

15A NCAC 02B .0295 MITIGATION PROGRAM REQUIREMENTS FOR PROTECTION AND MAINTENANCE OF RIPARIAN BUFFERS

(a) **PURPOSE.** The purpose of this Rule is to set forth the mitigation requirements that apply to applicants listed in Paragraph (c) of this Rule and to set forth requirements for buffer mitigation providers.

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

- (1) "Authority" means either the Division or a local government that has been delegated or designated pursuant to Rules .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter to implement the riparian buffer program.
- (2) "Compensatory Buffer Mitigation Bank" means a buffer mitigation site created by a mitigation provider and approved for mitigation credit by the Division through execution of a mitigation banking instrument.
- (3) "Division" means the Division of Water Resources of the North Carolina Department of Environment and Natural Resources.
- (4) "Enhancement Site" means a riparian zone site characterized by conditions between that of a restoration site and a preservation site such that the establishment of woody stems (i.e., tree or shrub species) will maximize nutrient removal and other buffer functions.
- (5) "Hydrologic Area" means the Watershed Boundary Dataset (WBD), located at no cost at <http://data.nconemap.com/geoportal/catalog/search/resource/details.page?uuid={16A42F31-6DC7-4EC3-88A9-03E6B7D55653}> using the eight-digit Hydrologic Unit Code (HUC) prepared by the United States Geological Survey.
- (6) "Locational Ratio" means the mitigation ratio applied to the mitigation requirements based on the location of the mitigation site relative to the impact site as set forth in Paragraph (f) of this Rule.
- (7) "Mitigation banking instrument" means the legal document for the establishment, operation, and use of a mitigation bank.
- (8) "Monitoring period" means the length of time specified in the approved mitigation plan during which monitoring of vegetation success and other anticipated benefits to the adjacent water as listed in the mitigation approval is done.
- (9) "Non-wasting endowment" means a fund that generates enough interest to cover the cost of the long term monitoring and maintenance.
- (10) "Outer Coastal Plain" means the portion of the state shown as the Middle Atlantic Coastal Plain (63) on Griffith, et al. (2002) "Ecoregions of North and South Carolina." Reston, VA, United States Geological Survey available at no cost at http://www.epa.gov/wed/pages/ecoregions/ncsc_eco.htm.
- (11) "Preservation Site" means riparian zone sites that, as determined by a site visit conducted by the Authority, are characterized by a forest consisting of the forest strata and diversity of species appropriate for the location.
- (12) "Restoration Site" means riparian zone sites that are characterized by an absence of trees and by a lack of dense growth of smaller woody stems (i.e., shrubs or saplings) or sites that are characterized by scattered individual trees such that the tree canopy is less than 25 percent of the cover and by a lack of dense growth of smaller woody stems (i.e., shrubs or saplings).
- (13) "Riparian buffer mitigation unit" means a unit representing a credit of riparian buffer mitigation as set forth in Paragraph (m) of this Rule.
- (14) "Riparian wetland" means a wetland that is found in one or more of the following landscape positions:
 - (A) in a geomorphic floodplain;
 - (B) in a natural topographic crenulation;
 - (C) contiguous with an open water equal to or greater than 20 acres in size; or
 - (D) subject to tidal flow regimes excluding salt/brackish marsh wetlands.
- (15) "Stem" means a woody seedling, sapling, shrub, or tree, no less than 10 centimeters in height.
- (16) "Urban" means an area that is either designated as an urbanized area under the most recent federal decennial census available at no cost at <http://www.census.gov/> or is located within the corporate limits of a municipality.
- (17) "Zonal Ratio" means the mitigation ratio applied to impact amounts in the respective zones of the riparian buffer as set forth in Paragraph (e) of this Rule.

(c) **MITIGATION REQUIREMENTS.** Buffer mitigation is required when one of the following applies:

- (1) The applicant has received an authorization certificate for impacts pursuant to Rule .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter and is required to perform mitigation as a condition of the authorization certificate; or
- (2) The applicant has received a variance pursuant to Rule .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter and is required to perform mitigation as a condition of a variance approval.

