



15A NCAC 02B .0233 (8)(b), .0243 (8)(b), .0250 (11)(b), .0259 (8)(b), .0267 (11)(c), .0607 (e)(2)  
Protection and Maintenance of Riparian Areas Rules - Variance Application  
FORM: VAR 10-2013

The Variance Application (VAR-10-2013) form is required for applicants seeking approval for activities within North Carolina's protected riparian buffers that are listed as prohibited or are not listed in the Table of Uses of the Buffer Rule applicable to the property (see citations below). If you are requesting activities listed in the Table of Uses as "Allowable or Allowable with Mitigation", please use the Buffer Authorization (BA 10-2013) form (found [here](#)) to apply for those impacts.

### **HOW DO I KNOW IF I NEED A VARIANCE?**

The riparian buffer must be undisturbed, regardless of property size or type of land use. Within each set of buffer [rules](#)\*, there is a Table of Uses for specific activities:

- **Exempt** uses are allowed in the riparian buffer without approval from DWR.
- **(Potentially) Allowable** or **Allowable with Mitigation** uses may occur in the buffer once a Buffer Authorization is issued from DWR. Some of these impacts may require mitigation.
- **Prohibited** uses are not allowed in the buffer unless a Variance is granted from DWR or the N.C. Environmental Management Commission. Activities not listed in the Table of Uses are **prohibited**.

\* Rules: Neuse - [15A NCAC 02B .0233 \(8\)\(b\)](#)                      Catawba - [15A NCAC 02B .0243 \(8\)\(b\)](#)  
Randleman - [15A NCAC 02B .0250 \(11\)\(b\)](#)                      Tar-Pamlico - [15A NCAC 02B .0259 \(8\)\(b\)](#)  
Jordan - [15A NCAC 02B .0267 \(11\)\(c\)](#)                      Goose Creek - [15A NCAC 02B .0607 \(e\)\(2\)](#)

For projects within the Neuse and Tar-Pamlico River Basins and the Randleman Lake and Jordan Lake Watersheds, a minor Variance is required for prohibited activities that will impact only Zone 2 of the riparian buffer. A major Variance is required for prohibited activities that will impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer.

For projects within the Catawba River Basin, a minor Variance is required for prohibited activities that impact any portion of Zone 1 and/or Zone 2 of the riparian buffer. For projects within the Goose Creek Watershed, a major Variance is required for prohibited activities that impact any portion of the riparian buffer.

Minor variance requests are reviewed and processed by the Division. Major variance requests are reviewed by the Water Quality Committee (WQC) of the Environmental Management Commission (EMC).

The Division will review your application for initial completeness within 45 days of receipt and notify you if additional information is needed to process your request. Minor variance requests are processed within 60 days of receipt of a complete application. Major Variance requests may take up to 6 to 9 months to process. To request that your proposed major variance be presented at the next scheduled WQC meeting, you must submit a complete major variance application at least sixty (60) days prior to the WQC meeting date. To view the WQC meeting dates, click on this link: <http://portal.ncdenr.org/web/emc>. Please note that we cannot guarantee the proposed major variance will be presented at the next WQC meeting. You may not begin work until you have received your variance approval letter and/or additional conditions and any required mitigation has been approved.

### **FEES**

There is no application fee for Variance requests.

### **WHERE TO SEND YOUR COMPLETED VAR 10-2013 FORM**

Copies of your completed VAR 10-2013 form with all required attachments must be sent to DWR.

For government (NCDOT, City/ Town) transportation projects:

Mailing Address (via US Postal Service)	Physical Address (via delivery service, UPS, FedEx, etc.)
NC DWR, Transportation Permitting Unit (TPU) 1650 Mail Service Center Raleigh, NC 27699-1650	NC DWR, Transportation Permitting Unit (TPU) 512 North Salisbury Street Raleigh, NC 27604

For all other projects:

Mailing Address (via US Postal Service including priority mail)	Physical Address (via delivery service, UPS FedEx, etc.)
NC DWR, 401 & Buffer Permitting Unit 1650 Mail Service Center Raleigh, NC 27699-1650	NC DWR, 401 & Buffer Permitting Unit 512 N. Salisbury St Raleigh, NC 27604

**NUMBER OF COPIES REQUIRED**

Provide three (3) complete and collated copies of the VAR 10-2013 form with all required attachments. Instead of providing 3 copies of the full size plans, you may provide two copies of full size plans along with one copy of 11 x 17 inch size plans. Be sure to include a copy of your completed application form, plan sheets and maps in Adobe (pdf) format on a CD or floppy disk.

