

15A NCAC 02B .0260 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: MITIGATION PROGRAM FOR PROTECTION AND MAINTENANCE OF RIPARIAN BUFFERS

The following are requirements for the Riparian Buffer Mitigation Program for the Tar-Pamlico Basin:

- (1) **PURPOSE.** The purpose of this Rule is to set forth the mitigation requirements that apply to the riparian buffer protection program in the Tar-Pamlico Basin, as described in Rule 15A NCAC 2B .0259, and whose surface waters are described in the Schedule of Classifications, 15A NCAC 2B .0316.
- (2) **APPLICABILITY.** This Rule applies to persons who wish to impact a riparian buffer in the Tar-Pamlico Basin when one of the following applies:
 - (a) A person has received an Authorization Certificate pursuant to 15A NCAC 2B .0259 for a proposed use that is designated as "allowable with mitigation."
 - (b) A person has received a variance pursuant to 15A NCAC 2B .0259 and is required to perform mitigation as a condition of a variance approval.
- (3) **THE AREA OF MITIGATION.** The required area of mitigation shall be determined by either the Division or the delegated local authority according to the following:
 - (a) The impacts in square feet to each zone of the riparian buffer shall be determined by the Division or the delegated local authority by adding the following:
 - (i) The area of the footprint of the use causing the impact to the riparian buffer.
 - (ii) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use.
 - (iii) The area of any ongoing maintenance corridors within the riparian buffer associated with the use.
 - (b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub-item (3)(a) of this Paragraph to each zone of the riparian buffer:
 - (i) Impacts to Zone 1 of the riparian buffer shall be multiplied by 3.
 - (ii) Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5.
 - (iii) Impacts to wetlands within Zones 1 and 2 of the riparian buffer that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.
- (4) **THE LOCATION OF MITIGATION.** The mitigation effort shall be located the same distance from the Pamlico River estuary as the proposed impact, or closer to the estuary than the impact, and as close to the location of the impact as feasible.
- (5) **ISSUANCE OF THE MITIGATION DETERMINATION.** The Division or the delegated local authority shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Rule.
- (6) **OPTIONS FOR MEETING THE MITIGATION DETERMINATION.** The mitigation determination made pursuant to Item (5) of this Rule may be met through one of the following options:
 - (a) Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule.
 - (b) Donation of real property or of an interest in real property pursuant to Item (8) of this Rule.
 - (c) Restoration or enhancement of a non-forested riparian buffer. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (9) of this Rule.
- (7) **PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND.** Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the following requirements:
 - (a) **SCHEDULE OF FEES:** The amount of payment into the Fund shall be determined by multiplying the acres or square feet of mitigation determination made pursuant to Item (5) of this Rule by ninety-six cents per square foot or forty-one thousand, six hundred and twenty-five dollars per acre.
 - (b) The required fee shall be submitted to the Division of Water Quality, Wetlands Restoration Program, 1619 Mail Service Center, Raleigh, NC 27699-1619 prior to any

activity that results in the removal or degradation of the protected riparian buffer for which a “no practical alternatives” determination has been made.

- (c) The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to Item (8) of this Rule.
 - (d) The Division of Water Quality shall review the fee outlined in Sub-item (7)(a) of this Rule every two years and shall compare it to the actual cost of restoration activities conducted by the Department, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Division of Water Quality shall recommend revisions to Sub-item (7)(a) of this Rule when adjustments to this Schedule of Fees are deemed necessary.
- (8) DONATION OF PROPERTY. Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:
- (a) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Sub-item (8)(d)(iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Sub-item (7)(a) of this Rule, the applicant shall pay the remaining balance due.
 - (b) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.
 - (c) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:
 - (i) The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan developed by the Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in the Basinwide Wetlands and Riparian Restoration Plan.
 - (ii) The property shall contain riparian buffers not currently protected by the State’s riparian buffer protection program that are in need of restoration.
 - (iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.
 - (iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Rule.
 - (v) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use.
 - (vi) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;
 - (vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs.
 - (ix) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended.
 - (x) The property shall not contain any hazardous substance or solid waste.
 - (xi) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations.
 - (xii) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort.
 - (xiii) The property shall not have any encumbrances or conditions on the transfer of the property interests.

- (d) At the expense of the applicant or donor, the following information shall be submitted to the Division with any proposal for donations or dedications of interest in real property:
 - (i) Documentation that the property meets the requirements laid out in Sub-Item (8)(c) of this Rule.
 - (ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.
 - (iii) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.
 - (iv) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.
 - (v) A title certificate.
- (9) RIPARIAN BUFFER RESTORATION OR ENHANCEMENT. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:
 - (a) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:
 - (i) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Item (3) of this Rule.
 - (ii) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (3) of this Rule.
 - (b) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (4) of this Rule.
 - (c) The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.
 - (d) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 2B .0259. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the Division. The restoration or enhancement plan shall contain the following.
 - (i) A map of the proposed restoration or enhancement site.
 - (ii) A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity.
 - (iii) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer.
 - (iv) A fertilization plan.
 - (v) A schedule for implementation.
 - (e) Within one year after the Division has approved the restoration or enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of the State's or the delegated local authority's riparian buffer protection program.
 - (f) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions.

- (g) The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

History Note: Authority 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999, c. 329, s. 7.1; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000.