Any applicant covered under this Paragraph shall submit to the Authority a written mitigation proposal that calculates the required area of mitigation and describes the area and location of each type of proposed mitigation. The applicant shall not impact buffers until the Authority approves the mitigation plan and issues written approval.

(d) AREA OF IMPACT. The Authority shall determine the area of impact in square feet to each Zone as defined by the applicable Rule .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter of the proposed riparian buffer by adding the following:

- (1) The area of the footprint of the use impacting the riparian buffer;
- (2) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use; and
- (3) The area of any ongoing maintenance corridors within the riparian buffer associated with the use.

The Authority shall deduct from this total the area of any wetlands that are subject to and compliant with riparian wetland mitigation requirements under 15A NCAC 02H .0506 and are located within the proposed riparian buffer impact area.

(e) AREA OF MITIGATION REQUIRED ON ZONAL MITIGATION RATIOS. The Authority shall determine the required area of mitigation for each Zone by applying each of the following ratios to the area of impact calculated under Paragraph (d) of this Rule:

| Basin/Watershed | Zone 1 Ratio | Zone 2 Ratio |
|---|------------------|--------------|
| Neuse River Basin (15A NCAC 02B .0233) | 3:1 | 1.5:1 |
| Catawba River Basin (15A NCAC 02B .0243) | 2:1 | 1.5:1 |
| Randleman Lake Watershed (15A NCAC 02B .0250) | 3:1 | 1.5:1 |
| Tar-Pamlico River Basin (15A NCAC 02B .0259) | 3:1 | 1.5:1 |
| Jordan Lake Watershed (15A NCAC 02B .0267) | 3:1 | 1.5:1 |
| Goose Creek Watershed (15A NCAC 02B .0607) | 3:1 ^A | |

^A The Goose Creek Watershed does not have a Zone 1 and Zone 2. The mitigation ratio in the Goose Creek Watershed is 3:1 for the entire buffer.

(f) AREA OF MITIGATION REQUIRED ON LOCATIONAL MITIGATION RATIOS. The applicant or mitigation provider shall use the following locational ratios as applicable based on location of the proposed mitigation site relative to that of the proposed impact site. Locational ratios shall be as follows:

| Location | Ratio |
|---|--------|
| Within the 12-digit HUC ^A | 0.75:1 |
| Within the eight-digit HUC ^B | 1:1 |
| Outside of the eight-digit HUC ^B | 2:1 |

^A Except within the Randleman Lake Watershed. Within the Randleman Lake Watershed the ratio is 1:1.

^B Except as provided in Paragraph (g) of this Rule.

(g) GEOGRAPHIC RESTRICTIONS ON LOCATION OF MITIGATION. Mitigation shall be performed in the same river basin where the impact is located with the following additional specifications:

- (1) In the following cases, mitigation shall be performed in the same watershed where the impact is located:
 - (A) Falls Lake Watershed, as defined in Rule .0275 of this Section;
 - (B) Goose Creek Watershed, as defined in Rule .0601 of this Subchapter;
 - (C) Randleman Lake Water Supply Watershed, as defined in Rule .0248 of this Section;
 - (D) Each subwatershed of the Jordan Lake watershed, as defined in Rule .0262 of this Section; and
 - (E) Other watersheds as specified in riparian buffer protection rules adopted by the Commission.
- (2) Buffer mitigation for impacts within watersheds with riparian buffer rules that also have federally listed threatened or endangered aquatic species may be done within other watersheds with the

same federally listed threatened or endangered aquatic species as long as the impacts are in the same river basin as the mitigation site.

(h) **MITIGATION OPTIONS FOR APPLICANTS.** The applicant may propose any of the following types of mitigation:

- (1) Riparian buffer restoration or enhancement pursuant to Paragraph (n) of this Rule;
- (2) Payment of a compensatory mitigation fee to a compensatory buffer mitigation bank pursuant to Paragraph (i) of this Rule or payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Paragraph (j) of this Rule. Payment shall conform to the requirements of G.S. 143-214.20;
- (3) Donation of real property or of an interest in real property pursuant to Paragraph (k) of this Rule;
- (4) Alternative buffer mitigation pursuant to Paragraph (o) of this Rule; or
- (5) Other buffer mitigation as approved by the Environmental Management Commission as a condition of a variance approval.

