ORDINANCE NO. 23-18( )

AN ORDINANCE TO AMEND CHAPTERS 7, HEALTH AND SAFETY; 14, SUBDIVISION OF LAND; 17, WATER PROTECTION; 18, ZONING; AND APPENDIX A.1 ACQUISITION OF CONSERVATION EASEMENTS PROGRAM, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that Chapters 7, Health and Safety; 14, Subdivision of Land; 17, Water Protection; 18, Zoning, and Appendix A.1 Acquisition of Conservation Easements Program, are hereby amended and reordained as follows:

BY REPEALING:

Chapter 17 Water Protection

Article IV – Procedure for submitting, reviewing and acting on applications; post-approval rights and obligations

- Sec. 406 Mitigation plan if development allowed in stream buffer; form and content

Article VI – Stream Buffers

- Sec. 600 Extent of stream buffers; retention and establishment
- Sec. 601 Management of stream buffer
- Sec. 602 Types of improvements and activities exempt from duties to retain, establish or maintain a stream buffer
- Sec. 603 Types of structures, improvements and activities authorized in a stream buffer
- Sec. 604 Types of structures, improvements and activities which may be allowed in a stream buffer by program authority

BY AMENDING:

Chapter 7 Health and Safety

Article 5 Nuisances

- Sec. 503 Exemptions

Chapter 14 Subdivision Ordinance

- Sec. 234 A (1) (b)
- Sec. 302 B (10)
- Sec. 404 D (1) and (2)
- Sec. 409 C (1) and (2), D (1) and (2)
- Sec. 410 I (1)
- Sec. 422 E (1) and (2), F (1)

Chapter 17 Water Protection

- Sec. 103 Applicability
- Sec. 205 Definitions
- Sec. 208 Fees for land disturbing activity under VSMP.
- Sec. 401 VSMP permit application; form and content.

- Sec. 416 Effect of approvals.
- Sec. 500 Erosion and sediment control plans; applicable technical criteria.

Chapter 18 Zoning

Article I – General Provisions

Sec. 3.1 – Definitions

Article II – Basic Regulations

Sec. 4.2 – Critical slopes

Sec. 4.19 - Setbacks and stepbacks in residential districts

Sec. 4.20 - Setbacks and stepbacks in conventional commercial and industrial districts

Sec. 5.1.28 - Clean earth and inert waste fill activity

Sec. 5.1.44 - Farm worker housing

Article III – District Regulations

Sec. 20C.8 – Building standards

Section 30.7.4 – Permitted uses

Appendix A.1 Acquisition of Conservation Easements Program

Sec. A.1-109 – Easement terms and conditions

BY ADDING:

Chapter 18 Zoning

Article III – District Regulations

Section 30 – Overlay Districts

Sec 30.8 – Riparian Buffer Overlay District

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REPEALING:

Chapter 17 Water Protection

Sec. 17-406 Mitigation plan if development allowed in stream buffer; form and content.

~~Each owner who seeks to develop in a stream buffer pursuant to section 17-604 shall submit a mitigation plan that includes the following in the form required by the administrator:~~

~~A. *Elements of plan*. Except as provided in subsection (B), each mitigation plan shall contain all of the following:~~

~~1. *Identify impacts and specify mitigation measures*. Identify the impacts of the proposed development on water quality and lands within the stream buffer, and specify the mitigation measures that will address water quality and stream buffer impacts.~~

~~2. *Disturbance to land and vegetation minimized*. Ensure that, where development takes place within a stream buffer: (i) the proposed development, including the alignment and design of any stream crossing, shall be located on those portions of a site and in a manner that will be least disruptive to the natural functions of the stream buffer; (ii) no more land shall be disturbed than is necessary to allow a development that is permitted in the underlying zoning district under the applicable regulations of the Zoning Ordinance; and~~

~~(iii) native vegetation shall be preserved to the fullest extent possible, consistent with the proposed development.~~

~~3. *Multiple stream crossings; demonstrate environmental advantage over single stream crossing*. If an owner seeks to establish more than one stream crossing as provided in section 17-604(C)(7), demonstrate that the environmental impacts from the entire road, street or driveway necessitated by a single stream crossing would be greater than the environmental impacts caused by an additional crossing and its associated road, street or driveway. For the purposes of this subsection, the environmental impacts considered by the administrator include, but are not limited to, impacts to soil, soil erosion, stormwater quantity, water quality, loss of vegetated stream buffer, impacts to stream beds and stream banks, the creation of impervious surfaces, and the disturbance of slopes of twenty-five (25) percent or greater.~~

4. *Additional information*. Additional information deemed necessary by the administrator for a complete review of the plan.

B. *Building permit in lieu of satisfying requirements of subsection (A)*. For any mitigation plan pertaining to the development of one single-family detached dwelling, the administrator may, in his discretion, accept the building permit for the dwelling in lieu of satisfying the requirements of subsection (A).

(§ 19.3-46, 2-11-98; § 19.2-8, 6-19-91, § 8; § 19.1-13, 6-19-91, § 13; Code 1988, §§ 19.1-13, 19.2-8, 19.3-46; § 17-322, Ord. 98-A(1), 8-5-98; Ord. 08-17(2), 5-7-08; Ord. 11-17(1), 10-5-11; § 14-406, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:73; 9VAC25-890-40.

ARTICLE VI. STREAM BUFFERS

Sec. 17-600 Extent of stream buffers; retention and establishment.

Except as provided in section 17-602, each erosion and sediment control plan and each VSMP permit shall provide for stream buffers for the purposes of retarding runoff, preventing erosion, filtering nonpoint source pollution from runoff, moderating stream temperature, and providing for the ecological integrity of stream corridors and networks, as provided herein:

A. *Development within a development area*. If the development is located within a development area, stream buffers shall be retained if present and established where they do not exist on any lands subject to this chapter containing perennial streams, contiguous nontidal wetlands, or both. The stream buffer shall be no less than one hundred (100) feet wide on each side of any perennial stream and contiguous nontidal wetlands, measured horizontally from the edge of the contiguous nontidal wetlands, or the top of the stream bank if no wetlands exist.

B. *Development within a water supply protection area or other rural land*. If the development is located within a water supply protection area or other rural land, stream buffers shall be retained if present and established where they do not exist on any lands subject to this chapter containing perennial or intermittent streams, contiguous nontidal wetlands, and flood plains. The stream buffer shall extend to whichever of the following is wider: (i) one hundred (100) feet on each side of any perennial or intermittent stream and contiguous nontidal wetlands, measured horizontally from the edge of the contiguous nontidal wetlands, or the top of the stream bank if no wetlandexist; or (ii) the limits of the flood plain. The stream buffer shall be no less than two hundred (200) horizontal feet wide from the flood plain of any public water

supply impoundment.

(§ 17-301: § 19.2-6, 6-19-91, § 6; § 19.3-25, 2-11-98; Code 1988, §§ 19.2-6, 19.3-25; § 17-301, Ord. 98-A(1), 8-5-98; Ord. 07-17(1), 2-14-07) (§ 17-317: § 19.3-41, 2-11-98; § 19.2-8, 6-19-91; Code 1988, §§ 19.2-8, 19.3-41; § 17-317, Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08; § 17-600, Ord. 14-17(1), 5-7-14,
effective 7-1-14)

State law reference –Va. Code § 62.1-44.15:73; 9VAC25-890-40.

Sec. 17-601 Management of stream buffer.

Each stream buffer required to be retained or established pursuant to section 17-600 shall be managed as provided herein:

A. *Target vegetative cover*. The preferred vegetative cover in a stream buffer shall be a native riparian forest with ground cover, shrub, and tree canopy layers.

B. *Preservation of native vegetation*. When evaluating a development design under subsection (C), when native vegetation may be disturbed or removed under subsection (D) and sections 17-603 and 17-604, and when stream buffers are maintained under subsection (E), native vegetation shall be preserved to the fullest extent possible.

C. *Incorporation into development design*. Each stream buffer shall be incorporated into the design of the development by keeping stream buffers in open or natural spaces, and out of residential lots or areas of active use, to the fullest extent possible.

