



County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

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Memorandum

To: Syd Shoaf
From: Greg Krystyniak, PE
Date: 5/6/25
Subject: SE-2025-00016 – Old Dominion Village Gas Relocation Stream Buffer Impact

The Applicant's special exception (SE) request for a 50 foot wide easement to the Gas Company in a conservation area and stream buffer has been reviewed. The Engineering review and recommendation of the request are as follows:

Description of the exception area and the proposed disturbance:

The Applicant proposes to relocate an existing gas main with its associated 50 foot wide easement from within the limits of the project to a stream buffer on Tax Map Parcel 05600-00-00-067B0. This parcel is located both in the Beaver Creek Reservoir Water Supply Protection Area and the development area. The approximate area of impact is 0.33 acres. This request occurred as a result of the planned development impacts to the existing gas line and its 50 foot wide easement currently traversing the development. After collaboration between the Gas Company and the Applicant, the Utility concluded that there are future operational concerns and that the gas line could not remain in its existing location; resulting in the Applicant's request for new gas line easement in a stream buffer. No gas line relocation was proposed during the rezoning process.

Variation Request Letter and Plan – Evaluation/Considerations

Pertinent County Code

Zoning Ordinance Code § 18-8.5.5.3(a)– Variation Request

The Owner has filed a written request in accordance with County Code § 18-8.5.5.3(a) that identifies and states how the request would satisfy the conditions set forth in County Code § 18-8.5.5.3(c). The Applicant based his request on provision number six which states “Minor changes to the design and location of stormwater management facilities, **minor land disturbance including disturbance within conservation areas, and mitigation**, all subject to a recommendation for approval by the County Engineer.”

The Applicant has requested an area of easement rights by the Gas Company with dimensions of 50 foot wide by approximately 300 feet long, an area equal to over 14,000 SF. This amount exceeds the threshold of 10,000 SF, which is the magnitude that triggers the need for a County

Land Disturbance Permit (LDP) and would not be considered a minor land disturbance under the Water Protection Ordinance (WPO). The Applicant states that their attached plan is the only feasible alignment. However, their narrative does not include any discussion of alternatives analysis or minimization efforts. In addition, no mitigation is discussed or offered, though mitigation would be required during the WPO plan review. The Plan shows alignment conflicts with Storm Water Management SWM-2, including a retaining wall, and roadway drainage.

Water Protection Ordinance Chapter 17, Section 600 – Stream Buffers:

Excerpt of Code § 17-600 – Extent of stream buffers; retention and establishment.

Sub-section B states: “If the development is located within a water supply protection area or other rural land, stream buffers must be retained if present and established where they do not exist on any lands subject to this chapter containing perennial or intermittent streams, contiguous nontidal wetlands, and floodplains.”

This section defines the need for stream buffers on intermittent streams in a water supply protection area.

Complete Code § 17-601 – Management of stream buffer.

All 5 Sub-Sections provide key points on the management of stream buffers; allowance of utility impacts in buffers, the need to minimize impacts and the preferred vegetative cover.

- A. Target vegetative cover. The preferred vegetative cover in a stream buffer shall be a **native riparian forest** with ground cover, shrub, and tree canopy layers.*
- B. Preservation of native vegetation. When evaluating a development design under subsection (C), when native vegetation may be disturbed or removed under subsection (D) and [sections 17-603](#) and [17-604](#), and when stream buffers are maintained under subsection (E), native vegetation shall be preserved to the **fullest extent possible**.*
- C. Incorporation into development design. Each stream buffer shall be incorporated into the design of the development by keeping stream buffers in open or natural spaces, and out of residential lots or areas of active use, to the **fullest extent possible**.*
- D. Retaining native vegetation; disturbance or removal. In order to maintain the runoff, erosion, nonpoint source pollution control, stream temperature, and ecological values of the stream buffer, no native vegetation within the stream buffer shall be disturbed or removed, regardless of the size of the area affected, except to maintain the stream buffer as provided in subsection (E), **provided that native vegetation may be removed to construct, install, operate or maintain any improvement, or engage in any activity, authorized by sections 17-603 and 17-604.***
- E. Maintaining the stream buffer. Each stream buffer shall be maintained in as natural a condition **as possible**.*

Sub-Section A states the preferred vegetative cover shall be “native riparian forest.” Sub-Sections B, C & E of this section requires minimization of impacts to “fullest extent possible”

and “as possible.” Sub-section D references allowance of impacts to stream buffers for utility construction.

Code § 17-602 – Types of improvements and activities exempt from duties to retain, establish, or manage a stream buffer.

The following types of improvements and activities are not required to retain, establish, or manage a stream buffer, provided that the requirements of this section are satisfied:

- A. ***Utility** and transportation improvements. The construction, installation, operation and maintenance of electric, **gas** and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the Stormwater Management Act (Virginia Code § [62.1-44.15:24](#) et seq.) or an ESM plan approved by the State Water Control Board.*

This section allows for utility construction and operations in a stream buffer.

Excerpt of Code § 17-604 – Types of structures, improvements and activities which may be allowed in a stream buffer by program authority.

*Structures, improvements and activities may be authorized by the administrator in the circumstances described below, **provided that a mitigation plan satisfying the requirements of [section 17-406](#), is submitted to, and approved, by the administrator:***

- A. ***Within the landward 50 horizontal feet.** On a lot within the 50 horizontal feet of a stream buffer that is the most landward (furthest from the stream), if the structures, improvements or activities either: (i) would be for necessary infrastructure to allow reasonable use of the lot; or (ii) **would be on a lot that is within a water supply protection area where the stream buffer protects an intermittent stream and the lot is within a development area.** In all cases under this subsection, any new building site and sewage disposal system shall be located outside of the stream buffer.*

This section would allow this relocation with an appropriate mitigation plan.

Staff Recommendation

Based on the review of the Applicant’s request and applicable code, Engineering does not recommend approval of this special exception request to impact the stream buffer. Code does allow for utility impacts in buffers. However, Section § 17-601 states the need to minimize to extent possible any allowable impacts and to keep as much as possible the preferred vegetative cover – native riparian forest – and Section § 17-604 requires a mitigation plan. There was no narrative in the request documenting any efforts to investigate alternatives or minimization of impacts (ex. redesign/relocation of SWM-2 or roadway drainage or shifting of site plan elements; parking lots, residences) nor a mitigation plan. As currently presented, there would be a conflict between a required stormwater management easement and the proposed gas easement.

As stated previously, during the rezoning process, the Applicant did not request any gas line related stream buffer impacts. It should be noted, that during the rezoning process, staff worked with the Developer to ensure the removal of proposed sewer utility impacts in the stream buffer resulting in a conservation area with no planned man-made impacts except for an allowed pedestrian path.

Staff opinion is that the requested 50-foot easement changes the context of the approved rezoning enough to warrant reconsideration by the Board.