

**D&C Standards Update
June 20, 2006
Meeting Notes**

This meeting covered two topics: 1) Ghost Buffers and Use of Payment to Provide; and, 2) Trail Location in Parks. Nora Curtis facilitated the first, and Terry Keyes and Carrie Pak facilitated the Parks discussion, with staff taking notes. Highlights of each discussion are summarized below.

Ghost Buffers and Use of Payment to Provide

Summary

This discussion included about 10 developer/consultant representatives, a Washington County LUT representative, and Dennis Ades of DEQ. Nora began by reviewing the two key issues: 1) buffer mitigation required when resources are replaced or reconfigured; and, 2) Payment to Provide (PTP) criteria. Nora emphasized that buffer widths are not open to change under this standards revision process.

The existing Payment to Provide criteria are intentionally restrictive in order to discourage developers from “paying their way out of” buffers, but staff and developers desire more flexibility, especially for severely constrained sites and other predictable challenges such as outfalls. It is a challenge is to define “severely constrained” sites to allow flexibility for those who will protect the resource while preventing abuses. The overarching goal is to protect wetland resources with adequate buffers—not to encourage payment instead of buffers.

Currently, Clean Water Services’ Payment to Provide option is linked with COE and DSL programs. COE is phasing out its program, and there are concerns that linking the District’s option to DSL’s program can result in “dual” mitigation. The term “ghost” buffer was coined by developers who contend that when development is allowed to disturb a wetland and replace it elsewhere, buffers should only apply to the mitigation wetland because the original wetland didn’t really have a buffer. However, the District’s rules requiring post-development buffer mitigation area to equal pre-development buffer area are intended to discourage resource and buffer impacts.

In response to a question regarding the PTP fee, Nora told the group that the Payment to Provide fee schedule had been revised in the Rates and Charges adopted this week, and will take effect July 1. A task force recommended the fees based on the available data, although the District is still willing to consider additional information regarding the cost to provide mitigation. If the PTP program is expanded, it may yield additional cost data which would be factored into subsequent fee revisions.

The development/consultant community identified other issues they felt were related and should be part of the discussion: 1) Small, isolated wetlands where the District requires a buffer although COE and DSL have not taken jurisdiction over the resource. 2) Considering application of buffers based on post-development configuration for partial fills as well as complete replacements, and 3) Clarification and concern regarding

existing language intended—but not successful—at prohibiting filling wetlands to create buffers.

Discussion of how the current rules might be interpreted to prioritize buffers over protecting the wetland resource drew a variety of ideas and opinions about buffer averaging, buffer banking, and quantification based on the functional values of the wetlands. District staff is encouraging owners with extremely resource-laden sites to look at marketing properties as mitigation “banks” rather than for development.

Nora asked for input on how to implement rules that may be less restrictive, in terms of timing for applications in progress. The group agreed that with advance notice developers can decide whether to time applications for the old or the new rules.

Summary

- Basic buffer width requirements will not be changed
- Consider functional analysis of existing buffer when determining mitigation requirements rather than strictly requiring post-development buffer area to equal pre-development area. High quality existing buffers=higher mitigation requirements. Low quality existing buffers=lower mitigation requirements
- Consider same policy for both total replacement and partial fills
- General understanding of “deterrent” aspect of rules, and desire to discourage resource and buffer impacts. Simply applying standard buffers to post-development configurations will not be acceptable, but consider more functional-based requirements.
- Clarify when resource enhancement could be offered in lieu of buffer mitigation—perhaps with greater square footage requirements.
- Address problem with impacting resources to provide buffer.
- Increase flexibility for District PTP access; disconnect absolute linkage with COE/DSL programs.
- Clarify District jurisdiction over resources not under COE/DSL jurisdiction.
- Talk to County/cities regarding land use approval revision process (Type 1 v. Type 2)—make sure implementation dates/process is clear so that applicants can make informed decisions on whether to move ahead or wait for (potential) new rules.

Next Steps

In consideration of the summary points listed above, staff will draft language for review by September.

Trail Location in Parks

Summary

Terry Keyes gave an overview of the District’s standards related to trails, noting that they have been changed several times to allow increased flexibility to locate park trails and facilities within vegetated corridors. He reviewed the District’s water quality concerns related to trails and park facilities within vegetated corridors: pet waste; concentrated runoff; need for water quality treatment/mitigation for pavement/hard surface; and, possible loss or reduction in areas that could be planted with trees to shade streams. Most serious recent issues concern 14-foot wide trails (12-feet of pavement) in buffers along the top of a streambank.

The group identified the needs and concerns of park and trail planners, including:

- 1 Need to meet ADA regulations, which is also a requirement for many grants
- 2 Requirement to meet AASHTO standards (American Association of State Highway and Transportation Officials) that often necessitate a much wider width than is desired. It is unclear whether the AASHTO standards are needed for ADA or funding requirements.
- 3 Desire to provide a trail that allows the public to see the stream
- 4 Need to provide emergency vehicle access to trails; responders prefer paved access
- 5 3-foot trails are rarely used because they are too narrow for handicap access
- 6 Soft surface trails tend to spread; they get wet, then people walk around
- 7 Connectivity is important; trails need to connect to other trails with similar widths.

The group discussed other concerns, briefly described here. Alternatives analysis is costly, and some would prefer to use the money to build trails. The group agreed that increased funding for trails is desired, but all applicants including public agencies must meet the standards and avoid and minimize impacts to water quality. In response to discussion of a potential conflict with the definition of a path versus a road, Carrie Pak noted this would be clarified in the Standards.

The park planners' major concerns about the current District standards are:

1. The 10-foot trail width limit is too narrow. Trails are typically 10 to 12-feet wide and paved with shoulders on each side, creating a 12 to 14-foot permanent encroachment into the buffer.
2. Limiting trails to the outer 40% of the buffer, per the current standards, is unrealistic because:
 - Parks have limited land available for trails, through direct ownership or easements, near stream corridors and this land is often not in the outer 40% of the buffer
 - Site conditions, e.g., flooding, are critical in dictating trail location and often require the trail be closer to the resource than the outer 40%
 - Trails should be located to provide aesthetic enjoyment for users, which often means putting the trails close to the water
 - Avoiding critical natural resources such as large stands of trees often forces the trails close to the resource
 - Locating trails in the outer edges of the buffers usually places the trails adjacent to development, e.g., building walls and patios, which should be avoided for aesthetics and property owner/neighborhood concerns

Suggestions, primarily offered by the District to meet both the parks and District needs included:

1. Require less mitigation, in exchange for pervious pavement and other low impact approaches
2. Allow different mitigation for pervious surfaces or narrower trail
3. District and park planners work together from pre-design stage to find the best approach
4. Overlay trail plans and vegetated corridor maps to identify highest priority areas

- for both parks and the District; find a mutual solution
5. Low impact surfaces would achieve better water quality

There was little consensus on these suggestions, except for working together early.

Next Steps

At the meeting, District staff indicated that they would consider the above discussion and decide how to proceed on this issue..

Update: Following the meeting, conservation stakeholders expressed concerns regarding the suggestions listed above. An additional stakeholder meeting on July 11 will further identify issues and potential solutions before staff drafts language.