

Summary Report
Approved Proposals for Improving Stream Health in Development Areas
Albemarle County Board of Supervisors – Work Session
July 15, 2020

Background

During a May 3, 2017 work session, the Board of Supervisors (Board) endorsed a Natural Resources Program for the County consisting of seven objectives. The first objective of the program states: “Conduct a thorough public review of the stream buffer requirements of the Water Protection Ordinance.”

In Spring 2017, County staff began conducting the public review. A team consisting of the Natural Resources Manager, County Engineer, and Development Process Manager/Ombudsman led the effort. The team proceeded with the understanding that the Board held a strong interest in improving water quality and stream health in the County. The primary goal of the process was to solicit ideas and input from the public, to hear the various perspectives on stream buffers and County regulations about them, and to assess if changes to the regulations or the process of implementing them should be considered.

County staff made an informational presentation to the Planning Commission on October 10, 2017. Staff presented the results of the public review to the Board at a work session on December 6, 2017. Discussion of stream buffer issues and rules was broadened to encompass stream health and water quality. Staff requested and received approval from the Board for the following two recommendations:

1. Approve staff recommendation to address the stream buffer review process in two phases, treating the Development Areas and the Rural Areas as separate phases.
2. Approve staff recommendation to address the Development Areas as the first phase.

Stream Health Proposals for Development Areas

The staff team reviewed material from the 2017 stream buffer review process to identify comments and information relevant to improving stream health in the County’s Development Areas. Other information was reviewed during internal meetings and other discussions.

Thirteen draft proposals were developed in October 2018. The intent of the proposals was to improve stream health while remaining consistent with the County’s Growth Management Policy. The proposals are not intended to limit or hinder potential growth and development in the Development Areas or create a need to expand the Development Areas.

Attachment B lists the original draft proposals reviewed during subsequent public meetings, plus some notes and clarifications (highlighted in yellow) that were helpful during meetings and updates (RED FONT) following the November 6, 2019 Board work session. Staff solicited comments and feedback from the public on the proposals. Public feedback was received via an online survey, a public meeting held on November 1, 2018, and staff participation in six Community Advisory Committees (CAC) meetings from October through December of 2018. The staff team met upon request with three small community groups. The Natural Resources Manager was also in communication with other interested individuals.

Summary of Board Work Session on 1/9/19

During this work session, staff presented the draft proposals for improving stream health in the Development Areas and discussed them with the Board. At the conclusion of the work session, the Board directed staff to proceed with nine of the proposals and to return to the Board with more detailed recommendations at a future date. The Board further requested a joint work session with the Planning Commission (Commission) to review the recommendations. Below are the actions that staff was directed

Attachment A – Summary Report, Approved Stream Health Proposals, 07/15/20

to take:

Proceed with work on these proposals: #1, #2 (with modification), #3, #5, #6, #9 (not exactly as written), #12, #13, and updates to WPO (added as proposal #14).

Do not work on these proposals at this time, a thorough Comprehensive Plan analysis is needed: #7 (and sub-items), #8 (and sub-items).

Do not work on these proposals at this time, they may be considered in the future: #4, #10, #11 (and sub-items).

Summary of Joint Board/Planning Commission Work Session on 7/9/19

At the Board's request, a joint work session with the Board and Commission was conducted on July 9, 2019. Following Board direction from the January 9, 2019 work session, nine proposals were reviewed and discussed. Staff presented new information and some recommendations regarding the proposals. The Board and Commission provided feedback to staff.

Work by staff is ongoing on proposals #12 and #13 and no Board action was needed. The Board directed staff to continue working on seven proposals: #1, #2, #3, #5, #6, #9, and #14.

Summary of Board Work Session on 11/6/19 and Subsequent Staff Efforts

Staff returned to the Board for a work session on 11/6/19 to review the proposals in more detail. The following is a summary of the seven proposals that were discussed during this work session, along with subsequent staff efforts.

