

1 15A NCAC 02B .0268 is adopted with changes as published in 21:24 NCR 2293-2296 as follows:

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3 **15A NCAC 02B .0268 JORDAN WATER SUPPLY NUTRIENT STRATEGY: MITIGATION FOR**
4 **RIPARIAN BUFFERS**

5 The following are requirements for the Riparian Buffer Mitigation Program for the Jordan watershed, as prefaced in
6 Rule 15A NCAC 02B .0262:

7 (1) PURPOSE. The ~~purposes-purpose~~ of this Rule ~~shall be~~ to set forth the mitigation requirements
8 that the local governments in the Jordan watershed and listed in 15A NCAC 02B .0262, and in
9 ~~certain-the~~ cases stated in ~~this~~ Rule 15A NCAC 02B .0267 (3) the Division, shall apply to the
10 riparian buffer protection program ~~in the Jordan watershed, as described~~ called for in Rule 15A
11 NCAC 02B ~~.0267,0267, and whose surface waters are described in the Schedule of~~
12 Classifications, 15A NCAC 02B .0311. Additionally this Rule will help to protect the water
13 supply uses of Jordan Reservoir and of designated water supplies throughout the Jordan
14 watershed. Local programs shall be established to meet or exceed the minimum requirements of
15 this Rule. ~~However, the Division shall assume responsibility for applying the requirements of this~~
16 ~~Rule to buffer activities state and federal entities.~~ For the types of buffer activities ~~on state and~~
17 ~~federal entities in the Jordan watershed, listed in Rule 15A NCAC 02B .0267 (3), it shall be~~
18 ~~presumed that~~ the Division shall apply the requirements of this Rule wherever local governments
19 are ~~referenced, referenced unless otherwise indicated~~. The requirements of this Rule shall
20 supersede all locally implemented buffer requirements stated in Rules 15A NCAC 02B .0214
21 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Jordan watershed. Local
22 governments may choose to implement more stringent ~~rules, requirements,~~ including the one-
23 hundred foot buffer requirement set out in Section (3)(b)(i) of Rules 15A NCAC 02B .0214
24 through .0216 for high-density developments.

25 (2) APPLICABILITY. This Rule applies to persons who wish to impact a riparian buffer in the
26 Jordan watershed when one of the following applies:

- 27 (a) A person has received an Authorization Certificate pursuant to 15A NCAC 02B .0267 for
28 a proposed use that is designated as “allowable with ~~mitigation.”~~ mitigation;” or
29 (b) A person has received a variance pursuant to 15A NCAC 02B .0267 and is required to
30 perform mitigation as a condition of a variance approval.

31 (3) ISSUANCE OF THE MITIGATION APPROVAL. The local government shall issue a mitigation
32 approval upon determining that a proposal meets the requirements set out in this Rule. The
33 approval shall identify at a minimum the option chosen, the required and proposed areas, and
34 either the mitigation location or the offset payment amount as applicable.

35 (4) OPTIONS FOR MEETING THE MITIGATION REQUIREMENT. The mitigation requirement
36 may be met through one of the following options:

1 (a) Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund
2 pursuant to 15A NCAC 02B .0269 contingent upon acceptance of payments by the NC
3 Ecosystem Enhancement Program, or to a private mitigation bank that complies with
4 banking requirements of the US Army Corps of Engineers, currently set out at
5 http://www.saw.usace.army.mil/WETLANDS/Mitigation/mitbanks.html or from the US
6 Army Corps of Engineers, P.O. Box 1890, Wilmington, NC, 28402-1890, and the
7 applicable trading criteria in Rule 15A NCAC 02B .0273;

8 (b) Donation of real property or of an interest in real property pursuant to Item (7) of this
9 Rule; or

10 (c) Restoration or enhancement of a non-forested riparian buffer pursuant to the
11 requirements of Item (8) of this Rule.

12 (3)(5) THE AREA OF MITIGATION. The local ~~government~~ ~~government, or the Director for the cases~~
13 ~~involving state or federal entities,~~ shall determine the required area of mitigation, which shall
14 apply to all mitigation options identified in ~~Sub-Item (6)~~ Item (4) of this ~~Rule,~~ Rule and as further
15 ~~specified in the requirements for each option set out in this Rule,~~ according to the following:

16 (a) The impacts in square feet to each zone of the riparian buffer shall be determined by the
17 local ~~government~~ ~~government, or the Director for the cases involving state or federal~~
18 ~~entities,~~ by adding the following:

- 19 (i) The area of the footprint of the use causing the impact to the riparian buffer;
- 20 (ii) The area of the boundary of any clearing and grading activities within the
21 riparian buffer necessary to accommodate the use; and
- 22 (iii) The area of any ongoing maintenance corridors within the riparian buffer
23 associated with the use.

