

Fayetteville Streamside Protection Ordinance

Introduction

The City of Fayetteville is in the process of drafting a streamside protection ordinance, which is often referred to as a riparian buffer ordinance. In April 2009, a Nutrient Reduction Plan was completed by private consultants as part of an agreement with the Beaver Water District and the City. The Plan recommended the development of a riparian buffer ordinance in an effort to reduce the amount of nonpoint source phosphorus in the Beaver Lake Watershed, specifically, and in all the City's waterways, in general.

What is a Riparian Area?

The Natural Resources Conservation Service (NRCS) defines riparian areas as ecosystems that occur along watercourses or water bodies.¹ These areas serve many purposes — which are beneficial for water quality, wildlife, recreation and health.

What is a Riparian Buffer?

A riparian buffer is a transitional area of diverse vegetation between a body of water and an area of development (a city or construction site) or production (a farm or industry) that separates a particular land use and the adjacent body of water. A riparian buffer can help maintain healthy aquatic ecosystems and provide a range of other environmental, economic and social benefits.

What is a Streamside Protection Ordinance?

A streamside protection ordinance, otherwise known as a riparian buffer ordinance, is a policy tool that is used by municipalities for protecting water quality and maintaining wildlife habitats. A model ordinance outlined by the EPA establishes riparian buffer zones — a strip of land that runs parallel to a stream bank that will be protected. Zones may range from 25 feet to 100 feet in width depending on such factors as topography, slope and other characteristics of the property. Some ordinances establish multiple buffer zones.

Other key features of a riparian buffer ordinance include a description of activities that are clearly prohibited within a riparian buffer zone, land uses that are exempt from the

ordinance, allowable variances and provisions for penalties and appeals.

A local buffer ordinance can take a number of different forms. For governments with zoning laws, an ordinance that creates a buffer overlay district may be an option. Buffer protection could also be incorporated into a floodplain ordinance or an erosion and sedimentation control ordinance; or it can be a stand alone ordinance.

If approved by the Fayetteville City Council, the ordinance could constitute a legally binding pollution reduction agreement between the Beaver Water District and the City of Fayetteville.

Streamside Protection Ordinances and Property Rights

Streamside protection ordinances/riparian buffer ordinances have been met with some opposition among property rights advocates. Property owners have historically been concerned with a government's takings of property. Takings are an exercise of governmental authority in restricting a property owner's use of his property. To minimize a charge of takings, an ordinance should include wording in the legislative intent to justify the buffer on the basis of sound science and concern for public safety and health.

Several options can be included in a streamside protection/riparian buffer ordinance to ensure that the interests of property owners are protected. These include conservation easements, the purchasing of development rights, variances and provisions for appeals.

Alternative Approaches

A streamside protection/riparian buffer ordinance is one way to address the stormwater runoff and other water-related issues facing the City of Fayetteville. Implementing and maintaining such an ordinance can be a financially costly policy. Other options that the City could consider include low impact development ordinances, soil erosion and sediment control erosion ordinance revisions, streambank restorations and landowner incentives.

Conclusion

Governments looking to adopt a streamside protection/riparian buffer ordinance should, in general, open the process for public participation and comment. Those that do not address community concerns or provide scientific justification face the possibility of public opposition. Community outreach and education is especially key in areas where lack of information or misinformation has formed a foundation of opposition.

¹<http://www.mt.nrcs.usda.gov/technical/ecs/water/setbacks/riparian.html>

Potential Benefits of a Streamside Protection Ordinance

Environmental	Economic	Social
Traps and removes sediment from runoff	Protects citizens against property loss through flood damage and erosion prevention	Increases diversity of wildlife
Stabilizes stream banks and reduces channel erosion	Reduces flood damage and property loss to urban lands (i.e., homes, businesses, parks)	Protects prime agricultural soils from permanent loss through development
Traps and removes nutrients and contaminants	Improves aesthetics, thereby increasing property values	Provides natural fences, visual screens and noise control
Maintains habitat for fish and other aquatic organisms	Increases recreational opportunities and revenues	Offers places for camping, nature study, hunting and fishing
Protects diverse terrestrial riparian wildlife communities	Reduces costs in the treatment of drinking water	Improves quality of drinking water
	Attracts businesses and residents	Reduces heat island effect
	Supports sustainable yields of timber	Increases overall community health
	Potential tax benefits for landowners	Preserves resources for posterity

Potential Concerns of a Streamside Protection Ordinance

Environmental	Economic	Social
Buffer distances may not be chosen based upon specific buffer thresholds designed to satisfy water quality considerations	Loss of developable land	May restrict property owners of some uses or activities on portions of their land
Lack of scientific research used in developing an ordinance	Costs of providing technical assistance to developers and landowners	Perceived inappropriate seizure of land through riparian buffer ordinance
May promote the growth of urban problem plants or exotic weeds on farm land	Language in the ordinance could constrain property development	Possible tax payments and other financial costs to landowners
May provide habitat for raccoons, deer, snakes, ticks and other nuisance animals	Enforcement of buffer ordinances may be difficult and costly	May limit recreational uses
	Possible loss of property value because of possible restrictions on land	

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