

High Rock Lake Nutrient Rules Engagement Process *Riparian Buffer Meeting 4 Notes*

August 25, 2023 / 10am – 12pm / Virtual via Zoom

Meeting Goal

- To discuss the table of allowable uses
- To reach consensus on the draft proposal to submit to the Steering Committee

Participants

TAG Members: Robby (Rabih) Abou-Rizk, Richard Cockerham, Danica Heflin, Keith Larick, AJ Lang, Edgar Miller, Chris Millis, George Morris, Siham Muntasser

DWR Team: Rich Gannon & Joey Hester

DSC Facilitation Team: Will Dudenhausen, Paura Heo & Laura Swartz

Meeting Summary

Agenda Overview

- ❖ Welcome
- ❖ Overview of Agenda
- ❖ Presentation of Buffer Proposal
- ❖ Discussion on Allowable Uses
- ❖ Next Steps
- ❖ Closing

Decisions made in the meeting

- Consensus was not reached, TAG members move forward with a report and majority/minority opinions concerning buffer width.

What's Next / Action Items from the meeting

- DWR and NC Forestry will engage outside of the TAG to discuss allowable limited use of logging decks in zone 2 of buffer with provisions.
- Joey Hester will edit the draft report to include the caveats discussed during the meeting.
- Joey Hester will send revised draft report to TAG members via email
 - Buffer TAG members will review this draft and respond with any comments via email.
- Buffer Proposal to be presented at the next Steering Committee Meeting:

Friday, September 27, 2023; 10am – 12.30 pm

Hybrid with in-person attendance strongly encouraged at the

Offices of Piedmont Triad Regional Council
1398 Carrollton Crossing Drive
Kernersville, NC 27284

Key Links (for Quick Access)

- [Updated Charge Document](#)
- [Executive Summary – Yadkin River Basin Plan](#)
- [Forest Harvest Requirements for the Consolidated Buffer Rules](#)

Detailed Summary of Meeting

Agenda Overview

The primary goal for this group's final phase I meeting was to arrive at consensus on a proposal to share with the Steering Committee.

In order to best meet this goal, Laura Swartz reviewed the agenda, the ground rules, and the definition of consensus.

- Per HRL Engagement Process Charter;
 - Consensus is being defined as at a minimum, "I can live with and support the decision."
 - When someone disagrees, the goal of the group shall be to discover the reason for the objection and to find a way to work toward meeting that need in a revised agreement.
 - If consensus is not reached, majority and minority opinions are recorded in a report that accompanies the final proposal.

- In this final meeting, the facilitation team used simple polling for recording call to questions.
- Ms. Swartz noted that the group would be polled on the overall proposal, then on various components of the proposal with discussion as needed.
- Voting members of the TAG and their representations are as follows:

Robby (Rabih) Abou-Rizk, Blue Ridge Chapter- TU
 Rich Cockerham, NC Forest Service
 Danica Heflin, PTRC
 Keith Larick, NC Farm Bureau
 Edgar Miller, Yadkin Riverkeeper
 Chris Millis, NC Homebuilders Association
 George Morris, Wild Ones representative

Joey Hester reiterated key steps in the rulemaking engagement process and re-emphasized the role and responsibilities of the buffer TAG.

- **HRL Rulemaking Engagement Process**
 - Riparian Buffer TAG presents a proposal to the Steering Committee.
 - Steering Committee offers a formal proposal.
 - DWR drafts rules that incorporate as much of the proposal as possible.
 - Rules are shared with the stakeholder community for comment.
 - If necessary, DWR amends the rules based on feedback.
- Mr. Hester reiterates, a consensus agreement is not the final approval, but an important initial step in the process.
- Edgar Miller asks if the draft rules in phase 2 will be formalized. Mr. Hester responds that those rules will be informal and subject to stakeholder feedback.
- **Riparian Buffer TAG Responsibility Clarification**
 - Riparian Buffer TAG is charged with making recommendation for a riparian buffer protection rule.
 - This rule is intended to protect existing stream and rivers from further degradation, not to reduce nutrient loading to the watershed.
 - Other TAGs are charged with identifying possible strategies for reducing nutrient loading within their respective sectors
 - The Steering Committee is charged with turning TAG proposals into a formal rulemaking recommendation.
 - Buffer rules cannot legally require new vegetation where none already exists
 - Considered a breach of the 5th Amendment or a Taking.

→ Buffer rules are only part of the overall nutrient management strategy.

