

### Background

The Town of Hillsborough has local delegated authority from the state to enforce the Neuse Riparian Buffer Rules (15A NCAC 02B .0714 Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers) within the town’s planning jurisdiction. The town’s Stormwater and Environmental Services Division staff administer and enforce the riparian buffer program through *Section 6.20.16, Riparian Buffers*, of the town’s Unified Development Ordinance (UDO).

The town received delegated authority in 2013 and has not made significant changes to *Section 6.20.16* since then. There was a legislative session law in 2016 that attempted to force local governments to be no more restrictive than the state’s rules. That prompted an update to *Section 6.20.16* of the UDO, but in the end the North Carolina Department of Environmental Quality (NCDEQ) determined that this session law did not apply to local riparian buffer programs like Hillsborough’s.

In 2020, the state updated the Neuse Riparian Buffer Rules including redefining the category of uses in the riparian buffer and expanding the table of allowable uses. Since that time Stormwater and Environmental Services Division staff have been reviewing the state’s updated riparian buffer rules and how the town’s riparian buffer plan is implemented.

### Current Request

Stormwater and Environmental Services Division and Planning and Economic Development Division staff have been contacted by two property owners within town limits regarding text amendments to *Section 6.20.16* of the UDO. This, coupled with staff’s review of the town’s riparian buffer regulations in the UDO has prompted staff to propose amendments to *Section 6.20.16*. The reasons for the proposed changes include:

- Provide flexibility to staff in enforcing riparian buffers by expanding uses which include more specific requirements and conditions;
- Itemize more uses with specific impact thresholds; this will provide equal or better protection because allowable impacts with specific thresholds are more enforceable;
- Update “diffuse flow” of stormwater requirements to meet current state rules regarding stormwater runoff through the riparian buffer; this will provide better protection to receiving streams and improve enforceability of the runoff requirements;
- Provide “equality” between town impacts and private citizens or developers; currently, the town riparian buffer activities/impacts are governed by the current state rules. We do not “self permit” our own buffer impacts;
- Residential infill lots have garnered a lot of attention; many of these have streams and without some flexibility cannot easily be developed;
- Correct references and typographical errors.

It is important to note that staff intends to keep what is referred to as the “kick-in” clause. In *Section 6.20.16.3.c* of the UDO, even an unmapped stream may require a riparian buffer if field evidence indicates a stream is present. This is more restrictive than the state’s rules. The state only applies riparian buffers to mapped streams, unless field evidence indicates they are not present. Given climate change impacts, staff has documented that the hydrology of streams—especially intermittent streams—does change. Keeping this section intact helps to protect stream quality throughout the town’s jurisdiction.

**Proposed Riparian Buffer Rule Changes**



The proposed changes to Section 6.20 includes a stipulation that only prohibited uses can seek a variance and that variance must be granted by the North Carolina Environmental Management Commission. Therefore staff is also proposing changes to Section 3.10 of the town’s UDO to reflect the separate variance process.

Proposed Changes

The following table summarizes the proposed changes to Section 6.20.16 of the town’s UDO.

***Table of Proposed Riparian Buffer UDO Changes***

<b>UDO Section 6.20.16 Riparian Buffers</b>		<b>Change</b>
6.20.16.1	Purpose and Intent	Changed the reference to the Nuese Buffer rules to the new citation
6.20.16.2	Delegated Authority	None
6.20.16.3	Applicability	Changed the reference from NC Division of Water Quality to the NC Department of Environmental Quality to reflect the department's name change.
6.20.16.4	Exemption Based upon an On-site Determination	Changed the reference from NC Division of Water Quality to the NC Department of Environmental Quality to reflect the department's name change. Also corrected the reference to the O2B rules and fixed a typo.
6.20.16.5	Exemption when Existing Uses are Present and Ongoing	Changed the reference to the new citation
6.20.16.6	Calculations for Width of Riparian Buffers	Minor changes made to reference how the buffer is measured for each zone as described in new Section 6.20.16.7.
6.20.16.7	Zones of the Riparian Buffer	Added new section to define Zone 1 and 2. In practice Zone 1 gets more protection and staff has been utilizing the zones, especially for buffer authorization and determination of mitigation. Makes sense to now include the definitions which are needed for the updated table of uses.
6.20.16.8	Permitted Uses within Riparian Buffers Table 6.20.16.8 Permitted Uses/Activities within Riparian Buffers	Section was modified to include DEQ's use definitions. Added new table of uses/activities to essentially match the current DEQ rules with a few exceptions.
6.20.16.9	Basis for “No Practical Alternatives”	Added the reference to the permitted use section.
6.20.16.10	Written Authorization Required	Added the reference to the permitted use section.

*(continued next page)*

*Table of Proposed Riparian Buffer UDO Changes (continued)*

<b>UDO Section 6.20.16 Riparian Buffers</b>		<b>Change</b>
6.20.16.11	Stormwater Runoff Through the Riparian Buffer	This section was previously titled, "Diffuse Flow Requirement," and has been replaced with new language from DEQ's regulations. This section is more protective but defines when stormwater conveyances through the buffer are allowed which generally requires meeting nutrient thresholds and other requirements. This will be much more enforceable.
6.20.16.12	Mitigation	Changed the reference to the permitted use section.
6.20.16.13	Riparian Buffer and Minimum Lot Requirements	None.
6.20.16.14	Existing Vegetation and New Vegetation in Riparian buffers	Deleted because the new table of uses, details vegetative management allowed in the riparian buffer and this section is no longer needed.

The following table summarizes the proposed changes to Section 3.10 of the town's UDO.

*Table of Proposed Variance UDO Changes*

<b>UDO Section 3.10. Variance</b>		<b>Change</b>
3.10.3.1	Findings of Fact	Changed to reflect that riparian buffer variances have their own requirements.
3.10.3.3	Riparian Buffer Variance Findings	Changed to show that riparian buffer variances only go to the NC EMC.
3.10.3.4	Minor and Major Variances	Deleted since this no longer applies to riparian buffers
3.10.6.4	Notice of Public Hearing	Minor clarification
3.10.6.5.b	Board of Adjustment Determination	Deleted, no longer needed.