**APPLICATION FORM**

Below you will find detailed instructions on how to fill out each section of the VAR 10-2013 form.

**A. General Information** – Although the agencies will communicate with the individual(s) listed as the applicant on the VAR 10-2013 form, the owner receives the original of all communications. The variance must be issued to the legal owner of the property.

**1. Applicant’s Name**

Provide the name of the corporation, individual, etc. who is requesting the variance. If the applicant is not the owner of the property, you must include an agent authorization letter with your VAR 10-2013 form for it to be considered complete. A signed and dated copy of an Agent Authorization letter must be attached if the Agent has signatory authority for the owner/applicant. (See sample form on the web:

[http://www.saw.usace.army.mil/Portals/59/docs/regulatory/regdocs/Permits/SAMPLE\\_AGENT\\_AUTHORIZATION\\_FORM.pdf](http://www.saw.usace.army.mil/Portals/59/docs/regulatory/regdocs/Permits/SAMPLE_AGENT_AUTHORIZATION_FORM.pdf))

**2. Property Owner/Signing Official**

Provide the name of the corporation, individual, etc who owns the property. A responsible individual must be identified for the proposed project, even if it is a corporate effort. Provide the property owner’s mailing address, telephone number and email address.

**3. Agent/Consultant Information**

Provide the agent/consultant’s name, mailing address, telephone number and email address. If you list an agent or consultant, you must include an agent authorization letter with your VAR 10-2013 form for it to be considered complete. A signed and dated copy of an Agent Authorization letter must be attached if the Agent has signatory authority for the owner/applicant. (See sample form on the web:

[http://www.saw.usace.army.mil/Portals/59/docs/regulatory/regdocs/Permits/SAMPLE\\_AGENT\\_AUTHORIZATION\\_FORM.pdf](http://www.saw.usace.army.mil/Portals/59/docs/regulatory/regdocs/Permits/SAMPLE_AGENT_AUTHORIZATION_FORM.pdf))

**4. Project Name**

If your project has a formal name please use this. If your project does not have a formal name, please identify your project by the owner name and proposed activity (Jones Property Access Road, Smith Guest House, etc.) List in parentheses any other names that have been used to identify the project in the past.

**5. Project Location**

5a. Provide the street address of the proposed project.

5b. List the county in which the project is located.

- 5c. The site coordinates are necessary so the agencies can accurately locate and analyze impacts from your proposed project. Site coordinates can be obtained from maps (see 5d. below), surveys, or from GPS devices. Coordinates should be written as latitude and longitude and expressed in decimal degrees. For assistance in finding the latitude/longitude information for your project, please try iTouchMap.com (<http://itouchmap.com/latlong.html>).
- 5d. USGS maps may be found via the USGS Store at: <http://store.usgs.gov>. Click the Map Locator & Downloader link on the right side of the screen and follow instructions on getting your most recent version of the 1:24,000 scale topographic map.
- 5e. Natural Resources Conservation Service (NRCS) Soil Surveys for North Carolina Counties may be found at [http://soils.usda.gov/survey/online\\_surveys/north\\_carolina/](http://soils.usda.gov/survey/online_surveys/north_carolina/). Use the table under "Soil Survey Maps" at <http://portal.ncdenr.org/web/wg/swp/ws/401/riparianbuffers/maps> to determine the **most recent published** version. You may also contact your local NRCS office for a paper version of your County's Soil Survey. Contact information for local offices may be found by county at: <http://offices.sc.egov.usda.gov/locator/app?service=page/CountyMap&state=NC&stateName=North%20Carolina&stateCode=37>. The "Web Soil Survey" may not be used for the purpose of the riparian buffer rules.