(i) **PURCHASE OF BUFFER MITIGATION CREDITS FROM A PRIVATE OR PUBLIC COMPENSATORY BUFFER MITIGATION BANK.** Applicants who choose to satisfy some or all of their mitigation by purchasing mitigation credits from a private or public compensatory buffer mitigation bank shall meet the following requirements:

- (1) The compensatory buffer mitigation bank from which credits are purchased shall have available riparian buffer credits approved by the Division;
- (2) The compensatory buffer mitigation bank from which credits are purchased shall be located as described in Paragraphs (e), (f), and (g) of this Rule; and
- (3) After receiving a mitigation acceptance letter from the compensatory buffer mitigation bank, proof of payment for the credits shall be provided to the Authority prior to any activity that results in the removal or degradation of the protected riparian buffer.

(j) **PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND.** Applicants who choose to satisfy some or all of their mitigation requirement by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the requirements of Rule .0269 of this Section. Payment made to the NC Division of Mitigation Services (DMS) shall be contingent upon acceptance of the payment by the DMS. The DMS shall consider their financial, temporal, and technical ability to satisfy the mitigation request to determine whether they shall accept or deny the request.

(k) **DONATION OF PROPERTY.** Applicants who choose to satisfy their mitigation requirement by donating real property or an interest in real property to fully or partially offset an approved payment into the Riparian Buffer Restoration Fund pursuant to Paragraph (j) of this Rule shall do so in accordance with 15A NCAC 02R .0403.

(l) **MITIGATION SITE REQUIREMENTS FOR APPLICANTS AND MITIGATION PROVIDERS.** For each mitigation site proposed by an applicant or mitigation provider under Paragraphs (n) or (o) of this Rule, the Authority shall identify functional criteria to measure the anticipated benefits of the mitigation to the adjacent water. The Authority shall issue a mitigation determination that specifies the area, type, and location of mitigation and the water quality benefits to be provided by the mitigation site. All mitigation proposals shall meet the following criteria:

- (1) The location of the buffer mitigation site shall comply with the requirements of Paragraphs (f) and (g) of this Rule. In the Catawba watershed, buffer mitigation may be done along the lake shoreline as well as along intermittent and perennial stream channels throughout the watershed.
- (2) The mitigation proposal shall include a commitment to provide:
 - (A) a perpetual conservation easement or similar preservation mechanism to ensure perpetual stewardship that protects the mitigation site's nutrient removal and other water quality functions;
 - (B) a non-wasting endowment or other dedicated financial surety to provide for the perpetual land management and hydrological maintenance of lands and maintenance of structures as applicable; and
 - (C) financial assurance in the form of a completion bond, credit insurance, letter of credit, escrow, or other vehicle acceptable to the Authority payable to, or for the benefit of, the Authority in an amount sufficient to ensure that the property is secured in fee title or by easement, and that planting or construction, monitoring and maintenance are completed as necessary to meet success criteria as specified in the approved mitigation plan. This financial assurance obligation shall not apply to the NC DMS.

