

**BY AMENDING:**

**Chapter 18 Zoning**

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## 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 floodplain 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.<sup>i</sup>

*Engineering Design Standards Manual.* The term "Engineering Design Standards Manual" or "DSM" means the manual developed and maintained by the County Engineer that includes, among other things, technical criteria and best management practices.

*Development.* "Development," as used in regulations pertaining to dam break inundation zones, means one or more lots developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more dwelling units, but does not include any lot or lots that will be principally devoted to agricultural production. For purposes of floodplain management **and riparian buffer protection standards**, "development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

*Development area.* The term "development area" means any portion of the County designated as such in the Comprehensive Plan.<sup>ii</sup>

*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.* A mitigation plan is developed to address, avoid, reduce and/or minimize impacts. The term "mitigation plan" as used in the Riparian Buffer Protection Standards means a plan that satisfies the requirements of Section 4.21.9.

*Natural stream.* The term "natural stream" means a tidal or nontidal watercourse that meets all of the following conditions: (i) it is part of the natural topography, (ii) it usually maintains a continuous or seasonal flow during the year, and (iii) it is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales are not considered natural streams. Channels designed using natural channel design concepts may be considered natural streams.<sup>iii</sup>

*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 (i) a clear, natural line impressed on the bank shelving; (ii) changes in the character of soil; (iii) destruction of terrestrial

vegetation; (iv) the presence of litter and debris; or (v) other appropriate means that consider the characteristics of the surrounding areas.<sup>iv</sup>

*Perennial stream.* The term "perennial stream" means any stream that meets any of the following conditions: (i) it 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), (ii) it 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 (iii) it 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.<sup>v</sup>

*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.<sup>vi</sup>

*Supportive infrastructure.* The term "supportive infrastructure" means structures or improvements 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.<sup>vii</sup>

*Water-dependent facility.* The term "water-dependent facility" means a development that cannot exist outside of the flood hazard overlay district **or 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.

## 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 any Riparian Buffer subject to Section 4.21; 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. 4.19 Setbacks and setbacks 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~~ **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. 4.20 Setbacks and setbacks 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 4.21** of this chapter, or in any ~~stream~~ **riparian** buffer area as defined by Chapter ~~187~~ 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:
  - a. *Existing single-family dwelling unit.* Any single-family detached or single-family attached dwelling unit which was lawfully in existence prior to March 5, 2014 may be expanded, enlarged, extended, modified or reconstructed. For the purposes of this subsection, the term "lawfully in existence" includes, but is not limited to, any single-family detached or single-family attached dwelling unit for which a building permit was issued prior to March 5, 2014; provided that the building permit has not expired.
  - b. *Existing lot of record; first single-family detached dwelling unit.* Any lot which was a lawful lot of record on March 5, 2014 may establish the first single-family detached dwelling unit on the lot; provided the lot does not contain adequate land area outside of the preserved slopes to locate the dwelling unit. For the purposes of this subsection, the term "lawful lot of record" includes any lot shown on a subdivision plat approved prior to March 5, 2014; provided that the plat is still valid.
  - 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. ...

**ADDING:**

**CHAPTER 18 ZONING**

**Article II – Basic Regulations**

Section 4 – General Regulations

Sec. 4.21 Riparian Buffer (RB) Protection Standards

**Section 4.21.1 Intent**

- A. **Virginia Code.** In accordance with Virginia Code §62.1-44.2, the Riparian Buffer Protection Standards are adopted to encourage and promote<sup>viii</sup>:
1. Protection of existing high-quality waters;
  2. 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;
  3. Safeguarding of the clean waters from pollution;
  4. Prevention of any increase in pollution;
  5. Reduction of existing pollution; and
  6. 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.
- B. **Additional purposes.** These standards are further intended to protect riparian buffers by:
1. Limiting development and land disturbance adjacent to surface watercourses and contiguous nontidal wetlands; and
  2. Encouraging retention of native vegetation as necessary to:
    - a. Protect public and private water supplies;
    - b. Trap sediment and other pollutants in surface runoff;
    - c. Promote bank stabilization;
    - d. Protect wildlife habitat;



- e. Provide for storm and flood mitigation; and
- f. Preserve scenic and recreational resources.

