

ARTICLE XVI
FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND
WATERSHED PROTECTION

PART III. WATER QUALITY BUFFERS

Section 15-269.5 Exempt and Allowable Activities.

(a) The table set forth in subsection (d) below sets out the activities and their designation under this part as exempt, allowable, or allowable with mitigation, except as provided for in 15-269.2. All activities not designated as exempt, allowable, or allowable with mitigation are prohibited within the buffer unless a variance is granted pursuant to Section 15-269.8.

(b) Activities designated in the table below as exempt, allowable, and allowable with mitigation shall be subject to the following requirements. All activities shall be designed, constructed and maintained to minimize soil and vegetation disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. Activities designated in the table as allowable and allowable with mitigation require written authorization from the Town.

- (1) Exempt. Activities designated as exempt are allowed within the buffer. In addition, exempt uses shall meet the requirements listed in the table and the accompanying notes for the specific use.
- (2) Allowable. Activities designated as allowable are permissible within the buffer provided that there are no practical alternatives to the requested use as determined in accordance with Section 15-269.6.
- (1) Allowable With Mitigation. Activities designated as allowable with mitigation are permissible within the buffer provided that there are no practical alternatives to the requested use as determined in accordance with Section 15-269.6, and an appropriate mitigation strategy has been approved pursuant to Section 15-269.7.

(c) For public utilities as defined in this Article, the activities and their designation as set forth in the table in subsection (d) apply to expansions and extensions. The requirements do not apply to routine or emergency maintenance and repairs.

(d) Table of Exempt and Allowable Activities in Water Quality Buffers (AMENDED 3/4/14)

Activity	Exempt *	Allowable*	Allowable with Mitigation*
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in Section 15-316 and no impervious surface is added to the buffer. • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Ordinance or impervious surface is added to the riparian buffer 	X	X	
<p>Airport facilities:</p> <ul style="list-style-type: none"> • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer • Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)⁵ 		X X	X
Archaeological activities	X		
Bridges		X	
Canoe Access provided that installation and use does not result in removal of trees as defined in Section 15-316 and no impervious surface is added to the buffer.	X		
<p>Dam maintenance activities:</p> <ul style="list-style-type: none"> • Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 • Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 	X	X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Activity	Exempt *	Allowable*	Allowable with Mitigation*
<p>Drainage ditches, roadside ditches and stormwater conveyances through buffers:</p> <ul style="list-style-type: none"> • New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided that flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to surface waters. • Realignment of roadside drainage ditches retaining 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. • New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges through the riparian buffer. • New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topographic constraints provided that other practicable BMPs have been employed. 	X	X	<p>X</p> <p>X</p>
<p>Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of this Section is established adjacent to the new channel [Ponds that are not in a natural drainage way are not subject to the buffer requirements of this part.] (AMENDED 2/21/12)</p>	X		