- (3) Diffuse flow of runoff shall be maintained in the riparian buffer. Any existing impervious cover or stormwater conveyances such as ditches, pipes, or drain tiles shall be eliminated and the flow converted to diffuse flow. If the applicant or mitigation provider determines that elimination of existing stormwater conveyances is not feasible, then they shall include a justification and shall provide a delineation of the watershed draining to the stormwater outfall and the percentage of the total drainage by area treated by the riparian buffer with the mitigation plan specified in Paragraph (n) or (o) of this Rule for Authority approval. During mitigation plan review and approval, the Authority may reduce credit proportionally.
- (4) Sewer easement within the buffer. If the proposed mitigation site contains a sewer easement in Zone 1, that portion of the sewer easement within Zone 1 shall not be suitable for buffer mitigation credit. If the proposed mitigation site contains a sewer easement in Zone 2, the portion of the sewer easement in Zone 2 may be suitable for buffer mitigation credit if:
 - (A) the applicant or mitigation provider restores or enhances the forested buffer in Zone 1 adjacent to the sewer easement;
 - (B) the sewer easement is required to be maintained in a condition that meets the vegetative requirements of the collection system permit; and
 - (C) diffuse flow is provided across the entire buffer width.
- (5) The applicant or mitigation provider shall provide a site specific credit/debit ledger to the Authority at regular intervals as specified in the mitigation plan approval or mitigation banking instrument once credits are established and until they are exhausted.
- (6) Buffer mitigation credit, nutrient offset credit, wetland mitigation credit, and stream mitigation credit shall be accounted for in accordance with the following:
 - (A) Buffer mitigation used for buffer mitigation credit shall not be used for nutrient offset credits;
 - (B) Buffer mitigation credit shall not be generated within wetlands that provide wetland mitigation credit required by 15A NCAC 02H .0506; and
 - (C) Buffer mitigation credit may be generated on stream mitigation sites as long as the width of the restored or enhanced riparian buffer meets the requirements of Subparagraph (n)(1) of this Rule.

(m) RIPARIAN BUFFER MITIGATION UNITS. Mitigation activities shall generate riparian buffer mitigation units as follows:

| Mitigation Activity | Square Feet of Mitigation Buffer | Riparian Buffer Mitigation Units Generated |
|--|----------------------------------|--|
| Restoration Site | 1 | 1 |
| Enhancement Site | 2 | 1 |
| Preservation Site on Non-Subject Urban Streams | 3 | 1 |
| Preservation Site on Subject Urban Streams | 3 | 1 |
| Preservation Site on Non-Subject Rural Streams | 5 | 1 |
| Preservation Site on Subject Rural Streams | 10 | 1 |

(n) RIPARIAN BUFFER RESTORATION SITE OR ENHANCEMENT SITE. Authority staff shall make an on-site determination as to whether a potential mitigation site qualifies as a restoration site or enhancement site as defined in Paragraph (b) of this Rule. Riparian buffer restoration sites or enhancement sites shall meet the following requirements:

- (1) Buffer restoration sites or enhancement sites may be proposed as follows:

| Buffer width (ft) | Proposed Percentage of Full Credit |
|-------------------|------------------------------------|
| Less than 20 | 0 % |
| 20-29 | 75 % |
| 30-100 | 100 % |
| 101-200 | 33% |

- (2) The applicant or mitigation provider shall submit a restoration or enhancement mitigation plan to the Authority for written approval. The plan shall demonstrate compliance with the requirements of this Paragraph and Paragraphs (l) and (m) of this Rule and shall also contain the following:
 - (A) A map of the proposed restoration or enhancement site;
 - (B) A vegetation plan that shall detail the activities proposed to ensure a final performance standard of 260 stems per acre at the completion of monitoring. The final performance standard shall include a minimum of four native hardwood tree species or four native hardwood tree and native shrub species, where no one species is greater than 50 percent of stems. Native hardwood and native shrub volunteer species may be included to meet the final performance standard of 260 stems per acre. The Authority may approve alternative vegetation plans upon consideration of factors, including site wetness and plant availability, to meet the requirements of this Part;
 - (C) A grading plan (if applicable). The site shall be graded in a manner to ensure diffuse flow through the entire riparian buffer;
 - (D) A schedule for implementation, including a fertilization and herbicide plan if applicable; and
 - (E) A monitoring plan to document whether the site is expected to meet the final performance standards as defined in Part (n)(2)(B) of this Rule and other anticipated benefits to the adjacent water. The plan shall include a proposed schedule and method for monitoring the vegetative status of the restoration or enhancement site for five years, including the health and average stem densities of native hardwood tree or tree and shrub species that are to be counted toward the final performance standard.
- (3) Within one year after Authority approval of the mitigation plan, the applicant or mitigation provider shall present documentation to the Authority that the riparian buffer has been restored or enhanced unless the applicant or mitigation provider requests, and the Authority agrees in writing prior to that date, to a longer time period.
- (4) The applicant or mitigation provider shall submit written annual reports, unless an alternative schedule has been approved by the Authority during the mitigation plan approval, for a period of five years after completion of the activities identified in Part (n)(2)(B) of this Rule at the restoration site or enhancement site showing:
 - (A) compliance with the monitoring plan approved pursuant to Part (n)(2)(E) of this Rule; and
 - (B) that diffuse flow through the riparian buffer has been maintained.