D. *Retaining native vegetation; disturbance or removal*. In order to maintain the runoff, erosion, nonpoint source pollution control, stream temperature, and ecological values of the stream buffer, no native vegetation within the stream buffer shall be disturbed or removed, regardless of the size of the area affected, except to maintain the stream buffer as provided in subsection (E), provided that native vegetation may be removed to construct, install, operate or maintain any improvement, or engage in any activity, authorized by sections 17-603 and 17-604.

E. *Maintaining the stream buffer*. Each stream buffer shall be maintained in as natural a condition as possible.

(§ 19.3-42, 2-11-98, § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-8, 19.3-42; § 17-318, Ord. 98-A(1), 8-5-98; § 17-601, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference –Va. Code § 62.1-44.15:73; 9VAC25-890-40.

Sec. 17-602 Types of improvements and activities exempt from duties to retain, establish, or manage a stream buffer.

The following types of improvements and activities shall not be required to retain, establish, or manage a stream buffer, provided that the requirements of this section

are satisfied:

A. *Utility and transportation improvements*. The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the Erosion and Sediment Control Law (Virginia Code § 62.1-44.15:51 *et seq*.) or an erosion and sediment control plan approved by the State Water Control Board.

1. *Public water and sewer improvements*. The construction, installation, and maintenance by public agencies of water and sewer lines, including water and sewer lines constructed by private interests for dedication to public agencies, provided that all of the following are satisfied. To the extent practical, as determined by the Albemarle County Service Authority or the Rivanna Water and Sewer Authority, the location of the water or sewer lines shall be outside of all stream buffer areas.

2. *Disturbance minimized*. No more land shall be disturbed than is necessary to construct, install and maintain the water or sewer lines.

3. *Compliance with applicable requirements*. All construction, installation, and maintenance of the water or sewer lines shall comply with all applicable Federal, State and local requirements and permits and be conducted in a manner that protects water quality.

B. *Silvicultural activities*. Silvicultural activities, provided that they are conducted in compliance with the water quality protection procedures established by the Virginia Department of Forestry in its "Virginia's Forestry Best Management Practices for Water Quality."

C. *Public airport improvements*. The construction, installation and maintenance of runways, taxiways, and other similar or appurtenant improvements at public airports, including the expansion or extension of those improvements, provided that all applicable Federal, State and local permits are obtained.

(§ 19.3-43, 2-11-98; § 19.2-12, 6-19-91, § 12; Code 1988, §§ 19.2-12, 19.3-43; § 17-319, Ord. 98-A(1), 8-5-98; Ord. 08-17(4), 9-3-08; § 17-602, Ord. 14-17(1), 5-7-14, effective 7-1-14)

State law reference – Va. Code § 62.1-44.15:73; 9VAC25-890-40.

Sec. 17-603 Types of structures, improvements and activities authorized in a stream buffer.

If otherwise authorized by the applicable regulations of the Zoning Ordinance, the following types of structures, control measures and activities shall be allowed in a stream buffer, provided that the requirements of this section are satisfied:

A. *Pre-existing buildings or structures*. Any building or structure which existed on February 11, 1998 may continue in its location on that date. However, nothing

in this section authorizes the continuance, repair, replacement, expansion or enlargement of any such building or structure except as provided in sections 18-6 and 18-30.3.

B. *Water-dependent facilities and miscellaneous uses*. Water-dependent facilities; water wells; passive recreation access, such as pedestrian trails and bicycle paths; historic preservation; archaeological activities; provided that all applicable Federal, State and local permits are obtained.

(§ 19.3-44, 2-11-98; § 19.2-7, 6-19-91, § 7; § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-7, 19.2-8, 19.3-44;§ 17-320, Ord. 98-A(1), 8-5-98; Ord. 08-17(2), 5-7-08; § 17-603, Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(1), 4-21-21, effective 9-1-21)

State law reference –Va. Code § 62.1-44.15:73; 9VAC25-890-40.

Sec. 17-604 Types of structures, improvements and activities which may be allowed in a stream buffer by program authority.

Structures, improvements and activities may be authorized by the administrator in the circumstances described below, provided that a mitigation plan satisfying the requirements of section 17-406, is submitted to, and approved, by the administrator:

A. *Within the landward 50 horizontal feet*. On a lot within the fifty (50) horizontal feet of a stream buffer that is the most landward (furthest from the stream), if the structures, improvements or activities either: (i) would be for necessary infrastructure to allow reasonable use of the lot; or (ii)ould be on a lot that is within a water supply protection area where the stream buffer protects an intermittent stream and the lot is within a development area. In all cases under this subsection, any new building site and sewage disposal system shall be located outside of the stream buffer.

B. *Lakes, ponds or restoration projects*. On a lot on which the development in the stream buffer will consist of a lake, pond, or ecological/wetland restoration project.

C. *Stream crossings*. Stream crossings of perennial and intermittent streams for roads, streets or driveways, provided they meet the following minimum criteria:

1. *Bridges and culverts*. Bridges and culverts shall satisfy the following:

a. *Perennial streams*. For crossings of perennial streams, bridges, arch culverts, or box culverts shall be used for the stream crossing and shall be sized to pass the ten (10) year storm, or the twenty-five (25) year storm if the design standards in either section 14-410 or 18-32.7.2.1 apply, without backing water onto upstream properties. Bridges or arch culverts shall either leave the stream section, consisting of the stream bed and the stream bank, undisturbed or shall allow the stream to

return to a natural stabilized cross-section upon completion of installation. The lowest interior elevation (invert) of a box culvert installation shall be a minimum of six (6) inches below the stream bed. Culvert walls and bridge columns should be located outside the stream banks wherever possible.

b. *Intermittent streams*. For crossings of intermittent streams, bridges or culverts shall be used for the stream crossing and sized to pass the ten (10) year storm, or the twenty-five (25) year storm if the design standards in either section 14-410 or 18-32.7.2.1 apply, without backing water onto upstream properties.

2. *Stream stabilization and energy dissipation*. Stream stabilization and energy dissipation measures below each bridge or culvert shall be provided.

3. *Disturbance minimized*. The stream buffer disturbance shall be the minimum necessary for the lot(s) to be used and developed as permitted in the underlying zoning district and under the applicable regulations of the Subdivision Ordinance. Stream crossings shall not disturb more than thirty (30) linear feet of stream for driveways and sixty (60) linear feet for roads or streets, provided that the administrator may allow additional length of stream disturbance where fill slopes or special conditions necessitate additional length.

4. *Stream bed and stream bank stabilization*. The stream bed and stream banks shall be stabilized within seven (7) days from the start of backfilling for the bridge or culvert.

5. *Establishment of buffer vegetation*. For stream crossings where any portion of the pre- construction stream buffer is not fully vegetated as determined by the administrator, and for any portion of a vegetated stream buffer that is disturbed during the installation of the stream crossing, buffer vegetation shall be established and maintained within the stream buffer but outside of the stream crossing at a ratio of two (2) square feet of stream buffer restored for every one (1) square foot of stream buffer that was either not fully vegetated or is disturbed during the installation of the stream crossing. Buffer vegetation shall be established and maintained at the 2:1 ratio to the extent that the stream buffer is fully vegetated outside of the stream crossing, provided that the owner shall not be required to establish vegetation outside of the stream buffer in order to satisfy the 2:1 ratio. The administrator may require that the owner enter into an agreement providing for the ongoing maintenance of the plantings in the stream buffer, and may require a bond with surety or other acceptable instrument as provided in section 17-414. Stream buffer plantings shall be consistent with guidance supplied by the administrator.

6. *Evidence of required permits*. The owner shall provide the

administrator with copies of approved State and Federal permits associated with the stream crossing, if applicable.

7. *Limitation on number of stream crossings; exception*. In order to ensure that the encroachment into or across the stream buffer is minimized, on and after May 7, 2008, it shall be presumed that one stream crossing is adequate to serve the owner's lot(s) existing on that date and all lots created therefrom on and after that date. The administrator shall allow only one stream crossing to serve all lots, provided that it may allow additional crossings under subsection (D).

D. *Stream crossings not allowed under subsection (C)*. On a lot on which the development in the stream buffer will consist of the construction and maintenance of a road, street or driveway that would not satisfy the requirements of subsection (C) and the administrator determines that the stream buffer would prohibit access to the lot necessary for the lot to be used and developed as permitted in the underlying zoning district and under the applicable regulations of the Subdivision Ordinance, or to establish more than one stream crossing.

