

15A NCAC 02B .0614 CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin.

- (1) **PURPOSE.** The purpose of this Rule shall be to maintain and protect existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin in order to maintain their pollutant removal functions as an aid in protecting the water quality of the lakes and connecting river segments.
- (2) **DEFINITIONS.** The terms used in this Rule shall be as defined in Rule .0610 of this Section and as follows:
 - (a) "Authority" means either the Division or a local government that has been delegated pursuant this Rule to implement the riparian buffer program.
 - (b) "Riparian buffer" means the area as defined in Item (4) of this Rule.
 - (c) "Full Pond Level" is a term used by Duke Energy Inc. that refers to the project water level, referenced to mean sea level, for each of the seven mainstem lakes along the Catawba River. The landward edge of the lakes at full pond level represents the project boundary for each lake.
 - (d) "Mainstem lakes" means the following impoundments created along the mainstem of the Catawba River: Lake James, Lake Rhodhiss, Lake Hickory, Lookout Shoals Lake, Lake Norman, Mountain Island Lake and Lake Wylie (North Carolina portion).
- (3) **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 (4) of this Rule in the Catawba River Basin.
- (4) **BUFFERS PROTECTED.** The following minimum criteria shall be used for identifying regulated riparian buffers:
 - (a) This Rule shall apply to activities conducted within 50-foot wide riparian buffers along the Catawba River mainstem below Lake James and along the mainstem lakes in the Catawba River Basin, excluding wetlands;
 - (b) 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;
 - (c) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (8) of this Rule;
 - (d) Riparian buffers protected by this Rule shall be measured pursuant to Item (7) of this Rule;
 - (e) A riparian buffer may be exempt from this Rule as described in Items (5) and (6) of this Rule;
 - (f) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.
- (5) **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 June 30, 2001 and has continued to exist since that time;
 - (ii) It was a deemed allowable activity as listed in Item (10) of this Rule;
 - (iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority; or
 - (iv) The project or proposed development are determined by the Authority to meet at least one of the following criteria:
 - (A) Project requires a 401 Certification/404 permit and these were issued prior to June 30, 2001 and are still valid; or
 - (B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to

- begin construction and had received all required state permits prior to June 30, 2001; or
- (C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with the Department on avoidance and minimization by June 30, 2003; or
 - (D) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (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 prior to June 30, 2001.
- (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 June 30, 2001, and the site is in compliance with Item (8) of this Rule.
 - (f) A project that can be documented to the Authority that has vested rights that were established or recognized for that project under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to July 1, 2001. This Rule does not confer or restrict a vested right established or recognized under common law or G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1.
 - (g) 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 (5)(a) through (5)(f) of this Rule.
- (6) **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 July 22, 1997.
 - (c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B(3).
- (7) **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 (8) and (9) of this Rule. The location of Zone 1 shall be as follows:
 - (i) For the Catawba River mainstem below Lake James, Zone 1 shall begin at the most landward limit of the top of the bank and extend landward a distance of 30 feet on all sides of the river, measured horizontally on a line perpendicular to the river.
 - (ii) For the mainstem lakes located on the Catawba River mainstem, Zone 1 shall begin at the full pond level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the lake.
 - (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Items (8) and (9) 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 along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin.

- (8) **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 (9)(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 (9)(a)(v) of this Rule:
- (a) The following are deemed allowable as defined in Sub-Item (9)(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 (9)(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 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;
 - (iii) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;
 - (iv) 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;
 - (v) 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;
 - (vi) 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;
 - (vii) 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
 - (viii) 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.
- (9) **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 (8)(a) and Item (10) 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 requirements listed in Item (10) of this Rule for the specific use.

- (ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Item (8)(b) and Item (10) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Section.
- (iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in Item (10) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Section and an appropriate mitigation strategy has received written approval pursuant to Item (11) of this Rule.
- (iv) PROHIBITED. Uses designated as Prohibited in Item (10) 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 (10) 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 Section and an appropriate mitigation strategy that has received written approval pursuant to Item (11) of this Rule.

