

3-E-5
(12/99)

STREAM PROTECTION OVERLAY DISTRICT (SP)

Intent: The Stream Protection Overlay District (SP) is designed to apply special regulations to the riparian buffer area no less than one hundred feet wide on each side of or perennial streams and wetlands adjacent to those streams. The purpose of the buffer is to retard runoff, prevent erosion, filter nonpoint source pollution from runoff, moderate stream temperature, and provides for the ecological integrity of stream corridors and networks.

3-E-5-a
(6/18/02)

Vegetated Stream Buffer.

Except for those land uses listed as exempt, land containing perennial streams, and/or nontidal wetlands adjacent to these streams shall provide for vegetated stream buffers of either 35 or 100 feet, as described below. The minimum stream buffer width shall be measured horizontally from the top edge of the stream bank or nontidal wetlands. The top edge of the steam bank, also known as bank-full width, is the width of the steam at normal high water events. This is determined by considering differences in vegetation (aquatic vs. typical terrestrial) and physical characteristics of the stream bank. The width of buffers for sloped stream banks shall be increased. For slopes between 15% and 25%, 35-foot buffers shall be increased to 45 feet. For slopes over 25%, 35-foot buffers shall be increased to 55 feet. For slopes between 15% and 25%, 100 foot buffers shall be increased to 125 feet. For slopes over 25%, 100-foot buffers shall be increased to 150 feet.

3-E-5-a-(1)

All parcels shall retain a vegetated buffer a minimum of one hundred feet of each side of the stream or wetland.

3-E-5-a-(2)

All parcels created or site plans approved before 1 January 2000 or parcels that were created after 1 January 2000 that qualify for Land Preservation Special Assessment (land use taxation) should establish a vegetated buffer within the buffer area, if one does not exist as described in Section 3-E-5-b.

3-E-5-a-(3)

Parcels that do not have sufficient acreage to qualify for the Land Preservation Special Assessment (land use taxation), that are shown on subdivision plat recorded or a site plan approved after 1 January 2000. Shall establish a vegetated buffer a minimum of thirty-five feet of each side of the stream or wetland (see section 3-E-5-b).

3-E-5-b
(3/19/02)

Vegetated stream buffer criteria

In order to maintain the runoff, erosion, nonpoint source pollution control, stream temperature, and ecological values of the stream buffer, indigenous vegetation shall be preserved to the maximum extent possible. The target vegetative cover in the stream buffer shall be an indigenous riparian forest with ground cover, shrub, and tree canopy layers. Removal or preservation of vegetation in the stream buffer shall be allowed as provided in paragraphs

(1) and (2) however, in no case shall vegetation be removed so as to disturb the soil.

3-E-5-b-(1) Within a minimum of thirty-five feet of the top of the stream bank and on land classified as nontidal wetland:

3-E-5-b-(1)-a Existing trees, with the following characteristics, shall be preserved:

3-E-5-b-(1)-a-(i) Have a diameter of six inches or greater(measured 4.5 feet above the ground) if large or medium canopy trees (see section 3-E-5-c);

3-E-5-b-(1)-a-(ii) Have a diameter of four inches or greater(measured 4.5 feet above the ground) if small canopy trees (see section 3-E-5-c);

3-E-5-b-(1)-b Invasive non-native species, such as *Ailanthus*, may be removed regardless of size;

3-E-5-b-(1)-c Dead, diseased, and dying trees may be removed;

3-E-5-b-(1)-d Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where stream bank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem;

3-E-5-b-(1)-(e)
(3/19/02) Pesticides shall not be applied, except by licensed applicators following pesticide label requirements.

3-E-5-b-(2) Between a minimum of thirty-five feet and a minimum of one hundred feet from the top of the stream bank and outside of nontidal wetlands:

3-E-5-b-(2)-a Dead, diseased, and dying trees may be removed;

3-E-5-b-(2)-b
(3/19/02) Invasive non-native species, such as *Ailanthus* (Tree of Heaven), *Malcura* (Osage Orange), and *Rosa Multiflora*, may be removed regardless of size;

3-E-5-b-(5) The property owner or their agent shall maintain any plant material required by this Ordinance, and any plant material that dies must be replaced in kind or with a suitable substitute as granted by the Clarke County Natural Resource Planner.

3-E-5-c The following types of development shall not be required to retain or establish a stream buffer, provided that the requirements of this section are satisfied:

3-E-5-c-(1) 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 §§ 10.1-560 et seq.) or an erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board.

