

15A NCAC 02B .0734 TAR-PAMLICO RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers in the Tar-Pamlico River Basin.

- (1) **PURPOSE.** The purpose of this Rule shall be to maintain and protect existing riparian buffers in the Tar-Pamlico River Basin to maintain their nutrient removal functions. Terms used in this Rule shall be as defined in Rule .0610 of this Subchapter.
- (2) **APPLICABILITY.** This Rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (3) of this Rule in the Tar-Pamlico River Basin, excluding Ocracoke Island.
- (3) **BUFFERS PROTECTED.** The following minimum criteria shall be used for identifying regulated riparian buffers:
 - (a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references:
 - (i) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture;
 - (ii) The United States Geologic Survey's (USGS) National Map, available online at: <https://www.usgs.gov/core-science-systems/national-geospatial-program/national-map>; or
 - (iii) Other maps approved by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps shall use a hydrography dataset developed using hydrography specifications and standard metadata approved by the Geographic Information Coordinating Council (GICC) and maintained on a GICC list of the best available hydrography. Edits, deletions and additions to the hydrography dataset shall follow GICC approved standards and specifications, per stewardship governance. Other maps shall have their hydrography dataset and procedures for edits, deletions and additions reviewed and approved by the GICC. Other maps shall be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Sub-Item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6) of this Rule;
 - (b) This Rule shall apply to activities conducted within 50-foot wide riparian buffers directly adjacent to surface waters in the Tar-Pamlico River Basin (intermittent streams, perennial streams, lakes, ponds, reservoirs and estuaries), excluding wetlands;
 - (c) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506;
 - (d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;
 - (e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;
 - (f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and
 - (g) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.
- (4) **ON-SITE DETERMINATION.** When a landowner or other affected party believes that the maps listed in Sub-Item (3)(a) of this Rule have inaccurately depicted surface waters or the specific origination point of a stream, or the specific origination point of a stream is in question or unclear,

he or she shall request the Authority to make an on-site determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in writing within 60 calendar days of written notification from the Authority. The Director's determination is subject to review as provided in G.S. 150B.

- (5) **EXEMPTION BASED ON ON-SITE DETERMINATION.** Surface waters that appear on the maps listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories:
- (a) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.
 - (b) Manmade ponds and lakes that are not fed by an intermittent or perennial stream nor have a direct discharge point to an intermittent or perennial stream.
 - (c) Ephemeral streams.
 - (d) The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, pond or estuary.
- (6) **EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING.** This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing.
- (a) A use shall be considered existing if:
 - (i) It was present within the riparian buffer as of January 1, 2000 and has continued to exist since that time; or
 - (ii) It was a deemed allowable activity as listed in Item (11) of this Rule; or
 - (iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.
 - (b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns (i.e. can be mowed without a chainsaw or bush-hog), existing utility line maintenance corridors and on-site sanitary sewage systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.
 - (c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.
 - (d) Change of ownership through purchase or inheritance is not a change of use.
 - (e) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to January 1, 2000, and the site is in compliance with Item (9) of this Rule.
 - (f) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.
- (7) **EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES.** This Rule shall not apply to a freshwater pond if all of the following conditions are met:
- (a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.
 - (b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before January 1, 2000.
 - (c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B(3).
- (8) **ZONES OF THE RIPARIAN BUFFER.** The protected riparian buffer shall have two zones as follows:
- (a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Items (9) and (11) of this Rule. The location of Zone 1 shall be as follows:
 - (i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward

a distance of 30 feet on all sides of the stream measured horizontally on a line perpendicular to the stream (where an intermittent or perennial stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).

- (ii) For ponds, lakes and reservoirs subject to this Rule, Zone 1 shall begin at the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.
 - (iii) For surface waters within the 20 Coastal Counties (defined in Rule .0202 of this Subchapter) and within the jurisdiction of the Division of Coastal Management, Zone 1 shall begin at the most landward limit of the normal high water level or the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.
- (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Items (9) and (11) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.
- (9) **STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER.** Stormwater runoff into the riparian buffer shall meet dispersed flow as defined in 15A NCAC 02H .1002 except as otherwise described in this Item. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through the riparian buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.
- (a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this Rule:
 - (i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and
 - (ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.
 - (b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:
 - (i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not required to be approved under a state stormwater program or a state-approved local government stormwater program;
 - (ii) New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goals as outlined in Rule .0731(e)(1) of this Subchapter;
 - (iii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;
 - (iv) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;
 - (v) Realignment of existing roadside drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;

