

**Report on the Public Review Process for Stream Buffer Regulations
Albemarle County Board of Supervisors Work Session – December 6, 2017**

Background

On January 4th and May 3rd of 2017, Albemarle County's Natural Resources Manager participated in work sessions with the Board of Supervisors (BOS) to discuss a Natural Resources Program for Albemarle County. During the May work session, the BOS endorsed a Natural Resources Program consisting of seven objectives. The first objective of the program states: "Conduct a thorough public review of the stream buffer requirements of the Water Protection Ordinance."

The stream buffer review is consistent with the Comprehensive Plan, which has a strong focus on natural resources in general and water resources in particular. Items in the Natural Resources chapter of the Comprehensive Plan include:

- Objective 1. Ensure clean and abundant water resources for public health, business, healthy ecosystems, and personal enjoyment by preventing shortages and contamination.
- Strategy 1a. Continue to apply the Water Protection Ordinance throughout the County to help protect and preserve water resources.
- Strategy 1c. Develop and implement a comprehensive water resources plan that sets expectations for quantity of public water supply, surface water protection and improvement, and groundwater protection.
- Objective 6. Retain and improve land cover near rivers and streams and protect wetlands.
- Strategy 6a. Continue to use the Water Protection Ordinance, critical slopes regulations, and other measures to preserve designated river and stream valleys in their natural state, to protect significant resources associated with river and stream valleys, and to provide buffer areas.

Description of the Public Engagement Process

In Spring 2017, county staff began conducting a public review of the county's stream buffer regulations. A team consisting of the Natural Resources Manager, County Engineer, and Development Process Manager/Ombudsman led the effort. The team proceeded with the understanding the BOS has a strong interest in improving water quality and stream health in the County. The primary goal of the process was to solicit ideas and input from the public, to hear the various perspectives on stream buffers and the county's regulations, and assess if changes to the regulations or the process of implementing them should be considered.

The first step of the process was conducting an online survey of local residents. Using A-mail and county social media to promote the effort, more than 4,000 area residents were invited to take the survey, which was open from April 12-30. A total of 281 people completed the survey.

A web page was created as an information source about the buffer review process. It includes a description of the process, a schedule of meetings, and links to relevant information. Among the information provided is access to the county's Water Protection Ordinance, an overview document of the buffer regulations, summaries of the survey results and stakeholder group meetings, and links to newspaper articles about two of the public meetings.

In order to engage members of the public with an interest in the topic, and to solicit input about the stream buffer rules, meetings were held with three different groups of stakeholders. Between 18-20

stakeholders attended each meeting. At least one BOS member attended each meeting as well. The meeting dates and groups were:

May 8	Farming and Forestry community
May 15	Development and Business community
May 16	Conservation community

Larger public meetings were held on August 16 and October 3. More than 50 people attended the August meeting and approximately 25 people attended the October meeting. Among the organizations participating in stakeholder and public meetings were Albemarle County Farm Bureau, Thomas Jefferson Soil and Water Conservation District, Free Enterprise Forum, Southern Environmental Law Center, Virginia Department of Forestry, and Piedmont Environmental Council.

The final public meeting regarding the buffer review process was an informational presentation made at the Albemarle County Planning Commission meeting on October 10. In addition to the public meetings, the Natural Resources Manager responded to emails and phone calls received throughout the process.

Results of the Public Engagement Process

Not surprisingly, a wide variety of ideas and perspectives were forthcoming from the public. Staff did not judge or assess the ideas, and generally refrained from entering into lengthy discussion about them. Staff remained focused on soliciting as much input as possible from interested citizens.

The A-mail survey results were beneficial in revealing a basic finding: many residents know little or nothing about the Water Protection Ordinance and the stream buffer requirements it includes. One sixth of the respondents had never heard of the ordinance. One third of the respondents had heard of the ordinance and buffer requirements but indicated they were not very familiar with it. A large number of respondents, 44.5%, indicated they do not know enough about the current buffer regulations to form an opinion about their effectiveness in protecting water quality.

During public meetings, sentiments were expressed for more restrictive buffer regulations to help improve water quality and environmental conditions, for less restrictive buffer regulations to give more land management latitude and economic opportunity, and for making few if any changes to the current regulations.

A clear division was observed between residents and advocates of the rural areas and residents and others interested in Development Areas. There were widely divergent views regarding buffers and water quality issues, the sources of water quality problems, and what steps, if any, the County should take.

Despite clear geographic and philosophical differences among portions of the county's population, there was agreement on many issues related to stream buffers. Some areas of common ground include:

- **Growth management policy.** No one questioned the need to have different sets of rules for Development Areas and the Rural Area. Many people spoke about a desire to retain the rural character of the county, and to continue encouraging future development in the Development Areas as a way to preserve the Rural Area.
- **Education.** Perhaps the most common theme during the review process was the need for better education. More residents should be made aware of the stream buffer regulations, why they are in place, and why they are important. There should be clarity about what landowners can

and cannot do on their property. Many people commented on the good will of many residents. More people would “do the right thing” on their property if they simply knew what that was (i.e., had more information and guidance).