## 6. Property Information

- 6a. Property identification no. (Tax PIN or parcel ID):  
List the identifying tax ID, parcel ID or PIN (whichever is the primary identifying information for real estate tax purposes in the county in which your property is located) and pertinent information. This information can frequently be found online through your county tax records or on a real estate tax invoice for the property, or from the local County tax assessor's office or register of deeds. Some counties have interactive GIS maps that show the property identification numbers as well.

NC State Property Office Web link to find tax parcel ID for your county: <http://www.ncspo.com/gis/county.htm>  
NC County GIS Data from NCSU: <http://www.lib.ncsu.edu/gis/counties.html>

6b-e. Self explanatory.

## 7. Is your project in one of the 20 Coastal Counties covered under the Coastal Area Management Act (CAMA)?

A list of the 20 Coastal Counties can be found at: <http://portal.ncdenr.org/web/cm/cama-counties>.

- 7a. In which Area of Concern (AEC) do you fall (30 ft or 75 ft)?  
To learn more about AECs and CAMA permits, visit the NC Division of Coastal Management's (DCM) web site: <http://dcm2.enr.state.nc.us/Permits/aecs.htm> Contact information for the NC DCM representative for your project area can be found at: [http://dcm2.enr.state.nc.us/contact\\_dcm.htm](http://dcm2.enr.state.nc.us/contact_dcm.htm).
- 7b. What is the total percent of impervious cover that you have proposed within the AEC?  
To determine the percent of impervious cover, total the square footage of impervious cover (e.g. buildings, sidewalks, patios and decks) proposed within the AEC and divide it by square footage of AEC on the property.

## 8. Directions to site from nearest major intersection:

Self explanatory.

## 9. Stream associated with riparian buffer to be impacted by the proposed activity:

If a creek or other waterbody does not have a name, please identify it as an "Unnamed tributary to \_\_\_\_" and list the nearest named stream to which it flows. The nearest named body of water can be found by looking on the 1:24,000 USGS Topographic map for the project.

The classification can be found by searching for the named stream on the list of waterbodies posted at: <http://portal.ncdenr.org/web/wg/ps/csu/classifications>. You may search by basin from a hydrologic listing or an alphabetical listing (posted on the left side of the page). The classification entry might read "C; NSW", for example.

9a. For Goose Creek, is the buffer in the 100-year floodplain?

The 100-year floodplain is the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management (<http://www.ncfloodmaps.com/>).

10. List any permits/approvals that have been requested or obtained for this project in the past (including all prior phases):

Examples include CAMA Major, CAMA Minor, 401 Certification, 404 Permit, stream determination, on-site wastewater permit, NPDES permit (including stormwater), non-discharge permit, water supply watershed variance, erosion/sedimentation control, etc.

## B. Proposed Activity

1a. Provide a detailed description of proposed activity including its purpose:

Explain what you are proposing to do in this project and why it is necessary. For example, if you are building an addition to a house, write "building an addition onto existing house to accommodate an expanding family".

1b. Attach a site plan: include items listed on the application form.

## C. Proposed Impacts and Mitigation

1. Individually list the square footage of each proposed impact to the protected riparian buffers:

- Temporary impacts include temporary roads, temporary sediment and erosion control devised and those areas that would be cleared for construction of the project, provided they would be allowed to revegetate once construction of the project is complete. Mitigation is not required for temporary impacts.
- Buffer mitigation is required for all permanent impacts to Zone 1 and 2 of the riparian buffer. If you are unsure if mitigation is required, please call the NC DWR 401/Buffer Coordinator at (919) 807-6364.
- Zone 1 and Zone 2:  
In the Neuse, Catawba, and Tar-Pamlico River Basins and the Randleman Lake and Jordan Lake Watersheds, the 50-foot riparian buffer has two zones:
  - **Zone 1:**
    - (i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water.
    - (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward a distance of 30 feet.
    - (iii) For surface waters within the 20 Coastal Counties (defined in 15A NCAC 02B .0202) within the jurisdiction of the Division of Coastal Management (DCM), Zone 1 shall begin at the most landward limit of the following and extend landward a distance of 30 feet:
      - a. the normal high water level;
      - b. the normal water level; or
      - c. the landward limit of coastal wetlands as defined by DCM;
  - **Zone 2**  
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.

