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MICHAEL S. REGAN

Secretary

S. JAY ZIMMERMAN

Director

March 10, 2017

MEMORANDUM

To: N.C. Division of Mitigation Services

From: S. Jay Zimmerman, N.C. Division of Water Resources Director *SJB*

Subject: DWR Responses to Questions from DMS regarding implementation of the Consolidated Buffer Mitigation Rule [15A NCAC 02B .0295]

On November 8, 2016, the Division of Mitigation Services (DMS) met with the Division of Water Resources (DWR) to discuss questions they had regarding implementation of the Consolidated Buffer Mitigation Rule [15A NCAC 02B .0295]. Below is a short summary of each question and DWR's response.

I. **Calculation of "25% of the Total Area of Buffer Mitigation"**

15A NCAC 02B .0295 (o) (4) and (5) state *"The area of preservation credit within a buffer mitigation site shall comprise of no more than 25 percent of the total area of buffer mitigation."*

DMS believes the following calculations should be used to determine the area eligible for preservation:

Restoration (R) + Enhancement (E) + Preservation (P) = Total Area of Buffer Mitigation (TABM)

$TABM * 0.25 = \text{Eligible Preservation Area (EPA)}$

Example: 2 acres (R) + 1 acre (E) + 7 acres (P) = 10 acres (TABM)

$10 \text{ acres (TABM)} * 0.25 = 2.5 \text{ acres (EPA)}$

Response:

In the example above, 45% of the area of the site would come from preservation, with the remaining 55% coming from restoration/enhancement:

$2.5 \text{ acre (P)} + 3 \text{ acres (R/E)} = 5.5 \text{ acres total}$

Based on a review of the language in the rule, the documents throughout the rulemaking process, including correspondence with OSBM on the fiscal note, areas where buffer mitigation credits are not being generated should not be used to calculate the "total area of buffer mitigation."

The restoration or enhancement area shall be at least 75% of the area generating buffer mitigation; the remaining 25% of the area generating buffer mitigation can be preservation:

$75\% (R/E) + 25\% (P) = 100\% \text{ TABM}$

To calculate the area eligible for preservation:

$$[\text{Restoration (R)} + \text{Enhancement (E)}] / 0.75 = \text{Total Area of Buffer Mitigation (TABM)}$$

$$\text{TABM} * 0.25 = \text{Eligible Preservation Area (EPA)}$$

Example: $[2 \text{ acres (R)} + 1 \text{ acre (E)}] / 0.75 = 4 \text{ acres (TABM)}$

$$4 \text{ acres (TABM)} * 0.25 = 1 \text{ acre (EPA)}$$

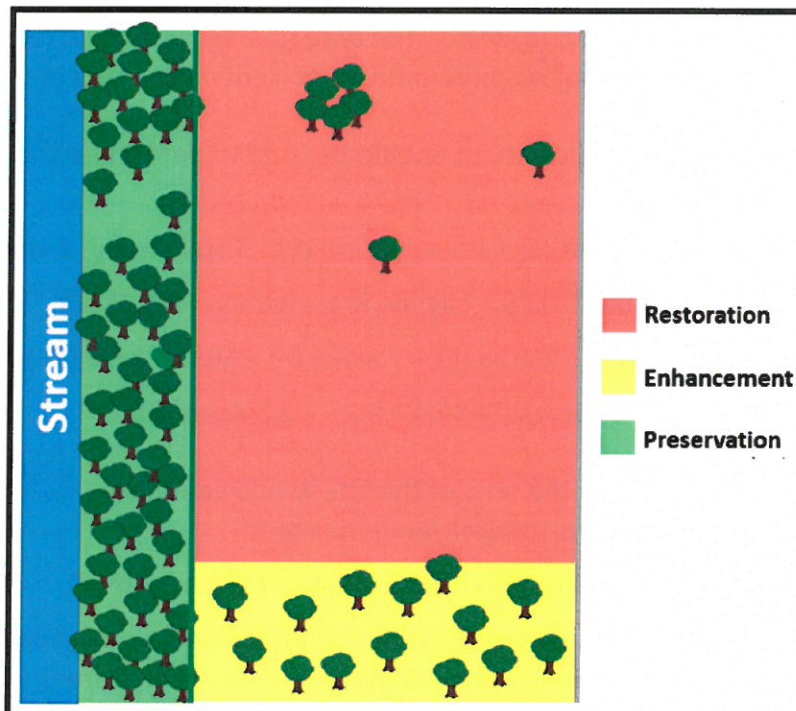
$$1 \text{ acre (P)} + 3 \text{ acres (R/E)} = 4 \text{ acres total}$$

II. Defining Breaks Between Restoration and Enhancement Areas

DMS asked for clarification on how DWR defines the breaks between restoration¹ and enhancement². Specifically, DMS asked whether drip lines were still used and whether individual trees were excluded from restoration sites.

Response:

DWR has not considered the drip line to represent the outer edge of a wooded area for several years. This was clarified in a memo from DWR to DMS in August 2013. Individual trees do not need to be delineated and removed from the restoration area, rather DWR looks for areas or zones when determining restoration, enhancement or preservation areas. For example:



¹ characterized by an absence of trees and by a lack of dense growth of smaller woody stems or are characterized by scattered individual trees such that the tree canopy is less than 25% of the cover and by a lack of dense growth of smaller woody stems

² characterized by conditions between that of a restoration site and a preservation site such that the establishment of woody stems will maximize nutrient removal and other buffer functions

III. Prior Grazing

15A NCAC 02B .0295 (o)(6) describes enhancement of grazing areas adjacent to streams. It states that the applicant or mitigation provider shall demonstrate that grazing was the predominant land use since the effective date of the applicable buffer rule. DMS asked when is the predominance of grazing demonstrated?

Response

15A NCAC 02B .0295 (l) states that the authority shall issue a mitigation determination that specifies the area, type and location of the mitigation and the water quality benefits to be provided by the mitigation site. During the on-site evaluation, DWR looks at existing conditions to determine whether grazing has been a continuous land use in the proposed mitigation area (*e.g.* hoof shear, manure, cattle fencing, *etc.*) since the effective date of the applicable buffer rule. DWR also evaluates satellite imagery. If it is not clear to DWR that grazing has been the predominant land use since the effective date of the applicable buffer rule, DWR will ask for additional documentation (*e.g.* landowner documentation, photos, maps, *etc.*).

If the grazing site is proposed for retroactive credit as described in 15A NCAC 02B .0295 (o)(1), additional documentation of the pre-existing conditions may be required.

If there is a disagreement regarding the documentation requested by DWR, the request will be elevated to the Water Quality Permitting Section Chief.

IV. Clarification of Use of 8-19-08 Diffuse Flow Clarification Memo

DMS asked for verification that the Buffer Interpretation Clarification Memo #2008-019, issued August 19, 2008, was still eligible for use, and whether that method or an alternative method as provided for in the rule could be used at the discretion of the project proponent.

Response:

The Buffer Interpretation Clarification Memo #2008-019, issued August 19, 2008, is still eligible for use to comply with 15A NCAC 02B .0295 (l)(3).