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Activity	Exempt *	Allowable*	Allowable with Mitigation*
Driveway crossings of streams and other surface waters subject to this Section: <ul style="list-style-type: none"> • Individual driveway crossings that disturb equal to or less than 25 linear feet or 2,500 square feet of buffer • Individual driveway crossings that disturb greater than 25 linear feet or 2,500 square feet of buffer • Multiple driveway crossings in any development that cumulatively disturbs equal to or less than 150 linear feet or one-third of an acre of buffer • Multiple driveway crossings in any development that cumulatively disturbs greater than 150 linear feet or one-third of an acre of buffer • Driveway impacts other than crossing of a stream or other surface waters subject to this Section 	X	X X	X X
Fences: <ul style="list-style-type: none"> • Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in Section 15-316 • Fences provided that disturbance is minimized and installation results in removal of trees as defined in Section 15-316 	X	X	
Fertilizer application: One-time application to establish vegetation	X		
Forest harvesting – See Section 15-319.1			
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized until they are revegetated		X	
Greenway / hiking trails ¹ designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Activity	Exempt *	Allowable*	Allowable with Mitigation*
Maintenance access on modified natural streams: a grassed travel way on one side of the water body where less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X	
Mining activities: <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new buffers that meet the requirements of this section are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new buffers that meet the requirements of this section are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit 	X	X	X
Playground equipment: <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	
Ponds created by impounding streams and not used as stormwater BMPs: <ul style="list-style-type: none"> • New ponds in Zone 2 only provided that a riparian buffer meeting the requirements of Section 15-269.3 and 15-269.4 is established adjacent to the pond • All other ponds 		X	X
Preservation or maintenance of historic or cultural sites	X		
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Activity	Exempt *	Allowable*	Allowable with Mitigation*
Railroad crossings of streams and other surface waters subject to this Ordinance: <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 or one-third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X
Railroad impacts other than crossings of streams and other surface waters subject to this Part.			X
Recreational and accessory structures in Zone 2: <ul style="list-style-type: none"> • Sheds and gazebos in Zone 2, provided they are not prohibited under local water supply ordinance: <ul style="list-style-type: none"> ○ Total footprint less than or equal to 150 square feet per lot. ○ Total footprint greater than 150 square feet per lot. • Wooden slatted decks and associated steps, provided the use meets the requirements of Section 15-269.3 and 15-269.4: <ul style="list-style-type: none"> ○ Deck at least eight feet in height and no vegetation removed from Zone 1. ○ Deck less than eight feet in height or vegetation removed from Zone 1. 		X	X
Removal of previous fill or debris provided that diffuse flow is maintained, a stabilizing ground cover sufficient to restrain erosion is established, and any woody vegetation removed is restored		X	
Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety: <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer impact • Greater than 2,500 square feet of buffer impact 		X	X
Scientific studies and stream gauging	X		
Shoreline stabilization, including armoring of stream banks with rip rap or retaining walls			X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Activity	Exempt *	Allowable*	Allowable with Mitigation*
Stormwater BMPs: <ul style="list-style-type: none"> • Wet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1 • Constructed wetlands in Zone 1, if not closer than 30' to surface waters and diffuse flow is provided into the remainder of Zone 1. • Wet detention, bioretention, and constructed wetlands 30' or less from surface waters 		X X	 X
Temporary roads, provided that restoration activities, including re-establishment of pre-construction topographic and hydrologic conditions and replanting with comparable vegetation occur immediately after construction. Tree planting may occur during the dormant season; the restored buffer shall comply with Section 15-269.7(g) within five years: <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with culvert installation or bridge construction or replacement. 	 X	 X X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Activity	Exempt *	Allowable*	Allowable with Mitigation*
<p>Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and comparable vegetation is replanted immediately after construction is complete. Tree planting may occur during the dormant season; the restored buffer shall comply with Section 15-269.7(g) within five years:</p> <ul style="list-style-type: none"> • In Zone 2, provided that the vegetation in Zone 1 is not compromised, that discharge is released as diffuse flow in accordance with Section 15-269.5, and that ground cover is established within time frames required by the Sedimentation and Erosion Control Act • In Zones 1 and 2 to control impacts associated with uses approved by the Town 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 that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act. • In-stream temporary erosion and sediment control measures for work within a stream channel. 	<p>X</p> <p>X</p>	<p>X</p> <p>X</p>	
<p>Transportation (vehicular, bike) crossings of streams and other surface waters subject to this Section:</p> <ul style="list-style-type: none"> • Transportation crossings that impact equal to or less than 40 linear feet of riparian buffer • Transportation crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Transportation crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X
Transportation impacts other than crossings of streams and other surface waters subject to this Section			X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Activity	Exempt *	Allowable*	Allowable with Mitigation*
Utility, electric, aerial, perpendicular crossings ^{2,3,4} : <ul style="list-style-type: none"> • Disturb equal to or less than 100 linear feet of buffer • Disturb greater than 100 linear feet of buffer 	X	X	
Utility, electric, aerial, other than perpendicular crossings ³ : <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters^{2,4,5} 	X	X	X
Utility, electric, underground, perpendicular crossings ^{3,4,6} : <ul style="list-style-type: none"> • Disturb less than or equal to 40 linear feet of buffer • Disturb greater than 40 linear feet of buffer 	X	X	
Utility, electric, underground, other than perpendicular crossings ^{3,6} : <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters⁵ 	X	X	X
Utility, non-electric, perpendicular crossings ^{3,4,6,7} : <ul style="list-style-type: none"> • Disturb equal to or less than 40 linear feet of buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb equal to or less than 40 linear feet of buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 150 linear feet of buffer 	X	X X	X X
Utility, non-electric, other than perpendicular crossings ^{3,6} : <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters^{5,8} 	X	X	X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Activity	Exempt *	Allowable*	Allowable with Mitigation*
Vegetation management: <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Mowing or harvesting of plant products in Zone 2 only • 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 dead, diseased, or damaged, are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering the stability of the streambank. • Removal of poison ivy • Removal of invasive exotic vegetation as defined in Smith, Cherri L., 1998 Exotic Plant Guidelines. DENR, Division of Parks and Recreation. Raleigh, N.C. Guideline # 30, or a more recent version or alternative reference approved by the NC EMC. 	X X X X X X		
Vehicle access roads and boat ramps leading to the surface water, docks, fishing piers, and other water dependent activities, but not crossing the surface water and having a minimum practicable width of not more than 10 feet.		X	
Water dependent structures where installation and use result in disturbance to riparian buffers.		X	
Water supply reservoirs: <ul style="list-style-type: none"> • New reservoirs where a riparian buffer that meets the requirements of Section 15-269.3 is established adjacent to the reservoir • New reservoirs where a riparian buffer that meets the requirements of Section 15-269.3 is not established adjacent to the reservoir 		X	X
Water wells <ul style="list-style-type: none"> • Single family residential water wells • All other water wells 	X	X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Activity	Exempt *	Allowable*	Allowable with Mitigation*
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> • Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does not require DWQ approval for the use of a 401 Water Quality Certification 	X	X	
Wildlife passage structures		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