(10) 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, allowable with mitigation upon authorization, or prohibited:

Use	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	X			
(ii) Airport facilities that impact equal to or less than one-third of an acre of riparian buffer		X		
(ii) Airport facilities that impact greater than one-third of an acre of riparian buffer			X	
(b) Archaeological activities	X			
(c) Bridges:				
(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 of riparian buffer		X		
(d) Dam maintenance activities:				
(i) Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam	X			
(ii) Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam		X		

Use	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(e) 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		
(f) Fertilizer: (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
(g) Forest harvesting - see Rule .0612 of this Section				
(h) Grading only in Zone 2 provided that the health of existing vegetation in Zone 1 is not compromised, Item (8) of this Rule is complied with, and disturbed areas are stabilized and revegetated	X			
(i) Greenways, trails, sidewalks or linear pedestrian/bicycle transportation systems: (i) On publicly owned property (ii) In Zone 2 provided that no built upon area is added within the riparian buffer (iii) 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) (iv) When built upon area is added to the riparian buffer, equal to or less than 10 feet wide with two foot wide shoulders. Shall be located outside Zone 1 unless there is no practical alternative (v) When built upon area is added to the riparian buffer, greater than 10 feet wide with two foot wide shoulders. Shall be located outside Zone 1 unless there is no practical alternative	X X X	X	X	
(j) Historic preservation	X			
(k) New Landfills as defined by G.S. 130A-290				X
(l) Mining activities: (i) Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (7) and (8) of this Rule are established adjacent to any relocated channels (ii) Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of Items (7) and (8) of this Rule are not established		X	X	

Use	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(iii) Wastewater or mining dewatering wells with approved NPDES permit	X			
(m) On-site sanitary sewage systems – new ones that use ground absorption				X
(n) 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 (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 (iii) Greater than six feet wide	X	X	X	
(o) Playground equipment: (i) Playground equipment on single-family lots provided that installation and use does not result in removal of vegetation (ii) Playground equipment on single-family lots where installation or use results in the removal of vegetation (iii) Playground equipment installed on lands other than single-family lots	X	X	X	

Use	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<p>(p) Properties that have been subdivided by a preliminary subdivision plat approved by local governments within the Catawba River Basin within 2 years prior to June 30, 2001 for conventional subdivisions and within 5 years prior to June 30, 2001 for phased subdivisions. The submitted preliminary subdivision plan shall include all of the following: total acreage of land proposed for platting, boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown, including dimensions of all lot lines; location and use of all existing and proposed easements, including easements for drainage and utilities, location, width of rights-of-way and all proposed streets, location of all utilities installations, distance to nearest public water supply and sanitary sewerage systems, significant natural features including existing riparian buffer areas, existing wetlands, lakes or rivers, or other natural features affecting the site, and existing physical features including buildings, streets, railroads, power lines, drainage ways, sewer and water or spring heads, and town limit lines both to or adjacent to the land to be subdivided:</p> <p>(i) Uses in Zone 2 provided that the ground is stabilized and Item (8) of this Rule is complied with</p> <p>(ii) Uses in Zone 1 provided that the ground is stabilized and Item (8) of this Rule is complied with. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1</p>	X	X		
<p>(q) Properties that are included on a recorded subdivision plan prior to June 30, 2001:</p> <p>(i) Uses in Zone 2 provided that the ground is stabilized and Item (8) of this Rule is complied with</p> <p>(ii) Uses in Zone 1 provided that the ground is stabilized and Item (8) of this Rule is complied with. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1</p>	X	X		

Use	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(r) Protection of existing structures and facilities when this requires additional disturbance to the riparian buffer		X		
(s) 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			
(t) Pumps for agricultural irrigation in Zone 1 provided that installation and use does not result in removal of trees as defined in this Rule	X			
(u) Removal of previous fill or debris provided that Item (8) of this Rule is complied with and any vegetation removed is restored	X			
(v) 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 (ii) Wetland or stream restoration other than those listed above	X	X		
(w) Road, driveway or railroad - impacts other than perpendicular crossings of surface waters subject to this Rule			X	
(x) Road, driveway or railroad - perpendicular crossings of surface waters subject to this Rule: (i) Impact equal to or less than one-tenth of an acre of riparian buffer (ii) Impact greater than one-tenth of an acre but equal to or less than one-third of an acre of riparian buffer (iii) Impact greater than one-third of an acre of riparian buffer (iv) Driveway crossings in a residential subdivision that cumulatively impact equal to or less than one-third of an acre of riparian buffer (v) Driveway crossings in a residential subdivision that cumulatively impact greater than one-third of an acre of riparian buffer (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	X	X	X