E. *Water and sewer facilities or sewage disposal systems on pre-existing lots*. On a lot which was of record prior to February 11, 1998, on which the development in the stream buffer will consist of the construction, installation and maintenance of water and sewer facilities or sewage disposal systems, and the administrator determines that the stream buffer would prohibit the practicable development of those facilities or systems. Any sewage disposal system must comply with all applicable State laws.

F. *Sole building sites on pre-existing lots*. On a lot which was of record prior to February 11, 1998, if the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the lot, or to allow redevelopment as permitted in the underlying zoning district.

G. *Temporary erosion and sediment control measures*. Temporary erosion and sediment control measures within the fifty (50) horizontal feet of a stream buffer that is the most landward (furthest from the stream), provided that to the extent practical, as determined by the administrator, the control measures must be located outside of the stream buffer and the disturbance impacts minimized.

(§ 19.3-45, 2-11-98; § 19.2-8, 6-19-91, § 8; Code 1988, §§ 19.2-8, 19.3-45; § 17-321, Ord. 98-A(1), 8-5-98; Ord. 08-17(1), 2-6-08; Ord. 08-17(2), 5-7-08; Ord. 11-17(1), 10-5-11; Ord. 12-17(1), 5-9-12; § 17-604, Ord. 14-17(1), 5-7-14, effective 7-1-14; Ord. 21-17(1), 4-21-21, effective 9-1-21)

State law reference – Va . Code § 62.1-44.15:73; 9VAC25-890-40.

AMENDING:

CHAPTER 7 HEALTH AND SAFETY

Sec. 7-503 Exemptions.

This division does not apply in: …

F. Any ~~stream~~ riparian buffer required by the County Code or which is protected under a permanent conservation or open-space easement.

CHAPTER 14 – SUBDIVISION OF LAND

Sec. 14-234 Procedure to authorize private street and related matters.

Requests under sections 14-232 and 14-233 shall be submitted, processed and acted upon as follows:

A. A subdivider shall submit a request in writing to the agent at the time of the submittal of the preliminary plat or may, within the development areas, submit the written request prior to submittal of a preliminary plat or with an application to rezone the land.

1. The request shall state the reasons and justifications for the request, and shall particularly address one or more applicable bases for granting the request as identified in sections 14-232 or 14-233, and each of the five findings identified in paragraph (C) required to be made…

(b) If the request is made prior to submittal of a preliminary plat or with an application to rezone the land, it also shall include: (i) a justification for the request; (ii) a vicinity map showing a larger street network at a scale no smaller than one inch equals 600 feet; (iii) a conceptual plan at a scale no smaller than one inch equals 200 feet showing surveyed boundaries of the property; (iv) topography of the property at five-foot intervals for the property being subdivided and on abutting lands to a distance of 500 feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, ~~stream~~ riparian buffers, steep slopes, floodplains, known wetlands; (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable; (vii) proposed private street profiles; and (viii) the maximum number of lots to be served.

Sec. 14-302 Contents of preliminary plat.

A preliminary plat shall contain the following information: …

B. A preliminary plat shall also contain the following information, provided that the preliminary plat shall not be deemed incomplete for purposes of section 14-218 if it does not include this information in the initial plat submittal: …

1. ~~Stream~~ Riparian buffers. The location of ~~stream~~ required riparian buffers required by the ~~water protection~~ zoning ordinance, with the following note: "The ~~stream~~ riparian buffer(s) shown hereon ~~shall~~ must be managed in accordance with the applicable standards of the Albemarle County Code ~~the Albemarle County Water Protection Ordinance.~~"

Sec. 14-404 Lot location to allow access from lot onto street or shared driveway.

Each lot within a subdivision shall be located as follows:

D. Standards for variation or exception. The requirement of subsection (A) may be varied or excepted by the agent as provided in section 14-203.1. A request for a variation or exception may be made prior to or with submittal of a preliminary or final plat, as follows:

1. Information to be submitted. A request shall include a justification for the variation or exception and a conceptual plan. The conceptual plan shall: (i) be drawn at a scale no smaller than one inch equals 200 feet showing surveyed boundaries of the property or an alternative scale approved by the agent; (ii) show the topography of the property at the best interval available from the County including delineation of proposed building sites; (iii) show the locations of streams, ~~stream~~ riparian buffers, steep slopes, floodplains, and known wetlands; and (v) show the proposed layout of lots, location of existing features such as buildings, fences, drainfields, existing driveways or other access ways, or other significant features.

2. Consideration. In reviewing a request for a variation or exception and determining whether the findings provided in section 14-203.1 can be made, the agent shall consider whether: (i) installing a single point of access would substantially impact environmental resources such as streams, ~~stream~~ riparian buffers, steep slopes, and floodplain; (ii) construction of a single point of access would substantially impact features existing on the property prior to October 14, 2009; (iii) granting the variation or exception would contribute to maintaining an agricultural or forestal use of the property; and (iv) granting the a variation or exception would facilitate development of areas identified in the open space plan as containing significant resources.

Sec. 14-409 Coordination and extension of streets.

Public streets within the development areas shall be coordinated and extended as follows: …

C. Variation or exception by commission of coordination requirement. The requirements of subsection (A) may varied or excepted by the commission as provided in section

14-203.1. A request for a variation or exception may be made prior to or with submittal of a preliminary plat or with an application to rezone the land, as follows:

1. Information to be submitted. If such a request is made, it shall include: (i) a justification for the request; (ii) a vicinity map showing a larger street network at a scale no smaller than one inch equals 600 feet; (iii) a conceptual plan at a scale no smaller than one inch equals 200 feet showing surveyed boundaries of the property; (iv) topography of the property at five-foot intervals for the property being subdivided and on abutting lands to a distance of 500 feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, ~~stream~~ riparian buffers, steep slopes, floodplains, known wetlands; (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable; and (vii) the location of the nearest development and rural area boundaries, and the maximum number of lots proposed in the subdivision.

2. Consideration. In reviewing a request for a variation or exception under section 14-203.1, the commission shall consider: (i) the engineering requirements for coordination and connection; (ii) whether the need for coordination and connection outweighs the impacts on environmental resources such as streams, ~~stream~~ riparian buffers, steep slopes, and floodplain; (iii) whether the street would and should be extended into the rural areas; (iv) whether there is an alternative street connection from another location in the subdivision that is preferable because of design, traffic flow, or the promotion of the goals of the comprehensive plan, including the neighborhood model, and the applicable neighborhood master plan; and (v) whether the variation or exception would enable a different principle of the neighborhood model to be satisfied to a greater extent so that the overall goals of the neighborhood model are more fully achieved.

D. Variation or exception by agent of extension requirement. The requirements of subsection (B) may be varied or excepted by the agent as provided in section 14-203.1. A request for a variation or exception may be made prior to or with submittal of a preliminary plat or with an application to rezone the land, as follows:

1. Information to be submitted. If such a request is made, it shall include: (i) a justification for the request; (ii) a vicinity map showing a larger street network at a scale no smaller than one inch equals 600 feet; (iii) a conceptual plan at a scale no smaller than one inch equals 200 feet showing surveyed boundaries of the property; (iv) topography of the property at five-foot intervals for the property being subdivided and on abutting lands to a distance of 500 feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, ~~stream~~ riparian buffers, steep slopes, floodplains, known wetlands; (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable; and (vii) identification of the location of the nearest development and rural area boundaries and the maximum number of lots proposed in the subdivision.

2. Consideration. In reviewing a request for a variation or exception under section 14-203.1, the agent shall consider whether: (i) extending the street to the

abutting property line would require offsite easements; (ii) the need for the extension outweighs the impacts on environmental resources such as streams, ~~stream~~ riparian buffers, steep slopes, and floodplain; (iii) alternative connections to the abutting lands from a different location would provide a better connection; (iv) the subdivider would contribute to the cost to complete the extension to the abutting property line when the adjoining lands are developed, and how; and (v) the street would be extended into the rural areas.

Sec. 14-410 Standards for all streets and alleys.

