

1 **15A NCAC 02B .0267 is adopted with changes as published in 21:24 NCR 2276-2293 as follows:**

2
3 **15A NCAC 02B .0267 JORDAN WATER SUPPLY NUTRIENT STRATEGY: PROTECTION OF**
4 **EXISTING RIPARIAN BUFFERS**

5 Protection of the nutrient removal and other water quality ~~benefitsservices~~ provided by riparian buffers throughout
6 the watershed is an important element of the overall Jordan water supply nutrient strategy. The following is the
7 strategy for riparian buffer protection and maintenance in the Jordan watershed, as prefaced in Rule 15A NCAC 02B
8 .0262:

9 (1) PURPOSE. The purposes of this Rule shall be ~~for the local governments listed in 15A NCAC~~
10 ~~02B .0262, and in certain cases stated in this Rule the Division,~~ to protect and preserve existing
11 riparian buffers throughout the Jordan watershed as generally described in Rule 15A NCAC 02B
12 .0262, in order to maintain their nutrient removal and stream protection functions. Additionally
13 this Rule will help protect the water supply uses of Jordan Reservoir and of designated water
14 supplies throughout the Jordan watershed. Local ~~programs shall be established~~governments shall
15 establish programs to meet or exceed the minimum requirements of this Rule. ~~However, the~~
16 ~~Division shall assume responsibility for applying the requirements of this Rule to buffer activities~~
17 ~~by state and federal entities.~~—The requirements of this Rule shall supersede all locally
18 implemented buffer requirements stated in Rules 15A NCAC 02B .0214 through .0216 as applied
19 to WS-II, WS-III, and WS-IV waters in the Jordan watershed. ~~Parties~~Local governments subject
20 to this ~~rule~~Rule may choose to implement more stringent ~~rules, requirements,~~ including ~~the one-~~
21 ~~hundred foot buffer requirement set out in Section (3)(b)(i) of Rules 15A NCAC 02B .0214~~
22 ~~through .0216 for high density developments requiring additional buffer width.~~

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

24 (a) ‘Access Trails’ means pedestrian trails constructed of pervious or impervious surfaces
25 and related structures to access a surface water, including boardwalks, steps, rails,
26 signage.

27 ~~(b) ‘Archaeological Activities’ means activities conducted by a Registered Professional~~
28 ~~Archaeologist (RPA).~~

29 ~~(c)~~(b) ‘Airport Facilities’ means all properties, facilities, buildings, structures, and activities that
30 satisfy or otherwise fall within the scope of one or more of the definition or uses of the
31 words or phrases ‘air navigation facility’, ‘airport’, or ‘airport protection privileges’
32 under G.S. 63-1; the definition of ‘aeronautical facilities’ in G.S. 63-79(1); the phrase
33 ‘airport facilities’ as used in G.S. 159-48(b)(1); the phrase ‘aeronautical facilities’ as
34 defined in G.S. 159-81 and G.S. 159-97; and the phrase ‘airport facilities and
35 improvements’ as used in Article V, Section 13, of the North Carolina Constitution,
36 which shall include, without limitation, any and all of the following: airports, airport
37 maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting,

1 airport and airport-related offices, parking facilities, related navigational and signal
2 systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant
3 areas used or suitable for airport buildings or other airport facilities, and all appurtenant
4 rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons,
5 marks, communicating systems, or other instrumentalities or devices used or useful as an
6 aid, or constituting an advantage or convenience to the safe taking off, navigation, and
7 landing of aircraft, or the safe and efficient operation or maintenance of an airport or
8 restricted landing area; easements through, or interests in, air space over land or water,
9 interests in airport hazards outside the boundaries of airports or restricted landing areas,
10 and other protection privileges, the acquisition or control of which is necessary to ensure
11 safe approaches to the landing areas of airports and restricted landing areas, and the safe
12 and efficient operation ~~of thereof~~ thereof and any combination of any or all of such
13 facilities. Notwithstanding the foregoing, the following shall not be included in the
14 definition of 'airport facilities':

- 15 (i) Satellite parking facilities;
- 16 (ii) Retail and commercial development outside of the terminal area, such as rental
17 car facilities; and
- 18 (iii) Other secondary development, such as hotels, industrial facilities, free-standing
19 offices and other similar buildings, so long as these facilities are not directly
20 associated with the operation of the airport, and are not operated by a unit of
21 government or special governmental entity such as an airport
22 ~~authority~~ authority, in which case they are included in the definition of 'airport
23 facilities':

24 ~~(c) 'Channel' means a natural water carrying trough cut vertically into low areas of the land
25 surface by erosive action of concentrated flowing water or a ditch or canal excavated for
26 the flow of water.~~

27 ~~(e) 'DBH' means diameter at breast height of a tree measured at 4.5 feet above ground surface
28 level.~~

29 ~~(d) 'Ditch or canal' means a man made channel other than a modified natural stream constructed
30 for drainage purposes that is typically dug through inter stream divide areas. A ditch or
31 canal may have flows that are perennial, intermittent, or ephemeral and may exhibit
32 hydrological and biological characteristics similar to perennial or intermittent streams.~~

33 ~~(e) 'Ephemeral (stormwater) stream' means a feature that carries only stormwater in direct
34 response to precipitation with water flowing only during and shortly after large
35 precipitation events. An ephemeral stream may or may not have a well defined channel,
36 the aquatic bed is always above the water table, and stormwater runoff is the primary
37 source of water. An ephemeral stream typically lacks the biological, hydrological, and~~

~~physical characteristics commonly associated with the continuous or intermittent conveyance of water.~~

(c) ‘Forest management plan’ means as defined in Chapter 160A-458.5(4).

~~(e)(d)~~ ‘Forest plantation’ means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.

~~(f)(e)~~ ‘Greenway / Hiking Trails’ means pedestrian trails constructed of pervious ~~and or~~ impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the shoreline.

~~(g)(f)~~ ‘High Value Tree’ means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; ~~and, or~~ for hardwoods and wetland species, 16-inch DBH or greater or 24-inch or greater stump diameter.

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

~~(j)~~ ‘Modified natural stream’ means an on site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

~~(k)~~ ‘Perennial stream’ means a well defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

~~(l)~~ ‘Perennial waterbody’ means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State’s riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream).