- (vi) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;
 - (vii) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;
 - (viii) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical; and
 - (ix) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.
- (10) USES. Uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited.
- (a) Potential new uses shall have the following requirements:
- (i) **DEEMED ALLOWABLE.** Uses designated as deemed allowable in Sub-Item (9)(a) and Item (11) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet the requirements listed in Item (11) of this Rule for the specific use.
 - (ii) **ALLOWABLE UPON AUTHORIZATION.** Uses designated as allowable upon authorization in Sub-Item (9)(b) and Item (11) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0611 of this Subchapter.
 - (iii) **ALLOWABLE WITH MITIGATION UPON AUTHORIZATION.** Uses designated as allowable with mitigation allowable upon authorization in Item (11) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0611 of this Subchapter and an appropriate mitigation strategy has received written approval pursuant to Item (12) of this Rule.
 - (iv) **PROHIBITED.** Uses designated as prohibited in Item (11) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Subchapter. Mitigation may be required as a condition of variance approval.
 - (v) **ALLOWABLE WITH EXCEPTION.** Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Item (11) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Subchapter and an appropriate mitigation strategy that has received written approval pursuant to Item (12) of this Rule.
- (11) **TABLE OF USES:** The following table sets out potential new uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, and designates them as deemed allowable, allowable upon authorization, or allowable with mitigation upon authorization:

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(a) Airport facilities: (i) Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated (ii) Airport facilities that impact equal to or less than one-third of an acre of riparian buffer (iii) Airport facilities that impact greater than one-third of an acre of riparian buffer	X	X	X	
(b) Archaeological activities	X			
(c) Bridges: (i) Impact equal to or less than one-tenth of an acre of riparian buffer (ii) Impact greater than one-tenth of an acre of riparian buffer	X	X		
(d) Dam maintenance activities: (i) Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint (ii) Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam	X	X		
(e) Drainage of a pond subject to Item (4) of this Rule provided that a new riparian buffer is established by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Item (4) of this Rule	X			
(f) Fences: (i) Fencing livestock out of surface waters (ii) Installation does not result in removal of trees from Zone 1 (iii) Installation results in removal of trees from Zone 1	X X	X		
(g) Fertilizer application: (i) One-time fertilizer application at agronomic rates in the riparian buffer to establish replanted vegetation. No runoff from this one-time application in the riparian buffer is allowed in the surface water (ii) Ongoing fertilizer application	X			X
(h) Forest harvesting - see Rule .0612 of this Subchapter				
(i) Grading only in Zone 2 provided that the health of existing vegetation in Zone 1 is not compromised, Item (9) of this Rule is complied with, and disturbed areas are stabilized and revegetated	X			

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(j) Greenways, trails, sidewalks or linear pedestrian/bicycle transportation systems:				
(i) In Zone 2 provided that no built upon area is added within the riparian buffer	X			
(ii) In Zone 1 provided that no built upon area is added within the riparian buffer and the installation does not result in the removal of tree(s)	X			
(iii) When built upon area is added to the riparian buffer, equal to or less than 10 feet wide with 2 foot wide shoulders. Shall be located outside Zone 1 unless there is no practical alternative		X		
(iv) When built upon area is added to the riparian buffer, greater than 10 feet wide with 2 foot wide shoulders. Shall be located outside Zone 1 unless there is no practical alternative			X	
(k) Historic preservation	X			
(l) New Landfills as defined by G.S. 130A-290				X
(m) Maintenance access on modified natural streams or canals: a grassed travel way on one side of the waterbody 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		X		
(n) Mining activities:				
(i) Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (8) and (9) of this Rule are established adjacent to any relocated channels		X		
(ii) Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of Items (8) and (9) of this Rule are not established			X	
(iii) Wastewater or mining dewatering wells with approved NPDES permit	X			
(o) On-site sanitary sewage systems - new ones that use ground absorption				X
(p) Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure:				
(i) Equal to or less than six feet wide that does not result in the removal of tree(s) within the riparian buffer and does not result in the addition of built upon area to the riparian buffer	X			
(ii) Equal to or less than six feet wide that results in the removal of tree(s) or the addition of built upon area to the riparian buffer		X		
(iii) Greater than six feet wide			X	

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(q) Playground equipment:				
(i) Playground equipment on single-family lots provided that installation and use does not result in removal of vegetation	X			
(ii) Playground equipment on single-family lots where installation or use results in the removal of vegetation		X		
(iii) Playground equipment installed on lands other than single-family lots		X		
(r) Ponds created or modified by impounding streams subject to the riparian buffers pursuant to Item (3) of this Rule and not used as stormwater control measures (SCMs):				
(i) New ponds provided that a riparian buffer that meets the requirements of Items (8) and (9) of this Rule is established adjacent to the pond		X		
(ii) New ponds where a riparian buffer that meets the requirements of Items (8) and (9) of this Rule is NOT established adjacent to the pond			X	
(s) Protection of existing structures and facilities, when this requires additional disturbance to the riparian buffer		X		
(t) Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the riparian buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing	X			
(u) Removal of previous fill or debris provided that Item (9) of this Rule is complied with and any vegetation removed is restored	X			
(v) Residential Properties: Where application of this Rule would preclude construction or expansion of a single-family residence and necessary infrastructure, the single-family residence may encroach in the riparian buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) the residence is designed to minimize encroachment into the riparian buffer; (3) the residence complies with Item (9) of this Rule; and (4) if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer:				