If the Authority determines that the native hardwood tree or tree and shrub species at the site are not expected to meet the final performance standards listed in Part (n)(2)(B) of this Rule, then the Authority may require that the applicant or mitigation provider replace trees or trees and shrubs as needed during that five-year period. If the Authority determines that diffuse flow through the buffer is not being maintained, then the Authority may require that the applicant or mitigation provider restore diffuse flow. If the Authority determines that the final performance standards listed in Part (n)(2)(B) of this Rule have not been achieved at the end of the five-year monitoring period, the Authority may require additional years of monitoring. The Authority shall make determinations referenced in this Subparagraph on a site specific basis based on the annual reports, any supplemental information submitted by the applicant or mitigation provider, or a site evaluation by the Authority.

(o) **ALTERNATIVE BUFFER MITIGATION OPTIONS.** Alternative buffer mitigation options are detailed in this Paragraph. Any proposal for alternative buffer mitigation shall be provided in writing to the Division, shall meet the content and procedural requirements for approval by the Division, shall meet the requirements set out in Paragraphs (l) and (m) of this Rule and the requirements set out in the named Subparagraph of this Paragraph addressing that applicable alternative buffer mitigation option:

- (1) **Retroactive Credit.** Alternative buffer mitigation sites constructed and within the required monitoring period on the effective date of this Rule shall be eligible for use as alternative buffer mitigation sites. Alternative buffer mitigation sites that have completed monitoring and were released by the Division on or within the past 10 years of the effective date of this Rule shall be eligible for use as alternative buffer mitigation sites. All alternative buffer mitigation site proposals submitted under this Subparagraph shall meet the following:
 - (A) A map or maps of the proposed alternative buffer mitigation site;

- (B) Documentation of pre-existing conditions showing that the proposed alternative buffer mitigation site met the criteria to qualify for the applicable alternative buffer mitigation type identified in the applicable Subparagraph of this Paragraph;
- (C) Documentation of the activities that were conducted at the proposed alternative buffer mitigation site to meet success criteria identified in the applicable Subparagraph of this Paragraph; and
- (D) Documentation that the proposed alternative buffer mitigation site met the success criteria identified in the applicable Subparagraph of this Paragraph.

These alternative buffer mitigation sites shall receive credit in accordance with the criteria set forth in Paragraph (m) and Subparagraph (n)(1) of this Rule.