~~(m)~~ ‘Riparian buffer enhancement’ is defined as the process of converting a non forested riparian area, where woody vegetation is sparse (greater than or equal to 100 trees per

1 ~~acre but less than 200 trees per acre) to a forested riparian buffer area. The enhanced,~~
2 ~~forested riparian buffer area shall include at least two native hardwood tree species~~
3 ~~planted at a density sufficient to provide 320 trees per acre at three years or 260 trees per~~
4 ~~acre five years, and diffuse flow through the riparian buffer shall be maintained.~~

5 ~~(n) ‘Riparian buffer restoration’ is defined as the process of converting a non-forested~~
6 ~~riparian area, where woody vegetation is absent (less than 100 trees per acre) to a forested~~
7 ~~riparian buffer area. The restored, forested riparian buffer area shall include at least two~~
8 ~~native hardwood tree species planted at a density sufficient to provide 320 trees per acre~~
9 ~~at three years or 260 trees per acre at five years, and diffuse flow through the riparian~~
10 ~~buffer shall be maintained.~~

11 ~~(g)~~ (g) ‘Shoreline stabilization’ is the in-place stabilization of an eroding shoreline. Stabilization
12 techniques which include “soft” methods or natural materials (such as root wads, or rock
13 vanes) may be considered as part of a restoration design. However, stabilization
14 techniques that consist primarily of “hard” engineering, such as concrete lined channels,
15 rip rap, or gabions, while providing bank stabilization, shall not be considered stream
16 restoration.

17 ~~(h)~~ (h) ‘Stream restoration’ is defined as the process of converting an unstable, altered or
18 degraded stream corridor, including adjacent riparian zone and flood-prone areas to its
19 natural or referenced, stable conditions considering recent and future watershed
20 conditions. This process also includes restoring the geomorphic dimension, pattern, and
21 profile as well as biological and chemical integrity, including transport of water and
22 sediment produced by the stream’s watershed in order to achieve dynamic equilibrium.
23 ‘Referenced’ or ‘referenced reach’ means a stable stream that is in dynamic equilibrium
24 with its valley and contributing watershed. A reference reach can be used to develop
25 natural channel design criteria for stream restoration projects. ~~‘Stream’ means a body of~~
26 ~~concentrated flowing water in a natural low area or natural channel on the land surface.~~

27 ~~(i)~~ (i) ‘Stump diameter’ means the diameter of a tree measured at six inches above the ground
28 surface level.

29 ~~(r)~~ ~~‘Surface waters’ means all waters of the state as defined in G.S. 143-212 except underground~~
30 ~~waters.~~

31 ~~(j)~~ (j) ‘Temporary road’ means a road constructed temporarily for equipment access to build or
32 replace hydraulic conveyance structures such as bridges, culverts, or pipes or water
33 dependent structures, or to maintain public traffic during ~~construction, construction and is~~
34 ~~restored within six months of initial disturbance.~~

35 ~~(t)~~ ‘Tree’ means a woody plant with a DBH equal to or exceeding five inches or a stump diameter
36 exceeding six inches.

1 (3) APPLICABILITY. This Rule applies to all landowners and other persons conducting activities in
2 the Jordan watershed, including state and federal entities, and to all local governments in the
3 Jordan watershed, as described in Rule 15A NCAC 02B.0262. Local governments shall develop
4 riparian buffer protection programs and ordinances for approval by the Commission, incorporating
5 the minimum standards set out throughout this Rule and shall apply the requirements of this Rule
6 throughout their jurisdictions within the Jordan watershed with the exception of state and federal
7 entities except where The Division shall exercise jurisdiction. For the following types of buffer
8 activities in the Jordan watershed, wherever local governments are referenced in this Rule, the
9 Division shall implement applicable requirements to the exclusion of local governments:

10 (a) Activities conducted under the authority of the State.

11 (b) Activities conducted under the authority of the United States.

12 (c) Activities conducted under the authority of multiple jurisdictions.

13 (d) Activities conducted under the authority of local units of government.

14 (e) Forest harvesting activities described in Item (14) of this Rule.

15 (f) Agricultural activities.

16 (g) Activities conducted in a location where there is no local government program
17 implementing NPDES stormwater requirements, Water Supply Watershed requirements,
18 or a voluntary local stormwater or buffer initiative at the time of the activity.

19 ~~For buffer activities on lands of state and federal entities in the Jordan watershed, it shall be presumed~~
20 ~~that the Division shall apply the requirements of this Rule wherever local governments are~~
21 ~~referenced unless otherwise indicated.~~

22 ~~(4) BUFFERS PROTECTED. All local governments subject to this Rule shall develop riparian buffer~~
23 ~~protection programs and ordinances for approval by the Commission, incorporating the minimum~~
24 ~~standards contained in this Section and the remainder of this Rule. The following minimum criteria~~
25 ~~shall be used for identifying regulated buffers:~~

26 (a) This Rule shall apply to activities conducted within, or outside of with impacts upon, 50-
27 foot wide riparian buffers directly adjacent to surface waters in the Jordan watershed
28 (intermittent streams, perennial streams, lakes, reservoirs and ponds), excluding wetlands.

29 (b) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be
30 considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 2H
31 .0506.

32 ~~(c)~~ A surface water shall be subject to this Rule if the feature is approximately shown on any
33 of the following references, and shall not be subject if it does not appear on any of these
34 references:

35 (i) The most ~~recent, complete~~ recent version of the soil survey map prepared by the
36 Natural Resources Conservation Service of the United States Department of
37 Agriculture.

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

4 (iii) Other ~~more accurate mapping maps~~ approved by the ~~Commission~~Commission
5 as more~~More~~ accurate than those identified in Sub-Item (4)(c)(i) and (4)(c)(ii) of
6 this Rule.~~maps approved would replace the first two sources as the standard of~~
7 ~~reference for this Rule upon their approval.~~

8 ~~(b)(d)~~ Where the specific ~~initiation-origination~~ point of ~~an intermittent~~ a stream regulated under
9 this Item is in question, upon request of the Division or another party, the local
10 government shall make an on-site determination. ~~parties subject to this rule.~~ A local
11 government representative who has successfully completed the Division's *Surface Water*
12 *Identification Training Certification* course, its successor, or other equivalent training
13 curriculum approved by the Division, shall establish that point using ~~shall use~~ the latest
14 version of the Division publication, *Identification Methods for the Origins of Intermittent*
15 and *Perennial Streams*, available at
16 http://h2o.enr.state.nc.us/newwetlands/documents/NC_Stream_ID_Manual.pdf or from the
17 Division of Water Quality, 401/Wetlands Unit, 1650 Mail Service Center, Raleigh, NC,
18 27699-1650. ~~<http://h2o.enr.state.nc.us/newwetlands/regcert.html>, to establish that point.~~ A
19 local government may accept the results of a site assessment made by another party who
20 meets these criteria. Any disputes over on-site determinations made according to this
21 Sub-Item shall be referred to the Director in writing. The Director's determination is
22 subject to review as provided in Articles 3 and 4 of G.S. 150B.

23 ~~(e)~~(e) Riparian buffers protected by this Rule shall be measured pursuant to Item (7) of this
24 Rule.

25 ~~(d)~~(f) Parties subject to this rule shall abide by all State rules and laws regarding waters of the
26 state including but not limited to Rules 15A NCAC 2H .0500, 15A NCAC 2H .1300, and
27 Sections 401 and 404 of the Federal Water Pollution Control Act.