The following minimum design standards shall apply to all streets and alleys within a subdivision: …

I. Variation of or exception to requirement for curb or curb and gutter. The requirement for curb or curb and gutter may be varied or excepted by the commission as provided in section 14-203.1. A request for a variation or exception may be made prior to or with submittal of a preliminary plat or with an application to rezone the land, as follows:

1. Information to be submitted. If such a request is made, it shall include: (i) a justification for the request; (ii) a vicinity map showing a larger street network at a scale no smaller than one inch equals 600 feet; (iii) a conceptual plan at a scale no smaller than one inch equals 200 feet showing surveyed boundaries of the property; (iv) topography of the property at five-foot intervals for the property being subdivided and on abutting lands to a distance of 500 feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, ~~stream~~ riparian buffers, steep slopes, floodplains, known wetlands; (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable; and (vii) the maximum number of lots to be served by the rural cross-section street, the location of the nearest development and rural area boundaries, and a cross-section of existing streets to which the proposed subdivision streets would be extended, if any.

Sec. 14-422 Sidewalks and planting strips.

Sidewalks and planting strips shall be provided as follows:…

E. Variation of or exception to sidewalk requirements. The requirements for sidewalks may be varied or excepted by the commission as provided in section 14-203.1. A request for a variation or exception may be made prior to or with submittal of a preliminary plat or with an application to rezone the land, as follows:

1. Information to be submitted. If such a request is made, it shall include: (i) a justification for the request; (ii) a vicinity map showing a larger street network at a scale no smaller than one inch equals 600 feet; (iii) a conceptual plan at a scale no smaller than one inch equals 200 feet showing surveyed boundaries of the property; (iv) topography of the property at five-foot intervals for the property being subdivided and on abutting lands to a distance of 500 feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, ~~stream~~ riparian buffers, steep slopes, floodplains,

known wetlands; (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable; and (vii) the location of any existing pedestrian network in the area, whether it is publicly or privately maintained, descriptions by widths and surfaces of the pedestrian ways within the existing pedestrian network, a proposed alternative profile and the intended ownership and maintenance.

2. Consideration. In reviewing a request to vary or except the requirement for sidewalks, the commission shall consider whether: (i) a variation or exception to allow a rural cross-section has been granted; (ii) a surface other than concrete is more appropriate for the subdivision because of the character of the proposed subdivision and the surrounding neighborhood; (iii) sidewalks on one side of the street are appropriate due to environmental constraints such as streams, ~~stream~~ riparian buffers, steep slopes, floodplain, or wetlands, or because lots are provided on only one side of the street; (iv) the sidewalks reasonably can connect into an existing or future pedestrian system in the area; (v) the length of the street is so short and the density of the development is so low that it is unlikely that the sidewalk would be used to an extent that it would provide a public benefit; (vi) an alternate pedestrian system including an alternative pavement could provide more appropriate access throughout the subdivision and to adjoining lands, based on a proposed alternative profile submitted by the subdivider; (vii) the sidewalks would be publicly or privately maintained; (viii) the waiver promotes the goals of the comprehensive plan, the neighborhood model, and the applicable neighborhood master plan; and (ix) waiving the requirement would enable a different principle of the neighborhood model to be more fully achieved.

F. Variation of or exception to planting strip requirements. The requirements for planting strips may be varied or excepted by the commission as provided in section 14-203.1. A request for a variation or exception may be made prior to or with submittal of a preliminary plat or with an application to rezone the land, as follows:

1. Information to be submitted. If such a request is made, it shall include: (i) a justification for the request; (ii) a vicinity map showing a larger street network at a scale no smaller than one inch equals 600 feet; (iii) a conceptual plan at a scale no smaller than one inch equals 200 feet showing surveyed boundaries of the property; (iv) topography of the property at five-foot intervals for the property being subdivided and on abutting lands to a distance of 500 feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, ~~stream~~ riparian buffers, steep slopes, floodplains, known wetlands; and (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable.

CHAPTER 17 – WATER PROTECTION

ARTICLE I – GENERAL

Sec. 17-103 Applicability.

This chapter, or the applicable parts thereof, shall apply to: …

~~*C. Stream buffers*. Any area within the County and the Town of Scottsville designated as a stream buffer under this chapter.~~

~~D.~~ *C. Permanent stormwater management facilities*. Any areas served by a public permanent stormwater management facility.

~~E.~~ *E. Discharges, connections and dumping*. All activities that cause or allow to be caused direct or indirect illicit discharges, illicit connections, and the prohibited dumping of refuse and pollutants, or which negatively impede the flow capacity of the County's MS4 or State waters.

ARTICLE II – ADMINISTRATION

Sec. 17-205 Definitions.

~~*Contiguous nontidal wetlands.* The term "contiguous nontidal wetlands" means nontidal wetlands that lie within or adjacent to a stream channel or within the flood plain of that stream channel so that there is a hydrologic connection between the stream and the wetland, and which include impoundments of water along a natural stream channel.~~

~~*Development area*. The term "development area" means any portion of the County designated as such in the Comprehensive Plan.~~

~~*Mitigation plan.* The term "mitigation plan" means a plan which meets the requirements of section 17-406 that describes how encroachments into a stream buffer will be mitigated through runoff treatment, revegetation, the addition of extra buffer areas, or other appropriate best management practices. A mitigation plan may be a component of a VSMP permit, or an erosion and sediment control plan if the land disturbing activity is subject solely to the VESCP.~~

~~*Necessary infrastructure.* The term "necessary infrastructure" means components of a site development necessary for the protection of the public health, safety, or welfare, and environmental features and they include, but are not limited to. drainage channels, structures and facilities, best management practices, access roads for emergency vehicles, and access roads in order to maintain stormwater management facilities or water-dependent facilities, or both.~~

~~*Other rural land*. The term "other rural land" means any portion of the County that is designated Rural Area in the Comprehensive Plan but which is not within a water supply protection area.~~

~~*Stream buffer.* The term "stream buffer" means an area of land at or near a tributary streambank or nontidal wetland, or both, that has an intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes which may result in significant degradation to the quality of State waters.~~

~~*Streamside Management Zone*. The term "streamside management zone" means an area of reduced management activity on both sides of the banks of perennial and intermittent streams and bodies of open water where extra precaution is used in carrying out forest practices to protect bank edges and water quality.~~

~~*Water supply protection area*. The term "water supply protection area" means those areas of land within the County that are within the watershed of a public water supply reservoir or water supply intake, and those areas shall consist of all land within the County that drains naturally to the South Fork Rivanna Reservoir, Beaver Creek Reservoir, Totier Creek Reservoir, Sugar Hollow Reservoir, Ragged Mountain Reservoir, the North Fork Rivanna River intake, and to any impoundment or water supply intake designated in the future by the board of supervisors as a public water supply reservoir.~~

Sec. 17-208 Fees for land disturbing activity under VSMP.

Other services	Fee
Each reinspection	$283 for the first reinspection and $383 for each subsequent
Bond agreement with surety; establish, amend or replace	$283
Each request for partial or full release of surety	$283
Amendment to approved plan	$227 per plan review
~~Review of mitigation plan pertaining to a land disturbing activity in a stream buffer~~	~~$170~~
Exceptions	$272 per request
Construction record drawing; review	$340
~~Stream Determination~~	~~$320~~
Technology Surcharge – additional percentage of each fee in this section	4%

ARTICLE IV. PROCEDURE FOR SUBMITTING, REVIEWING AND ACTING ON APPLICATIONS; POST-APPROVAL RIGHTS AND OBLIGATIONS

DIVISION 1. APPLICATION REQUIREMENTS

Sec. 17-401 VSMP permit application; form and content.

Any owner whose proposed land disturbing activity is subject to the VSMP shall submit an application for a VSMP permit that includes all of the following, in the

form required by the administrator:

A. *Application form*. A completed application on an application form provided by the administrator, signed by the owner.

B. *Fees*. All applicable fees required by section 17-207 and the applicable fee form.

C. *Registration statement*. A complete and accurate registration statement, if such a statement is required, from the operator on the official form provided by the Virginia Department of Environmental Quality in order to apply for general permit coverage. The registration statement shall be signed by the owner in accordance with 9VAC25-870-370 and 9VAC25-880-70. A registration statement is not required for construction of a detached single-family dwelling within or outside of a common plan of development or sale, provided that the project complies with the requirements of the general permit.

D. *Erosion and sediment control plan*. An erosion and sediment control plan satisfying the requirements of sections 17-402.

E. *Stormwater management plan*. A stormwater management plan satisfying the requirements of sections 17-403 or an executed agreement in lieu of a stormwater management plan.

