



# Albemarle County

## Legislation Text

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**File #:** 21-254, **Version:** 1

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**AGENDA DATE:** 4/21/2021

**TITLE:**

WPTA 2021-00002 Water Protection Ordinance Regarding Stream Buffer Regulations

**SUBJECT/PROPOSAL/REQUEST:** Public hearing to consider the adoption of ordinance to amend the stream buffer regulations in Albemarle County Code Chapter 17, Water Protection

**ITEM TYPE:** Regular Action Item

**STAFF CONTACT(S):** Richardson, Walker, Kamptner, Herrick, Filardo, McCulley, Pohl

**PRESENTER (S):** Frank Pohl

**LEGAL REVIEW:** Yes

**REVIEWED BY:** Jeffrey B. Richardson

**BACKGROUND:** With the goal of improving stream health, staff conducted a public review of the County's stream buffer regulations in 2017, culminating in a work session with the Board on December 6, 2017. From October through December of 2018, staff conducted a public engagement process to receive feedback and public comment on the proposed strategies. The proposals that arose from this input were subsequently shared with the Board.

During a work session on January 9, 2019, the Board directed staff to work on nine of the initial thirteen proposals to improve stream health in the County's Development Areas. At a joint work session with the Board and Planning Commission on July 9, 2019, more detailed proposals and staff recommendations were presented and discussed. At a Board work session on November 6, 2019, specific recommendations were presented and the Board provided further direction.

On July 15, 2020, staff returned to the Board with final proposals for consideration, which included the recommendation to phase the adoption of the proposals because of staff resource needs. The Board agreed to implement the proposals that have no or minimal impacts on staff resources.

On March 3, 2021, the Board directed staff to schedule a public hearing to consider the adoption of an ordinance that addresses the first phase of proposals.

**STRATEGIC PLAN:** Natural Resources Stewardship - Thoughtfully protect and manage Albemarle County's ecosystems and natural resources in both the rural and development areas to safeguard the quality of life of current and future generations.

**DISCUSSION:** The attached proposed ordinance includes changes that address the following proposals:

- Proposal #3 - Allow temporary Erosion & Sediment Control (ESC) measures within the stream buffer if the area is restored.
- Proposal #14 - General Water Protection Ordinance (WPO) updates and clarifications.
- Proposal A2 - Require a maintenance bond for stormwater facilities prior to release of the construction bond if the developer requests to have its construction bond released and the facility has not been transferred to the Property Owners Association.

Specifically, the proposed ordinance would:

- Amend § 17-201 by updating the name of the Facilities and Environmental Services Department;
- Amend the following definitions in § 17-205:
  - “Agricultural road” to require construction in compliance with the water quality protection procedures established by the Virginia Department of Forestry;
  - “Best management practice” to update the Virginia Stormwater BMP Clearinghouse Website hyperlink;
  - “Nonstructure best management practices” to include “forest and open space;”
  - “Land disturbance or land disturbing activity” to include filling; and
  - “Water supply protection area” to delete Chris Greene Lake from the list of reservoirs;
- Add definitions for “Forest and Open Space” and “Streamside Management Zone” to § 17-205;
- Amend § 17-209(A) to allow payment of fees through the County online payment system;
- Amend § 17-209(B)(4) to change the billing and due dates of maintenance fees;
- Amend § 17-301(F) to require that forestry activities comply with Virginia Department of Forestry Best Management Practices, including streamside management zones, to be exempt from VESCP requirements;
- Amend § 17-303(B) to require that forestry activities comply with Virginia Department of Forestry Best Management Practices, including streamside management zones, to be exempt from VSMP requirements;
- Add § 17-402(D)(1)(a) to require a Critical Resources Plan with each agreement in lieu of an erosion and sediment control plan;
- Add § 17-402(D)(1)(b) to identify land disturbances not eligible for agreements in lieu of an erosion and sediment control plan;
- Amend § 17-402(D)(2) to allow the administrator to require additional information for an agreement in lieu of an erosion and sediment control plan or to not accept an agreement;
- Amend § 17-414 to require an agreement with surety before any land disturbance activity;
- Amend § 17-414(A) to require an agreement with surety as a condition of a land disturbance permit;
- Add § 17-423(C) to require developers, prior to release of construction performance security, to either (1) transfer maintenance responsibilities of stormwater management facilities to a Property Owners Association or (2) provide the County with a maintenance security;
- Amend § 17-603(B) to delete temporary erosion and sediment control measures from the types of structures, improvements and activities allowed in a stream buffer without mitigation; and
- Add § 17-604(G) to permit temporary erosion and sediment control measures within the outer 50-feet of a stream buffer, provided that the measures are located outside of the stream buffer to the extent practical and that the disturbance impacts are minimized.

Please note that the revisions to § 17-209(B)(4) (highlighted in Attachment A) have been proposed since the Board’s prior review on March 3. The additional revisions address when the mandated annual Virginia Stormwater Management Program (VSMP) maintenance fees are billed and due.

Staff plans to schedule a work session with the Board this summer regarding the next phase of stream buffer proposals, which includes lowering the threshold for area of disturbance and expanding the applicability of the County's stream buffer regulations, and which is currently resource-constrained.

**BUDGET IMPACT:** An estimated 0.10 Civil Engineer FTE and 0.10 Community Development Administrative FTE are required by these proposals. We are of the opinion that this work can be absorbed by current staff during times of normal workload. No other budget impacts have been identified.

**RECOMMENDATION:**

Staff recommends that the Board adopt the proposed ordinance (Attachment A) with an effective date of July 1, 2021.

**ATTACHMENTS:**

A - Proposed Ordinance