In the Goose Creek Watershed, the riparian buffer is 200 feet within the 100-year Floodplain and 100 feet outside of the 100-year Floodplain. There are no Zones within the Goose Creek rules.

2. **Identify the square feet of impact to each zone of the riparian buffer that requires mitigation from the table above. Calculate the amount of mitigation required.**
- Zone 1 and Zone 2: See the descriptions above.
  - Total impact (square feet): This number should correspond with the square footage on your impact map that requires mitigation. Note this number may be less than the total proposed impacts if not all of your proposed impacts require mitigation.
  - Required mitigation (square feet): Multiply the total impact for each Zone with the Multiplier number in the Multiplier column and enter the result here.
  - Total buffer mitigation required: Add the required mitigation for Zones 1 and 2 to determine the total mitigation required.

3. **Provide a description of how mitigation will be achieved at your site pursuant to the mitigation requirements of the applicable river basin/watershed.**

Buffer mitigation may be met through one or a combination of the following options:

- Payment of a compensatory mitigation fee to a private mitigation bank or NC Ecosystem Enhancement Program (NC EEP) if mitigation is not available from a private mitigation bank.
- Restoration or enhancement of a non-forested riparian buffer

**3a. Is buffer restoration or enhancement proposed?**

If on-site riparian buffer restoration or enhancement is proposed, a detailed restoration or enhancement plan must be included in the application package following the most recent DWR guidelines:

<http://portal.ncdenr.org/web/wq/swp/ws/401/riparianbuffers>. Attach all appropriate information as identified within 15A NCAC 02B .0242, .0244, .0260, .0244, .0252, .0609, or .0268.

**3b. Is payment into a buffer restoration fund proposed?**

Answer yes if you plan to purchase riparian buffer mitigation credits from a private mitigation bank or NC EEP. A list of available mitigation banks can be found online at: <http://portal.ncdenr.org/web/wq/nutrientbufferbanks>. Information regarding NC EEP's procedures for requesting and purchasing mitigation may be found at <http://portal.ncdenr.org/web/eed/mitigation-applicants>. If mitigation is proposed through a private mitigation bank or NC EEP, the acceptance letter must be included in the application package specifying that they have the appropriate number of credits that your project requires. DWR recommends that you request the maximum possible mitigation amount that may be required so that you will not have to get further approval on short notice.

**D. Stormwater**

1. **Provide a description of how diffuse flow will be maintained through the protected riparian buffers (e.g., re-planting vegetation or enhancement of existing vegetation, gutter splash pads, level spreader to control of runoff from impervious surfaces, etc.).**

Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and re-establishing vegetation. Flows from new ditches or manmade conveyances may require installation of a level spreader (or other BMP if site constraints prevent the use of a level spreader) to diffuse the flow. Please see Chapter 8 of the [NC Stormwater BMP Manual](#), for detailed information on how to meet diffuse flow requirements.

- 1a. Show the location of diffuse flow measure(s) on your site plan: Self explanatory
- 1b. Attach a completed **Level Spreader Supplement Form** (or BMP Supplement Form where appropriate) with all required items for each proposed BMP. The supplement forms may be found at <http://portal.ncdenr.org/web/wq/ws/su/bmp-ch8>.
- 1c. Attach an **Operation and Maintenance (O&M) Form** for each proposed level spreader. The Level Spreader Inspection and Maintenance Form may be found at <http://portal.ncdenr.org/web/wq/ws/su/bmp-ch8>.

