

CITY OF RALEIGH – STREAM STABILIZATION POLICY

RESOLUTION NO. (2022) 429

WHEREAS, the City Council of the City of Raleigh has adopted a Storm Drainage Policy and has amended the same on several occasions beginning with Resolution No. 1970-742 and last amended by Resolution No. 2016-327, which policy is called the “City of Raleigh Stormwater Drainage Assistance Policy”; and

WHEREAS, the City of Raleigh Stormwater Drainage Assistance Policy was developed for evaluating and prioritizing drainage assistance projects that optimize public benefits from resources allocated by City Council for drainage assistance projects within the corporate limits of the City; and

WHEREAS, a similar policy is needed to preserve and protect life and support healthy natural resources through a program that repairs and revitalizes streams located within the corporate limits of the City by creating streamside riparian buffers and stabilizing eroding streambanks; and

WHEREAS, establishing a stream stabilization program will enhance water quality within the corporate limits of the City.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RALEIGH:

A stream stabilization policy is hereby established and referred to as the “City of Raleigh Stream Stabilization Policy.”

Section 1. Overview and Purpose.

The City of Raleigh’s Stormwater Management Program is responsible for managing stormwater to preserve and protect life, support healthy natural resources, and complement sustainable growth within Raleigh. Through the steps outlined herein for a stream stabilization program administered by the Stormwater Management Division within the City’s Engineering Services Department, the City will prioritize stream improvements for qualifying drainage projects to assist in preserving, restoring and creating streamside riparian buffers, and stabilizing and vegetating eroding stream banks, thereby enhancing water quality throughout the City.

Section 2. Stream Stabilization Definitions.

Riparian Buffer- a vegetated area bordering a body of water, such as a stream, lake or pond. The vegetated area closest to the body of water stabilizes the streambank and provides shade and habitat for aquatic life. The vegetation also acts as a filter and sponge to remove, transform, or store nutrients and other pollutants. The outer reaches of the vegetated buffer slow and spread out the flow of water over the land, trapping sediment and attached pollutants.

Intermittent Stream- a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be

heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.

Perennial Stream- a well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

Conservation Easement (CE) - a permanent easement granted by a landowner to the City for the purpose of permanently protecting natural areas and water quality on and within a streamside or wetland parcel or buffer by establishing use prohibitions and restrictions as covenants that encumber the conservation easement area in order to maintain or establish natural vegetation within such parcel or buffer area.

Temporary Construction Easement (TCE) - a temporary easement granted by a landowner to the City to allow the City, its employees and contractors to use a portion of the property in order to perform construction work related to a public stream stabilization project. Such uses and purposes include, but are not limited to, the removal of existing pavement as necessary; clearing; grading; the excavation of soils and other materials; use of the area for access; equipment and materials storage; construction staging; installation of stormwater drain pipes or other drainage facilities; and similar purposes. Areas that are disturbed are restored in accordance with generally accepted landscaping and engineering practices.

Rights-of-Entry (ROE) - a revocable license provided by a landowner to the City to allow the City, its employees, contractors and consultants to use a portion of the property for access or otherwise to perform design and construction work related to a public stream stabilization project with such permitted work and the expiration date of the revocable license expressly described in the ROE agreement. Areas that are disturbed are restored in accordance with generally accepted landscaping and engineering practices.

Permanent Drainage Easement (PDE) - a permanent easement granted by a landowner to the City for the acceptance, containment and transmittal of stormwater runoff and surface water drainage from adjacent properties, including the public streets, and specifically including the right, privilege and easement to access, construct, install, reconstruct, improve, inspect, repair, maintain, operate and use culverts, ditches, swales, impoundments, subsurface piping and other drainage control facilities, together with the perpetual right to clear and keep clear the full width of the PDE area. Such City maintenance activities within a PDE area include, but are not limited to, removing trees from the PDE area that may endanger the proper maintenance and operation of the stormwater infrastructure located within the PDE, clearing storm drain pipes, replacing broken stormwater infrastructure and repairing severe erosion that is threatening stormwater infrastructure.

Streambank Erosion – a natural process of actively losing soil from banks along waterways due to persistent or high velocity stormwater runoff flows. Common types of streambank erosion include active material loss on steep, vertical, or undercut stream banks and/ or sloughing of stream banks.

The City – as referred to in this policy and defined as the City of Raleigh, North Carolina.

Section 3. Stream Stabilization Program Eligibility Criteria and Prioritization.

Requests for stream repair assistance shall first be reviewed by the City's Stormwater staff to ensure that basic eligibility criteria are met. These include all of the following:

1. The project must be located within the corporate limits of Raleigh and, to the extent the project involves properties that are stormwater rate paying customers, such stormwater rate paying properties must have no outstanding balances on their stormwater utility; and
2. The project must receive and/or convey runoff that includes stormwater from public street right(s)-of-way and/or publicly-owned properties or facilities; and
3. The project must be related to, or carry, an intermittent or perennial stream and must be for the repair or restoration of a riparian buffer; and
4. The project must provide minimum 20-ft streamside riparian buffer area(s) as established by Conservation Easement(s) to be dedicated to the City, with such streamside riparian buffer(s) to be measured starting at the top of bank of the stream or creek.