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) The residence or necessary infrastructure only impact Zone 2		X		
(ii) The residence or necessary infrastructure impact Zone 1			X	
(iii) Impacts other than the residence or necessary infrastructure			X	
(w) Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm :				
(i) Wetland or stream restoration that is part of a compensatory mitigation bank, nutrient offset bank or the In Lieu Fee program	X			
(ii) Wetland or stream restoration other than those listed above		X		
(x) Road, driveway or railroad - impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	
(y) Road, driveway or railroads - perpendicular crossings of streams and other surface waters subject to this Rule:				
(i) Impact equal to or less than one-tenth of an acre of riparian buffer	X			
(ii) Impact greater than one-tenth of an acre but equal to or less than one-third of an acre of riparian buffer		X		
(iii) Impact greater than one-third of an acre of riparian buffer			X	
(iv) Driveway crossings in a residential subdivision that cumulatively impact equal to or less than one-third of an acre of riparian buffer		X		
(v) Driveway crossings in a residential subdivision that cumulatively impact greater than one-third of an acre of riparian buffer			X	
(vi) Farm roads and forest roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the Federal Clean Water Act	X			
(z) Road relocation of existing private access roads associated with public road projects where necessary for public safety:				
(i) Less than or equal to 2,500 square feet of riparian buffer impact		X		
(ii) Greater than 2,500 square feet of riparian buffer impact			X	
(aa) Scientific studies and stream gauging		X		

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(bb) Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Items (8) and (9) of this Rule and:				
(i) Installation does not result in removal of vegetation in Zone 1		X		
(ii) Installation results in removal of vegetation in Zone 1			X	
(cc) Stormwater Control Measure (SCM) as defined in 15A NCAC 02H .1002:				
(i) In Zone 2 if Item (9) of this Rule is complied with		X		
(ii) In Zone 1			X	
(dd) Streambank or shoreline stabilization		X		
(ee) Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:				
(i) Less than or equal to 2,500 square feet of riparian buffer disturbance	X			
(ii) Greater than 2,500 square feet of riparian buffer disturbance		X		
(iii) Associated with culvert installation or bridge construction or replacement		X		
(ff) Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:				
(i) In Zone 2 provided that ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone 1 is not compromised, and that discharge is released in accordance with Item (9) of this Rule	X			
(ii) In Zones 1 and 2 to control impacts associated with uses identified in this Table or that have received an Authorization Certificate with Exception provided that sediment and erosion control for upland areas is addressed outside the riparian buffer			X	

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(iii) In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Clean Water Act	X			
(gg) Utility Lines - Streambank stabilization for the protection of publicly owned utility lines (not including new line installation): (i) Less than 150 feet of streambank disturbance (ii) Greater than 150 feet of streambank disturbance	X	X		
(hh) Utility Lines – Sanitary Sewer Overflows: (i) Emergency sanitary sewer overflow response activities, provided that the disturbed area within the riparian buffer outside of the existing utility line maintenance corridor is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) within two months of when disturbance is complete (ii) Emergency sanitary sewer overflow response activities that do not meet the listing above. For any new proposed permanent impacts that are not a "Deemed Allowable Activity", an application for an Authorization Certificate shall be submitted to the Authority no later than 30 calendar days of conclusion of the emergency response activities	X	X		
(ii) Utility Lines – Sewer Lines - Vegetation maintenance activities that remove forest vegetation from existing sewer utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor: (i) Zone 2 impacts (ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide (iii) Zone 1 impacts other than those listed above	X X	X		
(jj) Utility Lines – Sewer Lines - Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor provided that comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) is allowed to regenerate in disturbed riparian buffers outside of the permanent maintenance corridor and riparian buffers outside of the permanent maintenance corridor are not maintained:				

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	X			
(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide		X		
(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts			X	
(kk) Utility Lines – Sewer Lines - New Line Construction/Installation Activities – Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Construction corridor of less than or equal to 40 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide	X			
(ii) Construction corridor of greater than 40 linear feet wide and less than or equal to 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide		X		
(iii) Construction corridor of greater than 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide			X	
(iv) Permanent maintenance corridor greater than 30 linear feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts			X	
(ll) Utility Lines – Sewer Lines - New Line Construction/Installation Activities – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Zone 2 impacts	X			

