

# Trout Buffer Variance

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Spring 2015

## Why a Trout Buffer

- Capturing pollutants in runoff to keep the water clean.
- Capturing sediment to keep mud out of the water.
- Providing shade to keep waters cool.
- Providing leaves and sticks for aquatic insects, which serve as a food source for trout
- Providing logs and branches that serve as habitat and feeding areas for trout and aquatic insects.
- Keeping stream banks stable.
- Preventing erosion.



## When is the SPCA Triggered?

- When a land disturbing activity takes place.
- A land-disturbing activity means any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.” (G.S. 113A-52(6))

## Exemptions from the SPCA

- Agriculture
- Forestry activities that follow Forest Practice Guidelines
- Mining (By Permit)
- Activities essential to protect human life during an emergency

## Sedimentation Pollution Control Act

### **§ 113A-57. Mandatory standards for land-disturbing activity.**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

- (1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. **Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater.** Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

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## Trout Buffer Requirements

- Required undisturbed trout buffer is a minimum of 25 feet unless the disturbance is “temporary” and “minimal”
- This buffer only applies to streams classified as trout streams by the Environmental Management Commission (EMC).
  - Note that any tributary to a trout stream (named or unnamed) take on the same trout classification



## The Rules

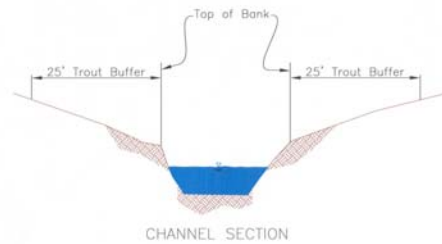
### 15A NCAC 04B .0125 BUFFER ZONE REQUIREMENTS

- (a) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- (b) The 25 foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.
- (c) Where a temporary and minimal disturbance is permitted as an exception by G.S. 113A-57(1), land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.
- (d) No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15A NCAC 2B .0211 "Fresh Surface Water Classification and Standards", in these waters.

## Top of Bank

15A NCAC 04B .0125(b)

The 25 foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.



Note that each side of a stream is considered a separate buffer zone.

## Temporary and Minimal

15A NCAC 04B .0125(c)

- By rule, a disturbance in the trout buffer is “temporary” and “minimal” if:
  - A maximum of 10% of the total length of buffer zone in the tract is disturbed
  - AND
  - There is no more than 100 linear feet of disturbance in any 1,000 linear feet of buffer zone

## Temporary and Minimal

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  - A maximum of 10% of the total length of buffer zone in the tract is disturbed
  - AND
  - There is no more than 100 linear feet of disturbance in any 1,000 linear feet of buffer zone

If your project meets these criteria, it does NOT need a trout buffer waiver and the disturbance may be approved through the Regional Office or delegated local program.

## Temporary and Minimal

15A NCAC 04B .0125(c)

- For example:

A tract has 5,000 linear feet of trout buffer zone

The maximum amount of buffer that can be disturbed is 10%, or 500 feet.

However, that 500 feet cannot be continuous. Only 100 feet every 1,000 feet of buffer could be disturbed.

## Temporary and Minimal

15A NCAC 04B .0125(c)

- Larger areas may be disturbed with the written approval of the Director.
  - This has been delegated to the State Sedimentation Specialist
  - If you do not meet the criteria of “temporary and minimal” under the rule, then you must apply for a trout buffer waiver

## Submitting a Variance Request

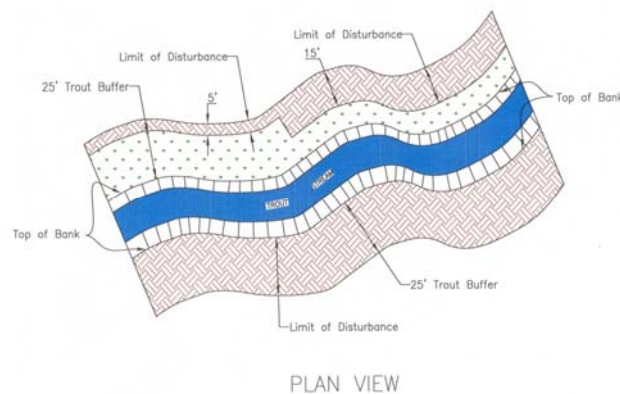
Variances should include the following information:

- A description of the actions taken to minimize the impact on the buffer.
- A description of why the disturbance is considered to have temporary impacts on the buffer and stream from erosion and sedimentation.