28 ~~(e)~~(g) A riparian buffer may be exempt from this Rule as described in Item (5) or (6) of this
29 Rule.

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

32 (5) EXEMPTION BASED ON ON-SITE DETERMINATION. When a landowner or other affected
33 party including the Division believes that the maps have inaccurately depicted surface waters, he
34 or she shall consult the appropriate local government. Upon request, a local government
35 representative who has successfully completed the Division's *Surface Water Identification*
36 *Training Certification* course, its successor, or other equivalent training curriculum approved by
37 the Division, ~~the local government~~ shall make an on-site determinations. Local governments may

1 also accept the results of site assessments made by other parties who have successfully completed
2 ~~a Division's such training training course and are sanctioned by the Division to make such~~
3 ~~determinations.~~ Any disputes over on-site determinations shall be referred to the Director local
4 Board of Adjustment or other local appeals process in writing. ~~For state and federal entities, any~~
5 ~~disputes shall be referred to the Director in writing.~~ A determination of the Director as to the
6 accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S.
7 150B. Surface waters that appear on the maps shall not be subject to this Rule if ~~an on-site~~
8 ~~determination shows that they fall into one of the following categories~~ a site evaluation reveals any
9 of the following cases:

10 (a) Manmade ponds and lakes that are ~~located outside natural drainage~~ not part of a natural
11 drainage way that is classified in accordance with 15A NCAC 2B .0100 ways; and
12 including ponds and lakes created for animal watering, irrigation, or other agricultural
13 uses. A pond or lake is part of a natural drainage way when it is fed by an intermittent or
14 perennial stream or when it has a direct discharge point to an intermittent or perennial
15 stream.

16 (b) Ephemeral ~~(stormwater)~~ streams.

17 (c) The absence on the ground of a corresponding intermittent or perennial stream, lake,
18 reservoir, or pond.

19 (d) Ditches or other manmade water conveyances, other than modified natural streams.

20 (6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not
21 apply to ~~portions of the riparian buffer where a use uses that are is~~ existing and ~~ongoing according~~
22 ~~to the following ongoing;~~ however, this Rule shall apply at the time an existing, ongoing use is
23 changed to another use. Change of use shall involve the initiation of any activity that does not
24 meet either of the following criteria for existing, ongoing activity: according to the following:

25 (a) ~~A use shall be considered existing and ongoing if it~~ It was present within the riparian
26 buffer as of the effective date of ~~the a local ordinance program or local ordinances~~
27 enforcing this Rule and has continued to exist since that time. For ~~state and federal~~
28 ~~entities, any Division-administered activities listed in Item (3) of this Rule,~~ a use shall be
29 considered existing and ongoing if it was present within the riparian buffer as of the
30 effective date of this Rule and has continued to exist since that time. Existing uses shall
31 include agriculture, buildings, industrial facilities, commercial areas, transportation
32 facilities, maintained lawns, utility lines and on-site sanitary sewage ~~systems~~ systems, any
33 of which involve either specific, periodic management of vegetation or displacement of
34 vegetation by structures or regular activity. Only the portion of the riparian buffer ~~that~~
35 contains occupied by the footprint of the existing use is exempt from this Rule. Change of
36 ownership through purchase or inheritance is not a change of use. Activities necessary to
37 maintain uses are allowed provided that the site remains similarly vegetated, no

1 impervious surface is added within 50 feet of the surface water where it did not
2 previously exist as of the effective date of ~~the a local ordinance program or local~~
3 ~~ordinances~~ enforcing this ~~Rule~~ Rule, or for Division-administered activities listed in Item
4 (3) of this Rule as of the effective date of this Rule, and existing diffuse flow is
5 maintained. Grading and revegetating ~~Zone two~~ Zone Two is allowed provided that the
6 health of the vegetation in ~~Zone one~~ Zone One is not compromised, the ground is
7 stabilized and existing diffuse flow is maintained.

8 (b) ~~A use shall be considered as existing if projects~~ Projects or proposed development ~~that~~ are
9 determined by the local ~~government government, or the Director for the cases involving~~
10 ~~state or federal entities,~~ to meet at least one of the following criteria:

11 (i) Project requires a 401 Certification/404 Permit and these were issued prior to the
12 effective date of the local ~~ordinance or local ordinances~~ program enforcing this
13 Rule, and prior to the effective date of this Rule for ~~state and federal entities;~~
14 ~~Division-administered activities listed in Item (3) of this Rule;~~

15 (ii) Projects that require a state permit, such as landfills, NPDES wastewater
16 discharges, land application of residuals and road construction activities, have
17 begun construction or are under contract to begin construction and had received
18 all required state permits and certifications prior to the effective date of the local
19 ~~ordinance or ordinances~~ program implementing this Rule, and prior to the
20 effective date of this Rule for ~~state and federal entities;~~ ~~Division-administered~~
21 ~~activities listed in Item (3) of this Rule;~~

22 (iii) Projects that are being reviewed through the Clean Water Act Section
23 404/National Environmental Policy Act Merger 01 Process (published by the US
24 Army Corps of Engineers and Federal Highway Administration, 2003) or its
25 immediate successor and that have reached agreement with DENR on avoidance
26 and minimization by the effective date of the local ~~ordinance or~~
27 ~~ordinances~~ program enforcing this Rule, and prior to the effective date of this
28 Rule for state and federal entities; ~~or~~

29 (iv) Projects that are not required to be reviewed by the Clean Water Act Section
30 404/National Environmental Policy Act Merger 01 Process (published by the US
31 Army Corps of Engineers and Federal Highway Administration, 2003) or its
32 immediate successor if a Finding of No Significant Impact has been issued for
33 the project and the project has the written approval of the local government prior
34 to the effective date of the local ~~ordinance or ordinances~~ program enforcing this
35 Rule, or the written approval of the Division prior to the effective date of this
36 Rule for state and federal entities;

1 ~~(c)A project that can be documented to the local government, or the Director for the cases~~
2 ~~involving state or federal entities, as having vested rights that were established or~~
3 ~~recognized for that project under the common law or by G.S. 153A 344(b), 153A 344.1,~~
4 ~~160A 385(b) or 160A 385.1 prior to the effective date of this Rule. This Rule does not~~
5 ~~confer or restrict a vested right established or recognized under common law or G.S.~~
6 ~~153A 344(b), 153(A) 344.1, 160A 385(b), or 160A 385.1.~~

7 ~~(d)This Rule shall apply at the time an existing use is changed to another use. Change of use shall~~
8 ~~involve the initiation of any activity not defined as existing and ongoing in either Sub~~
9 ~~Item (6)(a), (6)(b), or (6)(c) of this Rule.~~

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

12 (a) ~~Zone one~~Zone One shall consist of a vegetated area that is undisturbed except for uses
13 provided for in Item (9) of this Rule. The location of ~~Zone one~~Zone One shall be as
14 follows:

15 (i) For intermittent and perennial streams, ~~Zone one~~Zone One shall begin at ~~the~~
16 ~~most landward limit of~~ the top of the bank ~~or the rooted herbaceous vegetation~~
17 and extend landward a distance of 30 feet on all sides of the surface water,
18 measured horizontally on a line perpendicular to a vertical line marking the ~~edge~~
19 ~~of the~~ top of the bank.