¹ To the extent practicable the greenway easements shall be located a minimum of 10 feet from the top of bank; surfaces shall be a minimum of 15 feet from the top of bank.

² Provided that within 30 feet of surface waters, 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 alternative evaluation by the Administrator as defined in Section 15-269.6.

- A zone at least 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.
- Riprap 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.

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

⁴ Provided that poles or aerial infrastructure shall not be installed within 10 feet of a water body unless the Administrator completes a no practical alternative evaluation as defined in Section 15-269.6.

⁵ Provided that:

- No heavy equipment shall be used within 30 feet of surface waters.
- A tree protection plan shall be developed and approved by Administrator that will protect the buffer to the maximum extent practicable
- Vegetation in undisturbed portions of the buffer is not compromised.
- Felled trees are removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps are removed only by grinding.
- At the completion of the project the disturbed area is stabilized with native vegetation.
- Zones one and two meet the requirements of Section 15-269.3.

⁶ Provided that:

- A tree protection plan shall be developed and approved by Administrator that will protect the buffer to the maximum extent practicable.
- Trees shall be felled so as not to damage trees not intended for removal or stream banks.
- 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.

- Stump grinding is allowable only for stumps more than 30 feet from surface waters.
- Within 30 feet of surface water, all of the following BMPs for underground utility lines shall be used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Administrator, as defined in Section 15-269.6.
 - 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.
 - Measures shall be taken upon completion of construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
 - In wetlands, mats shall be utilized to minimize soil disturbance.

⁷ All sewer crossings shall be protected from damage and risk of future leakage to the maximum extent practicable using ductile iron and other appropriate construction materials and practices.

⁸ The width of the corridor that is maintained to exclude woody vegetation will not exceed 20 feet in width except to accommodate vehicle turnaround, preparedness for emergency situations, and state and federal regulatory standards.