**Sec 4.21.2 – Applicability<sup>ix</sup>**

- A. **Relationship to other regulations.** The regulations in Section 4.21 supersede any less restrictive conflicting regulations. Any more restrictive provision of Section 30.3 that are more restrictive applies to any Riparian Buffer that is both subject to Section 4.21 and within the Flood Hazard Overlay District.
- B. **New uses and development.** On and after XX (RB adoption date), full compliance with Section 4.21 is required for any of the following occurrences within the riparian buffers outlined Section 4.21.3:
  - 1. For land disturbance;
  - 2. For land development;
  - 3. For the location, relocation, construction, reconstruction, enlargement or structural alteration of any structure; and
  - 4. For planting, removal, replacement, and management of vegetation within the riparian buffer.
- C. **Pre-existing uses and development.** Any use or development lawfully existing on XX (RB adoption date) is nonconforming if it is not in compliance with Section 4.21<sup>x</sup>.

**Sec 4.21.3 – Boundaries - General<sup>xi</sup>**

- A. **Map.** Subject to adjustments by the Riparian Buffer Administrator based on Section 4.21.4, riparian buffers are included as a map layer in the County’s Geographic Information System (GIS). This GIS map layer illustrates the general extent of the riparian buffer boundaries, and does not definitively identify all riparian buffers and boundaries.
- B. **Defined boundaries.** The boundaries of riparian buffers extend from any applicable waterbody or wetlands to the farther of the following:

<u>Development Area</u>	<u>Not within a water supply protection area</u>	<u>100 feet wide on each side of any perennial stream and contiguous nontidal wetlands</u>
	<u>Within a water supply protection area</u>	<u>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</u>

<u>Public water supply impoundments</u>	<u>200 feet located adjacent to and landward of any such impoundment as measured horizontally from the limits of the Flood Hazard Overlay District</u>
<u>All other locations</u>	<u>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</u>

- C. **Measurement.** The distance from the side of a stream is measured from the top of its 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 regardless of the presence of any permitted uses, encroachments, and/or vegetation clearing in compliance with this Section 4.21.

**Sec. 4.21.4 – Site-Specific Depiction and Determinations of Riparian Buffers<sup>xii</sup>**

- A. **Development Applications:** All development applications, plans or permits, must include a site-specific evaluation of riparian buffer boundaries, applying the criteria in Section 4.21.3 and 4.21.4, or a statement that the subject property does not include riparian buffers. If, after reviewing such a statement, the Riparian Buffer Administrator determines that the property does include riparian buffers, the applicant must submit a site-specific evaluation.
- B. **Optional Boundary Determinations:** A site-specific evaluation of the location of the riparian buffer may be submitted for review by the Administrator.
- C. **Exemptions:** The Riparian Buffer Administrator may allow an exemption from Sec. 4.21.4(A) if the development involves a single family residence.
- D. **Site-Specific Determinations of Boundaries.** All site-specific evaluations of the location of riparian buffer boundaries are subject to review and approval by the Riparian Buffer Administrator (the Administrator). The evaluations must include 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. As a result of the evaluation, the Administrator may adjust the delineation of the riparian buffer on a particular property from that shown on the GIS map.

**Sec 4.21.5 – Appointment, Powers, and Duties of Riparian Buffer Administrator**

For the purposes of Section 4.21, “Riparian Buffer Administrator” refers to the County Engineer or a designee. The Riparian Buffer Administrator has all necessary authority to administer Section 4.21, including (but not limited to) the following powers and duties:

1. To make interpretations as to the exact location of the riparian buffer.<sup>xiii</sup>
2. To make interpretations related to the administration of Section 4.21, including permitted uses.
3. In conjunction with the Zoning Administrator, to enforce Section 4.21.