20 (ii) For ponds, lakes and reservoirs located within a natural drainage way, ~~Zone~~
21 ~~one~~Zone One shall begin at ~~the most landward limit of~~ the normal water level ~~or~~
22 ~~the rooted herbaceous vegetation~~ and extend landward a distance of 30 feet,
23 measured horizontally on a line perpendicular to a vertical line marking the ~~edge~~
24 ~~of the surface water or rooted herbaceous vegetation~~normal water level.

25 (b) ~~Zone two~~Zone Two shall consist of a stable, vegetated area that is undisturbed except for
26 uses provided for in Item (9) of this Rule. Grading and revegetating ~~Zone two~~in Zone
27 Two is allowed provided that the health of the vegetation in ~~Zone one~~Zone One is not
28 compromised. ~~Zone two~~Zone Two shall begin at the outer edge of ~~Zone one~~Zone One
29 and extend landward 20 feet as measured horizontally on a line perpendicular to the
30 surface water. The combined width of Zones ~~one~~One and ~~two~~Two shall be 50 feet on
31 all sides of the surface water.

32 (8) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian
33 buffer by dispersing concentrated flow prior to its entry into the buffer and reestablishing
34 ~~vegetation.~~ vegetation as follows:

35 (a) Concentrated runoff from new ditches or manmade conveyances shall be converted to
36 diffuse flow at non-erosive velocities before the runoff enters Zone Two of the riparian
37 buffer;

1 (b) Periodic corrective action to restore diffuse flow shall be taken as necessary and shall be
2 designed to impede the formation of erosion gullies; and

3 (c) As set out in Items (7) and (9) of this Rule, no new stormwater conveyances are allowed
4 through the buffers except for those specified in Item (9) of this Rule addressing
5 stormwater management ponds, drainage ditches, roadside ditches, and stormwater
6 conveyances.

7 (9) TABLE OF USES. The following chart sets out ~~the potential new~~ uses within the buffer, or
8 outside the buffer with impacts on the buffer, and ~~their designation under this Rule~~ categorizes
9 them as exempt, allowable, or allowable with mitigation. All uses not ~~designated~~ categorized as
10 exempt, allowable, or allowable with mitigation are considered prohibited and may not proceed
11 within the riparian buffer or outside the buffer if the use would impact the buffer, unless a variance
12 is granted pursuant to Item (12) Items (12), (13), or (14) of this Rule. The requirements for each
13 category are given in Item (10) Items (12), (13), and (14) of this Rule.

Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer 	X	X	
<p>Airport facilities:</p> <ul style="list-style-type: none"> • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer • Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)¹ 		X <u>X</u>	X
Archaeological activities	X		
Bridges		X	
Canoe Access provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the buffer.	<u>X</u>		

[* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item \(10\) of this Rule.](#)

Use	Exempt *	Allowable *	Allowable with Mitigation*
Dam maintenance activities: <ul style="list-style-type: none"> • Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 • Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No.3 	X	X	

[* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item \(10\) of this Rule.](#)

Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:</p> <ul style="list-style-type: none"> • Existing <u>New stormwater flows to existing</u> drainage ditches, roadside ditches, and stormwater conveyances provided that flows do not alter or result in the need to alter the conveyance and are they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies <u>waterbodies</u>. • <u>Realignment of existing</u> Existing roadside drainage ditches that need to be realigned retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations. • New <u>or altered</u> drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges through the riparian buffer <p>□ New stormwater discharges to existing man-made conveyances (including, but not limited to, drainage ditches, roadside ditches, and stormwater conveyances) provided that the new stormwater discharge does not result in the need to alter the existing man-made conveyances</p> <p>□ New stormwater discharges to existing man-made conveyances applicable to linear projects (including but not limited to, drainage ditches, roadside ditches, and stormwater conveyances) for which the new stormwater discharges result in the need to alter existing man-made conveyances.</p> <ul style="list-style-type: none"> • New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed. 	<p>X</p>	<p>X</p> <p>X</p> <p>X</p>	<p>X</p> <p>X</p>

Use	Exempt *	Allowable *	Allowable with Mitigation*
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[* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item \(10\) of this Rule.](#)

Driveway crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> • Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer • Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer • In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer • In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X X	X
<u>Driveway impacts other than crossing of a stream or other surface waters subject to this Rule</u>			<u>X</u>
Fences: <ul style="list-style-type: none"> • Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Rule • Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Rule 	X	X	
Forest harvesting - see Item (14) (16) of this Rule			
Fertilizer application: One-time <u>one-time</u> application to establish vegetation	X		
Grading and revegetation in Zone two <u>Zone Two only</u> provided that diffuse flow and the health of existing vegetation in Zone one <u>Zone One</u> is not compromised and disturbed areas are stabilized <u>until they are revegetated.</u>	X		

Use	Exempt *	Allowable *	Allowable with Mitigation*
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* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

<u>Greenway / hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.</u>		X	
Historic preservation	X		
<u>Maintenance access on modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.</u>		X	
Mining activities: <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (7) and (8) of this Rule are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items (7) and (8) of this Rule are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit 	X	X	X
Non electric utility lines: <ul style="list-style-type: none"> • Impacts other than perpendicular crossings in Zone two<u>Zone Two only</u>^{4,5} • Impacts other than perpendicular crossings in Zone one<u>Zone One</u>^{4,5} 		X	X

Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Non electric utility line perpendicular crossings of streams and other surface waters subject to this Rule3:</p> <ul style="list-style-type: none"> •Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width •Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width •Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width •Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width ■Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer 	<p>X</p>	<p>X</p> <p>X</p>	<p>X</p> <p>X</p>
<p>Overhead electric utility lines:</p> <ul style="list-style-type: none"> •Impacts other than perpendicular crossings in Zone twoZone Two only3only4,5 ■Impacts other than perpendicular crossings in Zone oneZone One 1,2,3,4,5 	<p>X</p> <p>X</p>	<p>X</p>	<p>X</p>
<p>Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule2,3,4,5:</p> <ul style="list-style-type: none"> •Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer. ■Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer. 	<p>X</p>	<p>X</p>	

Use	Exempt *	Allowable *	Allowable with Mitigation*
Playground equipment: <ul style="list-style-type: none"> • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	X	X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Ponds in natural drainage ways, excluding dry ponds created by impounding streams and not used as stormwater BMPs: <ul style="list-style-type: none"> • New ponds provided that a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the pond • New ponds where a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is NOT established adjacent to the pond 		X	X
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this Rule.			X
Railroad crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X