Activity	Exempt	Allowable	Allowable with Mitigation
Drainage, Stormwater, Erosion Control, and other Water-based activities			
<ul style="list-style-type: none"> • Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 • Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 	X	X	

Activity	Exempt	Allowable	Allowable with Mitigation
<p>Drainage ditches, roadside ditches and stormwater conveyances through buffers:</p> <ul style="list-style-type: none"> • New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided that flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to surface waters – Realignment of roadside drainage ditches retaining 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. • New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges through the riparian buffer. • New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topographic constraints provided that other practicable BMPs have been employed. 	X	X	X
<ul style="list-style-type: none"> • Ponds created by impounding streams and not used as stormwater BMPs: • New ponds in Zone 2 only provided that a riparian buffer meeting the requirements of Section 15-269.3 and 15-269.4 is established adjacent to the pond • All other new ponds 		X	X
<ul style="list-style-type: none"> • Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of this section is established adjacent to the new channel. [Ponds that are not in a natural drainage way are not subject to the buffer requirements of this part.] AMENDED 2/21/12) 	X		
Scientific studies and stream gauging	X		

Activity	Exempt	Allowable	Allowable with Mitigation
<p>Stormwater BMPs:</p> <ul style="list-style-type: none"> Constructed wetlands in Zone 1, if not closer than 30' to surface waters and diffuse flow is provided into the remainder of Zone 1. Wet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1 		<p>X</p> <p>X</p>	
See Wetland, stream and buffer restoration			
Shoreline stabilization, including armoring of stream banks with rip rap or retaining walls			X
<p>Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and comparable vegetation is replanted immediately after construction is complete. Tree planting may occur during the dormant season; the restored buffer shall comply with Section 15-269.7(g) within five years:</p> <ul style="list-style-type: none"> In Zone 2, provided that the vegetation in Zone 1 is not compromised, that discharge is released as diffuse flow in accordance with Section 15-269.5, and that ground cover is established within time frames required by the Sedimentation and Erosion Control Act In Zones 1 and 2 to control impacts associated with uses approved by the Town 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 that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act. In stream temporary erosion and sediment control measures for work within a stream channel. 	<p>X</p> <p>X</p>	<p>X</p> <p>X</p>	
Water dependent structures where installation and use result in disturbance to riparian buffers.		X	
<p>Water wells</p> <ul style="list-style-type: none"> Single family residential water wells All other water wells 	X	X	

Activity	Exempt	Allowable	Allowable with Mitigation
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification Wetland, stream and buffer restoration that does not require DWQ approval for the use of a 401 Water Quality Certification 	X	X	
Miscellaneous			
Archaeological activities	X		
Fences: <ul style="list-style-type: none"> Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in Section 15-316 Fences provided that disturbance is minimized and installation results in removal of trees as defined in Section 15-316 	X	X	
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized until they are revegetated		X	
Maintenance access on modified natural streams: a grassed travel way on one side of the water body where less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X	
Mining activities: <ul style="list-style-type: none"> Mining activities that are covered by the Mining Act provided that new buffers that meet the requirements of this section are established adjacent to the relocated channels Mining activities that are not covered by the Mining Act OR where new buffers that meet the requirements of this section are not established adjacent to the relocated channels Wastewater or mining dewatering wells with approved NPDES permit 	X	X	X
Preservation or maintenance of historic or cultural sites	X		

Activity	Exempt	Allowable	Allowable with Mitigation
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Removal of previous fill or debris provided that diffuse flow is maintained, a stabilizing ground cover sufficient to restrain erosion is established, and any woody vegetation removed is restored		X	
Wildlife passage structures		X	
Recreation			
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in Section 15-316 and no impervious surface is added to the buffer. • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Section or impervious surface is added to the buffer. 	X	X	
Canoe Access provided that installation and use does not result in removal of trees as defined in Section 15-316 and no impervious surface is added to the buffer.	X		
Greenway / hiking trails ⁺ designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent 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	
Transportation			
Bridges		X	

⁺ To the extent practicable, greenway easements shall be located a minimum of 10 feet from the top of bank; surfaces shall be a minimum of 15 feet from the top of bank