Sec 4.21.6 – General Performance Criteria.<sup>xiv</sup>

- A. **Landcovers.** Permitted landcovers and changes to them are subject to the “Permitted Landcover Change Matrix” found in the Engineering Design Standards Manual (DSM).
- B. **Buffer management.** Except for any uses, encroachments, and/or vegetation clearing authorized by Sections 4.21.7 and 4.21.8, each riparian buffer must be managed as follows:
1. Native vegetation within the riparian buffer must not be disturbed or removed, regardless of the size of the area affected.
  2. 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.
  3. 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.
- C. **Performance criteria.** Any use, development, or redevelopment of land in the Riparian Buffer must meet the following performance criteria:
1. No more land may be disturbed than is necessary to provide for the proposed use, development, or redevelopment;<sup>xv</sup>
  2. Native vegetation must be preserved to the maximum extent practicable based on the use, development, or redevelopment proposed;<sup>xvi</sup>
  3. Impervious cover must be minimized consistent with the use, development, or redevelopment proposed;<sup>xvii</sup>
  4. Any land disturbing activity must comply with all applicable requirements of the County Code;
  5. Structures and improvements must be constructed to effectively control erosion;
  6. For developments providing common areas (including open space)
    - a. Riparian buffers must be located outside individual building lots; or
    - b. The Riparian Buffer Administrator may authorize riparian buffers on individual building lots if a permanent easement or other legal instrument requiring preservation of the buffer is provided that complies with Section 4.21.
  7. 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 a subdivision creating one or more

lots or a construction activity requiring a site plan, and does not apply to property principally devoted to *bona fide* agricultural production. The Riparian Buffer Administrator will determine the appropriate number, size, location, and language for the signage, based on guidelines in the Engineering Design Standards Manual (DSM).<sup>xviii</sup>

**Sec. 4.21.7 – Permitted Uses.<sup>xix</sup>**

**A. Compliance with regulations.** Any permitted use listed in Sec. 4.21.7(B) must comply with the following:

1. Section 4.21.6:
2. All applicable Federal, State, and local permits must have been obtained; and
3. Any use must be otherwise permitted by this Chapter.

**B. Permitted uses.** Uses permitted within the Riparian Buffer are limited to the following:

1. Agricultural activity, other than structures.
2. 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.<sup>xx</sup>
3. The construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads constructed by the Virginia Department of Transportation (VDOT) and their appurtenant structures, provided such activities comply with:
  - a. The Virginia Erosion and Stormwater Management Act and its regulations.
  - b. An approved soil erosion and stormwater management plan; and<sup>xxi</sup>
  - c. Local water quality protection criteria that is at least as stringent as state requirements.
4. The construction, installation, and/or maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines owned, permitted, or both, by a local government or regional service authority provided that:
  - a. To the degree possible, the location of such utilities and facilities should be outside the Riparian Buffer. Permitted utilities and facilities are those that cannot be reasonably located outside the Riparian Buffer;
  - b. No more land may be disturbed than is necessary to provide for the proposed utility installation; and

- c. All such construction, installation, and maintenance of such utilities and facilities must comply with all applicable county, state and federal permits and be designed and conducted in a manner that protects water quality.
5. Water-dependent structures or facilities, provided that:
  - a. Any non-water dependent component must be located outside of the buffer;
  - b. Only a single point of access may be provided; and
  - c. Disturbance must be minimized to that necessary for the access.<sup>xxii</sup>
6. Passive recreation access and facilities, such as:
  - a. Educational signs and kiosks; and
  - b. Trails or paths with pervious surfaces and boardwalks, 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.
7. Historic preservation and archaeological activities, as approved by the Riparian Buffer Administrator in conjunction with the Zoning Administrator.
8. Buffer replacement and restoration activities are permitted subject to the following:
  - a. A plan or narrative approved by the Riparian Buffer Administrator;
  - b. Mature trees must be preserved and trimmed or pruned in lieu of removal as site conditions permit. Removal of native vegetation must be limited to the least amount feasible. Removal of trees or other vegetation must be replaced with:
    - (1) native vegetation that is appropriate to site conditions and equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff; and
    - (2) replaced in such a manner as to maximize the buffer function and to protect water quality.
  - c. Permitted replacement and restoration activities include:
    - (1) Buffer reestablishment after conversion of agricultural or silvicultural land to another land use;
    - (2) Restoration of vegetation where forestry or agricultural best management practices recommend removal and replacement of vegetation for the health of the buffer;