Use	Exempt *	Allowable *	Allowable with Mitigation*
Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety: <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer impact • Greater than 2,500 square feet of buffer impact 		X	X
Stormwater BMPs: <ul style="list-style-type: none"> • Wet detention, bioretention, and constructed wetlands in Zone two<u>Zone Two</u> if diffuse flow of discharge is provided into Zone one<u>Zone One</u> • Wet detention, bioretention, and constructed wetlands in Zone one<u>Zone One</u> 		X	X
Scientific studies and stream gauging	X		
Streambank <u>or shoreline</u> stabilization		X	
Temporary roads, provided that restoration activities, such as soil stabilization and revegetation, occur immediately after construction; <u>that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria in Item (8) of Rule 15A NCAC 02B.0268:</u> <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with linear projects<u>culvert installation or bridge construction or replacement.</u> 	X	X X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Use	Exempt *	Allowable *	Allowable with Mitigation*
<p><u>Temporary sediment and erosion control devices: devices, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria in Item (8) of Rule 15A NCAC 02B.0268:</u></p> <ul style="list-style-type: none"> <u>• In Zone two Zone Two only provided ground cover is established within timeframes required by the Sedimentation and Erosion Control Act, that the vegetation in Zone one Zone One is not compromised compromised, and that discharge runoff is released as diffuse flow in accordance with Item (5)(8) of this RuleRule.</u> <u>• In Zones one and two to control impacts associated with uses approved by the local government or that have received a variance variance, provided that sediment and erosion control for upland areas is addressed addressed, to the maximum extent practical practical, outside the buffer buffer.</u> <u>• In-stream temporary erosion and sediment control measures for authorized work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act.</u> <u>• In-stream temporary erosion and sediment control measures for work within a stream channel.</u> 	<p>X</p> <p>X</p>	<p>X</p> <p>X</p>	
<p><u>Underground electric utility lines:</u></p> <ul style="list-style-type: none"> <u>• Impacts other than perpendicular crossings in Zone two only²</u> <u>• Impacts other than perpendicular crossings in Zone one⁴</u> 	<p>X</p> <p>X</p>		

Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:</p> <ul style="list-style-type: none"> • Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer^{3,4,5} • Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer^{3,4,5} 	X	X	
<p><u>Utility, electric, aerial, perpendicular crossings of streams and other surface waters subject to this Rule^{2,3,5}:</u></p> <ul style="list-style-type: none"> <u>• Disturb equal to or less than 150 linear feet of riparian buffer</u> <u>• Disturb greater than 150 linear feet of riparian buffer</u> 	X	X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

<p><u>Utility, electric, aerial, other than perpendicular crossings⁵:</u></p> <ul style="list-style-type: none"> <u>• Impacts in Zone Two</u> <u>• Impacts in Zone One^{2,3}</u> 		X	X
<p><u>Utility, electric, underground, perpendicular crossings^{3,4,5}:</u></p> <ul style="list-style-type: none"> <u>• Disturb less than or equal to 40 linear feet of riparian buffer</u> <u>• Disturb greater than 40 linear feet of riparian buffer</u> 	X	X	
<p><u>Utility, electric, underground, other than perpendicular crossings⁴:</u></p> <ul style="list-style-type: none"> <u>• Impacts in Zone Two</u> <u>• Impacts in Zone One¹</u> 	X X		

Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Vegetation management:</p> <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Mowing or harvesting of plant products in Zone two<u>Zone Two-only</u> • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees which that are in danger of causing damage to dwellings, other structures or human lifeline, or are imminently endangering stability of the streambank. • Removal of individual trees which are dead, diseased or damaged. • Removal of poison ivy • Removal of invasive exotic understory nuisance vegetation as defined in: <i>Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</i> 	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>		
<p>Vehicle<u>Vehicular</u> access roads and boat ramps leading to the surface water, docks, fishing piers, and other water dependent<u>water-dependent activities; structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have minimum practicable width not exceeding ten feet.</u></p> <ul style="list-style-type: none"> •Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 10 feet in width • Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 10 feet in width 		<p>X</p>	

Use	Exempt *	Allowable *	Allowable with Mitigation*
<ul style="list-style-type: none"> Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers. 		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Water supply reservoirs: <ul style="list-style-type: none"> New reservoirs provided thatwhere a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the reservoir New reservoirs where a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is NOT <u>not</u> established adjacent to the reservoir 		X	X
Water wells <ul style="list-style-type: none"> Single family residential water wells All other water wells 	X	X	
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> Wetland, stream and buffer restoration that requires <u>DWQ-Division</u> approval for the use of a 401 Water Quality Certification Wetland, stream and buffer restoration that does not require <u>DWQ-Division</u> approval for the use of a 401 Water Quality Certification 	X	X	
Wildlife passage <u>structures</u>		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

Provided that:

- No heavy equipment is used in Zone One.
- Vegetation in undisturbed portions of the buffer is not compromised.
- Felled trees are removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps are removed only by grinding.
- At the completion of the project the disturbed area is stabilized with native vegetation.

1 ▪ Zones one and two meet the requirements of Sub-Items (7) and (8) of this Rule.

2 ² Provided that, in ~~Zone one~~Zone One, all of the following BMPs for overhead utility lines are
3 used. If all of these BMPs are not used, then the overhead utility lines shall require a no
4 practical alternative evaluation by the local government, ~~or the Director for the cases involving~~
5 ~~state or federal entities~~, as defined in Item (11) of this Rule.

- 6 • A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed
7 such that only vegetation that poses a hazard or has the potential to grow tall enough to
8 interfere with the line is removed.
- 9 • Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- 10 • Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall
11 remain where trees are cut.
- 12 • Riprap shall not be used unless it is necessary to stabilize a tower.
- 13 • No fertilizer shall be used other than a one-time application to re-establish vegetation.
- 14 • Construction activities shall minimize the removal of woody vegetation, the extent of the
15 disturbed area, and the time in which areas remain in a disturbed state.
- 16 • Active measures shall be taken after construction and during routine maintenance to ensure
17 diffuse flow of stormwater through the buffer.
- 18 • In wetlands, mats shall be utilized to minimize soil disturbance.

19 ²³ Provided that poles or ~~towers~~aerial infrastructure shall not be installed within 10 feet of a water
20 body unless the local ~~government~~government, ~~or the Director for the cases involving state or~~
21 ~~federal entities~~, completes a no practical alternative evaluation as defined in Item (11) of this
22 Rule.