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided (iii) Zone 1 impacts other than those listed above		X	X	
(mm) Utility Lines – Non-Sewer Underground Lines – Vegetation maintenance activities that remove forest vegetation from existing utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor: (i) Zone 2 impacts (ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide (iii) Zone 1 impacts other than those listed above	X X	X		
(nn) Utility Lines – Non-Sewer Underground Lines. Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor: (i) Construction corridor of less than or equal to 50 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide (ii) Construction corridor of greater than 50 linear feet wide and less than or equal to 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide (iii) Construction corridor of greater than 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide (iv) Permanent maintenance corridor that is greater than 30 linear feet wide (mitigation is required only for Zone 1 impacts)	X	X	X X	
(oo) Utility Lines – Non-Sewer Underground Lines – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor: (i) Zone 2 impacts (ii) Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided (iii) Zone 1 impacts other than those listed above	X	X	X	

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(pp) Utilities – Non-Sewer Aerial Lines - Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				
(i) Disturb equal to or less than 150 linear feet wide of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that poles or aerial infrastructure are not installed within 10 feet of a waterbody	X			
(ii) Disturb greater than 150 linear feet wide of riparian buffer		X		
(qq) Utilities – Non-Sewer Aerial Lines - Impacts other than perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				
(i) Impacts in Zone 2 only		X		
(ii) Impacts in Zone 1 provided that a minimum zone of 10 feet wide immediately adjacent to the waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that poles or aerial infrastructure are not installed within 10 feet of a waterbody			X	
(rr) Vegetation management:				
(i) Emergency fire control measures provided that topography is restored	X			
(ii) Periodic mowing and harvesting of plant products only in Zone 2	X			
(iii) Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X			
(iv) Planting non-invasive vegetation to enhance the riparian buffer	X			
(v) Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
(vi) Removal of individual trees, branches or limbs, which are in danger of causing damage to dwellings, existing utility lines, other structures or human life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance	X			

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(vii) Removal of individual trees that are dead, diseased or damaged	X			
(viii) Removal or poison ivy, oak or sumac Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species	X			
(ix) Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364) . Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant then the riparian buffer shall be replanted with non-invasive species	X			
(x) Removal of woody vegetation in Zone 1 provided that Item (9) of this Rule is complied with			X	
(ss) Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:				
(i) Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet wide		X		
(ii) 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 15 feet wide			X	
(tt) Water dependent structures (except for boat ramps) as defined in Rule .0202 of this Subchapter		X		
(uu) Water supply reservoirs:				
(i) New reservoirs provided that a riparian buffer that meets the requirements of Items (8) and (9) of this Rule is established adjacent to the reservoir		X		
(ii) New reservoirs where a riparian buffer that meets the requirements of Items (8) and (9) of this Rule is NOT established adjacent to the reservoir			X	
(vv) Water wells	X			

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ww) Wildlife passage structures		X		

- (12) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation upon authorization as defined in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed use.
- (a) Obtain an Authorization Certificate pursuant to Rule .0611 of this Subchapter; and
 - (b) Obtain written approval for a mitigation proposal pursuant to Rule .0295 of this Subchapter.
- (13) REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL. Local governments that are required to have local stormwater programs pursuant to Rule .0258 of this Subchapter shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.
- (a) Obtain authority to implement a local riparian buffer protection program pursuant to Rule .0735 of this Section; or
 - (b) Refrain from issuing local approvals for new development projects unless either:
 - (i) The person requesting the approval does not propose to impact the riparian buffer as described in Item (3) of this Rule; or
 - (ii) The person requesting the approval proposes to impact the riparian buffer as described in Item (3) of this Rule and either:
 - (A) Has received an on-site determination from the Authority pursuant to Item (4) of this Rule that surface waters are not present in the location of the proposed impact;
 - (B) The activity is designated as exempt under this Rule;
 - (C) Has received an Authorization Certificate from the Authority pursuant to Rule .0611 of this Subchapter for uses designated as allowable upon authorization under this Rule;
 - (D) Has received an Authorization Certificate from the Authority pursuant to Rule .0611 of this Subchapter and obtained the Authority's approval on a mitigation plan pursuant to Item (11) of this Rule for uses designated as allowable with Mitigation upon authorization under this Rule;
 - (E) Has received an exception from the Authority pursuant Rule .0611 of this Subchapter; or
 - (F) Has received a Variance pursuant to Rule .0611 of this Subchapter.
- (14) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999-329, s. 7.1; S.L. 2011-394; S.L. 2012-200; S.L. 2013-413; S.L. 2015-246; S.L. 2017-209;
Temporary Adoption Eff. January 1, 2000;
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