- (3) Replacement of vegetation that was removed to achieve a sightline, access path or woodlot management; and
- (4) Replacement of an excessive removal of vegetation that was not permitted.
9. Planting trees, shrubs, or other native vegetation in accordance with the Engineering Design Standards Manual (DSM).
10. Installation of posts or poles.
11. When authorized by the Riparian Buffer Administrator, removal of vegetation that either poses a clearly demonstrable danger to buildings or otherwise is a danger to public health or safety.<sup>xxiii</sup>

#### Sec 4.21.8 – Additional Uses Permitted When Approved by Riparian Buffer Administrator

- A. **Authorization.** The allowance of uses listed in Sec. 4.21.8(B) is conditioned on these requirements:
  1. Riparian Buffer Administrator approval of a mitigation plan satisfying the requirements of Section 4.21.9;
  2. The structure, improvement, or activity complies with Section 4.21.6;
  3. All applicable Federal, State, and local permits are obtained; and
  4. The structure, improvement, or activity complies with and is otherwise permitted by all other applicable law.
- B. **Additional Uses.** The following structures, improvements, and activities may be authorized by the Riparian Buffer Administrator.
  1. Temporary erosion and sediment control measures within the landward 50 horizontal feet of a riparian buffer, provided that the Riparian Buffer Administrator determines that to the extent practical:
    - a. The control measures are located outside of the riparian buffer;
    - b. The disturbance impacts are minimized<sup>xxiv</sup>; and
    - c. The area is restored after removal of the temporary measures, in compliance with Section 4.21.
  2. Structures, improvements, or activities located within the landward 50 horizontal feet of a riparian buffer that are either:

- a. Supportive infrastructure necessary to allow reasonable use of the lot as provided in Sec. 4.21.8 B(8) or (9)<sup>xxv</sup>; or
- b. Located along an intermittent stream that lies within both a water supply protection area and a development area.
3. Lakes and ponds.
4. Environmental restoration projects approved by the county, a soil and water conservation district, or a public agency authorized to carry out environmental restoration.
5. Roads, streets, or driveways (including associated sidewalks, utilities, and drainage facilities), provided they comply with the Engineering Design Standards Manual (DSM), and that only one stream crossing may serve the owner's lot(s), as it (they) existed on May 7, 2008, and all subsequent lots created, unless additional crossing(s) is(are) approved under Section 4.21.
6. Stream crossings for roads, streets, or driveways that either:
  - a. Would not satisfy the requirements of subsection (5); or
  - b. The riparian buffer would prohibit access necessary for use of the lot as determined by the Riparian Buffer Administrator and as permitted by the zoning district and Chapter 14.
7. 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.
8. On a lot that was of record prior to February 11, 1998, development of a single building site if:
  - a. 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<sup>xxvi</sup>; and
  - b. The site would allow redevelopment as permitted by the property zoning, provided that impervious cover and further encroachment within the riparian buffer are minimized.
9. Flood control and stormwater management facilities serving multiple development projects or from a significant portion of a watershed, provided that:
  - a. Such facilities or improvements (to provide best management practices that collect and/or treat runoff) do not serve an individual lot, some portion of a lot, or a single development project;

- b. Such facilities are allowed by the Virginia Stormwater Management Act and applicable County ordinances;
  - c. The Riparian Buffer Administrator has conclusively determined that the proposed location of the facility within the riparian buffer both (1) is necessary for reasonable use of the subject property and (2) minimizes impacts to the buffer;
  - d. The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; and
  - e. The facility is consistent with a comprehensive stormwater management plan developed and approved by the County in accordance with Virginia Erosion and Stormwater Management Program (VESMP) regulations<sup>xxvii</sup>.
10. Stormwater management facility outfalls.
  11. Passive recreation access and facilities with impervious surfaces, designed in compliance with the Virginia Department of Conservation and Recreation's Riparian Buffers Modification & Mitigation Guidance Manual.
  12. Public Uses.
  13. 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 unless prohibited by Sections 18-6 and 18-30.3.

