

15A NCAC 02B .0607 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): BUFFER TYPES AND MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS

(a) **RIPARIAN BUFFER.** The protected riparian buffer shall consist of an area that is undisturbed except for uses provided for in the table in this Rule. A waterbody shall be considered to be present if the feature is shown as described in the applicability paragraph of 15A NCAC 02B .0233 (3) and 02B .0233(3)(a)(i)-(iii). The location of the riparian buffer shall be as follows:

- (1) For streams, the riparian buffer shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward on all sides of the surface water, measured horizontally on a line perpendicular to the surface water.
- (2) For ponds, lakes and reservoirs located within a natural drainage way, the riparian buffer shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward, measured horizontally on a line perpendicular to the surface water.

(b) **EXEMPTION WHEN USES ARE PRESENT AND ONGOING.** The buffer requirements in this Rule do not apply to portions of the riparian buffer where a use is existing and ongoing. Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt. The determination of whether a use is existing and ongoing shall be made by the Division of Water Quality. A use is existing and ongoing when it is a completed and maintained activity, an activity with appropriate valid permits, or an activity with documentation for unexpired vested rights, as described below:

- (1) A use that was present within the riparian buffer as of the effective date of this Rule and has continued since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within the buffer area where it did not exist as of the effective date of this Rule and existing diffuse flow is maintained.
- (2) A use that can be documented to the Division of Water Quality that meets at least one of the following criteria:
 - (A) Project requires a 401 Certification/404 Permit, issued prior to the effective date of this Rule and are still valid;
 - (B) Project requires a state permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or is under contract to begin construction and has received all required state permits prior to the effective date of this Rule;
 - (C) Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with Department of Environment and Natural Resources on avoidance and minimization by the effective date of this Rule; or
 - (D) Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division of Water Quality prior to the effective date of this Rule.
- (3) At the time an existing use is changed to another use, the buffer requirement of this Rule shall apply. Change of use includes the following:
 - (A) To add impervious surface within the riparian buffer;
 - (B) An agricultural operation within the riparian buffer is converted to a non-agricultural; or
 - (C) a lawn within the riparian buffer ceases to be maintained.

(c) **DIFFUSE FLOW REQUIREMENT.** Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation, as follows:

- (1) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the riparian buffer; and

- (2) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.
- (d) REQUIREMENTS FOR CATEGORIES OF USES AND MITIGATION. Uses designated as exempt, potentially allowable, and prohibited location in the chart of uses in this Rule shall have the following requirements:
- (1) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in the table of this Rule for the specific use.
 - (2) POTENTIALLY ALLOWABLE. Uses designated as potentially allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to this Rule. These uses require written authorization from the Division of Water Quality. Some of these uses require mitigation, as indicated in the chart in this Rule.
 - (3) PROHIBITED. Uses designated as prohibited or not included in this table may not proceed within the riparian buffer unless a variance is granted pursuant to Rule .0606. Site-specific mitigation may be required as one condition of a variance approval.
 - (4) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0609.
- (e) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as potentially allowable shall submit a request for a "no practical alternatives" determination to the Division of Water Quality. The applicant shall certify that the criteria identified in Subparagraph (e)(1) of this Rule are met. The Division shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:
- (1) For any request for an Authorization Certificate, the Division 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:
 - (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.
 - (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.
 - (C) Plans for practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - (D) The Division of Water Quality must consider the impacts that may affect conditions required to sustain and recover the federally endangered Carolin heelsplitter (*Lasmigona decorata*).
 - (2) Requests for an Authorization Certificate shall be either approved or denied within 60 days of receipt of a complete submission based on the criteria in Subparagraph (e)(1) of this Rule by the Division. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division of Water Quality may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:
 - (A) The name, address and phone number of the applicant;
 - (B) The nature of the activity to be conducted by the applicant;
 - (C) The location of the activity, including the jurisdiction;
 - (D) 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;
 - (E) 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
 - (F) Plans for any practices proposed to be used to control the impacts associated with the activity.
 - (3) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(f) **DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS.** The Commission shall grant and rescind local government delegation of the Riparian Buffer Protection requirements according to the following procedures:

