

Summary Report - Proposals for Improving Stream Health in Development Areas Joint Work Session - Albemarle County Board of Supervisors and Planning Commission July 9, 2019

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 (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.
 - a. Staff meets with individuals, businesses, and organizations to develop ideas for incentives to improve water quality.
 - b. Staff compiles, analyzes, and refines all ideas and information, creating a package of potential incentives.
 - c. Staff conducts work session with the Board in spring of 2018 to present recommendations for the Development Areas.
 - d. Upon implementation of phase one recommendations for Development Areas, staff will immediately begin working on Rural Area issues as phase two.

Stream Health Proposals in 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.

A set of 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 should not limit or hinder potential growth and development in the Development Areas or create a need to expand the Development Areas.

Attachment B contains the draft proposals that were reviewed during subsequent public meetings, plus some notes and clarifications (highlighted in yellow) that were helpful during meetings. Attachment C

lists the draft proposals with significant pros, cons, and comments (if any) about each. Most of the proposals, if acted upon, would require revisions to the County's Water Protection Ordinance (WPO) or the Zoning Ordinance.

Staff solicited comments and feedback from the public on the proposals. Public feedback was received via an online survey (37 individuals responded, results in Attachment D), 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 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, County 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 Commission to review the recommendations. Below are the actions that staff was directed 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 subitems), #8 (and subitems)

Do not work on these proposals at this time, they may be considered in the future:

#4, #10, #11 (and subitems)

Status of Proposals and Staff Recommendations

Since the work session, staff has continued discussions and deliberations on the nine proposals that the Board directed them to proceed with. The other proposals have not been addressed in a substantive way, nor have other ideas that have been proposed. Doing so would require a significant commitment of staff time.

Each of the nine proposals is discussed below. The proposals are grouped into three categories for ease of discussion: proposals requiring County Action only, recommendations requiring revisions to the Zoning Ordinance, and recommendations requiring revisions to the WPO.

County Actions:

Proposal #12 - Develop educational material and conduct public outreach. and

Proposal #13 - Provide support and coordinate with other organizations and landowners to facilitate activities and projects that will improve stream health.

- Staff are actively working on these, they are works in progress. No Board action is necessary.
- Albemarle Conservation Assistance Program (ACAP) is funded by the County with \$32,000 for FY20, and should be funded in subsequent years. It increases funding available for landowners to install conservation practices on their property (e.g., conservation landscaping, rain gardens,

use of pervious paving, removing impervious surfaces, etc.). ACAP is administered by the Thomas Jefferson Soil & Water Conservation District (TJSCWD) and extends the funding available from Virginia Conservation Assistance Program (VCAP). The program applies County-wide but is most applicable in urban and suburban settings.

- Use Email, County social media, and informal methods for educating landowners and promoting good stewardship. An example is promoting stream buffer creation or expansion to County residents. Virginia Department of Forestry (DOF) is administering a grant program for the James River Watershed, with no cost to landowners who make a 15 year commitment to retain wooded riparian buffers a minimum of 35' wide.
- Some other steps to take:
 - Update county materials and web pages if/when WPO revisions are made, and if any other significant steps taken.
 - Expand education and outreach efforts, involve partners and community organizations.

Outside of the nine proposals, staff continues to require that new home lots exclude stream buffers for rezoning, special exceptions, or other applications that require legislative action. In these instances, stream buffer areas become part of the common area.

Zoning Ordinance Revisions:

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)

- Requesting Board approval to implement this proposal and develop Resolution of Intent (ROI) to amend the Zoning Ordinance.
- Design Standards that currently apply only to steep slopes would apply to any proposed land disturbing activity requiring a VSMP or VESCP permit (e.g., building permit, site plan) anywhere in the County.
- Would apply in both the Development Areas and the Rural Area.
- These standards are development-specific, applying mostly to new houses and roads, but larger projects too (e.g. subdivisions).
- Will reduce the potential for erosion and will control runoff from created steep slopes.
- Easy to administer but would have impacts on staff. Staff would need to confirm that proposed slopes meet and incorporate the new requirements, which may include drainage systems and retaining walls that would not have been required previously. Retaining walls resulting from these requirements will impact the Building Inspections Division, since retaining walls greater than three feet in height require building permits.
- Current wording will be moved from Section 30 of Zoning Ordinance (Overlay Districts) to Section 4 (General Regulations).
- The process:
 - ROI on upcoming Board Consent Agenda - public meeting/open house - more public engagement if needed - Commission public hearing - Board public hearing.
 - Estimated timeframe of 8 months unless more public engagement is needed.