- A “one size fits all” approach does not work. Site-specific approaches to buffers and water quality protection would be better than fixed rules that are broadly applied.
- Process issues. GIS data used for stream locations, beginning points, and type (perennial vs. intermittent) are often inaccurate. Correcting the data can be problematic due to the uncertainty in the application process with the county, the cost of consulting or hiring professionals, and the lack of understanding or availability of county staff.
- Enforcement. There needs to be more consistency when enforcing the regulations. The county should not have rules if it cannot or will not enforce them. There were numerous comments to the effect that enforcement has been lax historically and usually complaint-driven. Some comments indicate that fines amount to nothing more than a “slap on the wrist” when levied.
- Frustration with “loopholes.” Many people pointed to “loopholes” in county regulations allowing for poor land management that causes erosion issues. An example occurs when agricultural or forestal land is converted to another use (e.g., residential development) without re-establishing 100’ buffers along streams. Another example deals with exemptions from buffer regulations for farm roads when the landowner may actually be constructing the roads for future development activity. Other “loopholes” were often a misinterpretation of county regulations (e.g., landowners in the Land Use program not engaged in legitimate agricultural activity) or the inability to correct problems after the fact (e.g., timber harvest in violation of the state’s Best Management Practices (BMPs) that results in erosion and sedimentation problems).
- Incentives. Specific to discussion of Development Areas, there is strong interest in developing incentives for developers and landowners to improve the health and water quality of streams, especially as new development takes place.

Some Legal and Historical Background

Some background information is important in considering possible revisions to the county’s stream buffer regulations. The Chesapeake Bay Preservation Act (CBPA) was adopted by the Virginia General Assembly in 1989. The law focuses on land use planning and land management to improve and protect water quality in Virginia and the Chesapeake Bay.

The CBPA is mandatory in Tidewater Virginia, for all localities located east of Interstate 95. Other localities may enact the CBPA or selected aspects of it. Some key components of the law include 100’ buffers along perennial streams and contiguous non-tidal wetlands, mandatory pump-outs of septic tanks every five years, and a threshold of 2,500 square feet of land disturbance to comply with all local development review and erosion and sediment control requirements.

By enacting the Water Resource Protection Areas Ordinance In 1991, Albemarle County became the first locality west of the Tidewater region to adopt a local CBPA ordinance. The ordinance limited activities and required buffers along perennial streams. In recent years, the City of Charlottesville, Fluvanna County and Powhatan County have also enacted ordinances with some stream buffer requirements.

In Tidewater Virginia, all land within a locality, regardless of the land use, is subject to the CBPA. In localities west of the Tidewater region that choose to adopt CBPA provisions (such as Albemarle County), all land within the locality can be made subject to the provisions (i.e., no land is automatically exempt from the provisions). The lone exception occurs when silvicultural activity takes place. In this

instance, the land is exempt from the CBPA provided the silvicultural operations comply with the Virginia Department of Forestry's BMPs for water quality.

Some flexibility in buffer widths is possible on agricultural lands under the CBPA. Agricultural lands must have a soil and water quality conservation assessment conducted. Findings and recommendations from the assessment must be submitted to and approved by the local Soil and Water Conservation District (SWCD). Under certain conditions, buffers may be as narrow as 25' or 50' when agricultural BMPs are in place on land adjacent to the stream buffer and a nutrient management plan is in place for the farm operation.

With the most recent revisions to the county's Water Protection Ordinance in 2014, agricultural lands were exempted from stream buffer regulations (no agricultural BMPs or other management standards are required). Forestal lands are also exempt provided that any silvicultural activity complies with Virginia Department of Forestry's BMPs for water quality. It should be pointed out that forestry BMPs for streamside management zones are less restrictive than the county's buffer regulations for much land in the county (e.g., land that is not agricultural or forestal). The BMPs require a 50' buffer adjacent to perennial and intermittent streams (as well as lakes, ponds, and natural springs), and up to 50% of the timber within the buffer area can be harvested.

Prior to 2014, agricultural land in Albemarle County was subject to stream buffer regulation. Beginning with the Water Resource Protection Areas Ordinance in 1991, 100' buffers along perennial streams were required throughout the county. Well managed pasture and hay fields were considered adequate buffers. A buffer at least 25' wide was required between cropland and streams as part of a conservation plan approved by the Thomas Jefferson SWCD.