24 (b) The required area of mitigation shall be determined by applying the following multipliers
25 to the impacts determined in Sub-item ~~(3)(a)(5)(a)~~ (5)(a) of this Rule to each zone of the
26 riparian buffer:

- 27 (i) Impacts to ~~Zone one~~ Zone One of the riparian buffer shall be multiplied by three;
- 28 (ii) Impacts to ~~Zone two~~ Zone Two of the riparian buffer shall be multiplied by one
29 and one-half; and
- 30 (iii) Impacts to wetlands within Zones ~~one and two~~ One and Two of the riparian
31 buffer that are subject to mitigation under 15A NCAC 2H .0506 shall comply
32 with the mitigation ratios in 15A NCAC 2H .0506.

33 (4)(6) THE LOCATION OF MITIGATION. ~~The~~ For any option chosen, the mitigation effort shall be
34 located ~~within the same subwatershed of the Jordan watershed, as defined in Rule .0262 of this~~
35 ~~Section, and~~ the same distance from the Jordan Reservoir as the proposed impact, or closer to the
36 Reservoir than the impact, and as close to the location of the impact as feasible. ~~Alternatively, the~~
37 ~~applicant may propose mitigation anywhere within the same subwatershed of the Jordan~~

1 watershed, as defined in Rule .0262 of this Section, provided that the mitigation proposal accounts
2 for differences in delivery of nutrients to the affected arm of Jordan Reservoir resulting from
3 differences between the locations of the buffer impact and mitigation. Additional location
4 requirements for the property donation option are enumerated in Sub-Item (7)(c)(i) of this Rule.

5 ~~(5)ISSUANCE OF THE MITIGATION DETERMINATION. The local government, or the Director for~~
6 ~~the cases involving state or federal entities, shall issue a determination that specifies the required~~
7 ~~area and location of mitigation pursuant to Items (3) and (4) of this Rule.~~

8 ~~(6)OPTIONS FOR MEETING THE MITIGATION DETERMINATION. The mitigation determination~~
9 ~~made pursuant to Item (5) of this Rule may be met through one of the following options:~~

10 ~~(a)Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to~~
11 ~~15A NCAC 02B .0272;~~

12 ~~(b)Donation of real property or of an interest in real property pursuant to Item (7) of this Rule; and~~

13 ~~(c)Restoration or enhancement of a non-forested riparian buffer. This shall be accomplished by~~
14 ~~the applicant after submittal and approval of a restoration plan pursuant to Item (8) of this~~
15 ~~Rule.~~

16 (7) DONATION OF PROPERTY. Persons who choose to satisfy their mitigation determination by
17 donating real property or an interest in real property shall meet the following requirements:

18 (a) The donation of real property interests may be used to either partially or fully satisfy the
19 payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund
20 pursuant to 15A NCAC 02B .0272. The value of the property interest shall be
21 determined by an appraisal performed in accordance with Sub-item (7)(d)(iv) of this
22 Rule. The donation shall satisfy the mitigation determination if the appraised value of the
23 donated property interest is equal to or greater than the required fee. If the appraised
24 value of the donated property interest is less than the required fee calculated pursuant to
25 15A NCAC 02B .0272, the applicant shall pay the remaining balance due.

26 (b) The donation of conservation easements to satisfy compensatory mitigation requirements
27 shall be accepted only if the conservation easement is granted in perpetuity.

28 (c) Donation of real property interests to satisfy the mitigation determination shall be
29 accepted only if such property meets all of the following requirements:

30 (i) In addition to the location requirements of Item (6), the~~The~~ property shall be
31 located within an area that is identified as a priority for restoration in, or is
32 otherwise consistent with the goals of, the *Basinwide Wetlands and Riparian*
33 *Restoration Plan for the Cape Fear River Basin* developed by the Department
34 pursuant to G.S. ~~143-214.10,~~ 143-214.10;

35 (ii) The property shall contain riparian buffers not currently protected by the State's
36 riparian buffer protection program that are in need of restoration as defined in

~~Sub-Item (8)(d) of this Rule; restoration. Buffers not in compliance with 15A NCAC 02B .0267 are in need of restoration.~~

- (iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface ~~water.~~water;
- (iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the ~~acreage of riparian buffer required to be mitigated under the area of~~ mitigation responsibility determined pursuant to Item ~~(3)(5)~~ of this ~~Rule.~~Rule;
- (v) ~~The property~~Restoration shall not require ~~excessive measures for successful restoration, such as~~ removal of man-made structures or ~~infrastructure.~~infrastructure. ~~Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use.~~
- (vi) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and ~~vegetation.~~vegetation;
- (vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and ~~land acquisition~~transaction ~~costs.~~costs;
- (viii) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as ~~amended.~~amended;
- (ix) The property shall not contain any hazardous substance or solid ~~waste.~~waste;
- (x) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety ~~regulations.~~regulations;
- (xi) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration ~~effort.~~effort; and
- (xii) The property shall not have any encumbrances or conditions on the transfer of the property interests.