Activity	Exempt	Allowable	Allowable with Mitigation
<p>Driveway crossings of streams and other surface waters subject to this Section:</p> <ul style="list-style-type: none"> • Individual driveway crossings that disturb equal to or less than 25 linear feet or 2,500 square feet of buffer • Individual driveway crossings that disturb greater than 25 linear feet or 2,500 square feet of buffer • Multiple driveway crossings in any development that cumulatively disturbs equal to or less than 150 linear feet or one third of an acre of buffer • Multiple driveway crossings in any development that cumulatively disturbs greater than 150 linear feet or one third of an acre of buffer • Driveway impacts other than crossing of a stream or other surface waters subject to this Section 	X	X	X
Railroad impacts other than crossings of streams and other surface waters subject to this Part.			X
<p>Railroad crossings of streams and other surface water drainage features subject to this Part:</p> <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 or one third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one third of an acre of riparian buffer 	X	X	X
<p>Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety:</p> <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer impact • Greater than 2,500 square feet of buffer impact 		X	X

Activity	Exempt	Allowable	Allowable with Mitigation
<p>Temporary roads, provided that restoration activities, including re-establishment of pre-construction topographic and hydrologic conditions and replanting with comparable vegetation occur immediately after construction. Tree planting may occur during the dormant season; the restored buffer shall comply with Section 15-269.7(g) within five years:</p> <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with culvert installation of bridge construction or replacement 	X	X	
<p>Transportation (vehicular, bike) crossings of streams and other surface waters subject to this Section:</p> <ul style="list-style-type: none"> • Transportation crossings that impact equal to or less than 40 linear feet of riparian buffer • Transportation crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one third of an acre of riparian buffer • Transportation crossings that impact greater than 150 linear feet or one third of an acre of riparian buffer 	X	X	X
Transportation impacts other than crossings of streams and other surface waters subject to this Section			X
Vehicle access roads and boat ramps leading to the surface water, docks, fishing piers, and other water dependent activities, but not crossing the surface water and having a minimum practicable width of not more than 10 feet.		X	
Utilities			

Activity	Exempt	Allowable	Allowable with Mitigation
Electric utility, aerial, perpendicular crossings ^{2,3,4} : <ul style="list-style-type: none"> • Disturb equal to or less than 100 linear feet of buffer • Disturb greater than 100 linear feet of buffer 	X	X	
Electric utility, aerial, other than perpendicular crossings ³ : <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters^{2,4,5} 	X	X	X
Electric utility, underground, perpendicular crossings ^{3,4,6} : <ul style="list-style-type: none"> • Disturb less than or equal to 40 linear feet of buffer • Disturb greater than 40 linear feet of buffer 	X	X	

² Provided that within 30 feet of surface waters, 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 alternative evaluation by the Administrator as defined in Section 15-269.6.

- A zone at least 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.
- Riprap 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.

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

⁴ Provided that poles or aerial infrastructure shall not be installed within 10 feet of a water body unless the Administrator completes a no practical alternative evaluation as defined in Section 15-269.6

⁵ Provided that:

- No heavy equipment shall be used within 30 feet of surface waters.
- A tree protection plan shall be developed and approved by Administrator that will protect the buffer to the maximum extent practicable.
- Trees shall be: 1) felled so as not to damage trees not intended for removal or stream banks; and 2) removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps shall be removed only by grinding.
- 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.
- At the completion of the project the disturbed area shall be stabilized with native vegetation.
- The condition and use of the area within 50 feet of surface waters shall be consistent with Sections 15-269.3 and 15-269.4.

⁶ A tree protection plan shall be developed and approved by Administrator that will protect the buffer to the maximum extent practicable.

- Trees shall be felled so as not to damage trees not intended for removal or stream banks.
- 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.
- Stump grinding is allowable only for stumps more than 30 feet from surface waters.