Some Large Issues and Questions

A number of questions and issues related to possible revisions to current buffer regulations were raised during the public meetings and staff discussions. Some questions and issues of most concern include:

General

- Language and wording of the ordinance should be easier to follow, less confusing.
- Any changes should be consistent with the billing structure for the county's stormwater utility fee, currently being developed.
- Are new GIS data or models needed for streams, to provide more reliable spatial information and stream type determinations (perennial vs. intermittent)?
- Review/clarify the provision allowing use of the landward 50' of a buffer "for necessary infrastructure to allow reasonable use of the lot."
- Review/clarify provisions for stream crossings.
- Should the impacts of climate change be considered in regulations?
- How will the county enforce new regulations?
- How will new regulations treat existing structures, uses of the land and parcels of record?
- Should erosion and sediment control facilities be allowed within the first 50' of a buffer?

Development Areas

- Should the goal be to maintain/not further degrade water quality or to improve water quality?
- Should we incentivize improving water quality? If so, how?
- Should the piping and "burying" of intermittent streams be allowed?
- What incentives can be created for "daylighting" streams that were buried in the past?

- Explore the relationship between steep slopes and streams.

Rural Area

- Clarify/determine the definition of “bona fide” agriculture.
- Should the exemption for regulations on agricultural and forestal lands, in place since 2014, be continued?
- Requiring 100’ buffers takes a significant amount of land out of production, making agriculture much less viable economically and potentially driving farmers off the land.
- Much agricultural land in Albemarle County is leased. Landowners who lease their land to farmers may not be willing to make sacrifices or accept financial burdens to keep their land in agricultural use.
- Proposed changes should not interfere with or “undo” the significant amount of stream protection (buffers and fencing) already in place, through CREP (Conservation Reserve Enhancement Program) and other cost share programs.
- Can the county provide funding or other incentives to increase the amount of rural land enrolled in cost share programs?
- Clarify/review if or how buffer regulations should apply to farm ponds.
- The growing diversity of agricultural operations in the county needs to be considered when reviewing stream buffer regulations.
- Is there a need to address non-commercial timber harvesting activities near streams? (Virginia Department of Forestry monitors forestry BMPs only on commercial harvesting operations.)
- Should there be a link between buffer regulations and property enrolled in the Land Use program?
- If buffer exemptions are kept in place for agricultural and forestal land, should properties in the Land Use program, in Ag/Forestal Districts, and/or with Open Space Use agreements be required to comply with buffer regulations?
- Does the county have the legal authority to require the above step, or would authorization from the Virginia General Assembly be needed?

Staff Conclusions and Recommendations

After completing the public review process and analyzing all the comments, the staff team feels it is necessary to divide the process into two phases moving forward. The complete review of buffer regulations and developing specific recommendations will be best accomplished by considering the Development Areas and Rural Area separately.

Working on both areas simultaneously would be very complex and very time consuming. This is true for staff, interested parties who want and need to be involved, and the Board of Supervisors. As described above, there is a clear division between the two areas. Though there are some commonalities, issues for the two areas are very different. The local communities and county residents potentially affected are also different. Staff feels that dividing the project into two phases will make it much more manageable and help ensure that some improvements will be implemented in a timely manner.

Staff further recommends that the first phase be devoted to the Development Areas. As listed above, the issues affecting the Rural Area are both numerous and complex. Many issues have significant financial and land use implications, and some may require involvement by the state. By virtue of occupying 95% of the county land area, even issues common across the county may be more difficult to resolve in the Rural Area. Monitoring and enforcing the regulations is a prime example.

In contrast, most stream buffer issues in the Development Areas center around identifying methods to improve stream health and water quality by creating incentives for developers and landowners to implement them. Incentives would be designed to further the County goal of encouraging growth in Development Areas, thus relieving some development pressure on the Rural Area. One example of an incentive idea to explore includes increasing allowable building density in return for practices that improve water quality. Possible practices include improving degraded buffers, establishing high quality buffers, permanent protection (e.g., conservation easements) of strategic parcels, and using Low Impact Development techniques such as rain harvesting, rain gardens, and permeable paving.

Development Areas have a smaller number of buffer issues to deal with and most are less complicated than those in the Rural Area. In short, staff feels that Development Area issues and improvements will be simpler and more straightforward to resolve and implement, and will require significantly less time and fewer resources than Rural Area solutions.

In monitoring and enforcing current buffer regulations, county staff spend far more time on projects and properties in the Development Areas compared to the Rural Area. Addressing Development Areas as the first phase of the project will be an efficient use of staff time. Staff envisions completing phase one and implementing it, including possible ordinance changes, before beginning phase two. Lessons learned during phase one will be used when addressing Rural Area issues, hopefully resulting in a more timely and efficient process and use of resources.

Staff proposes to begin the first phase immediately by meeting and working with interested parties to find solutions and improvements to current buffer regulations in the Development Areas. Staff intends to return for a work session with the Board of Supervisors in the spring of 2018 to review and discuss specific recommendations.

Action Requested

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