

**Summary Report –
Approved Proposals for Improving Stream Health in Development Areas
Work Session - Albemarle County Board of Supervisors
November 6, 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 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 will meet with individuals, businesses, and organizations to develop ideas for incentives to improve water quality.
 - b. Staff will compile, analyze, and refine all ideas and information, creating a package of potential incentives.
 - c. Staff will conduct 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 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.

A set of thirteen draft proposals was 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 original draft proposals that were reviewed during subsequent public meetings, plus some notes and clarifications (highlighted in yellow) that were helpful during meetings. 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 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 Planning Commission (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)

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 Planning 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. Proposal #1 requires an amendment to the Zoning Ordinance. Five of the proposals - #2, #3, #5, #6, and #14 – require amendments to the County's Water Protection Ordinance. Proposal #9 does not require an ordinance amendment.

Status of Proposals and Staff Recommendations

Since the joint work session on July 9, 2019, staff has continued work on seven proposals at the direction of the Board. Each of the seven proposals is discussed below.

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)

- The Board has expressed support for implementing this proposal County-wide. It would apply in both the Development Areas and Rural Areas.

- Implementing the proposal requires adoption of a Resolution of Intent (ROI) to amend the Zoning Ordinance and a Zoning Text Amendment (ZTA). The ZTA process requires public hearings by both the Planning Commission and Board of Supervisors and approval by the Board.
- The ZTA process has begun and is being led by Zoning Division staff in the Community Development Department.

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.
- Staff recommends changing the proposal as follows, selecting either Option A or Option B for LDA less than 10,000 square feet in area. Staff's proposal would strengthen protection for erosion and sediment control:
 - For LDA of 10,000 square feet or more in area:
 - Current regulations remain in place, a VESCP plan is required.
 - OPTION A (for LDA less than 10,000 square feet)
 - For LDA of 5,000 to 9,999 square feet in area:
 - A permit is required (a plan is not required). Allow the permit to be an Agreement in Lieu of a Plan (per Section 17-402.D of the WPO).
 - A Responsible Land Disturber is required.
 - Fee of \$50.
 - For LDA of 0 to 4,999 square feet in area:
 - A permit is required (a plan is not required).
 - Allow the permit to be an Agreement in Lieu of a Plan (per Section 17-402.D of the WPO).
 - A Responsible Land Disturber is not required.
 - Fee of \$25.
 - OPTION B (for LDA less than 10,000 square feet)
 - For LDA of 2,500 to 9,999 square feet in area:
 - A permit is required (a plan is not required).
 - Allow the permit to be an Agreement in Lieu of a Plan (per Section 17-402.D of the WPO).
 - A Responsible Land Disturber is required.
 - Fee of \$25 or \$50.
- Requires amending Section 17-300 of the WPO.
- Staff impacts – Staff will need to review applications to ensure LDA thresholds are not exceeded, assign agreement numbers, respond to questions and complaints, and enter fee information.
- Staff requests the Board to select between Options A and B for LDA less than 10,000 square feet in area, and direct staff to move forward with the proposal.

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 has expressed support of this proposal. Staff will move forward with implementing it.
- 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.

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, 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 any amount of impervious surface area is added to a previously developed parcel, regardless of the size of the disturbed area.
- The WPO will need to be amended for this proposal.
- Staff requests direction to move forward with this proposal.

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

- Staff proposes a new fee structure for Erosion & Sediment Control and Stormwater Management 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.

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.

- As discussed during the July 9, 2019 joint work session, the Board strongly supports requiring (rather than incentivizing) the use of nutrient credits from local nutrient credit banks when off-site mitigation is used to offset water quality impacts. The Board requested research by staff to determine if there are legal issues with this approach.
- Research since the July 9 joint session indicates that on-site mitigation and/or purchase of nutrient credits from a nutrient credit bank within the watershed of proposed development (and upstream of the proposed development) can be required when development occurs within the watershed of an impaired waterway (as designated by Virginia Department of Environmental Quality, or DEQ) with a TMDL (Total Maximum Daily Load).

- In July 2019, the City of Harrisonburg began phasing in a policy that prohibits the use of offsite nutrient credits for development within the Blacks Run-Crooks Creek watersheds, for which a TMDL was recently approved (Attachment C). This new policy will impact projects in over 90% of the area within the City limits, and there are currently no upstream credit banks serving the City of Harrisonburg. The City of Harrisonburg memo indicates that DEQ plans to revise the regulations in April 2020 to prohibit nutrient credit banks from selling credits for projects discharging to a TMDL approved stream.
- A segment of the Rivanna River in Albemarle County is impaired and has a TMDL for sediment. The watershed for the TMDL encompasses all of the County's seven development areas. A policy similar to Harrisonburg's could thus have significant implications for local development and water quality.
- No amendments would be needed to either the WPO or Zoning Ordinance to adopt this policy.
- There is currently one approved nutrient credit bank in Albemarle County, located on a tributary of Ivy Creek. Approximately 100 pounds/year were available for purchase on August 21, 2019.
- Staff recommends continued research to confirm that a sediment TMDL justifies prohibiting offsite nutrient credits (which are based on phosphorous loading) and requests Board direction to that effect. If sediment TMDLs justify restricting the use of offsite nutrient credits, staff recommends phasing in this policy.

Proposal #14 - Updates to 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).
- The County Engineer and County Attorney's Office will collaborate on these updates.

In addition to working on the seven proposals above, as directed by the Board during the joint work session of July 9, 2019, staff is proposing two additional amendments to the WPO. The two amendments are simpler and more straightforward than the seven proposals above, but are not non-substantive. They will help improve stream health. After full discussion during this work session (November 6, 2019), staff recommends that the Board approve them.

- Under the Erosion and Sediment Control Program, require two-layer perimeter control measures where land disturbances occur with two hundred feet of a stream or wetland.
- Under the Stormwater Management Program, require a maintenance bond from developers for stormwater facilities prior to release of the construction bond if the facility has not been transferred to the Homeowners Association.

The County Engineer and the County Attorney's Office will coordinate on all WPO revisions. Staff will prepare for a public hearing with the Board in the spring of 2020. Staff intends to present the amended WPO for approval at the public hearing. The amended WPO will be scheduled to become effective approximately six months after adoption by the Board. This will allow time for appeals from the public and for DEQ to review the amended ordinance.

Impacts to Staff of Implementing Proposals

The effect of implementing the seven stream health proposals is expected to require adding 1.25 Civil Engineer I and 0.50 Engineering Inspector II full time equivalent (FTE) positions to existing staff. The staffing impacts are described in the table below.

Proposal	FTE	Task	Position
#1	0.05	Engineering Plan Review	Civil Engineer I
#2	0.75	Engineering Plan Review	Civil Engineer I
	0.50	Engineering Inspection	Engineering Inspector II
#3	0.10	Engineering Plan Review	Civil Engineer I
#5	0.10	Engineering Plan Review	Civil Engineer I
#9	0.25	Engineering Plan Review	Civil Engineer 1
TOTAL	1.75		