F. *Pollution prevention plan*. A pollution prevention plan satisfying the requirements of section 17- 404.

G. *Stormwater pollution prevention plan*. A stormwater pollution prevention plan satisfying the requirements of section 17-405.

H. *Mitigation plan*. A mitigation plan satisfying the requirements of chapter 18 section 30.8 ~~17-406~~ if land disturbing activity is proposed within a ~~stream~~ riparian buffer overlay district under chapter 18 section 30.8 ~~17-604~~.

I. *Requested variations or exceptions*. A request for any variation or exception as provided in sections 17-407 and 17-408.

J. *Construction record drawings*. Construction record drawings if existing stormwater management facilities are used, satisfying the requirements of section 17-422.

DIVISION 4. POST-APPROVAL RIGHTS AND OBLIGATIONS

Sec. 17-416 Effect of approvals.

The effect of an approval of an erosion and sediment control plan for any land disturbing activity subject solely to the VESCP, or a VSMP permit, is as follows:

A. *Erosion and sediment control plan*. When an erosion and sediment control

plan is approved for any land disturbing activity subject solely to the VESCP, the owner may engage in the land disturbing activity as provided in the erosion and sediment control plan and the mitigation plan, if applicable, subject to any applicable requirements of any such plans and this chapter, including, but not limited to, sections 17-417 through 17-424, chapter 18 section 30.8, and the affirmative duties in sections 17-800 and 17-801, and State and Federal law. Any land disturbing activity shall be conducted only as it was approved under the erosion and sediment control plan and the erosion and sediment control plan shall be implemented only as it was approved.

B. *VSMP permit*. When a VSMP permit is approved, the permit is a consolidated permit authorizing the owner to engage in land disturbing activity as provided by the approved erosion and sediment control plan, the approved stormwater management plan, the pollution prevention plan, the stormwater pollution prevention plan, and the mitigation plan, if applicable, and the general permit, subject to any applicable requirements of this chapter including, but not limited to, sections 17-417 through 17-424, and sections 17-800 through 17-807, and State and Federal law. The consolidated permit shall include a copy of, or a reference to, the general permit coverage to discharge stormwater. Any land disturbing activity shall be conducted only as it was approved under the VSMP permit. Any plan approved in conjunction with a VSMP permit shall be implemented only as it was approved.

C. *Stormwater management plans for residential, commercial or industrial subdivisions govern development*. The approved stormwater management plan shall govern the development of the individual parcels until development of the project is complete, including those parcels developed under subsequent owners.

ARTICLE V. TECHNICAL CRITERIA

Sec. 17-500 Erosion and sediment control plans; applicable technical criteria.

Each erosion and sediment control plan shall satisfy the following, as applicable:

A. *Erosion and sediment control minimum standards*. The criteria, techniques and methods provided in 9VAC25-840-40.

B. *Annual standards and specifications*. Any applicable annual standards and specifications approved by the Virginia Department of Environmental Quality.

C. *Stormwater pollution prevention*. If the land disturbing activity also requires a VSMP permit, the requirements in 9VAC25-870-54(F) and as specified in 40 CFR 450.21.

D. ~~*Stream*~~ *Riparian buffers*. The procedures and requirements for land disturbing activity and development in stream buffers, as provided in chapter 18 section 30.8 ~~17-600 *et seq*~~.

E. *County design standards*. The technical criteria, including County notes and details, as provided in the Design Standards Manual.

CHAPTER 18 – ZONING

ARTICLE I – GENERAL PROVISIONS

Sec. 3.1 – Definitions

Contiguous nontidal wetlands. The term "contiguous nontidal wetlands" means nontidal wetlands that lie within or adjacent to a stream channel or within the flood plain of that stream channel so that there is a hydrologic connection between the stream and the wetland, and which include impoundments of water along a natural stream channel.[i]

Development area. The term "development area" means any portion of the County designated as such in the Comprehensive Plan.[ii]

Intermittent stream. The term "intermittent stream" means a natural stream or portion of a natural stream that has a defined bed and defined banks within which water flows in response to precipitation, through near surface groundwater flow, or from springs, and which is not a perennial stream.

Mitigation plan. The term “mitigation plan” as used in the Riparian Buffer Overlay District, means a plan that satisfies the requirements of Section 30.8.9.

Natural stream. The term "natural stream" means a tidal or nontidal watercourse that is part of the natural topography, that usually maintains a continuous or seasonal flow during the year, and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales must not be considered natural streams; however, channels designed using natural channel design concepts may be considered natural streams.[iii]

Ordinary high-water mark. The term “ordinary high-water mark” means that line established by fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving, changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.[iv]

Perennial stream. The term "perennial stream" means any stream that is depicted as a continuous blue line on the most recent United States Geological Survey 7.5 minute topographic quadrangle maps (scale 1:24,000), which is determined by the program authority to be perennial following a site-specific evaluation using the guidance entitled "Determinations of Water Bodies with Perennial Flow," dated September 2003, issued by the Chesapeake Bay Local Assistance Department, or which is delineated as a perennial stream by the United States Army Corps of Engineers, the Virginia Department of Environmental Quality, or under the Virginia Water Protection program.[v]

Streamside Management Zone. The term "streamside management zone" means an area of reduced management activity on both sides of the banks of perennial and intermittent streams and bodies of open water where extra precaution is used in carrying out forest practices to protect bank edges and water quality.[vi]

Supportive infrastructure. The term “supportive infrastructure” means components of a site development necessary for the protection of the public health, safety, or welfare, and environmental features. They include, but are not limited to, drainage channels, structures and facilities, best management practices, access roads for emergency vehicles, and access roads to maintain stormwater management facilities or water-dependent facilities, or both.[vii]

Water-dependent facility. The term “water-dependent facility” means a development that cannot exist outside of the riparian buffer and must be located on the shoreline because of the intrinsic nature of its operation and which include, but are not limited to: (i) the intake and outfall structures of power plants, sewage treatment plants, water treatment plants, and storm sewers; (ii) public water-oriented recreation areas; and (iii) boat docks and ramps.

Watershed. The term “watershed” means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet; provided that in karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

Water supply protection area. The term "water supply protection area" means those areas of land within the County that are within the watershed of a public water supply reservoir or water supply intake, and those areas consist of all land within the County that drains naturally to the South Fork Rivanna Reservoir, Beaver Creek Reservoir, Totier Creek Reservoir, Sugar Hollow Reservoir, Ragged Mountain Reservoir, the North Fork Rivanna River intake, and to any impoundment or water supply intake designated in the future by the board of supervisors as a public water supply reservoir.[viii]

Article II
Basic Regulations
Section 4 - General Regulations

Sec. 4.2 Critical Slopes and Water Protection

Sec. 4.2.1. Building site required

No lot other than a special lot ~~shall~~ may have less than one building site, subject to the following:

a. *Composition of building site. A building site ~~shall~~ must be composed of a contiguous area of land and may not contain any area of land that is: (i) in critical or preserved slopes; (ii) within the Flood Hazard Overlay District; (iii) within the Riparian Buffer Overlay District; or (iv) under water during normal hydrological conditions.; ~~(iiiiv) within 200 horizontal feet of the 100-year floodplain of any public water supply reservoir; and (v) within a stream buffer under chapter 17 of the Code, provided that nothing contained~~*

~~*herein shall be deemed to prohibit or impair the program authority from exercising its discretion as authorized in chapter 17.)*~~

Sec. 4.2.6 Exemptions.