3-E-5-c-(2) 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:

3-E-5-c-(2)-a To the extent practical, the location of such water or sewer lines shall be outside of all stream buffer areas;

3-E-5-c-(2)-b No more land shall be disturbed than is necessary to construct, install and maintain the water or sewer lines; and

3-E-5-c-(2)-c All such construction, installation, and maintenance of such 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.

3-E-5-c-(3) Silvicultural activities, provided that such activities are conducted in compliance with the water quality protection procedures established by the Virginia Department of Forestry in its "Best Management Practices Handbook for Forestry Operations," and are conducted on parcels that qualify for Land Preservation Special Assessment (land use taxation).

3-E-5-d The following types of development shall be allowed in a stream buffer if allowed by the Zoning Ordinance and provided that the requirements of this section are satisfied:

3-E-5-d-(1) A building or structure that existed as of 1 January 2000 may continue at such location. However, any expansion or enlargement of such structure may not encroach upon the stream buffer more than the encroachment of the existing structure.

3-E-5-d-(2) On-site or regional stormwater management facilities and temporary erosion and sediment control measures, provided that:

3-E-5-d-(2)-a To the extent practical, as determined by the Natural Resource Planner, the location of such facilities shall be outside of the stream buffer;

3-E-5-d-(2)-b No more land shall be disturbed than is necessary to provide for construction and maintenance of the facility, as determined by the Natural Resource Planner;

3-E-5-d-(2)-c The facilities are designed and constructed so as to minimize impacts to the functional value of the stream buffer and to protect water quality; and

3-E-5-d-(3) Water-dependent facilities; water wells; passive recreation access, such as pedestrian trails and bicycle paths; historic preservation; archeological activities; provided that all applicable federal, state and local permits are obtained.

3-E-5-e Types of development in a stream buffer that may be authorized by the Natural Resource Planner in the circumstances described below, provided that a mitigation plan is submitted and approved pursuant to section 3-E-5-f:

3-E-5-e-(1) a lake, pond, or ecological/wetland restoration project;

3-E-5-e-(2) construction and maintenance of a driveway or roadway, if the Natural Resource Planner determines that the stream buffer would prohibit reasonable access to a portion of the lot which is necessary in order for the owner to have a reasonable use of the lot;

3-E-5-e-(3) construction, installation and maintenance of water and sewer facilities or sewage disposal systems, on parcels recorded before

1/1/2000 if the Natural Resource Planner determines that the stream buffer would prohibit the practical development of such facilities or systems.

3-E-5-e-(4) construction of a structure, on parcels recorded before 1/1/2000, if the Natural Resource Planner determines that 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 parcel.

3-E-5-f An owner who seeks to develop in a stream buffer pursuant to section 3-E-5-e shall submit to the Natural Resource Planner for review and approval a mitigation plan as provided herein:

3-E-5-f-(1) The owner shall submit a mitigation plan that satisfies the applicable requirements of this section, a processing fee of \$100 and a certification stating that all requirements of the approved plan will be complied with.

3-E-5-f-(2) The mitigation plan shall be reviewed by the Natural Resource Planner to determine whether it complies with the requirements of this section and all other requirements of this article. The Natural Resource Planner shall approve or disapprove a mitigation plan within thirty days that a complete plan was accepted for review. The decision shall be in writing and shall be communicated to the owner. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.

3-E-5-f-(3) Each mitigation plan shall:

3-E-5-f-(3)-a identify the impacts of proposed development on water quality and lands within the stream buffer;

3-E-5-f-(3)-b ensure that, where development does take place within a stream buffer, it will 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;

3-E-5-f-(3)-c demonstrate and assure that development will be conducted using best management practices;

3-E-5-f-(3)-d specify mitigation that will address water quality and stream buffer impacts; and;

3-E-5-f-(3)-e contain all other information requested by the Natural Resource Planner.

3-E-5-f-(4) Each mitigation plan shall be evaluated by the Natural Resource Planner based on the following criteria:

3-E-5-f-(4)-a whether all reasonable alternatives to development in the stream buffer have been explored and exhausted;

3-E-5-f-(4)-b

whether the development in the stream buffer is the minimum necessary and is conducted in a manner that will be least disruptive to the natural functions of the stream buffer; and

3-E-5-f-(4)-c

whether best management practices will effectively mitigate adverse impacts from the encroachment on the stream buffer and its natural functions.

3-E-5-g

Inspections

The Natural Resource Planner shall inspect any land subject to establishing a vegetated stream buffer to insure that the buffers are installed as per the criteria outlined in this Ordinance.