## Submitting a Variance Request

- All trout waters on the tract must be identified on the plan.
- The top of bank of the trout stream(s) must be identified on the plan.
- The 25 foot buffer (measured horizontally from top of bank) must be identified on the plan.
- The length and width of buffer to be disturbed must be identified on the plan. Note that each side of a stream is considered a separate buffer zone.

## Identifying the Trout Buffer





## Submitting a Variance Request

- A narrative with a description of the disturbance.
- A construction sequence detailing how the buffer is to be disturbed.
- The erosion and sedimentation control measures to be used in the buffer with details and calculations. If dewatering is part of the plan, the location of the settling device and discharge point must be included in the plan.
- Discharge points into the buffer zone must be identified on the plan.

## Submitting a Variance Request

- Any additional measures that may be planned to minimize the impact from erosion and sedimentation. This does not include taking into consideration other types of water quality impacts or wildlife impacts.
- Revegetation/restabilization plan to include native, riparian species.
- Completed Buffer Waiver Supplemental Information Form.

## Considerations



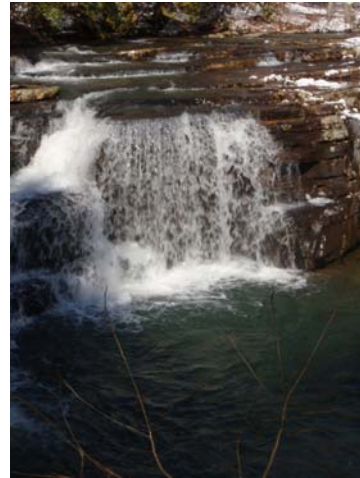
- The Land Quality staff looks at each plan thoroughly and determines if impacts will be minimal and temporary.
- *No disturbance will be approved if it can reasonably be moved out of the trout buffer.*

## Considerations

- When planning, consideration should be taken not to store excavated material from the project in the buffer. Appropriate E&SC measures should be provided if excavated material is stored above the buffer in order to prevent it from entering the buffer.
- Keep equipment and material storage out of the buffer.
- If the buffer is in a 100-yr floodplain allowing a larger riparian area may be prudent.

## Considerations

- There is no statutory time frame to review a request for trout buffer variance.
- E&SC Plans with a proposed disturbance in trout buffers which require a buffer variance CANNOT be approved until that variance has been granted.



## Considerations

We encourage anyone requesting a trout buffer waiver to contact the Division of Water Resources and obtain a 401 certification if needed. The Division of Energy, Mineral, and Land Resources and the Division of Water Resources coordinate the 401 certification and the trout buffer variance. Trout buffer variances do not supersede the turbidity standard of 10 NTUs.

## Considerations

- All materials for construction should be on hand before land-disturbing activity starts.
- Native plants must be used for permanent stabilization. Temporary groundcover should be provided while the permanent groundcover is being established.

## Considerations

- Variances that are approved will generally have conditions that shall become part of the plan. These conditions may be general which pertain to all projects or project specific. Several of these conditions are as follows:
  - Not working when precipitation is forecasted.
  - A full time E&SC inspector with the authority to shut the job down.
  - No work during fish spawning seasons.
  - Same day stabilization

## To Submit

- Send 1 copy of all materials to my attention at:  
Ashley Rodgers, PE  
State Sedimentation Specialist  
1612 Mail Service Center  
Raleigh, NC 27699  
Send a 2<sup>nd</sup> copy to the appropriate Regional Engineer
- Send all materials to my email: [ashley.rodgers@ncdenr.gov](mailto:ashley.rodgers@ncdenr.gov)
  - Please copy the appropriate Regional Engineer
- Submit your request through our ECLIPS Public Portal (once available!)

## Enforcement



- A fine of up to \$5,000 per day may be assessed
- Injunctions/Stop Work Orders
- Require restoration of the buffer and stream from damage caused by sedimentation

## Mowing

- If mowing does not damage the ability of the groundcover to prevent soil erosion, then it is not considered a land disturbing activity.
- Weed-eating or bush-hogging may result in “scalping” that would result in soil erosion.

## Trimming Vegetation

- Trimming of limbs or other vegetation is generally not a land-disturbing activity and therefore is allowed in the trout buffer.
- However, removing shade that results in adverse stream temperature fluctuations is prohibited (15A NCAC 04B .0125(d))

## Maintenance

- You can maintain your house, deck, or any other existing structures.

## Questions?

