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Eric – Thank you for the opportunity to comment on the proposed rule .0295 on riparian buffer mitigation requirements. My comments on the proposed rule follow:

1. Under .0295 (e), three options to the rule are presented. I support the use of Option B with the following recommendations. The geographic restrictions under paragraph (f) for Jordan and Falls NMS should also be addressed and included as multipliers. The upper portion of Jordan and Falls are the most polluted areas of these lakes. Multipliers should be added as incentive for mitigation to locate in these areas. For example, allowing Haw or LNH buffer impacts to be mitigated in the UNH would benefit the overall lake restoration. A 1.0 multiplier for cross-subwatershed mitigation to offset buffer impacts in the headwaters of these watersheds could be that incentive. A 1.5 multiplier should apply for impacts within the subwatershed but outside the 12-digit HUC.
2. I support the inclusion of Falls Lake geographic restrictions and encourage additional restrictions and/or multipliers to make it consistent with the nutrient strategy. Under paragraph (f)(1), the restrictions for the upper and lower Falls watershed present in the Nutrient Strategy should applied to buffer impacts. That allows mitigation in the upper watershed to be used for impacts throughout the watershed while mitigation in the lower watershed can only apply to impacts in the lower Falls subwatershed. See #1 for comments on multipliers.
3. To make the rule more explicit in prohibiting features which bypass the buffer, under (g)(6), please include tile drains as a prohibited feature not allowed in buffer areas. These features are prevalent in agricultural landscapes like those that are often used for mitigation. They are, however, in the subsurface so they may not be considered stormwater conveyances. Depending on how they are managed, they can bypass buffers and their associated nutrient reducing functions.
4. (g)(11) – Suggest adding that monitoring be “for a **minimum** period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the buffer has been maintained”. **Additional years of monitoring may be required if the objectives under paragraph (g) have not been achieved at the end of the five-year monitoring period.**
5. (k)(2)(B) I support the inclusion of this paragraph. Restoration of unmapped P/I streams is as important as restoration of mapped P/I streams. This also improves flexibility for achieving the objectives of the buffer rules and may help lower rule costs.
6. (k)(2)(C) Buffers less than 50-ft can provide many functions but they are diminished (see Mayer et al. in 2007). As such, credits for these buffers should be lowered (e.g., 0.75). Also, a 30-ft buffer should be the minimum that qualifies considering that stream channels can migrate and could relocate to other areas within the protective easement. Too narrow buffer would more easily be circumvented, potentially losing the intended protections of the buffer. Also, the reduced buffer credit for widths less than 50ft should also apply to

agricultural settings where it may be easier to sustain diffuse flow.

7. (l)(5) Support Option 3. As indicated in the last Neuse and Tar-Pam Basin plans, nutrient loading to the estuaries has shown no significant difference in overall nitrogen loading since the early 1990's. In addition to the Division's continued implementation of its nutrient reduction policies, more restoration work is needed to lower nutrient levels. Options 1 and 2 are policies that do not support the restoration needed to lower nutrient flows to the estuary.
8. One additional comment on content not included in the rule. A crediting framework should be created to allow buffer credit for widths wider than 50-feet. While these areas are not protected under buffer rules, in many instances, they provide important functions. Multipliers could be used to adjust the credit given to these areas so that the 50-foot priority area is most desirable to restore.