Proposal #1 – Implement the County's steep slope design standards when a VSMP or VESCP application is required. (VSMP = Virginia Stormwater Management Program, VESCP = Virginia Erosion and Sediment Control Program)

- **Because this proposal is being presented to the Board on July 15, 2020 as a proposed zoning text amendment, it is being removed from this work program.**

Proposal #2 – Reduce/eliminate the threshold for the area of land disturbing activity (LDA) to invoke VESCP regulations but allow an agreement in lieu of a plan for LDA under 10,000 square feet. This would apply to any LDA involving a building permit, site plan, subdivision, or other activity requiring county approval, but still allow any applicant or project involving less than 10,000 square feet of LDA to submit an agreement in lieu of a plan.

- At the July 9, 2019 joint work session, the Board approved the staff recommendation to reduce the threshold for land disturbing activity that triggers VESCP regulations from 10,000 to 6,000 square feet. (This proposal addresses VESCP only, not stormwater management.) However, some Board members preferred a lower threshold for LDA.
- At the November 6, 2019 BOS work session, the two proposals listed below were presented:
 - OPTION A (for LDA less than 10,000 square feet)
 - For LDA of 0 to 4,999 square feet in area:
 - Allow an ESC agreement in lieu of a plan with a Responsible Land Disturber (RLD).
 - For LDA of 5,000 to 9,999 square feet in area:
 - Allow an ESC agreement in lieu of a plan without an RLD.
 - OPTION B (for LDA less than 10,000 square feet)
 - For LDA of 2,500 to 9,999 square feet in area:
 - Allow an ESC agreement in lieu of a plan with an RLD.
- Though the Board preferred Option A, there were concerns that lowering the threshold to zero

was too restrictive and could be too difficult to enforce or administer. The Board directed staff to continue working on this proposal.

Following the November 6, 2019 meeting, staff has refined the proposal, based on the Board's concerns and further input from staff, and recommends the following modified proposal:

- Require an ESC agreement in lieu of a plan for ANY land disturbance associated with a single-family residence (including additions and swimming pools) up to the current one-acre threshold.
 - Lower the threshold to 2,500 square feet for all other regulated land disturbances. Allow an ESC agreement in lieu of a plan when the LDA is less than 10,000 square feet.
- Requires amending Section 17-300 and 17-402 of the WPO.
 - Staff impacts – Staff will need to administer the additional applications, perform additional inspections, and respond to additional questions and complaints generated as a result of these changes. Refer to Staff Impacts Table on page 7.
 - **Because this proposal requires additional staff, staff seeks the Board's input and recommends that the Board defer this proposal until staffing needs can be filled.**

Proposal #3 - Do not allow temporary Erosion & Sedimentation Control measures to be located within a stream buffer without mitigation. The measures may be allowed within the landward 50 feet of the buffer with an approved mitigation plan for the area after construction is completed.

- The Board expressed support of this proposal.
- Requires moving Paragraph B of Section 17-603 to Section 17-604 of the WPO.
- Staff impacts – Mitigation is not currently required when ESC measures (e.g., sediment traps, basins) are located within the outer (landward) 50-feet of a 100-foot buffer. This proposal would require applicants to submit a mitigation plan and bond, each of which would need to be reviewed by County staff. Plantings would need to be inspected by staff as well prior to bond release. However, expected staffing impacts would be minimal for this proposal (refer to Staff Impacts Table on page 7).
- **This proposal has not changed since the 11/6/2019 Board work session.**
- **Staff recommends that the Board confirm moving this proposal forward.**

Proposal #5 - Expand the definition of a Common Plan of Development in the Water Protection Ordinance to include activities occurring within any five-year period.

- As discussed during the July 9, 2019 joint work session and November 6, 2019 work session, the definition of Common Plan of Development does not need to be changed.
- The intent of the proposal is to address individual parcels of land where small areas (less than 10,000 square feet) of LDA occurs cumulatively over time (e.g., phased development on a single parcel). Common Plans of Development do not address single parcels.
- The Board has expressed strong support for implementing a policy like that of Greene County, which requires applicants to address stormwater management when amending previously developed parcels, regardless of the size of the disturbed area.
- *Allow a VSMP agreement in lieu of a plan on up to 10,000 square feet cumulative area of land disturbance, then require a plan.*
- The WPO will need to be amended for this proposal.
- The Board directed staff to move forward with this proposal. However, staff has revisited the staffing impacts and has updated the Staff Impact Table on page 7.
- **Because this proposal requires additional staff, staff seeks the Board's input and recommends**

that the Board defer this proposal until staffing needs can be filled.

