

15A NCAC 02B .0611 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES

(a) **PURPOSE.** The following requirements shall apply to persons who wish to undertake uses designated as allowable upon authorization, allowable with mitigation upon authorization, or allowable with exception within the protected riparian buffer area as specified in the applicable riparian buffer protection rule of this Section and Section .0700 of this Subchapter.

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

- (1) The application shall specify:
 - (A) The name, address, and phone number of the applicant;
 - (B) If the applicant is not the property owner(s), the name, address, and phone number of the property owner;
 - (C) If the applicant is a corporation, the name and address of the North Carolina process agency, and the name, address, and phone number of the individual who is the authorized agent of the corporation and responsible for the activity for which certification is sought. The corporation must be authorized to do business in NC;
 - (D) The nature of the activity to be conducted by the applicant;
 - (E) The location of the activity, including the jurisdiction;
 - (F) A map that is legible to the reviewer and of sufficient detail to 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;
 - (G) An explanation of why this plan for the activity cannot be practically accomplished, reduced, relocated, or reconfigured to avoid or better minimize disturbance to the riparian buffer, preserve aquatic life and habitat, and protect water quality;
 - (H) Plans for any best management practices proposed to be used to control the impacts associated with the activity; and
 - (I) For uses designated as allowable with mitigation upon authorization or allowable with exception, a mitigation proposal in accordance with Rule .0295 of this Subchapter.
- (2) The applicant shall demonstrate that the project meets all the following criteria:
 - (A) The basic project purpose cannot be practically accomplished in a manner that would avoid or better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
 - (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
 - (C) Best management practices shall be used to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- (3) The Authority shall issue an Authorization Certificate, deny the application, or request additional information within 60 calendar days after receipt of an application that meets the requirements as described in Subparagraphs (b)(1) and (b)(2) of this Rule. When the Authority requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Authority. Failure to issue the Authorization Certificate, deny the application, or request additional information within 60 calendar days shall be construed as issuance of an Authorization Certificate by the Authority to the applicant unless one of the following occurs:
 - (A) The applicant agrees, in writing, to a longer period;
 - (B) The applicant fails to furnish information necessary for the Authority's decision;
 - (C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or
 - (D) Information necessary for the Authority's decision is unavailable.
- (4) The Authority may attach conditions to the Authorization Certificate that ensure compliance with the riparian buffer protection program.
- (5) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates issued by the delegated local authority shall be pursuant to the local authority's ordinance.

(c) **AUTHORIZATION CERTIFICATES WITH EXCEPTION.** Persons who wish to undertake uses designated in the applicable riparian buffer protection rule of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception. The Authorization Certificate with Exception review procedure shall be as follows:

- (1) All of the following conditions must be met in order to qualify for an Authorization Certificate with Exception:
 - (A) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements.
 - (B) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the Authorization Certificate with Exception would allow a greater profit from the property shall not be considered adequate justification for an Authorization Certificate with Exception. Moreover, the Authority shall consider whether the Authorization Certificate with Exception is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;
 - (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography;
 - (D) The applicant did not cause the hardship;
 - (E) The requested Authorization Certificate with Exception is consistent with the general spirit, purpose, and intent of the State's riparian buffer protection requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.
- (2) **MINOR EXCEPTIONS.** An Authorization Certificate with Minor Exception request pertains to allowable with exception activities that are proposed to impact equal to or less than one-third of an acre of riparian buffer.
 - (A) Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
 - (B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2), and (c)(1) of this Rule, the Authority shall issue an Authorization Certificate with Minor Exception if the Authority determines that the criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant satisfies other applicable requirements as described in Paragraph (b) and Subparagraph (c)(1) of this Rule. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Minor Exception.
- (3) **MAJOR EXCEPTIONS.** An Authorization Certificate with Major Exception request pertains to allowable with exception activities that are proposed to impact greater than one-third of an acre of riparian buffer.
 - (A) Authorization Certificate with Major Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
 - (B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2), and (c)(1) of this Rule, the Authority shall prepare a preliminary finding as to whether the criteria in Subparagraphs (b)(2) and (c)(1) of this Rule have been met.
 - (C) Notice of each pending complete application for an Authorization Certificate with Major Exception, including the preliminary finding prepared by the Authority, shall be posted on the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503(g), at least 30 calendar days prior to proposed final action by the Authority on the application. If the Authority is not the Division, then the Authority shall forward the required notice information to the Division for posting.
 - (D) Within 60 calendar days following the notice as described in Part (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have been met, the Authority shall issue an Authorization Certificate with Major Exception. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Major Exception.

- (4) The Authority may attach conditions to the Authorization Certificate with Exception that ensure compliance with the riparian buffer protection program.
- (5) Requests for appeals of Authorization Certificates with Exception issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception issued by the delegated local authority shall be made pursuant to the local authority's ordinance.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); 143-215.8A; S.L. 1995-572; S.L. 1999-329; S.L. 2011-394; S.L. 2012-200; S.L. 2013-413; S.L. 2015-246; Eff. June 15, 2020 (The provisions of this Rule were previously codified in 15A NCAC 02B .0233(8) & (9), 15A NCAC 02B .0243(8) & (9), 15A NCAC 02B .0250(11) & (12) and 15A NCAC 02B .0259(8) & (9)).