23 ³ ~~Perpendicular crossings are those that intersect the surface water at an angle between 75° and~~
24 ~~105°.~~

25 ⁴ Provided that, in ~~Zone one~~Zone One, all of the following BMPs for underground utility lines
26 are used. If all of these BMPs are not used, then the underground utility line shall require a no
27 practical alternative evaluation by the local government, ~~or the Director for the cases involving~~
28 ~~state or federal entities~~, as defined in Item (11) of this Rule.

- 29 • Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- 30 • Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall
31 remain, except in the ~~trench~~trench where trees are cut.
- 32 • Underground cables shall be installed by vibratory plow or trenching.
- 33 • The trench shall be backfilled with the excavated soil material immediately following cable
34 installation.
- 35 • No fertilizer shall be used other than a one-time application to re-establish vegetation.
- 36 • Construction activities shall minimize the removal of woody vegetation, the extent of the
37 disturbed area, and the time in which areas remain in a disturbed state.

- ~~Active measures~~Measures shall be taken ~~after~~upon completion ~~of~~ construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

⁵ Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

(10) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated in Item (9) of this Rule as exempt, allowable, and allowable with mitigation within a riparian buffer in Item (9) of this Rule shall have the following requirements:

(a) EXEMPT. Uses designated as exempt are ~~allowed-permissible without local government authorization provided that they adhere to the limitations of the activity as defined in Item (9), within the riparian buffer.~~ Exempt—~~In addition, exempt~~ uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance ~~activities.~~ activities. ~~In addition, exempt uses shall meet requirements listed in Item (9) of this Rule for the specific use.~~

(b) ALLOWABLE. Uses designated as allowable may proceed ~~within the riparian buffer~~ provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule. This includes construction, monitoring, and maintenance activities. These uses require written authorization from the local ~~government, government, or the Director for the cases involving state or federal entities.~~

(c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed ~~within the riparian buffer~~ provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item ~~(13)~~(45) of this Rule. These uses require written authorization from the local ~~government, government, or the Director for the cases involving state or federal entities.~~

(11) DETERMINATION OF “NO PRACTICAL ALTERNATIVES.” Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a “no practical alternatives” determination to the local ~~government, government or the Director for the cases involving state or federal entities.~~ The applicant shall certify that the project meets all the following criteria for finding “no practical alternatives”: ~~criteria identified in Sub Item (11)(a) of this Rule are met.~~ ~~The local government, or the Director for the cases involving state or federal entities, shall grant an Authorization Certificate upon a “no practical alternatives” determination. The procedure for making an Authorization Certificate shall be as follows:~~

~~(a) For any request for an Authorization Certificate, the local government, or the Director for the cases involving state or federal entities, shall review the entire project and make a~~

~~finding of fact as to whether the following requirements have been met in support of a “no practical alternatives” determination;~~

~~(i)(a)~~ The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

~~(i)(b)~~ The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and

~~(iii)(c)~~ Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

~~(d)~~ The applicant shall also submit at least the following information in support of their assertion of “no practical alternatives”:

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

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

~~(iii)~~ The location of the activity, including the jurisdiction;

~~(iv)~~ A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;

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

~~(vi)~~ Plans for any best management practices proposed to be used to control the impacts associated with the activity.

~~(b)(e)~~ Within 60 days of a submission that addresses Sub-Item (11)(b) of this Rule, the local government shall review the entire project and make a finding of fact as to whether the criteria in Sub-Item (11)(a) have been met. ~~Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (11)(a) of this Rule and the local ordinance or ordinances enforcing this Rule by the local government, or the Director for the cases involving state or federal entities. A finding of “no practical alternatives” shall result in issuance of an Authorization Certificate. Failure to issue an approval or denial~~ within 60 days shall ~~constitute that the applicant has demonstrated~~ be construed as a finding of “no practical ~~alternatives”~~ alternatives.” and an ~~An~~ Authorization Certificate shall be issued to the ~~applicant, unless~~ applicant unless one of the following occurs:

~~(i)~~ The applicant agrees, in writing, to a longer ~~period;~~ period; and

~~(ii)~~ ~~Applicant~~ The local government determines that the applicant has failed ~~fails~~ to furnish requested information necessary to the local government’s

1 ~~decision; decision or the Director's decision for the cases involving state or~~
2 ~~federal entities.~~

3 ~~(iii) The final decision is to be made pursuant to a public hearing; or~~

4 ~~(iv) The applicant refuses access to its records or premises for the purpose of~~
5 ~~gathering information necessary to the local government's decision.~~

6 ~~(f) The local government may attach conditions to the Authorization Certificate that support~~
7 ~~the purpose, spirit and intent of the riparian buffer protection program.~~

8 ~~(e) The local government, or the Director for the cases involving state or federal entities,~~
9 ~~may attach conditions to the Authorization Certificate that support the purpose, spirit and~~
10 ~~intent of the riparian buffer protection program. Complete submissions shall include the~~
11 ~~following:~~

12 ~~(i) The name, address and phone number of the applicant;~~

13 ~~(ii) The nature of the activity to be conducted by the applicant;~~

14 ~~(iii) The location of the activity, including the jurisdiction;~~

15 ~~(iv) A map of sufficient detail to accurately delineate the boundaries of the land to be~~
16 ~~utilized in carrying out the activity, the location and dimensions of any~~
17 ~~disturbance in riparian buffers associated with the activity, and the extent of~~
18 ~~riparian buffers on the land;~~

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

22 ~~(vi)(i) Plans for any best management practices proposed to be used to control the~~
23 ~~impacts associated with the activity.~~

24 ~~(d)(g) Any disputes over appeals of determinations regarding Authorization Certificates shall be~~
25 ~~referred to the Director local government's appeals process for a decision, or to the~~
26 ~~Director for determinations involving lands of state and federal entities. The Director's~~
27 ~~decision is subject to review as provided in G.S. 150B Articles 3 and 4.~~

28 (12) VARIANCES. Persons who wish to undertake prohibited uses may pursue a variance. The local
29 government may ~~only~~ grant minor variances. For major variances, local governments shall
30 prepare preliminary findings and submit them to the Commission for approval. The variance
31 request procedure shall be as follows:

32 (a) ~~For any variance request, the local government shall make a finding of fact as to whether~~
33 ~~there~~ There are practical difficulties or unnecessary hardships that prevent compliance
34 with the riparian buffer protection requirements. ~~Practical~~ A finding of practical
35 difficulties or unnecessary hardships shall ~~be evaluated in accordance with~~ require that the
36 ~~following~~ following conditions are met:

- 1 (i) If the applicant complies with the provisions of this Rule, he/she can secure no
 2 reasonable return from, nor make reasonable use of, his/her property. Merely
 3 proving that the variance would permit a greater profit from the property shall
 4 not be considered adequate justification for a variance. Moreover, the local
 5 ~~government~~government, or the Director for the cases involving state or federal
 6 ~~entities;~~ shall consider whether the variance is the minimum possible deviation
 7 from the terms of this Rule that shall make reasonable use of the property
 8 ~~possible~~possible;
- 9 (ii) The hardship results from application of this Rule to the property rather than
 10 from other factors such as deed restrictions or other ~~hardship~~hardship;
- 11 (iii) The hardship is due to the physical nature of the applicant's property, such as its
 12 size, shape, or topography, ~~which is different from that of neighboring~~such that
 13 ~~compliance with provisions of this rule would not allow reasonable use of~~
 14 ~~the property.~~ property;
- 15 (iv) The applicant did not cause the hardship by knowingly or unknowingly violating
 16 this ~~Rule~~Rule;
- 17 (v) The applicant did not purchase the property after the effective date of this Rule,
 18 and then request a ~~variance~~variance; and
- 19 (vi) The hardship is ~~rare or~~ unique to the applicant's ~~property~~property, rather than
 20 ~~the result of conditions that are widespread. If other properties are equally~~
 21 ~~subject to the hardship created in the restriction, then granting a variance would~~
 22 ~~be a special privilege denied to others, and would not promote equal justice.~~
- 23 (b) For any variance request, the local government shall make a finding of fact as to whether
 24 ~~the~~ The variance is in harmony with the general purpose and intent of the State's riparian
 25 buffer protection requirements and preserves its spirit; and
- 26 (c) For any variance request, the local government shall make a finding of fact as to whether,
 27 ~~in~~ in granting the variance, the public safety and welfare have been assured, water quality
 28 has been protected, and substantial justice has been done.

29 ~~(13)~~(d) MINOR VARIANCES. A minor variance request pertains to activities that ~~are proposed~~
 30 ~~only to impact~~will impact only any portion of Zone twoZone Two of the riparian buffer.
 31 Minor variance requests shall be reviewed and approved based on the criteria in ~~Sub-~~
 32 ~~Items~~ Sub Item (11)(a) ~~through~~ (11)(c) of this Rule by the local government pursuant to
 33 G.S. 153A-Article 18, or G.S. 160A-Article 19. The local government may attach
 34 conditions to the variance approval that support the purpose, spirit and intent of the
 35 riparian buffer protection program. Request for appeals to decisions made by the local
 36 ~~governments~~ government shall be made ~~through the local government's appeals~~
 37 ~~process,~~ in writing to the Director. ~~or to the Director for determinations involving state~~

1 ~~and federal entities.~~ The Director's decision is subject to review as provided in G.S.
2 150B Articles 3 and 4.

3 ~~(14)(e)~~ MAJOR VARIANCES. A major variance request pertains to activities that ~~are proposed~~
4 ~~to will~~ impact any portion of ~~Zone one~~Zone One or any portion of both Zones ~~one~~One
5 and ~~two~~Two of the riparian buffer. If the local ~~government government, or the Director~~
6 ~~for the cases involving state or federal entities,~~ has determined that a major variance
7 request meets the requirements in ~~Sub-Item~~ Sub-Items ~~(9)(a)(12)(a) through (12)(c)~~ of
8 this Rule, then it shall prepare a preliminary finding and submit it to the Commission for
9 approval. Within 90 days after receipt by the local government, ~~or the Director for the~~
10 ~~cases involving state or federal entities,~~ the Commission shall review preliminary
11 findings on major variance ~~requests.~~ ~~The following actions shall be taken depending on~~
12 ~~the Commission's decision on the major variance request: requests and take one of the~~
13 ~~following actions: approve, approve with conditions and stipulations, or deny the request.~~
14 ~~Appeals from a Commission decision on a major variance request are made on judicial~~
15 ~~review to Superior Court.~~

16 ~~(a) Upon the Commission's approval, the local government shall issue a final decision~~
17 ~~granting the major variance. The Director shall issue the final decision for the cases~~
18 ~~involving state or federal entities.~~

19 ~~(b) Upon the Commission's approval with conditions or stipulations, the local government~~
20 ~~shall issue a final decision, which includes these conditions or stipulations. The Director~~
21 ~~shall issue a final decision for the cases involving state or federal entities.~~

22 ~~(c) Upon the Commission's denial, the local government shall issue a final decision~~
23 ~~denying the major variance. The Director shall issue a final decision for the cases~~
24 ~~involving state or federal entities.~~

25 ~~(15)(13)~~ MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall
26 meet the following requirements in order to proceed with their proposed use.

- 27 (a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item
28 (11) of this Rule; and
29 (b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0268.

30 ~~(16)(14)~~ REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall
31 apply for forest harvesting operations and practices:

- 32 (a) ~~All the~~The following measures shall apply in the entire riparian ~~buffer~~buffer as
33 applicable:
34 (i) Logging decks and sawmill sites shall not be placed in the riparian ~~buffer~~buffer;
35 (ii) Access roads and skid trails shall be prohibited except for temporary and
36 permanent stream crossings established in accordance with 15A NCAC 11

1 .0203. Temporary stream crossings shall be permanently stabilized after any
2 site disturbing activity is ~~completed-completed~~;

- 3 (iii) Timber felling shall be directed away from the stream or ~~water body-waterbody~~;
- 4 (iv) Skidding shall be directed away from the stream or water body and shall be done
5 in a manner that minimizes soil disturbance and prevents the creation of
6 channels or ~~ruts-ruts~~;
- 7 (v) Individual trees may be treated to maintain or improve their health, form or
8 ~~vigor-vigor~~;
- 9 (vi) Harvesting of dead or infected trees ~~or application of pesticides as~~ necessary to
10 prevent or control ~~extensive~~the spread of tree pest and disease infestation shall
11 be allowed. These practices must be approved by the Division of Forest
12 Resources for a specific site pursuant to the rule. The Division of Forest
13 Resources must notify the ~~local government~~Division of all ~~approvals-approvals~~;
- 14 (vii) Removal of individual trees that are in danger of causing damage to structures or
15 human life shall be ~~allowed-allowed~~;
- 16 (viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground
17 cover plants to enhance the riparian buffer shall be allowed provided that soil
18 disturbance is minimized. ~~Plantings shall consist primarily of native species.~~
- 19 (ix) High-intensity prescribed burns shall not be ~~allowed-allowed~~; and
- 20 (x) Application of fertilizer shall not be allowed except as necessary for permanent
21 stabilization. Broadcast application of fertilizer ~~or herbicides~~ to the adjacent
22 forest stand shall be conducted so that the chemicals are not applied directly to
23 or allowed to drift into the riparian buffer.