Use	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(y) 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 (ii) Greater than 2,500 square feet of riparian buffer impact		X	X	
(z) Scientific studies and gauging station	X			
(aa) Shoreline stabilization		X		
(bb) Slatted uncovered decks including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Items (7) and (8) of this Rule: (i) Installation does not result in removal of vegetation in Zone 1 (ii) Installation results in removal of vegetation in Zone 1		X	X	
(cc) Stormwater Control Measure (SCM) as defined in 15A NCAC 02H .1002: (i) In Zone 2 if Item (8) of this Rule is complied with (ii) In Zone 1		X	X	
(dd) 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 (ii) Greater than 2,500 square feet of riparian buffer disturbance	X	X		
(iii) Associated with culvert installation, bridge construction or replacement		X		

Use	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<p>(ee) 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 shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:</p> <p>(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 (8) of this Rule</p> <p>(ii) In Zones 1 and 2 to control impacts associated with uses identified in this Table or uses approved by the Authority or that have received an Authorization Certificate with Exception provided that sediment and erosion control for upland areas is addressed outside the riparian buffer</p> <p>(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</p>	<p>X</p> <p>X</p>	<p>X</p>		
<p>(ff) Utility – Streambank stabilization for the protection of publicly owned utility lines (not including new line installation):</p> <p>(i) Less than 150 feet of streambank disturbance</p> <p>(ii) Greater than 150 feet of streambank disturbance</p>	<p>X</p>	<p>X</p>		
<p>(gg) Utility – Sewer lines - Sanitary Sewer Overflows:</p> <p>(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</p>	<p>X</p>			

Use	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(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		
(hh) Utility – 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	
(ii) Utility - 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: (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 (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		X	

Use	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(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	
(jj) Utility – Sewer Lines - New Line Construction 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 (ii) Construction corridor of greater than 40 linear feet wide and less than or equal to 150 linear feet 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. 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	X	X X	
(kk) Utility – Sewer Lines - New Line Construction/Installation Activities - Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor: (i) Zone 2 impacts	X			

Use	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	
(ll) Utility – 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		
(mm) Utility – 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	
(nn) Utility – 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	X			

Use	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		
(oo) 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 (ii) Disturb greater than 150 linear feet wide of riparian buffer	X			
(pp) 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 (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	X		
(qq) Vegetation management: (i) Emergency fire control measures provided that topography is restored (ii) Periodic mowing and harvesting of plant products only in Zone 2 (iii) Placement of mulch ring around restoration plantings for a period of five years from the date of planting (iv) Planting non-invasive vegetation to enhance the riparian buffer	X	X	X	X

Use	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(v) Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
<p>(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</p> <p>(vii) Removal of individual trees which are dead, diseased or damaged</p> <p>(viii) Removal of 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</p> <p>(ix) Removal of understory nuisance vegetation listed in Appendix III of: Smith, Cheri 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.</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p>			
<p>(rr) Vehicle access roads and boat ramps (excluding parking areas) leading to the surface water, docks, fishing piers, and other water dependent activities:</p> <p>(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</p> <p>(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</p>		X	X	
(ss) View corridors:				

Use	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Thinning of underbrush, shrubs, and limbs up to 50% of individual tree height to enhance a lake view provided soils are undisturbed, Item (8) of this Rule is complied with and no stems of woody vegetation larger than 3" DBH are removed	X			
(ii) Thinning of underbrush, shrubs, and limbs above 50% of individual tree height to enhance a lake view provided soils are undisturbed, Item (8) of this Rule is complied with and no stems of woody vegetation larger than 3" DBH are removed		X		
(tt) Water dependent structures (except for boat ramps) as defined in Rule .0202 of this Subchapter		X		
(uu) Water wells	X			
(vv) Wildlife passage structures		X		