Activity	Exempt	Allowable	Allowable with Mitigation
Electric utility, underground, other than perpendicular crossings ^{3,6} ; <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters⁵ 	X	X	X
Non electric utility, perpendicular crossings ^{3,4,6,7} ; <ul style="list-style-type: none"> • Disturb equal to or less than 40 linear feet of buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb equal to or less than 40 linear feet of buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 150 linear feet of buffer 	X	X X	X X
Non electric utility, other than perpendicular crossings ^{3,6} ; <ul style="list-style-type: none"> • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters^{5,8} 	X	X	X
Vegetation Management			
Forest harvesting— See Section 15-319.1			
Fertilizer application: One-time fertilizer application to establish vegetation	X		

• Within 30 feet of surface water, all of the following BMPs for underground utility lines shall be used. If all of these BMPs are not used, then the underground utility line shall require a no-practical-alternative evaluation by the Administrator, as defined in Section 15-269.6.

• Trees shall be removed by chain. 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 created for the line installation.

• 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.

• In wetlands, mats shall be utilized to minimize soil disturbance.

• At the completion of the project the disturbed area shall be stabilized with native vegetation.

• The condition and use of the area within 50 feet of surface waters shall be consistent with Sections 15-269.3 and 15-269.4

⁷ All sewer crossings shall be protected from damage and risk of future leakage to the maximum extent practicable using ductile iron and other appropriate construction materials and practices.

⁸ The width of the corridor that is maintained to exclude woody vegetation will not exceed 20 feet in width except to accommodate vehicle turnaround, preparedness for emergency situations, and state and federal regulatory standards.

Activity	Exempt	Allowable	Allowable with Mitigation
Vegetation management: • Emergency fire control measures provided that topography is restored • Mowing and harvesting of plant products in Zone 2 only • 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 dead, diseased, or damaged, are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering the stability of the streambank • Removal of poison ivy • Removal of invasive exotic vegetation as defined in Smith, Cherri L., 1998 <i>Exotic Plant Guidelines</i>. DENR, Division of Parks and Recreation. Raleigh, N.C. Guideline # 30, or a more recent version or alternative reference approved by the NC EMC.	X X X X X X X		

ARTICLE V
APPEALS, VARIANCES, SPECIAL SETBACK EXCEPTIONS, INTERPRETATIONS,
AND DETERMINATIONS (AMENDED 6/22/21)

Section 15-92 Variances. (AMENDED 11/10/81; 4/21/87; 12/05/89; 4/23/96; 10/24/06; 6/26/12; 10/21/14; REPEALED & AMENDED 3/24/09; REWRITTEN 10/26/10)

...

(k) ~~If the board votes to grant a major~~ With respect to a variance from any of the provisions of Part III (Water Quality Buffers) of Article XVI, the following procedure shall apply in addition to the standards set forth in Section 15-92(b):

- (1) The Board may grant minor variances, which are activities that pertain to Zone Two as defined in 15a NCAC 02b.0267, as amended, and shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:
 - (a) If the applicant complies with the provisions of this part, they can secure no reasonable return from, nor make reasonable use of, their property.
 - i. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of this part that shall make reasonable use of the property possible;
 - (b) The hardship results from application of this part to the property rather than from other factors such as deed restrictions or other hardship;
 - (c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this part would not allow reasonable use of the property;
 - (d) The applicant did not cause the hardship by knowingly or unknowingly violating this part;
 - (e) The applicant did not purchase the property after August 11, 2009, the effective date of this part, and then request a variance; and
 - (f) The hardship is rare or unique to the applicant's property.
- (2) For any variance request, the local government shall make a finding of fact

as to whether the variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

- (3) For any variance request, the Board shall make a finding of fact as to whether, in granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (4) MINOR VARIANCES. A minor variance request pertains to activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in subsection (k)(1) through (k)(3) of this part by the Board pursuant to G.S. 160D-102(38). The Board may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program.
- (5) Request for appeals to decisions made by the Board shall be made on certiorari to the local Superior Court.
- (6) MAJOR VARIANCES. A major variance request pertains to activities that will impact any portion of Zone One or any portion of both Zones One and Two of the riparian buffer. If the local government has determined that a major variance request meets the requirements in subsection (k)(1) through (k)(3) of this part, then it shall prepare a preliminary finding and submit it to the Board for approval. Within 90 days after receipt by the local government, the Board shall review preliminary findings on major variance requests and take one of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a Board decision on a major variance request are made on judicial review to the local Superior Court.