- (1) Local governments within the Goose Creek Watershed may submit a written request to the Commission for authority to implement and enforce the State's riparian buffer protection requirements within their jurisdiction. The written request shall be accompanied by information that shows:
 - (A) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer scale map(s);
 - (B) The local government has the administrative organization, staff, legal authority, financial and other resources necessary to implement and enforce the State's riparian buffer protection requirements based on its size and projected amount of development;
 - (C) The local government has adopted ordinances, resolutions, or regulations necessary to establish and maintain the State's riparian buffer protection requirements; and
 - (D) The local government has provided a plan to address violations with civil or criminal remedies and actions as well as remedies that shall restore buffer functions on violation sites and provide a deterrent against the occurrence of future violations.
- (2) Within 90 days after the Commission has received the request for delegation, the Commission shall approve the request if the local government has complied with all of Subparagraph (f)(1) of this Rule and notify the local government whether it has been approved, approved with modifications, or denied.
- (3) The Commission, upon determination that a delegated local authority is failing to implement or enforce the riparian buffer protection requirements in keeping with an approved delegation, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the State's riparian buffer protection requirements.

(g) **APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR.** Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division of Water Quality and subsequent annual training sessions. The Administrator shall ensure that local government staffs working directly with the program receive training to understand, implement and enforce the program.

(h) **PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE AND ALLOWABLE WITH MITIGATION.**

- (1) Upon receiving delegation, local authorities shall review proposed uses within the riparian buffer and issue approvals if the uses meet the riparian buffer protection requirements.
- (2) Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the requirements including provisions for mitigation set forth in Rule .0609.
- (3) The Division of Water Quality may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division of Water Quality does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand.

(i) **VARIANCES.** After receiving delegation, local governments shall review variance requests and make recommendations to the Commission for approval.

(j) **LIMITS OF DELEGATED LOCAL AUTHORITY.** The Commission has jurisdiction to the exclusion of local governments to implement the requirements of this Rule for the following types of activities:

- (1) Activities undertaken by the State;
- (2) Activities undertaken by the United States;
- (3) Activities undertaken by multiple jurisdictions; and
- (4) Activities undertaken by local units of government.

(k) **RECORD-KEEPING REQUIREMENTS.** Delegated local authorities shall maintain on-site records for a minimum of five years. Delegated local authorities must furnish a copy of these records to the Director within 30 days of receipt of a written request for the records. The Division of the Water Quality shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced. Each delegated local authority's records shall include the following:

- (1) A copy of variance requests;

- (2) The variance request's finding of fact;
- (3) The result of the variance proceedings;
- (4) A record of complaints and action taken as a result of the complaint;
- (5) Records for stream origin calls and stream ratings; and
- (6) Copies of request for authorization, records approving authorization and Authorization Certificates.

(l) Riparian buffers along surface waters in this watershed shall be maintained. Some uses within riparian buffers are exempt and some uses are potentially allowable. Any exempt or potentially allowed use shall require stormwater control as outlined in Rule .0602 if the one acre threshold is met. The following chart sets out the uses and their designation under this Rule as exempt, potentially allowable requiring DWQ approval or potentially allowable requiring both DWQ approval and mitigation, or prohibited as described above. The United States Environmental Protection Agency Endangered Species Protection Program at www.epa.gov/espp and NC Pesticide Board regulates pesticide application (see rules at 02 NCAC 09L .2201 through .2203).

	Exempt	Potentially allowable requiring DWQ approval or Potentially allowable requiring both DWQ approval and mitigation* Note: the asterisk (X*) identifies those uses that require both DWQ approval and mitigation.	Prohibited
Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer		X	
Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer		X*	
Archaeological activities	X		
Bridges		X	
Dam maintenance activities	X		
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:	X		
<ul style="list-style-type: none"> • Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients including ammonia and other pollution that convey to waterbodies • New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before the conveyance discharges through the riparian buffer • New drainage ditches, roadside ditches and stormwater outfalls that do not minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before discharging through the riparian buffer • Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch 		X	X

Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the new channel	X		
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 in width and are perpendicular³ • Driveway crossings on single family residential lots that disturb greater than 25 linear feet in width and are perpendicular³ • In a subdivision that cumulatively disturbs equal to or less than 150 linear feet in width and are perpendicular • In a subdivision that cumulatively disturbs greater than 150 linear feet in width and are perpendicular 	X	X	X*
Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation	X		
Forest harvesting – see Rule .0608			
Fertilizer application: <ul style="list-style-type: none"> • One-time fertilizer application at agronomic rates to establish replanted vegetation • Ongoing fertilizer application 	X		X
Greenway/hiking trails		X	
Historic preservation	X		
Landfills as defined by G.S. 130A-290			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 diffuse flow requirements 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 diffuse flow requirements of this Rule are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit 		X	X
Non-electric utility lines with impacts other than perpendicular crossings ³ <ul style="list-style-type: none"> • If activity is within 50 feet of the stream • If activity is outside of the inner 50 feet nearest the stream • Wastewater collection system utility lines and lift station lines may impact the riparian zone if both gravity and force main collections systems are made of ductile iron and 50% of the collection system is cleaned annually. • Lift Stations require Supervisory Control and Data Acquisition System (SCADA), telemetry, audio and visual alarms, signage with emergency contact, daily visitation (365 days/year), and documentation must be maintained for 3 years of all of the above and available upon request [note: this requirement also applies to 		X*	X

collection system perpendicular crossings, detailed below.]			
<p>Non-electric utility line perpendicular crossing of streams and other surface waters subject to this Rule that are not collection systems³:</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>Non-electric perpendicular utility line crossings that are collections systems as defined in Rule 15A NCAC 02T .0300 (note: must follow constraints listed under wastewater collection system utility lines and lift stations, above):</p> <ul style="list-style-type: none"> • That use any of the following installation methods to minimize the sediment, nutrient and other pollution through the riparian buffer: underground directional boring methods, bore-and-jack techniques or another appropriate microtunnelling method. • That does not minimize the sediment, nutrient and other pollution through the riparian buffer by the most appropriate exempt method. 	X	X X X* X*	X
On-site sanitary sewage systems - new ones that use ground absorption			X
<p>Overhead electric utility lines^{1,2,3}:</p> <ul style="list-style-type: none"> • Stream crossings that disturb equal to or less than 150 linear feet of riparian buffer • Stream crossings that disturb greater than 150 linear feet of riparian buffer 	X	X*	
Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical.		X	
<p>Playground equipment:</p> <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	
<p>Ponds in natural drainage ways, excluding dry ponds:</p> <ul style="list-style-type: none"> • New ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established 		X	

<ul style="list-style-type: none"> adjacent to the pond New ponds where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the pond 			X
Protection of existing structures, facilities and streambanks 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 of riparian buffer Railroad crossings that impact greater than 150 linear feet of riparian buffer 	X	X	X
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	X		
Road impacts other than crossings of streams and other surface waters subject to this Rule		X*	
Road crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> Road crossings that impact equal to or less than 40 linear feet of riparian buffer and is perpendicular Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet and is perpendicular Road crossings that impact greater than 150 linear feet of riparian buffer 	X	X X*	
Scientific studies and stream gauging	X		
Stormwater management ponds excluding dry ponds: <ul style="list-style-type: none"> New stormwater management ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the pond New stormwater management ponds where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the pond 		X	X
Stream restoration	X		
Streambank stabilization		X	
Temporary roads: <ul style="list-style-type: none"> Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction 	X	X X	
Temporary sediment and erosion control devices:			

<ul style="list-style-type: none"> To control impacts associated with uses approved by the Division or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer In-stream temporary erosion and sediment control measures for work within a stream channel 	X	X	
Underground electric utility lines: <ul style="list-style-type: none"> Impacts other than perpendicular crossings^{3,4} 	X		
Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer^{3,4} Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer^{3,4} 	X	X	
Vegetation management: <ul style="list-style-type: none"> Emergency fire control measures provided that topography is restored 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 are in danger of causing damage to dwellings, other structures or human life Removal of poison ivy Removal of understory nuisance vegetation as defined in: Smith, Cheri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources, Division of Parks and Recreation. Raleigh, NC. Guideline #30 	X X X X X X		
Water dependent structures as defined in 15A NCAC 02B .0202		X	
Water wells	X		
Wetland restoration	X		

¹ Provided that all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternatives evaluation by the Division of Water Quality.

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

² Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division of Water Quality completes a no practical alternatives evaluation.

³ Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

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Provided that all of the following BMPs for underground utility lines are used.

If all of these BMPs are not used, then the underground utility line shall require a no practical alternatives evaluation by the Division of Water Quality.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

*History Note: Authority G.S. 143-214.1; 143-215.8A; 143-214.7;
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