Draft Buffer Report

Joey Hester shared a draft report in advance of this meeting including the majority and minority buffer width opinions. Members of the TAG were called to vote on either the majority or minority proposal by consensus.

Consensus Poll – Overall Draft Report

- Consensus was not reached, so the group will move forward with a split decision.

Level of support for the report

Poll ended | 1 question | 7 of 12 (58%) participated

1. Indicate your level of support for the report as presented: (Single Choice) *

7/7 (100%) answered



Draft Buffer Report Discussion

Robby (Rabih) Abou-Rizk shared concerns about the overall report and proposed report amendments via email prior to the meeting.

- Mr. Abou-Rizk's proposed amendments to the draft report based on information from page 2 of the Executive Summary of the Yadkin River Basin Plan.

"Studies show that if urbanized areas cover more than 25% of a watershed, there is a point where the decline in the health of the ecosystem is irreversible (Beach, 2002; Galli, 1991). Many of the HUC12 watersheds in the Yadkin-Pee Dee River basin's urban watersheds are at or well above 25% developed."

- Any urban area that has exceeded the 25 percent development needs to have all exemptions removed with the exception of critical functions of the state or for emergencies.
- Any urban area approaching the 25 percent development needs to have all exemptions reduced
- Any urban area that has exceeded the 25 percent threshold needs to install riparian buffers to reduce its impact. A narrower or modified riparian buffer may be installed due to existing buildings, roads, etc.
- Joey Hester notes that the 25% threshold is a valuable measure in a small watershed, but that is it not a widely spread agreed upon threshold. He importantly noted that the threshold is not actionable.
- Mr. Hester explained further that the local ordinance cannot add buffers where there is no vegetation. To do so would be considering a “taking” and in violation of the Fifth Amendment of the US Constitution.
- Mr. Abou-Rizk pointed out this language in the rules, “A local government can implement the buffer rule.”
- Rich Gannon clarified that this statement is a procedural one. DWR is tasked with implementation of NMS rules. However, a local government has the option of implementing the buffer rule in lieu of DWR if it would like to do so.
- Joey Hester shared that he did not want to undermine the value of the information presented, but noted that what is allowable and what is actionable are significant considerations when drafting these rules.
- Danica Heflin commented that Buffer rules could be an area where the One Water Approach is effective.
- Mr. Abou-Rizk posed a question about airports and their jurisdiction. He shared this example; Smith Reynolds Airport cleared 250 acres on Brushy creek which led to the flooding of many communities downstream.
 - Joey Hester commented that airports and how they are regulated depends on who owns the airport.
 - He shared that DWR will be mindful of this point when adopting the rule language in a final proposal.
- Mr. Abou-Rizk noted concerns about sediment and stormwater that were outside of the Buffer TAG’s charge.
 - Joey Hester responded by noting that the 20yr Neuse/Tar-Pamlico report did not specify that the buffer protection rule as a weakness of current WQ standard attainment.
 - A primary cause of nutrient impairment is climate change, among others.
 - Joey Hester assured Mr. Abou-Rizk that other TAG’s are serious about the undertaking of their respective sectors.
 - Mr. Hester reminded the group that there would be an opportunity to review this draft language before it is finalized.
- Finally, DWR responded to Mr. Abou-Rizk’s noted concern about variances.
 - Joey Hester noted that the rate of variance does not warrant an increased buffer

- width.
 - Rich Gannon performed calculations and shared the following data with the group.
 - In the Neuse River Basin, Mr. Gannon noted that 83.6 million sq ft of buffer area was subject to impacts or variances of some kind.
 - o Spread over 24 years, that figure is reduced to 80 acres/yr.
 - In the Tar-Pamlico Rivers basin, the figure is 18 acres/yr.
 - Joey Hester added that homeowners are required to purchase mitigation credits when variances are granted.
- DWR asked if there were other concerns or questions.
 - Edgar Miller asked if the Table of Allowable Uses would carry over if there were no explicit objections or amendments.
 - Mr. Hester responded that the Table of Uses would carry over to the HRL rule strategy without explicit objections, highlighting that the language would likely not be verbatim.
 - Mr. Hester commented that there is a long history of vetting of uses in the Table.
 - Rich Gannon added that this table of Uses is present in other strategies. He added that current data and Buffer staff would be consulted.
 - Edgar Miller asked Mr. Abou-Rizk if there were any uses that he flagged?
 - Mr. Abou-Rizk replied that he was not familiar with much of the stormwater uses.
 - Mr. Abou-Rizk noted further that adequate tracking of buffers does not exist. He expressed concern about loss of buffer areas even with mediation.
 - Edgar Miller and others shared that there is still much to learn and dig into as the process moves forward.
 - Joey Hester acknowledged the concerns and stated increased tracking and monitoring does not ameliorate major vulnerabilities.
 - Mr. Hester encouraged TAG members to continue to ask questions. He shared that there will be opportunities to discussion and review further in the next phases of the rulemaking process.
- From pg. 3 of the Draft Report: *"TAG members recommend the below table of uses..."*
 - Edgar Miller expressed concern over the language used. He thinks it is too strong.
 - Keith Larick asks if this language is in both the Majority and Minority proposal.
 - Mr. Hester clarified that the language is found in the Draft Report which is the overall report or proposal. Majority and minority opinions are included separately in the overall report, and the table of uses language is included in both.
 - Joey Hester asked if the group would feel comfortable moving forward with inclusion of the Table of the Uses with a softening of the language.
- Richard Cockerham and AJ Lang brought the issue of logging decks forward.
 - Their primary concern is that there are no logging decks allowed in the entire buffer zone. And the farther west, the smaller the tracts, the narrower the roads. This makes access a challenge.
 - AJ Lang elaborated that if there are no logging decks permitted, there may not be a way to access the tract at all. Streams sometimes offer flatter terrain where