- (11) **MITIGATION.** Persons who wish to undertake uses designated as allowable with mitigation upon authorization as defined in Sub-Item (9)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (9)(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 Section; and
 - (b) Obtain written approval for a mitigation proposal pursuant to Rule .0295 of this Subchapter.
- (12) **PREVIOUSLY APPROVED DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFER.** The following set out the requirements for delegation of the responsibility for implementing and enforcing the Catawba River riparian buffer protection program, as described in this Rule, to local governments previously approved by the Division:
- (a) All local governments that have land use authority along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin may adopt local riparian buffer ordinances to protect water quality. The Division shall approve the local riparian buffer ordinance within 30 days after receiving the request from local governments, if the Division determines that the local riparian buffer ordinance provides equal to or greater water quality protection than this Rule. This Rule shall not apply in any area where a local government has obtained the Division's approval of the local riparian buffer ordinance, provided that the local government is implementing and enforcing the approved local riparian buffer ordinance. The Division, upon determination that the local government is failing to implement or enforce the approved local riparian buffer ordinance, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification, then the Division shall implement and enforce the provisions of this Rule.
 - (b) The Division shall be responsible for the implementation of this rule for all riparian areas and activities not regulated under a Division-approved local government ordinance.
- (13) **DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFER.** The following set out the requirements for delegation of the responsibility for implementing and enforcing the Catawba River riparian buffer protection program, as described in this Rule, to local governments not previously approved by the Division:

- (a) The Commission shall grant local government delegation of the Catawba River Riparian Buffer Protection requirements as described in this Rule according to the following procedures:
 - (i) Local governments within the Catawba River may submit a written request to the Commission for authority to implement and enforce the Catawba River riparian buffer protection requirements within their jurisdiction by establishing a riparian buffer program to meet the requirements of this Rule. The written request to establish a riparian buffer program shall include the following:
 - (A) Documentation that the local government has land use jurisdiction along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);
 - (B) Documentation that the local government has the administrative organization, staff, legal authority, financial resources 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 ordinances, resolutions, or regulations necessary to establish a riparian buffer program to meet the requirements of this Rule and G.S. 143-214.23A.
 - (D) Documentation that the local government's riparian buffer program shall comply with all requirements set forth in G.S. 143-214.23A
 - (E) A plan to address violations with civil or criminal remedies and actions as well as remedies that shall restore riparian buffer functions on violation sites and provide a deterrent against the occurrence of future violations.
 - (ii) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.
- (b) The Division has jurisdiction to the exclusion of local governments to implement the requirements of this Rule for the following types of activities:
 - (i) Activities undertaken by the State;
 - (ii) Activities undertaken by the United States;
 - (iii) Activities undertaken by multiple jurisdictions;
 - (iv) Activities undertaken by local units of government;
 - (v) Forest harvest activities described in Rule .0612 of this Section; and
 - (vi) Agricultural activities.
- (c) Delegated local governments shall maintain on-site records for a minimum of five years. Delegated local governments shall furnish a copy of these records to the Division within 30 calendar days of receipt of a written request for the records. Each delegated local government's records shall include the following:
 - (i) A copy of Authorization Certificate with Exception requests;
 - (ii) The Authorization Certificate with Exception request's finding of fact;
 - (iii) The result of the Authorization Certificate with Exception proceedings;
 - (iv) A record of complaints and action taken as a result of the complaint;
 - (v) Records for stream origin calls and stream ratings; and
 - (vi) Copies of request for authorization, records approving authorization and Authorization Certificates.
- (d) The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule.
- (e) Upon determination by the Division that a delegated local government is failing to implement or enforce the Catawba River riparian buffer protection requirements in keeping with the request approved under Sub-Item (13)(a)(ii) of this Rule, the Commission shall notify the delegated local government in writing of the local program's

inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Catawba River riparian buffer protection requirements within their jurisdiction.

(f) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Catawba River riparian buffer protection requirements, in whole or in part, to the Director.

(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); S.L. 1999-329; S.L. 2013-413; S.L. 2017-209;
Temporary Adoption Eff. June 30, 2001; (exempt from 270 day requirement - S.L. 2001-418 & S.L. 2003-340);
Eff. August 1, 2004;
Readopted Eff. June 15, 2020 (The provisions of this Rule were transferred from 15A NCAC 02B .0243).*