- (2) Coastal Headwater Stream Mitigation. Wooded buffers planted along Outer Coastal Plain headwater stream mitigation sites may also be approved as riparian buffer mitigation credit if the site meets all applicable requirements of Paragraph (n) of this Rule. In addition, all success criteria specified in the approval of the stream mitigation site by the Division shall be met. The area of the buffer shall be measured perpendicular to the length of the valley being restored. The area within the proposed buffer mitigation site shall not also be used as wetland mitigation.
- (3) Buffer Restoration and Enhancement on Non-Subject Streams. Restoration or enhancement of buffers may be conducted on intermittent or perennial streams that are not subject to the applicable Rule .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter. These streams shall be confirmed as intermittent or perennial streams by Division staff certified per G.S. 143-214.25A using the Division publication, "Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010)" available at no cost at <http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations>. The proposal shall meet all applicable requirements of Paragraph (n) of this Rule.
- (4) Preservation of Buffer on Non-Subject Streams. Preservation of buffers on intermittent or perennial streams that are not subject to the applicable Rule .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter may be proposed in order to permanently protect the buffer from cutting, clearing, filling, grading, and similar activities that would affect the functioning of the buffer. These streams shall be confirmed as intermittent or perennial streams by Division staff certified per G.S. 143-214.25A using the Division publication, "Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v4.11, 2010)." The preservation site shall meet the requirements of Subparagraph (n)(1) of this Rule and the requirements set forth in 15A NCAC 02R .0403(c)(7), (8), and (11). The area of preservation credit within a buffer mitigation site shall comprise of no more than 25 percent of the total area of buffer mitigation.
- (5) Preservation of Buffers on Subject Streams. Buffer preservation may be proposed on streams that are subject to the applicable Rule .0233, .0243, .0250, .0259, .0267, or .0607 of this Subchapter in order to permanently protect the buffer from cutting, clearing, filling, grading, and similar activities that would affect the functioning of the buffer beyond the protection afforded by the existing buffer rules on sites that meet the definition of a preservation site. The preservation site shall meet the requirements of Subparagraph (n)(1) and the requirements set forth in 15A NCAC 02R .0403(c)(7), (8), and (11). The area of preservation credit within a buffer mitigation site shall comprise of no more than 25 percent of the total area of buffer mitigation.
- (6) Enhancement of grazing areas adjacent to streams. Buffer credit at a 2:1 ratio shall be available for an applicant or mitigation provider who proposes permanent exclusion of grazing livestock that otherwise degrade the stream and riparian zone through trampling, grazing, or waste deposition by fencing the livestock out of the stream and its adjacent buffer. The applicant or mitigation provider shall provide an enhancement plan as set forth in Paragraph (n) of this Rule. The applicant or mitigation provider shall demonstrate that grazing was the predominant land use since the effective date of the applicable buffer rule.
- (7) Mitigation on ephemeral channels. For purposes of riparian buffer mitigation as described in this Part, an "ephemeral channel" is defined as a natural channel exhibiting discernible banks within a topographic crenulation (V-shaped contour lines) indicative of natural drainage on the 1:24,000 scale (7.5 minute) quadrangle topographic map prepared by the U.S. Geologic Survey, or as seen on digital elevation models with contours developed from the most recent available LiDAR data, available at no cost at <http://www.ncfloodmaps.com/lidar.com>. Ephemeral channels only flow for a short period of time after precipitation in the drainage area and do not have periods of base flow

sustained by groundwater discharge. The applicant or mitigation provider shall provide a delineation of the watershed draining to the ephemeral channel. The entire area proposed for mitigation shall be within the contributing drainage area to the ephemeral channel. The ephemeral channel shall be directly connected to an intermittent or perennial stream and contiguous with the rest of the mitigation site protected under a perpetual conservation easement. The area of the mitigation site on ephemeral channels shall comprise no more than 25 percent of the total area of buffer mitigation. The proposal shall meet all applicable requirements of Paragraph (n) of this Rule for restoration or enhancement. The proposal shall meet all applicable requirements of Subparagraph (o)(4) or (o)(5) of this Rule for preservation.

(8) Restoration and Enhancement on Ditches. For purposes of riparian buffer mitigation as described in this Part, a "ditch" is defined as a man-made channel other than a modified natural stream that was constructed for drainage purposes. To be used for mitigation, a ditch shall meet all of the following criteria:

- (A) be directly connected with and draining towards an intermittent or perennial stream;
- (B) be contiguous with the rest of the mitigation site protected under a perpetual conservation easement;
- (C) stormwater runoff from overland flow shall drain towards the ditch;
- (D) be between one and three feet in depth; and
- (E) the entire length of the ditch shall have been in place prior to the effective date of the applicable buffer rule.

The width of the restored or enhanced area shall not be less than 30 feet and shall not exceed 50 feet for crediting purposes. The applicant or mitigation provider shall provide a delineation of the watershed draining to the ditch. The watershed draining to the ditch shall be at least four times larger than the restored or enhanced area along the ditch. The perpetual conservation easement shall include the ditch and the confluence of the ditch with the intermittent or perennial stream, and provide language that prohibits future maintenance of the ditch. The proposal shall meet all applicable requirements of Paragraph (n) of this Rule for restoration or enhancement.