A lot, structure, or improvement may be exempt from the requirements of section 4.2 as provided herein: (Added 10-17-01)

a. Any structure which was lawfully in existence prior to the effective date of this chapter and which is nonconforming solely on the basis of the requirements of section 4.2, may be expanded, enlarged, extended, modified and/or reconstructed as though such structure were a conforming structure. For the purposes of this section, the term "lawfully in existence" also applies to any structure for which a site development plan was approved or a building permit was issued prior to the effective date of this chapter, provided such plan or permit has not expired.

b. Any lot or parcel of record which was lawfully a lot of record on the effective date of this chapter is exempt from the requirements of section 4.2 for the establishment of the first single-family detached dwelling unit on such lot or parcel; provided that section 4.2.3(b) will apply to such lot or parcel if it contains adequate land area that is not in critical slopes for the location of such structure. For the purposes of this section a manufactured home is deemed a single-family detached dwelling unit.

c. Accessways, public utility lines and appurtenances, stormwater management facilities, and any other public facilities necessary to allow the use of the parcel are not required to be located within a building site and are not subject to the requirements of section 4.2.2, provided that the applicant demonstrates that no reasonable alternative location or alignment exists. Protective and restorative measures must be installed and maintained as deemed necessary by the county engineer to ensure that the development will be consistent with the intent of section 4.2 of this chapter. <u>This subsection does not apply to facilities within the Riparian Buffer Overlay District.</u>

Sec. 4.19 Setbacks and stepbacks in residential districts

1. Whether a site is an infill or non-infill development, and the minimum and maximum setback, shall be determined by the zoning administrator as an official determination provided to the owner.
2. Any minimum setback and any minimum building separation for a side yard, may be reduced by special exception.
3. The maximum front setback for a non-infill development shall be increased to the depth necessary to avoid existing utilities, significant existing vegetation steep slopes, perennial and intermittent streams, ~~stream~~ <u>riparian</u> buffers, public spaces and public plazas shown as such on an approved site plan or subdivision plat, to satisfy a condition of a certificate of appropriateness, and in circumstances where there are multiple buildings on the same lot and prevailing development patterns. On any parcel with multiple main buildings, at least one main building shall meet the maximum setback…

Sec. 4.20 Setbacks and stepbacks in conventional commercial and industrial districts

a. Conventional commercial districts. The following shall apply within the C-1, C0, and HC districts:

1. The maximum front setback shall be increased to the depth necessary to avoid existing utilities, significant existing vegetation, steep slopes, perennial and intermittent streams, ~~stream~~ riparian buffers, public spaces and public plazas shown as such on an approved site plan or subdivision plat, to satisfy a condition of a certificate of appropriateness, and in circumstances where there are multiple buildings on the same lot and prevailing development patterns. On any parcel with multiple main buildings, at least one main building shall meet the maximum setback.

Sec. 5.1.28 Clean earth and inert waste fill activity.

a. Each clean earth fill activity or inert waste fill activity not established and operated in conjunction with a permitted use under section 30.4 of this chapter or established and operated in conjunction with an approved site plan or subdivision are subject to the following requirements:

1. Each active fill area shall be shaped and sloped so that no undrained pockets or stagnant pools of water are created to the maximum extent reasonably practicable as determined by the program authority. All undrained pockets and stagnant pools of water resulting from drainage shall be treated as required by the Virginia Department of Health to eliminate breeding places for mosquitoes and other insects. Slope may not exceed 3:1. The height of fill may not exceed eight feet above natural grade.

2. No fill area shall be located either within the flood hazard overlay district, except as authorized by section 30.3 and section 30.8 of this chapter, or in any ~~stream~~ riparian buffer area as defined by Chapter 18~~7~~ of the Code of Albemarle or on any hydric soils as identified by the United States Department of Agriculture…

Sec. 5.1.44 Farm worker housing.

Each farm worker housing facility shall be subject to the following:

a. *Concept plan to be submitted with application for farm worker housing.* Before applying for the first building permit for a farm worker housing, Class A, facility, or in addition to any other information required to be submitted for a farm worker housing, Class B, special use permit, the applicant shall submit a concept plan meeting the requirements of section 5.1.44(b).

b. *Contents of concept plan*. The concept plan shall show the following: (i) the boundary lines of the farm (may be shown on an inset map if necessary); (ii) the location and general layout of the proposed structures at a scale of not more than one inch equals 40 feet; (iii) vehicular access, travelways and parking for the facility; (iv) topography (with a contour

interval of no greater than ten feet); (v) critical slopes; (vi) streams, ~~stream~~ riparian buffers and floodplains; (vii) source(s) of water for fire suppression; (viii) building setback lines as provided in subsection 5.1.44(g) below; and (ix) outdoor lighting. The concept plan also shall include a written description of each structure's construction and materials used, and the number of persons to be housed in the farm worker housing facility…

Sec. 30.7.4 Permitted uses.

The following uses and structures are permitted by right or by special use permit on managed or preserved slopes, provided that the land disturbing activity to establish the use or structure complies with design standards in section 30.7.5 and all other applicable requirements of the Code: …

b. *Preserved slopes*. The uses permitted by right and by special use permit on preserved slopes are as follows, subject to the applicable requirements of this chapter:

1. *By right*. The uses permitted by right on preserved slopes are the following: …

c. *Necessary public facilities*. Public facilities necessary to allow the use of the lot, provided that the lot does not contain adequate land area outside of the preserved slopes to locate the public facilities and one or more of the following exist: (i) the land disturbing activity avoids impacts on other protected resources such as ~~stream~~ riparian buffers or floodplain; (ii) the alignment of the public facilities is consistent with the alignment of public facilities depicted or described in the comprehensive plan; (iii) the disturbance is necessary to provide interconnection required by the Code or the applicable regulations of other public entities; or (iv) prohibiting the facilities from being located on preserved slopes will cause an unnecessary hardship. To the extent that public facilities are established on preserved slopes, the preserved slopes should be preserved to the maximum extent practicable consistent with the intent and purpose of this overlay district.

APPENDIX A.1 ACQUISITION OF CONSERVATION EASEMENTS PROGRAM

Sec. A.1-109 Easement terms and conditions.

B. *Protection of conservation resources*. The deed of easement shall include the following restrictions if the owner is eligible for points under section A.1-108 for the resources identified therein: …

3. ~~*Stream*~~ *Riparian buffers.* If the parcel is eligible for points in the evaluation process under section A.1-108(C)(8) for adjoining or containing perennial streams, the deed of easement shall provide for a ~~stream~~ riparian buffer at least 35 feet wide from the top of each bank of any perennial stream, as that term is defined in Chapter 17, Water Protection, of the Albemarle County Code. At a minimum, the deed of easement shall provide that within the ~~stream~~ riparian buffer, there be:

ADDING:

CHAPTER 18 ZONING

Article III – District Regulations

Section 30 – Overlay Districts

Sec 30.8 – Riparian Buffer Overlay District - RB

Sec 30.8.1 – Purposes and Intent.

The purposes and intent of this section 30.8 are to encourage and promote[ix]:

A. The protection of existing high-quality waters;

B. The restoration of all other waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;

C. The safeguarding of the clean waters from pollution;

D. The prevention of any increase in pollution;

E. The reduction of existing pollution; and

F. Water resource conservation in order to provide for the health, safety and welfare of the present and future residents of Albemarle County and the Commonwealth of Virginia.

These standards are further intended to protect riparian buffers by limiting development and land disturbance adjacent to surface watercourses and wetlands, encouraging retention of native vegetation as necessary to protect public and private water supplies, trapping sediment and other pollutants in surface runoff, promoting bank stabilization, protecting wildlife habitat, providing for storm and flood mitigation, and preserving scenic and recreational resources.

Sec 30.8.2 – Applicability.[x]

Section 30.8 applies as follows:

A. *Relationship to other regulations.* The regulations in section 30.8 supersede any less restrictive conflicting ordinances and regulations. The regulations in section 30.3 that are more restrictive will apply to land that is within both the Riparian Buffer Overlay District and the Flood Hazard Overlay District.

B. *New uses and development.* On and after XX (RB adoption date), no land may be disturbed, no land may be developed, and no structure may be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with section 30.8.

D. *Pre-existing uses and development.* Any use or development lawfully existing on XX (RB adoption date) is nonconforming to the extent that it is not in compliance with section 30.8[xi].

Sec 30.8.3 – Boundaries of the district.[xii]

A. The boundaries of the district extend from any applicable waterbody or wetlands to the farther of the following:

Development Area	Not within a water supply protection area	100 feet wide on each side of any perennial stream and contiguous nontidal wetlands
	Within a water supply protection area	The wider of either i) 100 feet on each side of any perennial or intermittent stream and contiguous nontidal wetlands, or ii) the limits of the Flood Hazard Overlay District
Public water supply impoundments	200 feet located adjacent to and landward of any such impoundment as measured horizontally from the limits of the Flood Hazard Overlay District	
All other locations	The wider of either i) 100 feet on each side of any perennial or intermittent stream and contiguous nontidal wetlands or ii) the limits of the Flood Hazard Overlay District	

B. The edge of a stream is measured from top-of-bank. The areal extent of a pond or lake is measured at the ordinary high-water mark. The full riparian buffer area extends as designated notwithstanding the presence of any permitted uses, encroachments, and/or vegetation clearing in compliance with this section 30.8.