~~the administrator shall forthwith prepare and send to the Environmental Management Commission a record of the proceedings before the board. The variance shall not be issued until it is approved by the EMC. For purposes of this subsection, a major variance is one that pertains to prohibited activities that will impact that portion of Zone One of the riparian buffers that lies within 30 feet of the surface waters subject to buffer requirements of the Jordan Reservoir.~~

Section 15-92.1 Special Setback Exception Permits. (AMENDED 6/21/94; 6/4/24)

[PLEASE REFERENCE "APPENDIX H"]

(a) An application for a special setback exception permit shall be submitted to the board of adjustment by filing a copy of the application with the administrator in the planning department.

(b) All of the provisions of this article applicable to the processing of variance applications shall also apply to special setback exception permit requests, except the provisions of Subsections 15-92(b) and 15-96(b) and (c).

(c) The board of adjustment may issue a ~~special~~ setback exception permit for the purposes and under the circumstances set forth in the remaining subsections of this section if it concludes, in addition to any other findings required below, that:

- (1) Issuance of the permit will not create a threat to the public health or safety; and
- (2) Issuance of the permit will not adversely affect the value of adjoining or neighboring properties. ~~If the applicant presents a petition, signed by the owners of all properties entitled to receive notice of the hearing on the application pursuant to Section 15-102(2), and stating that such property owners believe their property values will not be adversely affected by the proposed use, this shall be sufficient evidence from which the board may (but shall not be required to) make the required finding. The board may also make the required finding based on other competent evidence.~~

(d) The board of adjustment may issue a ~~special~~ setback exception permit under this section to allow a reduction of up to 50% in the required distances that buildings must be set back from lot boundary lines under Subsection 15-184(a)(4)

...

(e) The board of adjustment may issue a ~~special~~ setback exception permit to authorize a structure to encroach upon a setback required under Section 15-184 if it finds that

...

Section 15-96 Board Action on Appeals, Variances, and ~~Special~~ Setback Exceptions.
(AMENDED 4/27/82; 6/21/94; 10/21/14)

(d) Before granting a ~~special~~ setback exception permit, the board shall vote affirmatively on each of the findings required under section 15-92.1. A motion to deny a ~~special~~ setback exception may be made on the basis that any one or more of the findings required by section 15-92.1 are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it.

ARTICLE XIII

RECREATIONAL FACILITIES AND OPEN SPACE

Section 15-198 Open Space. (AMENDED 4/24/84; 3/26/85; 12/10/85; 11/11/86;
REWRITTEN 6/27/95; 6/20/06; AMENDED 3/24/09; 3/23/10)

(a) The Council finds that when land is developed for residential purposes, the public health, safety, and welfare are best served when substantial portions of the tracts so developed remain as common open space. The preservation of such open space areas serves the following important objectives, to the benefit of the residents of such developments as well as the general public:

- (1) Preservation of open vistas, providing relief from an urban landscape;
- (2) Preservation of environmentally sensitive lands;
- (3) Preservation of habitat for wildlife;
- (4) Preservation of historically or archaeologically significant areas;
- (5) Provision of areas for passive recreation, such as walking or jogging.

(b) For purposes of this section:

- (1) Open space refers to an area that:
 - a. Is not encumbered with any substantial structure;
 - b. Is not devoted to use as a roadway, parking area, or sidewalk, **unless a publicly accessible sidewalk or related shared-use facility is located within a protective roadway buffer as defined by Section 15-312.**
 - c. Is not part of any privately owned lot that is used or intended for use for residential purposes;
 - d. Is legally and practicably accessible to the general public or to the residents of the development where the open space is located.
- (2) Narrow strips of common area that separate lots within a development from each other, from streets, or from adjoining tracts shall generally not be regarded as open space within the meaning of this section unless such areas:
 - a. Are at least 50 feet in width and capable of functioning as a substantial visual buffer; or

