Increased allowed width of BUA to 6 feet
- Residential Properties: incorporation of Neuse/Tar Pam legislation
 - Allows residential structures/expansions where no alternatives exist
- Combined roads, driveways, railroads for consistency
 - Modified thresholds from linear foot to buffer impact acreages
 - Exempted farm roads that are exempt from 404 permitting

What is changing?

Utility Activities in the Table of Uses

- **Added to table:** Utility Lines - Streambank stabilization for the protection of publicly owned utility lines (not including new line installation):
 - <150 feet of streambank = Deemed Allowable, >150 ft of streambank Allowable upon Authorization
- **Sewer lines and Non-Sewer lines separated within the Table**
- **Increased allowable maintenance corridor from 10 feet to 30 feet wide**
- **New item:** Utility – Sewer lines – Sanitary Sewer Overflows:
 - Allows for emergency response without need for approval provided all disturbed areas are restored
 - Allows for authorization applications to be submitted after the response to the emergency overflow is resolved for any impacts not restored and requiring authorization
- **New item:** Utility - Sewer Lines – Vegetation maintenance activities that remove forest vegetation from existing sewer utility right of ways (not including new line installation) outside of the “existing utility line maintenance corridor”:
 - Deemed Allowable:
 - Zone 2 impacts & Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide

What is changing?

Utility Activities in the Table of Uses

- **New Item:** Utility - Sewer Lines –Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor provided that comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) is allowed to regenerate in disturbed riparian buffers outside of the permanent maintenance corridor and riparian buffers outside of the permanent maintenance corridor are not maintained
 - Deemed allowable: Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream
 - Allowable Upon Authorization: Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide
 - Allowable with Mitigation upon Authorization: Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts

What is changing?

Utility Activities in the Table of Uses

- Utility - Sewer Lines – New Line Construction/Installation Activities – Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:
 - Allowable with Mitigation upon Authorization: Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, **mitigation is only required for Zone 1 impacts.** For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, **mitigation is only required for Zone 1 impacts**
- Utility - Sewer Lines – New Line Construction/Installation Activities – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:
 - **New Item:** Allowable upon Authorization: Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided

What is changing?

Delegated / Designated Authorities

- **PROCEDURES FOR GRANTING DELEGATION.** The Commission shall grant local government delegation of the individual Buffer Protection requirements, according to the following procedures:
 - Clear and precise list of requirements
 - Clear list of record-keeping requirements
 - The Division shall conduct regular audits
 - Clear procedures for rescinding delegation
- **APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR.** Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator(s) who shall coordinate the implementation and enforcement of the program. The Administrator(s) shall attend an initial training session by the Division and be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator(s) shall ensure that local government staff working directly with the program receive training to understand, implement, and enforce the program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have anyone on staff certified to make on-site determinations pursuant to G.S. 143-214.25A, it shall notify the Division within 30 calendar days and provide a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government:

Application Procedural Changes

- No changes to DWR's application/review process (When DWR is the Authority)
 - Continue to use PCN/ePCN for all requests for Buffer Authorizations for activities listed as:
 - Allowable upon Authorization
 - Allowable upon Authorization with Mitigation
 - Continue to use Variance Application for all requests for Authorization Certificates with Exception where DWR is the Authority
 - DWR will update this form later this year
 - Process of documenting hardships remains the same
 - For Major Exceptions DWR will issue a Public Notice on website and send to listserve

QUESTIONS?

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*please provide feedback to DWR on these rules, especially any inaccurate citations/references