



# Albemarle County

## Legislation Text

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**File #:** 20-390, **Version:** 1

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**AGENDA DATE:** 7/15/2020

**TITLE:**

Work Session on Improving Stream Health in Development Areas

**SUBJECT/PROPOSAL/REQUEST:** Discuss Water Protection Ordinance (WPO) proposals to improve stream health in the County's Development Areas prior to public hearing on proposed amendments.

**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:** During 2017, staff conducted a public review of the County's stream buffer regulations, culminating in a work session with the Board on December 6, 2017. Based on Board direction during the work session, staff initially developed thirteen proposals designed to improve stream health in the Development Areas consistent with the County's Growth Management Policy. The proposals are not intended to limit or hinder development in the County's Development Areas.

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. Staff was directed to develop final versions of seven of the proposals, and to make recommendations to the Board. At a Board work session on November 6, 2019, specific recommendations were presented and the Board provided further direction. Staff is now returning for an additional work session before scheduling a public hearing.

**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:** A summary report is provided as Attachment A, which includes details about the process of developing and reviewing the stream health proposals. A list of the earlier proposals is provided as Attachment B. Notes in yellow clarify and explain some of the proposals. Notes in red reflect updates since the November 6, 2019 work session.

During the July 9, 2019 joint work session, staff was directed to continue working on seven proposals outlined in the summary report (Attachment A). The Board expressed support for these proposals, though more information and further research were requested on a few.

- Proposal #1 (to implement the County's steep slope design standards when a VSMP or VESCP application is required) -- Because this proposal is being presented as a separate Zoning Text Amendment (ZTA) at the July 15, 2020 Board meeting, it has been removed from the WPO work program.
- Proposal #2 (reduce threshold for VSMP/VESCP permitting) would require amending the Water Protection Ordinance (WPO). This proposal was refined after the July 9, 2019 joint work session and again after the November 6, 2019 Board work session. Further discussion with the Board on Proposal #2 is necessary, particularly its timing due to the need for additional staff resources.
- Proposal #3 (allow temporary ESC measures in outer 50-ft of buffer with mitigation) would require a WPO amendment. The Board agreed with this proposal.
- Proposal #5 (address incremental development) would require a WPO amendment. The Board supported adopting a policy like that of Greene County, which requires stormwater to be addressed when impervious surface is added to a previously developed parcel.
- Proposal #6 (update WPO fees) would require a WPO amendment. Fee adjustments will be confirmed as a final step in this process after specific proposals are confirmed for adoption. The Board generally agreed with this proposal.
- Proposal #9 (incentivize stormwater treatment to be provided onsite and limit use of offsite nutrient credits). After the November 6, 2019 work session, staff confirmed with DEQ that use of offsite nutrient credits cannot be limited unless certain DEQ regulatory criteria cannot be met. At this point, though the Rivanna River has an approved sediment TMDL, a sediment TMDL does not qualify as a nutrient TMDL. Instead of proposing to limit use of offsite nutrient credits, staff is proposing to refocus efforts to reduce sediment loading of streams by requiring additional measures when a sediment TMDL is approved (see proposal A3 below).
- Proposal #14 (general WPO updates) would require a WPO amendment. The Board generally agreed with this proposal.

In addition, staff previously proposed, and the Board supported, two additional WPO amendments:

Proposal A1 - Under the Erosion and Sediment Control (ESC) Program, this proposal would require two-layer perimeter control measures where land disturbances occur within 200 feet of a stream or wetland.

Proposal A2 - Under the Stormwater Management Program, this proposal would require a maintenance bond for stormwater facilities prior to release of the construction bond if the facility has not been transferred to the Property Owners Association and the developer requests to have its construction bond released.

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

Proposal A3 - To require an improvement factor of 25% for erosion and sediment control measures when projects are located within a watershed that has an approved sediment TMDL. Proposal A1 noted above could also be included in this proposal.

Proposal A4 - Revise *Section 17-603(A) (Pre-existing buildings or structures in stream buffers)* to clarify when and under what conditions existing buildings or structures that existed on February 11, 1998 can be replaced or expanded. This proposal has been added to help clarify the current ordinance

language. Board input is requested.

Proposal A5 - Revise Section 17-604(A) (Types of structures, improvements and activities which may be allowed in stream buffer by program authority) to clarify activities necessary to allow “reasonable use” of a lot. Revisions may include eliminating the term “reasonable use” and/or including specific conditions or performance standards. This proposal has been added to help clarify the current ordinance language. Board input is requested.

**BUDGET IMPACT:** Several proposals would increase staff workload, as noted in the summary report (Attachment A, Staff Impacts Table, page 7). Analysis of program fees, revenues and costs indicates the need to increase fees to recover current shortfalls. Considering the current budget projections, staff recommends adopting the proposals in two phases. Phase 1 would include proposals that can be absorbed by existing staff. Because Phase 2 would require additional personnel, staff recommends delaying Phase 2 proposals until additional staff positions to support this work can be funded.

**RECOMMENDATION:**

Staff recommends that the Board confirm implementing Phase 1 proposals #3, #6, #14, A2, A4, and A5. Proposal #2 requires further direction from the Board because of proposed revisions. Staff further asks the Board to confirm delaying implementation of Phase 2 proposals #2, #5, and A3 because of the need for additional staff resources. For the proposals that necessitate additional staffing to administer and enforce, staff recommends returning to the Board after the FY2021 outlook has become clearer.

**ATTACHMENTS:**

Attachment A - Summary Report on Approved Stream Health Proposals

Attachment B - Original List of Stream Health Proposals with Notations and Updates