(d) At the expense of the applicant or donor, the following information shall be submitted to the local ~~government, or the Director for the cases involving state or federal entities,~~ with any proposal for donations or dedications of interest in real property:

- (i) Documentation that the property meets the requirements laid out in Sub-Item (8)(c) of this Rule;
- (ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map,

1 and county road map showing the location of the property to be donated along
2 with information on existing site conditions, vegetation types, presence of
3 existing structures and easements;

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

11 (iv) A current appraisal of the value of the property performed in accordance with
12 the procedures of the North Carolina Department of Administration, State
13 Property Office as identified by the Appraisal Board in the "Uniform Standards
14 of Professional North Carolina Appraisal Practice." Copies may be obtained
15 from the Appraisal Foundation, Publications Department, P.O. Box 96734,
16 Washington, D.C. 20090-6734; and

17 (v) A title certificate.

18 (8) RIPARIAN BUFFER RESTORATION OR ENHANCEMENT. Persons who choose to meet
19 their mitigation requirement through riparian buffer restoration or enhancement shall meet the
20 following requirements:

21 (a) The applicant may restore or enhance a non-forested riparian buffer if either of the
22 following applies:

23 (i) The area of riparian buffer restoration is equal to the required area of mitigation
24 determined pursuant to Item ~~(3)(5)~~ of this Rule; or

25 (ii) The area of riparian buffer enhancement is three times larger than the required
26 area of mitigation determined pursuant to Item ~~(3)(5)~~ of this ~~Rule~~ Rule;

27 (b) The location of the riparian buffer restoration or enhancement shall comply with the
28 requirements in Item ~~(4)(6)~~ of this ~~Rule~~ Rule;

29 (c) The riparian buffer restoration or enhancement site shall have a minimum width of 50
30 feet as measured horizontally on a line perpendicular to the surface ~~water~~ water;

31 (d) Enhancement and restoration shall both have the objective of establishing a forested
32 riparian buffer according to the requirements of this Item. Enhancement shall be
33 distinguished from restoration based on existing buffer conditions. Where existing trees
34 are sparse, that is greater than or equal to 100 trees per acre but less than 200 trees per
35 acre, a buffer may be enhanced. Where existing woody vegetation is absent, that is less
36 than 100 trees per acre, a buffer may be restored;

1 ~~(d)~~(e) The applicant shall first receive an Authorization Certificate for the proposed use
2 according to the requirements of 15A NCAC 02B .0267. After receiving this
3 determination, the applicant shall submit a restoration or enhancement plan for approval
4 by the local ~~government, government, or the Director for the cases involving state or~~
5 ~~federal entities.~~ The restoration or enhancement plan shall contain the following:

- 6 (i) A map of the proposed restoration or enhancement site;
7 (ii) A vegetation plan. The vegetation plan shall include a minimum of at least two
8 native hardwood tree species planted at a density sufficient to provide 320 trees
9 per acre at maturity;
10 (iii) A grading plan. The site shall be graded in a manner to ensure diffuse flow
11 through the riparian buffer;
12 (iv) A fertilization plan; and
13 (v) A schedule for ~~implementation.~~implementation;

14 ~~(e)~~(f) Within one year after the local government has approved the restoration or
15 enhancement plan, the applicant shall present proof to the local
16 ~~government, government, or the Director for the cases involving state or federal entities,~~
17 that the riparian buffer has been restored or enhanced. If proof is not presented within
18 this timeframe, then the person shall be in violation of both the State's and the local
19 government's riparian buffer protection ~~program.~~program;

20 ~~(f)~~(g) The mitigation area shall be placed under a perpetual conservation easement that will
21 provide for protection of the property's nutrient removal ~~functions.~~functions; and

22 ~~(g)~~(h) The applicant shall submit annual reports for a period of five years after the restoration
23 or enhancement showing that the trees planted have survived and that diffuse flow
24 through the riparian buffer has been maintained. The applicant shall replace trees that
25 do not survive and restore diffuse flow if needed during that five-year period.

26
27 *History Note:* Authority 143-214.1; 143-214.5; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-
28 215.6C; ~~143B-282(d); 143 215.8B; 143-215.8B(b);~~ 143B-282(c); ~~143B-282(d);~~ S.L. 1999-329, s.
29 7.1.; S.L. 2005-190; S.L. 2006-259;
30 *Eff. July 1, 2008.*