Sec. 30.8.4 Determination of Riparian Buffer Overlay Boundaries[xiii]

A. The following terms apply to the use and interpretation of the Riparian Buffer Overlay District boundaries:

i. Designation of the boundaries listed in this section 30.8 is not subject to modification unless based on reliable, site-specific evaluation.

ii. As part of the zoning application or plan review processes, a reliable, site-specific evaluation may be required from the applicant. As a result of an evaluation, the district boundaries may be adjusted as deemed necessary by the Riparian Buffer Administrator.

iii. Any landowner or agent of the landowner may choose to submit a site-specific evaluation of the location of district boundaries certified by a professional engineer, land surveyor, landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the Commonwealth of Virginia. This evaluation is subject to review and approval by the Riparian Buffer Administrator.

iv. The applicant must show the appropriate district boundaries, applying the criteria in section 30.8.3 and 30.8.4, on all plans of development submitted for review. Such boundary locations shown on plans of development may be approved, modified, or disapproved by the Riparian Buffer Administrator. The Riparian Buffer Administrator may require a site-specific evaluation from the applicant to confirm stream classification and the location of the district boundary shown on the plan of development.

v. Any person aggrieved by a decision of the Riparian Buffer Administrator as to the district boundaries may appeal such decision to the Board of Zoning Appeals.

Sec 30.8.5 – Designation of Riparian Buffer Administrator; Powers and Duties.

The County Engineer is hereby designated as the Riparian Buffer Administrator and has all powers and duties authorized by law to administer section 30.8, including, but not limited to, the following: [xiv]

A. To delegate any duties and responsibilities set forth in section 30.8 to qualified technical personnel, plan reviewers, inspectors, and other employees.[xv]

2. To make interpretations, where needed, as to the exact location of the riparian buffer district.[xvi]

3. To make interpretations as to permitted uses.

4. In conjunction with the Zoning Administrator, who is authorized by section 31.1 to enforce this chapter, to enforce this section 30.8, investigate alleged violations, issue notices to comply, notices of violation, or stop work orders, as authorized by law, and require permit holders to take corrective action.

Sec 30.8.6 – General Performance Criteria.[xvii]

A. Except for any uses, encroachments, and/or vegetation clearing authorized by sections 30.8.7 and 30.8.8, each riparian buffer must be managed as follows:

i. Native vegetation within the riparian buffer must not be disturbed or removed, regardless of the size of the area affected.

ii. Each riparian buffer must be maintained in as natural a condition as possible. The preferred vegetative cover is a native riparian forest with ground cover, shrub, understory, and tree canopy layers.

iii. When permitted land uses within the riparian buffer cease, the full buffer must be re-established and maintained. This does not apply to ongoing agricultural and silvicultural uses.

B. Any use, development, or redevelopment of land in the Riparian Buffer Overlay District must meet the following performance criteria:

i. No more land may be disturbed than is necessary to provide for the proposed use, development, or redevelopment.[xviii]

ii. Native vegetation must be preserved to the maximum extent practicable consistent with the use, development, or redevelopment proposed.[xix]

iii. Impervious cover must be minimized consistent with the use, development, or redevelopment proposed.[xx]

iv. Any land disturbing activity must comply with all applicable requirements of the County Code.

v. Structures and improvements must be constructed and surfaced to effectively control erosion.

vi. For developments providing common areas (including open space), riparian buffers must be located outside individual building lots, unless authorized by the Riparian Buffer Administrator. In those cases, a permanent easement or other legal instrument requiring preservation of the buffer must be provided in compliance with this section 30.8.[xxi]

vii. Where a development includes a riparian buffer, the developer must install signage to identify the landward boundary of the buffer. For purposes of this subsection, the term "development" means subdivision creating one or more lots or construction activity requiring a site plan, and does not apply to property principally devoted to *bona fide* agricultural production. The Riparian Buffer Administrator will evaluate the proposed development to determine the appropriate number, size, location, and language for the signage.[xxii]

Sec. 30.8.7 Permitted Uses.[xxiii]

Uses permitted within the Riparian Buffer Overlay District are limited to the following, provided that (i) any use must comply with section 30.8.6, (ii) all applicable Federal, State, and local permits have been obtained, and (iii) any use must be otherwise permitted by this Chapter:

A. Agricultural activity, other than structures.

B. Silvicultural activity conducted in compliance with the Virginia Department of Forestry's "Virginia's Forestry Best Management Practices for Water Quality," including the establishment of Streamside Management Zones.[xxiv]

C. The construction, installation, operation, and/or maintenance of utility and transportation improvements, including electric, gas, fiber-optic and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, provided such activities comply with the state Erosion and Sediment Control Law (Virginia Code § 62.1-44.15:51 *et seq*.) or an erosion and sediment control plan approved by the State Water Control Board.[xxv]

D. The construction, installation, and/or maintenance of public water and sewer lines by public agencies, including water and sewer lines constructed by private interests for dedication to public agencies.

E. Water-dependent structures or facilities, such as docks, boat launches, water wells, footbridges, and flood control structures, provided that (i) any non-water dependent component must be located outside of the buffer, and (ii) only a single point of access may be provided. Disturbance must be minimized to that necessary for the access.[xxvi]

F. Passive recreation access and facilities, such as boardwalks, educational signs and kiosks, and trails or paths, in accordance with the Virginia Department of Conservation and Recreation's Riparian Buffers Modification & Mitigation Guidance Manual. Paths serving individual residential lots must be no more than four feet wide except as necessary for ADA or emergency services accessibility.

G. Historic preservation and archaeological activities, as approved by the Riparian Buffer Administrator in conjunction with the Zoning Administrator.

H. Buffer management, including restoration projects, general woodlot management including removal of invasives, and creating sight lines and vistas; with a plan or narrative (i) approved by the Riparian Buffer Administrator and (ii) in accordance the Virginia Department of Conservation and Recreation's Riparian Buffers Modification & Mitigation Guidance Manual. Where trees or other vegetation are removed as permitted, they must be replaced with native vegetation that is appropriate to site conditions and equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff, and in such a manner as to maximize the buffer function and to protect water quality. Mature trees must be preserved and trimmed or pruned in lieu of removal as site conditions permit. Removal of native vegetation should be limited to the least amount feasible.

I. Planting of trees, shrubs, or other native vegetation in accordance with the Virginia Department of Conservation and Recreation's Riparian Buffers Modification & Mitigation Guidance Manual.

J. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles.[xxvii]

Sec 30.8.8 – Exceptions to Permitted Uses, When Approved by Riparian Buffer Administrator.[xxviii]

The following structures, improvements, and activities may be authorized by the Riparian Buffer Administrator in the circumstances described below, provided that (i) a mitigation plan satisfying the requirements of section 30.8.9 is approved by the Riparian Buffer Administrator, and (ii) said structure, improvement, or activity complies with section 30.8.6, (iii) all applicable Federal, State, and local permits are obtained, and (iv) said structure, improvement, or activity complies with and is otherwise permitted by all other applicable law. Facilities or improvements to provide best management practices that collect and/or treat runoff from an individual lot, some portion of a lot, or from a single development project may not be located within a riparian buffer.

A. Temporary erosion and sediment control measures within the landward 50 horizontal feet of a riparian buffer, provided that to the extent practical, as determined by the Riparian Buffer Administrator: (i) the control measures are located outside of the riparian buffer, (ii) the disturbance impacts are minimized[xxix], and (iii) the area is restored upon removal of the temporary measures, in accordance with this section 30.8.

B. Structures, improvements, or activities located within the landward 50 horizontal feet of a riparian buffer that are either:

   i. Supportive infrastructure necessary to allow reasonable use of the lot[xxx]; or

   ii. Located along an intermittent stream that lies within both a water supply protection area and a development area.

   In all cases under this subsection (B), any new building site or sewage disposal system must be located outside of the riparian buffer, except as allowed under subsection (F).

C. Lakes and ponds, or temporary ecological restoration projects, intended to restore the land or watercourse to an ecologically healthy state.