- decks could be placed.
 - Edgar Miller asked who or what entity would enforce practices to prevent erosion.
- Richard Cockerham shares an image with the group to share an example of a logging deck near a stream.
 - In the image, there is a steep grade so the logging deck was placed in the best possible location.
 - George Morris asked if that scenario could have been granted a variance.
 - Joey Hester noted that there is limited harvesting allowed in zone 1 of the buffer. However, harvesting of trees is permitted in zone 2
- Richard Cockerham stated that the current provisions call for no deck in the entire zone. But harvesting is allowed in certain cases:
 - where forest management plans that was prepared or approved by a Registered Forester; or
 - The parcel is enrolled in that county's Present-Use Value (PUV) tax deferral program for forestry use.
- Keith Larick commented that if harvesting is permitted in this zone, then he did not see why a logging deck should not be allowed in certain cases with a Forest management plan in place.
- Rich Gannon acknowledged Mr. Larick's point and said DWR would take the issue up in the rule-drafting stage.
- Robby (Rabih) Abou-Rizk expressed caution and concern over a potential opening for clear cutting.
- Mr. Gannon acknowledged this concern and noted that this item would be further considered.
- DWR and the Forestry Service agreed to engage outside of this meeting to discuss the matter.
- Joey Hester asked the group if there were non-regulatory recommendations? He asked if there was a desire to add a One Water Approach to the proposal?
 - Danica Helfin asked if the One Water Approach could be incorporated into the rule language.
 - Edgar Miller noted his support for inclusion of the One Water Approach

Majority/Minority Reports Polling

Support for respective draft reports was called to question with the following caveats:

1. DWR will soften commitment language for adoption of Table of Uses.
 2. DWR will soften commitment language for prohibition of logging decks and soil disturbance on forest operations within the buffer zone.
- DWR will add non-regulatory recommendations to support One Water and cross-sector collaboration.

Who supports majority/ minority report, add name

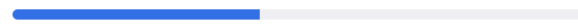
Poll ended | 3 questions | 7 of 12 (58%) participated

1. I would like to endorse the MAJORITY PROPOSAL for a 70ft, 2-zone buffer rule with forest harvest limitations in zone 1 and harvest allowable in zone 2. Please add your name: (Short Answer)



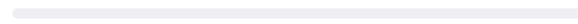
4/7 (57%) answered

2. I would like to endorse the MINORITY PROPOSAL 50ft, 2-zone buffer rule with forest harvest limitations in zone 1 and harvest allowable in zone 2. Please add your name: (Short Answer)



3/7 (43%) answered

3. I am a voting member who is abstaining. Please add your name: (Short Answer)



0/7 (0%) answered

- **Majority Report**

The following members of the Buffer TAG endorsed the majority proposal with the above listed caveats;

1. **Robby (Rabih) Abou-Rizk** - Blue Ridge Chapter, Trout Unlimited
2. **Danica Heflin** – Piedmont Triad Regional Council
3. **George Morris** - Wild Ones
4. **Edgar Miller** – Yadkin Riverkeeper

- **Minority Report**

The following members of the Buffer TAG endorsed the minority proposal with the above listed caveats;

1. **Richard Cockerham** – NC Forestry
2. **Keith Larick** – NC Farm Bureau
3. **Chris Millis** – NC Homebuilders Association