2. **For Major, Catawba, and Goose Creek variance requests, provide a description of all best management practices (BMPs) that will be used to minimize disturbance and control the discharge of nutrients and sediments from stormwater.**  
These variance requests require that you develop a stormwater management plan to treat stormwater from the impervious area proposed within the riparian buffer. If it is not feasible then you may treat an equal amount of existing impervious surface area such as stormwater from existing roofs, sidewalks, driveways, patios, etc. A stormwater treatment plan is only required for Catawba variance requests that include impacts to Zone 1 of the riparian buffer.
  - 2a. Show the location of BMPs on your site plan: Self explanatory
  - 2b. Attach a **Supplement Form** for each structural BMP proposed. Please see the [NC Stormwater BMP Manual](#) for detailed information on how to design and use BMPs.
  - 2c. Attach an **Operation and Maintenance (O&M) Form** for each structural BMP proposed. These forms are contained in the specific chapter for each BMP type in the [NC Stormwater BMP Manual](#).

#### E. Demonstration of Need for a Variance

1. **Explain how complying with the provisions of the applicable rule would prevent you from securing a reasonable return from or make reasonable use of your property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. The Division will consider whether the variance is the minimum possible deviation from the terms of the applicable Buffer Rule that shall make reasonable use of the property possible.**

In considering whether the variance is the minimum possible deviation from the terms of the applicable Buffer Rule that shall make reasonable use of the property possible, the Division will review the application to determine if impacts to protected riparian buffers have been avoided and minimized

Minimizing and avoiding impacts should be a critical part of the design process. The following is a checklist of avoidance and minimization questions that the Division often looks for in applications. If the answer to any of the below questions is “yes” then you must provide a specific justification addressing these issues as to why the impacts are necessary.

- Can property access routes be moved or reduced to avoid or reduce stream, wetland, water, and buffer impacts?
- Can a building, parking lot, etc. be realigned to avoid or reduce impacts?
- Can the site layout be reconfigured to avoid or reduce impacts?
- Can headwalls or steeper side slopes be safely used to avoid or reduce impacts?
- Can a retaining wall be safely used to avoid or reduce impacts?

List all techniques and practices that you plan to use to avoid and minimize (i.e. reduce) impacts from the construction of the project (e.g., scheduling issues to avoid certain time-specific and aquatic impacts, erosion control measures, hand clearing versus use of heavy equipment, site access from high ground, pre-fabrication of materials in high ground to minimize time in sensitive environments, building elevated structures over wetlands or streams to transport equipment, etc.).

2. **Explain how the hardship results from application of the Buffer Rule to the property rather from other factors such as deed restrictions or other hardships (e.g. zoning setbacks, floodplains, etc).**

If adherence to zoning setbacks prevents reconfiguration of your project to avoid or minimize impacts to the protected riparian buffer then applicants should request a variance from local municipalities prior to requesting a variance from the applicable Buffer Rule.

3. **Explain how the hardship results from physical nature of the property, such as its size, shape, or topography, which is different from that of neighboring property.**

Self explanatory

4. **Explain whether the hardship was caused by the applicant knowingly or unknowingly violating the applicable Buffer Rule.**

Conducting an activity within the protected riparian buffer that is not listed as Exempt in the Table of Uses of the applicable Buffer Rules without a Buffer Authorization or Variance would constitute a violation.

**5. For Neuse, Tar-Pamlico, Jordan Lake and Goose Creek only: Did the applicant purchase the property after the effective date of the applicable Buffer Rule and then request a variance?**

The effective date for each Buffer Rule is listed below.

Neuse - July 22, 1997

Tar-Pamlico - January 1, 2000

Catawba - June 30, 2001

Jordan - August 11, 2009\*

Randleman - April 1, 1999

Goose Creek - February 1, 2009

*\*Or date local program was adopted*

**6. Explain how the hardship is rare or unique to the applicant's property, rather than the result of conditions that are widespread.**

Self explanatory

**F. Deed Restrictions**

All stormwater management structures shall be located in recorded drainage easements for the purposes of operation and maintenance and shall have recorded access easements to the nearest public right-of-way. These easements shall be granted in favor of the party responsible for operating and maintaining the stormwater management structures.

**F. Applicant's Certification**

The application must be signed and dated by the person(s) who is/are legally responsible for the property and its compliance. If an agent is filling out the application, the agent should not sign the application unless they are certifying that they will be the responsible party for the property's compliance.