D. Stream crossings for roads, streets, or driveways (including associated sidewalks, utilities, and drainage facilities), provided they meet the following minimum criteria:

   i. Bridges and culverts must satisfy the following conditions:

      a. For crossings of perennial streams: bridges, arch culverts, or box culverts may be used for the stream crossing and must be sized to adequately convey peak flow from the ten-year storm event (or the 25-year storm event if the design standards in either sections 14-410 or 18-32.7.2.1 apply) without backing water onto upstream properties. Bridges or arch culverts must either leave the stream section, consisting of the stream bed and the stream bank, undisturbed or allow the stream to return to a

natural stabilized cross-section upon completion of installation. The lowest interior elevation (invert) of a box culvert installation must be a minimum of six inches below the stream bed. Culvert walls and bridge columns should be located outside the stream banks wherever possible.

b. For crossings of intermittent streams: Bridges or culverts may be used for the stream crossing and must be sized to adequately convey peak flow from the ten-year storm event (or the 25-year storm event if either sections 14-410 or 18-32.7.2.1 apply) without backing water onto upstream properties.

ii. Stream crossings must be perpendicular to the stream, or otherwise aligned to minimize impacts to the buffer.

iii. Stream stabilization and energy dissipation measures below each bridge or culvert must be provided.[xxxi]

iv. Stream crossings must not disturb more than 30 linear feet of stream for driveways or 60 linear feet for roads or streets, provided that the Riparian Buffer Administrator may allow additional length of stream disturbance where fill slopes or special conditions necessitate additional length[xxxii].

v. The stream bed and stream banks must be stabilized within seven days of the start of backfilling for the bridge or culvert.

vi. The owner must obtain and demonstrate all applicable State and Federal approvals associated with the stream crossing.

vii. Only one stream crossing may serve the owner's lot(s), as it/they existed on May 7, 2008, and all lots created therefrom on and after that date, unless additional crossing(s) is/are permitted under subsection (E).

E. Stream crossings for roads, streets, or driveways that would not satisfy the requirements of subsection (D), or stream crossings on a lot where the riparian buffer would prohibit access necessary for reasonable use of the lot as permitted in the underlying zoning district and under the applicable regulations of Chapter 14, as determined by the Riparian Buffer Administrator;

F. Water and sewer facilities or sewage disposal systems on lots of record lawfully existing prior to February 11, 1998, on which the necessary development in the riparian buffer would consist of the construction, installation, and maintenance of water and sewer facilities or sewage disposal systems, and the Riparian Buffer Administrator determines that the riparian buffer would prohibit all reasonable use of the lot.

G. On a lot that was of record prior to February 11, 1998, development of a single building site if:

i. The riparian buffer would result in the loss of a building site, and there are no other available building sites outside the riparian buffer on the lot[xxxiii]; and

ii. The site would allow redevelopment as permitted in the underlying zoning district, provided that impervious cover and further encroachment within the riparian buffer are minimized.

H. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed, provided that:

i. Such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and applicable County ordinances;

ii. The Riparian Buffer Administrator has conclusively determined that the proposed location of the facility within the riparian buffer both (a) is necessary for reasonable use of the subject property and (b) minimizes impacts to the buffer;

iii. The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; and

iv. The facility is consistent with a comprehensive stormwater management plan developed and approved in accordance with Virginia Stormwater Management Program (VSMP) regulations[xxxiv].

I. Stormwater management facility outfalls.

J. Passive recreation access and facilities with impervious surfaces, designed in accordance with the Virginia Department of Conservation and Recreation's Riparian Buffers Modification & Mitigation Guidance Manual.

K. Public Uses.

L. Any building or structure that existed on February 11, 1998 may continue in its location on that date. The continuance, repair, replacement, expansion or enlargement of any such building or structure may be allowed except as prohibited in sections 18-6 and 18-30.3.

M. Removal of vegetation authorized by the Riparian Buffer Administrator because it poses a clearly demonstrable danger to buildings or other structures or otherwise is a danger to public health or safety.[xxxv]

Sec. 30.8.9 - Mitigation plan; form, standards, content and bonding.

A. *Form.* A mitigation plan must address the standards and content of this subsection, in the form required by the Riparian Buffer Administrator.

i. For mitigation pertaining to the development of one single-family detached dwelling, the Riparian Buffer Administrator may accept information

required on the mitigation plan with the building permit, in lieu of a separate mitigation plan.

ii. For mitigation pertaining to the remediation of a violation, the Riparian Buffer Administrator may accept a letter or other documentation in lieu of a mitigation plan.

B. *Standards.*
Riparian buffers must be established and/or restored in accordance with the Virginia Department of Conservation and Recreation's Riparian Buffers Modification & Mitigation Guidance Manual. In the case of a violation resulting in the reduction of vegetation within the buffer, either through the direct removal of trees and/or shrubs, or indirectly as a result of grading or other construction activity, tree and/or shrub removal mitigation replanting will be required at a 1:1 ratio and with hardwood trees and shrubs, planted as provided in the most current version of Chapter 5.1, Restoration/Establishment Table A of the Virginia Department of Conservation and Recreation's Riparian Buffers Modification & Mitigation Guidance Manual.

C. *Content.* Except as otherwise provided in this section 30.8, each mitigation plan must:

i. Identify the impacts of the proposed development on water quality and lands within the riparian buffer, and specify the mitigation measures that will address water quality and riparian buffer impacts.

ii. Where any portion of a riparian buffer is disturbed, establish and maintain buffer vegetation with plantings within the buffer at a ratio of two square feet of restored riparian buffer for every one square foot (2:1 ratio) of riparian buffer that is disturbed. Buffer vegetation must be planted, established and maintained at the 2:1 ratio to the extent that the riparian buffer is fully vegetated, provided that establishing vegetation outside of the riparian buffer is not required in order to satisfy the 2:1 ratio. The Riparian Buffer Administrator may require that the owner provide for the ongoing maintenance of the plantings in the riparian buffer, and may require a bond with surety or other acceptable instrument.

iii. If more than one stream crossing is sought, demonstrate that the environmental impacts from the entire road, street, or driveway necessitated by a single stream crossing would be greater than the environmental impacts caused by an additional crossing and its associated road, street, or driveway. For the purposes of this subsection, the environmental impacts considered by the Riparian Buffer Administrator include, but are not limited to, impacts to soil, soil erosion, stormwater quantity, water quality, loss of vegetated riparian buffer, impacts to stream beds and stream banks, the creation of impervious surfaces, and the disturbance of slopes of 25 percent or greater.

iv. Contain any additional information deemed necessary by the Riparian Buffer Administrator for a complete review of the plan.

[i] Source: WPO
[ii] WPO
[iii] WPO
[iv] 9VAC25-210-10 Definitions
[v] WPO
[vi] WPO from VA Forestry BMP Technical Guide.
[vii] WPO
[viii] WPO
[ix] VA Code Sect. 62.1-44.2
[x] Section 30.3 FH Overlay
[xi] Based on FHOD and expanded to include additional riparian buffers
[xii] WPO 17-600
[xiii] Common language for guidance in interpreting zoning boundaries, as in Z.O. Sec. 1.7 ©
[xiv] FHOD
[xv] FHOD
[xvi] FHOD
[xvii] WPO 17-601 is basis, especially in A. Also Ches Bay Preservation Ordinance 118-3-2.
[xviii] 9VAC25-830-130 and Ches Bay Preservation Ordinance 118-3-2
[xix] 9VAC25-830-130
[xx] 118-3-2.(c)
[xxi] Powhatan County, VA Sec. 83-471 a 6
[xxii] Powhatan County, VA Sec. 83-471 a 7
[xxiii] WPO 17-602 and some of 17-603 is basis
[xxiv] 9VAC25-830-130

[xxv] WPO 17-602
[xxvi] Consistent with 9VAC25-830-140
[xxvii] Ches Bay Local Assistance Manual Chapter IV #12
[xxviii] WPO 17-604 is basis
[xxix] WPO 17-604 G
[xxx] WPO 17-604 A
[xxxi] WPO 17-604 c2
[xxxii] WPO 17-604 c 3
[xxxiii] WPO

[xxxv] Zoning Ordinance Sec. 4.3 c 1 Tree Cutting

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