Proposal #6 - Increase fees for Water Protection Ordinance violations.

- Staff proposes a new fee structure for inspections and re-inspections. The Board has expressed support.
- The intent is to cover staff time and other County costs in the fee structure. Fines, which serve as a punitive measure for failed inspections, are not being proposed.
- Final fee structure will require additional analysis to confirm the average number of re-inspections and the staff costs involved.
- Requires straightforward revisions to Sections 207 and 208 of the WPO.
- **This proposal is being expanded to include other WPO fees in addition to inspection and re-inspection fees. Staff will review all WPO fees to confirm that staff costs are being captured.**
- **Staff recommends that the Board confirm moving this proposal forward.**

Proposal #9 – Incentivize Require that all stormwater treatment be conducted on-site or that any nutrient credits purchased be from a nutrient credit bank located in Albemarle County in order to qualify for special exceptions to zoning requirements, density bonuses, or cluster provisions.

- Staff has verified with the Department of Environmental Quality (DEQ) that use of offsite nutrient credits cannot be limited unless the proposed development cannot meet State eligibility standards.
- DEQ stated that a sediment impairment cannot be considered a nutrient impairment without conducting a stressor analysis to show the stream is impaired for both sediment and nutrients.
- The Rivanna River has an approved sediment TMDL, which is not a nutrient TMDL.
- Staff recommends redirecting focus to reduce sediment loading of streams that have sediment TMDLs to improve water quality in local streams (refer to Proposal A5 below).
- **Staff recommends that the Board confirm removing this proposal from the work program.**

Proposal #14 – Updates to the WPO.

- These are non-substantive updates that do not alter the intent or the meaning of the WPO. Examples of updates include:
 - simplifying or clarifying wording and using current County department names that have changed since 2014 (the last time the WPO was revised).
 - Clarifying that steam buffer mitigation is required at a 2:1 ratio (current policy).
- The County Engineer and County Attorney’s Office will collaborate on these updates.
- There are minimal staff impacts from this proposal.
- **Staff recommends that the Board confirm moving this proposal forward.**

In addition to the proposals above, as directed by the Board during the joint work session of July 9, 2019, staff proposed two additional amendments to the WPO to improve stream health at the November 6, 2019 Board work session. The Board agreed to move forward with the following proposed additions:

Proposal A1 – Require two-layered perimeter control measures where land disturbances occur within two-hundred feet of a stream or wetland.

- This proposal would entail requiring two layers of silt fence, or a diversion dike and silt fence along environmentally sensitive water features or to protect adjacent properties from construction-related runoff.
- Pros – Increases ESC protection of streams, wetlands and waterways. Intent is to reduce

the number or severity of sediment releases from a project.

- Cons – Increases construction costs.
- Staff impacts – refer to the Staff Impacts Table on page 7.
- **Because this proposal requires additional staff, staff seeks the Board’s input and recommends that the Board defer this proposal until staffing needs can be filled.**

Proposal A2 – Require a maintenance bond for stormwater facilities prior to release of the construction bond if the facility has not been transferred to the Homeowners Property Association.

- Pros – Eliminates a potential gap in maintenance from when a bond is released to when an HOA assumes responsibility.
- Cons – Increases bonding requirements.
- Staff impacts – there are minimal impacts for staff with this proposal.
- **Staff recommends that the Board confirm moving this proposal forward.**

In addition to these two amendments, staff recommends that the Board consider the following additional proposals:

Proposal A3 – Require a 25% improvement factor for erosion and sediment control measures when projects are located within a watershed with an approved sediment TMDL.