24 (b) In ~~Zone one,Zone One~~, forest vegetation shall be protected and maintained. Selective
25 harvest as provided for below is allowed on forest lands that have a deferment for use
26 value under forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands
27 that have a forest management ~~plan prepared or approved by a registered professional~~
28 ~~forester.~~plan. A plan drafted under either option shall meet the standards set out in this
29 Item. Copies of either the approval of the deferment for use value under forestry or the
30 forest management plan shall be produced upon request. For such forest lands, selective
31 harvest is allowed in accordance with the following:

- 32 (i) Tracked or wheeled vehicles are ~~not~~ permitted for the purpose of selective
33 timber harvesting where there is no other practical alternative for removal of
34 individual trees provided activities comply with forest practice guidelines for
35 water quality as defined in Rule 15A NCAC 01I .0101 through .0209, and
36 provided no equipment shall operate within the first 10 feet immediately

1 adjacent to the stream except at stream crossings designed, constructed and
2 maintained in accordance with Rule 15A NCAC 11 .0203;

3 (ii) Soil disturbing site preparation activities are not allowed; and

4 (iii) Trees shall be removed with the minimum disturbance to the soil and residual
5 vegetation.

6 (c) In addition to the requirements of (b) in this item, theThe following provisions for
7 selective harvesting shall be met:

8 (i) The first 10 feet of ~~Zone one~~Zone One directly adjacent to the stream or
9 waterbody shall be undisturbed except for the removal of individual high value
10 trees as defined provided that no trees with exposed primary roots visible in the
11 streambank be ~~cut~~cut unless listed as an exempt activity under Vegetation
12 Management in the Table of Uses, Sub-Item (9) of this Rule;

13 (ii) In the outer 20 feet of ~~Zone one~~Zone One, a maximum of 50 percent of the trees
14 greater than five inches DBH may be cut and removed. The reentry time for
15 harvest shall be no more frequent than every 15 years, except on forest
16 plantations where the reentry time shall be no more frequent than every five
17 years. In either case, the trees remaining after harvest shall be as evenly spaced
18 as ~~possible~~possible; and

19 (iii) In ~~Zone two~~Zone Two, harvesting and regeneration of the forest stand shall be
20 allowed in accordance with 15A NCAC 01I .0100 through .0200 as enforced by
21 the Division of Forest Resources.

22 ~~(+7)~~(15) RULE IMPLEMENTATION. This Rule shall be implemented as follows:

23 (a) For ~~state and federal entities~~Division-administered activities listed in Item (3) of this
24 Rule, the Division shall implement the requirements of this Rule as of its effective
25 ~~date~~date;

26 (b) Within two months after the effective date of this Rule, the Division shall submit a model
27 local riparian buffer protection ordinance that embodies the standards set out in this Rule
28 and Rule 15A NCAC 2B .0268 to the Commission for approval.

29 (b)(c) Within six months of after the effective date of this Rule, Commission's approval of a
30 model local buffer ordinance, local governments shall submit a local ~~program~~programs
31 ~~including all necessary ordinances~~ to the Division for ~~review~~review based on the
32 standards set out in this Rule and Rule 15A NCAC 2B .0268. ~~The A~~ local program shall
33 also detail ~~local government buffer program~~ implementation including but not limited to
34 such factors as a method for ~~resolution of disputes involving Authorization Certificate~~
35 ~~or~~making variance determinations, a plan for record keeping, and a plan for enforcement.
36 Local governments shall use the latest version of the Division's publication,
37 *Identification Methods for the Origins of Intermittent and Perennial Streams*, available at

1 <http://h2o.enr.state.nc.us/newetlands/regcert.html>,

2 http://h2o.enr.state.nc.us/newetlands/documents/NC_Stream_ID_Manual.pdf or at the
3 401/Wetlands Unit of the North Carolina Division of Water Quality at: Mail Service
4 Center 1650, Raleigh, NC, 27699-1650, to establish the existence of ~~streams~~ streams;

5 ~~(e)~~(d) Within one year ~~of after~~ the effective date of the ~~this Rule~~, Commission's approval of a
6 ~~model local buffer ordinance~~, the Division shall ~~request~~ Commission
7 ~~approval approval~~ provide recommendations to the Commission on local buffer
8 ~~programs~~. The Commission shall either approve the programs or require changes based
9 on the standards set out in this Rule and Rule 15A NCAC 2B .0268. Should the
10 Commission require changes, the applicable local government shall have two months to
11 submit revisions, and the Division shall provide follow-up recommendations to the
12 Commission within two months after receiving revisions;

13 ~~(d)~~(e) Within ~~14-2~~ months ~~of after~~ the effective date of the ~~this Rule~~, Commission's approval of
14 ~~local buffer programs~~, local governments shall implement programs to ensure that
15 existing land use activities and proposed development complies with local programs. A
16 local government shall issue an approval for new development only if the development
17 application proposes to avoid impacts to riparian buffers defined in Item (4) of this Rule,
18 or where the application proposes to impact such buffers, it demonstrates that the
19 applicant has done the following, as applicable:

20 (i) Determined that the activity is exempt from requirements of this Rule;

21 (ii) Received an Authorization Certificate from the Division pursuant to Item (11) of
22 this Rule for uses designated as Allowable or Allowable with Mitigation;

23 (iii) For uses designated as Allowable with Mitigation, received approval of a
24 mitigation plan pursuant to Rule 15A NCAC 02B .0268; and

25 (iv) Received a variance pursuant to Item (12) of this Rule;

26 ~~(e)~~(f) Upon implementation, ~~subject~~ local governments shall submit annual reports to the
27 Division summarizing their activities in implementing ~~each of~~ the requirements ~~in Item~~
28 ~~(4)~~ of this ~~Rule~~ Rule;

29 ~~(f)~~(g) If a local government fails to adopt or adequately implement its program as called for in
30 this Rule, the Division may take appropriate enforcement action as authorized by statute,
31 and may choose to assume responsibility for implementing that program until such time
32 as it determines that the local government is prepared to comply with its
33 ~~responsibilities~~ responsibilities; and

34 (h) LOCAL OVERSIGHT. The Division shall periodically inspect local programs to ensure
35 that they are being implemented and enforced in keeping with the requirements of this
36 Rule. Local governments shall maintain on-site records for a minimum of five years, and

1 shall furnish a copy of these records to the Division within 30 days of receipt of a written
2 request for them. Local programs' records shall include the following:

3 (i) A copy of all variance requests;

4 (ii) Findings of fact on all variance requests;

5 (iii) Results of all variance proceedings;

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

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

8 (vi) Copies of all requests for authorization, records approving authorization and
9 Authorization Certificates.

10 ~~(+8)~~(16) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does
11 not preclude the requirement to comply with all other federal, state and local ~~regulations-laws,~~
12 regulations, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains,
13 forest harvesting, surface mining, land disturbance activities, or ~~and laws.~~any other landscape
14 feature or water quality-related activity.

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16
17 *History Note:* Authority 143-214.1; 143-214.5; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-
18 215.6C; 143 215.8B; ~~143-215.8B(b);~~ 143B-282(c); 143B-282(d) S.L. 1999-329, s. 7.1.; S.L. 2005-
19 190; S.L. 2006-259;
20 Eff. July 1, 2008.