- b. Are configured and/or improved (e.g. through the installation of trails) in such a way as to be conducive to actual use for passive recreational purposes (i.e. walking or jogging) by residents of the development where located.
- (3) The following areas shall be regarded as open space if such areas satisfy at least the criteria set forth in Subdivision (1) a, b, and c of subsection (b) of this section:
- a. Utility easements located outside of street rights of way;
 - b. Cemeteries located on a tract prior to its development.
 - c. Areas used for the growing of crops, such as hay, corn, or vegetables, if and to the extent that such uses occur within an area that is subject to the control of a homeowners association and such uses are approved by the homeowners association. **(AMENDED 5/25/99)**
- (4) The term “primary conservation areas” shall mean: **(AMENDED 5/25/99; 6/20/99)**
- a. Areas containing slopes greater than 25%
 - b. Hardwood areas as designated in the Geographic Information System (GIS) of the Town of Carrboro. **(AMENDED 3/24/09)**
 - c. Wetlands as defined pursuant to Section 404 of the Clean Water Act
 - d. Floodplains
 - e. Water quality buffers on perennial and intermittent streams. **(AMENDED 3/24/09)**
 - f. Lakes and ponds;
 - g. Road buffers as required by Section 15-312 of this Chapter, except for those portions of the buffers that must be included in road or utility crossings, **sight triangles, and pedestrian and bicycle improvements.**

ARTICLE XIX SCREENING AND TREES

PART I. SCREENING

Section 15-312 Protective Buffer Along Major Roads. (AMENDED 5/25/99; 10/23/07)

Notwithstanding the provisions of Section 15-308, but subject to the remaining provisions of this section, an undisturbed protective buffer shall be maintained along Old N.C. 86, Dairyland Road, Union Grove Church Road, Homestead Road, Eubanks Road and Smith Level Road south of Ray Road that will help preserve the scenic views and elements of this area. With respect to each property that fronts one of the named streets, any development other than use classification 13.200, Fire Station, that occurs after the effective date of this section shall provide an undisturbed buffer (except for necessary crossings and encroachments as described in Section 15-198(b)(4)(g)) that is a minimum of 50 feet in width and on average is 100 feet in width along such frontage. If the buffer area does not provide the equivalent of a Type 'A' screen, the developer shall provide a Type 'A' screen on the development's side of the buffer (one hundred (100) feet from the right-of-way)

ARTICLE XII

DENSITY AND DIMENSIONAL REGULATIONS

Section 15-184 Building Setback Requirements

- (a) Subject to Section 15-187 (Architecturally Integrated Subdivisions) and the other provisions of this section, no portion of any building or any freestanding sign may be located on any lot closer to any lot line or to the street right-of-way line or centerline than is authorized in the table set forth below: **(AMENDED 1/22/85)**
- (1) If the street right-of-way line is readily determinable (by reference to a recorded map, set irons, or other means), the setback shall be measured from such right-of-way line. If the right-of-way line is not so determinable, the setback shall be measured from the street centerline.
- (2) As used in this section, the term “lot boundary line” refers to lot boundaries other than those that abut streets.
- (3) As used in this section, the term “building” includes any substantial structure, which, by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building. Without limiting the generality of the foregoing, the following structures shall be deemed to fall within this description:
- a. Gas pumps and overhead canopies or roofs.
 - b. Fences, walls or berms running along **right-of-way or** lot boundaries adjacent to public street rights of way if such fences, walls or berms exceed three feet in height and are substantially opaque except that fences, walls or berms shall not be regarded as “buildings” within the meaning of this subdivision if they are located along the rear lot line of lots that have street frontage along both the front and rear of such lots. **For the purpose of this section, any portion of a fence higher than three feet located parallel along or perpendicular to a right-of-way that does not meet the applicable setback requirement must be at least 50 percent open/revealed to 50 percent closed/opaque. A zoning permit for use 35.00 (Fences) is only required when fences are located in the right-of-way setback (AMENDED 5/19/98)**

[illegible]