- This proposal was added following the November 6, 2019 work session to address the specific TMDL in the County.
- Requiring an improvement factor would directly address the specific TMDL.
- A1 noted above could be combined with this proposal.
- Has been required on a few ZMAs in the past where erosion was a concern.
- Pros – increases efficiencies of ESC measures.
- Cons – increased construction costs.
- Staff impacts – refer to the Staff Impacts Table on page 7.
- **Because this proposal requires additional staff, staff seeks the Board’s input and recommends that the Board defer this proposal until staffing needs can be filled.**

Proposal A4 – *Section 17-603.A – Pre-existing buildings or structures in stream buffers.* Clarify when and under what conditions existing buildings or structures that existed on February 11, 1998 can be replaced or expanded.

- This proposal was added to clarify the current ordinance language.
- Suggest allowing replacement, expansions and additions if mitigation is provided.
- **Staff requests Board input and direction to move forward with this proposal.**

Proposal A5 – *Section 17-604 – Types of structures, improvements and activities which may be allowed in stream buffer by program authority.*

- Clarify what “reasonable use” means to justify impacts to the landward 50 feet of a stream buffer.
 - This has been added as a proposal to clarify the current ordinance language.
 - Revisions may include eliminating the term ‘reasonable use’ and including specific conditions or performance standards.
- **Staff requests Board input and direction to move forward with this proposal.**

Conclusion

The County Engineer and the County Attorney's Office will coordinate on all WPO revisions. Staff will prepare a draft ordinance based on the Phase 1 proposals if directed by the Board. Staff will bring the draft ordinance to the Board as a consent agenda item to schedule a public hearing with the Board in the latter half of 2020. If adopted by the Board, the revised WPO will be scheduled to become effective approximately three months after adoption, which will allow time for appeals from the public and for DEQ review of any appeals.

Staff Impacts Table

Staffing impacts for each proposal are shown in the table below. Because of revenue/budget concerns, staff recommends a two-phased approach to implement the proposals.

| Proposal | Description | FTE | Task | Position | Recommended Phase |
|----------|---|--------|-----------------------------|---|-------------------|
| #1 | Steep Slopes | 0.05 | Plan Review | Civil Engineer | N/A |
| #2 | Reduce VESCP Threshold | 0.50 | Plan Review | Civil Engineer (CE) | 2 |
| | | 0.75 | Inspections | Engineering Inspector (EI) | |
| | | 0.10 | Administration | Community Development Administrator (CDA) | |
| #3 | ESC allowed in buffer w/mitigation | 0.10 | Plan Review | Civil Engineer (CE) | 1 |
| #5 | Incremental Dev. | 0.25 | Plan Review | Civil Engineer (CE) | 2 |
| | | 0.25 | Inspections | Eng. Inspector (EI) | |
| #6 | Update fees | 0.0 | N/A | N/A | 1 |
| #9 | Nutrient Credits | 0.25 | Plan Review | Civil Engineer | N/A |
| #14 | WPO updates | 0.0 | N/A | N/A | 1 |
| A1 | Two-layer ESC measures | See A3 | Recommend combining with A3 | See A3 | See A3 |
| A2 | Maint. bonding | 0.10 | Bonding | Analyst (A) | 1 |
| A3 | ESC 25% improvement factor and 2-layer ESC measures | 0.50 | Plan Review | Civil Engineer (CE) | 2 |
| | | 0.25 | Inspections | Eng. Inspector (EI) | |
| A4 | Pre-existing bldgs. clarification | 0.0 | N/A | N/A | 1 |
| A5 | Reasonable Use clarification | 0.0 | N/A | N/A | 1 |

Phase 1 – Proposals 3, 6, 14, A2, A4 and A5.

- It is believed that 0.10 CE FTEs and 0.10 Analyst FTEs can be absorbed by current staff.

Phase 2 – Proposals 2, 5, and A3.

- 1.25 CE FTEs, 1.25 EI FTEs and 0.1 CDA FTE.
- Staff recommends delaying Phase 2 proposals until 3/6/6 revenue/budget analysis is complete.