#### Sec. 4.21.9 – Mitigation plan: form, standards, content and bonding.

- A. **Form.** A mitigation plan must address the standards and content of this subsection and the Engineering Design Standards Manual (DSM), in the form required by the Riparian Buffer Administrator.
  1. For mitigation pertaining to the development of one single-family detached dwelling, the Riparian Buffer Administrator may accept required information on a plan with the building permit in lieu of a separate mitigation plan.
  2. 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.**
  1. General: Riparian buffers must be established and/or restored in compliance with the RB Protection Standards and the DSM.



2. Where any portion of a riparian buffer is disturbed, vegetation must be restored and maintained with plantings at a ratio of two square feet of restored riparian buffer for every one square foot of riparian buffer that is disturbed (2:1 ratio). Plantings must include only native species as identified in the DSM. Buffer vegetation must be planted, established and maintained as described in the DSM. The Riparian Buffer Administrator may require that the owner post a mitigation bond until the plants are established.
  3. If more than one stream crossing is sought, the applicant must demonstrate that a) it is necessary for use of the lot based on Section 4.21.8 B (6) (b), or b) the environmental impacts from a single stream crossing would be greater than those caused by an additional crossing and its associated road, street, or driveway. For the purposes of this subsection, qualifying environmental impacts include, but are not limited to, (i) impacts to soil, (ii) soil erosion, (iii) stormwater runoff, (iv) water quality, (v) loss of vegetated riparian buffer, (vi) impacts to stream beds and stream banks, (vii) the creation of impervious surfaces, and (viii) the disturbance of slopes of 25 percent or greater.
- C. **Content.** Except as otherwise provided in Section 4.21.8, each mitigation plan must:
1. Identify the water quality and riparian buffer impacts, and mitigation measures for the proposed development.
  2. Provide any additional information deemed necessary by the Riparian Buffer Administrator for a complete review of the plan.

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<sup>i</sup> Source: WPO

<sup>ii</sup> WPO

<sup>iii</sup> WPO

<sup>iv</sup> 9VAC25-210-10 Definitions

<sup>v</sup> WPO

<sup>vi</sup> WPO from VA Forestry BMP Technical Guide.

<sup>vii</sup> WPO

<sup>viii</sup> VA Code Sect. 62.1-44.2

<sup>ix</sup> Section 30.3 FH Overlay

<sup>x</sup> Based on FHOD and expanded to include additional riparian buffers

<sup>xi</sup> WPO 17-600

<sup>xii</sup> Common language for guidance in interpreting zoning boundaries, as in Z.O. Sec. 1.7 ©

<sup>xiii</sup> FHOD

<sup>xiv</sup> WPO 17-601 is basis, especially in A. Also Fairfax County Ches Bay Preservation Ordinance 118-3-2.

<sup>xv</sup> 9VAC25-830-130 and Fairfax County Ches Bay Preservation Ordinance 118-3-2

<sup>xvi</sup> 9VAC25-830-130

<sup>xvii</sup> 118-3-2.(c)

<sup>xviii</sup> Powhatan County, VA Sec. 83-471 a 7

<sup>xix</sup> WPO 17-602 and some of 17-603 is basis

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<sup>xx</sup> 9VAC25-830-130

<sup>xxi</sup> WPO 17-602

<sup>xxii</sup> Consistent with 9VAC25-830-140

<sup>xxiii</sup> Zoning Ordinance Sec. 4.3 c 1 Tree Cutting

<sup>xxiv</sup> WPO 17-604 G

<sup>xxv</sup> WPO 17-604 A

<sup>xxvi</sup> WPO

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