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

- Requesting Board endorsement of this concept.

- If/when a nutrient credit bank is established in Albemarle County, staff will return to the Board for a work session with specific recommendation for implementing this proposal. Staff will not act on the proposal unless/until a nutrient credit bank is established in the County.
- This responds to some comments from the public and is a common-sense approach.
- Minor change to the proposal as written. We are not requiring that - in order to qualify for discretionary actions (e.g., special exceptions to zoning requirements, density bonuses, or cluster provisions) - stormwater treatment be conducted on-site and/or any nutrient credits that are purchased must be purchased from a nutrient credit bank located in Albemarle County.
- We recommend these two conditions be factors that are considered when applicant requests special exceptions to zoning requirements, density bonuses, or cluster provisions.
- Straightforward ordinance change. Add wording to Section 33 of Zoning Ordinance (Zoning Map Amendments, Zoning Text Amendments, Special Use Permits, Special Exceptions).
- There are no impacts to County staff or resources resulting from applicants purchasing nutrient credits from local banks. Reviewing on-site stormwater facilities requires significant staff time. On-site facilities require an engineering review of design requirements and planning/engineering/legal review of easements and agreements. On-site facilities also require inspections to ensure maintenance is completed.

WPO Revisions:

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.

- Staff recommends reducing threshold for land disturbing activity that triggers VESCP regulations be reduced from 10,000 to 6,000 square feet. (This proposal addresses VESCP only, not stormwater management.)
- Requesting Board approval of this proposal.
- Simple wording change to Section 17-300 of WPO.
- The 6,000 square foot threshold is consistent with Erosion and Sediment Control (ESC) regulations in the City of Charlottesville.
- Staff impacts – decreasing the LDA threshold will result in more ESC plans being submitted to the Engineering Division of the Community Development Department. It is not possible to know, but a 10–20% increase in applications is a reasonable estimate (40-80 more reviews per year based on current numbers). An increase in approved VESCP plans will also result in an increase in ESC inspections required.
- The process:
 - Public engagement - ROI to Board to amend the WPO – Board public hearing – enact revision with advance effective date – submit revised WPO to Virginia Department of Environmental Quality (DEQ) for review.

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.

- Requesting Board approval of this proposal.

- Revise Paragraph B of Section 17-603 of WPO. Require mitigation for temporary ESC measures proposed within the outer (landward) 50 feet of a 100 foot buffer if disturbance is minimized and approved by Program Administrator.
- 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. Implementation of the proposal could increase the work load of Engineering.
- Include in the process described for Proposal #2.

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.

- Staff concludes that monitoring the situation moving forward is all that is required. No action is requested of the Board.
- County Engineer has discussed options with County staff, other organizations. Does not require changing definition of “common plan of development” or other changes to WPO.
- This issue does not arise often, roughly once every few years. Usually involves phased development on a single parcel.
- Proposal #2 partially addresses the issue.

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

- Staff proposes a new fee structure for ESC and Stormwater Management inspections and re-inspections. Final fee structure will require additional analysis to confirm the average number of re-inspections and the staff costs involved.
- Intent is to cover staff time and other County costs, not to punish applicants.
- Straightforward revisions to Sections 207 and 208 of the WPO.
- Include in the process described for Proposal #2.

Proposal #14 (updates to WPO):

- County Engineer and Deputy County Attorney will coordinate on this.
- Staff does not anticipate the need for need public engagement beyond the public hearing process, but is open to additional public comment and engagement if needed.
- Will consult with County Attorney’s Office regarding the process. If appropriate, will include in the process described for Proposal #2.

The County Engineer and the County Attorney’s Office will coordinate on all WPO revisions. Public engagement will occur as needed before beginning the public hearing process.