(9) Stormwater Treatment Options. All stormwater treatment options shall meet the following requirements:

- (A) Structural options already required by other local, state, or federal rule or permit cannot be used as alternative buffer mitigation credit, except to the extent such measure(s) exceed the requirements of such rule or permit. Stormwater Best Management Practices (BMPs), including bioretention facilities, constructed wetlands, infiltration devices and sand filters are all potentially approvable BMPs by the Division for alternative buffer mitigation credit. Other BMPs may be approved only if they meet the nutrient removal levels outlined in Part (o)(9)(B) of this Rule. Existing or planned BMPs for a local, state, or federal rule or permit may be retrofitted or expanded to improve their nutrient removal if this level of treatment is not required by other local, state, or federal rules. In this case, the predicted increase in nutrient removal may be counted toward alternative buffer mitigation credit;
- (B) Minimum treatment levels: Any structural BMP shall provide at least 30 percent total nitrogen and 35 percent total phosphorus removal as demonstrated by a scientific and engineering literature review as approved by the Division. The mitigation proposal shall demonstrate that the proposed alternative removes an equal or greater annual mass load of nutrients to surface waters as the buffer impact authorized in the authorization certificate or variance, following the calculation of impact and mitigation areas pursuant to Paragraphs (d), (e), and (f) of this Rule. To estimate the rate of nutrient removal of the impacted buffer, the applicant or mitigation provider may use the "NC Division of Water Quality – Methodology and Calculation for determining nutrient reductions associated with Riparian Buffer Establishment" available at no cost at http://portal.ncdenr.org/c/document_library/get_file?uuid=55c3758f-5e27-46cf-8237-47f890d9329a&groupId=38364. The applicant or mitigation provider may propose an alternative method of estimating the rate of nutrient removal for consideration and review by the Division;
- (C) All proposed structural BMPs shall follow the Division's "2009 Stormwater Best Management Practice Design Manual" available at no cost at

<http://portal.ncdenr.org/web/lr/bmp-manual>. If a specific proposed structural BMP is not addressed in this Manual, the applicant or mitigation provider shall follow Chapter 20 in this Manual for approval;

- (D) All structural options are required to have Division approved operation and maintenance plans;
 - (E) All structural options are required to have continuous and perpetual maintenance and shall follow the Division's "2009 Stormwater Best Management Practice Design Manual";
 - (F) Upon completion of construction, the designer for the type of BMP installed shall certify that the system was inspected during construction and that the BMP was constructed in conformity with plans and specifications approved by the Division;
 - (G) Removal and replacement of structural options: If a structural option is proposed to be removed and cannot be replaced on-site, then a structural or non-structural measure of equal or better nutrient removal capacity, as determined by calculations submitted to and approved by the Division, in a location as specified by Paragraphs (f) and (g) of this Rule shall be constructed as a replacement;
 - (H) Renovation or repair of structural options: If the applicant, mitigation provider, or the Division determines that a structural option must be renovated or repaired, it shall be renovated to provide equal or better nutrient removal capacity than as originally designed; and
 - (I) Structural options, as well as their operation and maintenance, are the responsibility of the landowner or easement holder unless the Division gives written approval for another responsible party to operate and maintain them. Structural options shall be located in recorded drainage easements for the purposes of operation and maintenance and shall have recorded access easements to the nearest public right-of-way. These easements shall be granted in favor of the party responsible for operating and maintaining the structure, with a note that operation and maintenance is the responsibility of the landowner, easement holder, or other responsible party.
- (10) Approval for other alternative buffer mitigation options. Other alternative riparian buffer mitigation options not specified within this Rule may be submitted to the Division for review and recommendation to the Environmental Management Commission on a case-by-case basis. Any proposal submitted under this Paragraph shall provide documentation or calculations to demonstrate that the proposed alternative mitigation option removes an equal or greater annual mass load of nutrients to surface waters as a riparian buffer. Upon completion of the Division's review, and prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's website and the DWRwetlands Listserve. Division staff shall present their recommendations, including comments received during the public notice period, to the Environmental Management Commission for a final decision. If approved by the Environmental Management Commission, the alternative buffer mitigation option may be proposed by other applicants and mitigation providers.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-214.20; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8A; 143-215.8B; 143-282(c); 143B-282(d); S.L. 1998-221; S.L. 1999-329, s. 7.1; S.L. 2001-418, s. 4.(a); S.L. 2003-340, s. 5; S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486; S.L. 2014-95;
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