Stream erosion issues will be evaluated and prioritized based upon criteria that represent the severity of stream erosion and the width of streamside riparian buffer(s) being restored. Projects will be implemented based on the amount of available funding and the availability of other City resources. The City will utilize an objective, priority-based ranking method developed in partnership with the Stormwater Management Advisory Commission to rank the most urgent stormwater needs and determine a cost-effective and equitable use of the City's stormwater funds to address the identified stream erosion problems and needs. Projects will be regularly ranked based upon pre-determined, objective, and weighted criteria, including but not limited to: public health and safety, severity of stream erosion, restoration of streamside riparian buffer(s), water quality benefits, watershed management benefits (such as being in an impaired, or draining to an impaired, watershed), equitable project distribution, community support, and implementation complexity, among others.

Stream stabilization projects also will be subject to the following guidelines:

1. All projects will be authorized and funded based on a project priority ranking system and available City funding.
2. Property owners shall grant to the City appropriate easement(s) across (his)(her)(their) property(ies) for the purpose of performing all necessary investigation and construction activities and to achieve conservation purposes. These may include, but not be limited to, Temporary Construction Easements (TCE), Rights-of-Entry (ROE) agreements, Conservation Easements (CE), and Permanent Drainage Easements (PDE). Signed easements and/or right-of-entry agreements must be obtained before any construction of stream stabilization improvements will commence on private property.

3. Design and construction of stream stabilization solutions will meet or exceed City design standards when practical.
4. Any pre-existing pipe or other drainage system installed along the public drainage system without proper City approval may need to be removed and will not be maintained by the City (for example, unpermitted piping of streams).
5. This stream stabilization program is not for new construction or redevelopment. Nothing herein shall be construed or applied in such a manner as to aid or assist in the subdivision or development of property in the City. The policy set out herein shall be applicable only to those properties for which no new subdivisions, preliminary development plans, or development plans are anticipated. Properties either subject to new development plans with associated Site Permitting Review (SPR) or mass grading plans shall not be eligible for the stream stabilization program until after two years from the issuance of a certificate of occupancy (C/O) for a development or redevelopment with an SPR plan or two years after a mass grading plan has been stabilized, whichever shall first occur. For properties subject to SPR plans, the two years after the issuance of a C/O requirement will only apply to those lots requesting stream stabilization assistance through the City's stream stabilization program. If other lots in a subdivision that are not part of a request for stream stabilization assistance are still within two years of having received a C/O or have not yet received a C/O, then the status of these other lots will not preclude the lots that have sought stream stabilization assistance from participating in the City's stream stabilization program so long as the requesting lots have met all of the requirements for participation that are set forth in this Stream Stabilization Policy. Highest priority will be given to stream erosion issues that most greatly impact overall sediment loss, water quality benefits, and streamside riparian buffer restoration. The City reserves the right to re-evaluate and review stream stabilization projects at any time.

Section 4. Application of the Stream Stabilization Policy.

- City staff will evaluate all stream erosion requests to determine whether the site and location receives public or private runoff, proximity from structures, linear feet of stream erosion and width of streamside riparian buffer that can be restored.
- Participation in stream stabilization projects by the City, its agents and contractors shall be limited to the extent to which City funds and resources are available for such purpose.
 - The purpose of this Stream Stabilization Policy is to support healthy and natural resources by addressing and correcting stream erosion, re-establishing streamside riparian buffers and reducing sediment loss. It is not the intent or the practice of the City of Raleigh's stream stabilization program to monetarily or aesthetically enhance public or private property.
- The City Manager or his/her designee is given administrative authority for assigning staff responsibility for the receipt, review and evaluation of projects under the City's Stream Stabilization Policy.

- No work shall be performed until projects are approved by the City Council. Recommendations for projects shall be made by City staff with periodic review and concurrence from the City's Stormwater Management Advisory Commission.
- Per the terms of Conservation Easements to be dedicated to the City, the maintenance of Conservation Easement areas, including litter removal and other routine maintenance, where allowed, shall be the responsibility of the property owner, except for those maintenance activities that are specifically identified as the City's responsibility in the deeds of easement that grant the Conservation Easements to the City with some of these City maintenance activities within Conservation Easement areas further described in Section 5, below.
- Upgrading/relocation of existing stormwater infrastructure for the purpose of new development or redevelopment shall be at the developers'/owners' expense. The owner of property must obtain City approval before construction.
- Projects must be reasonably permissible for purposes of all local, state and federal regulations (e.g. not for cases where individual permits or significant mitigation efforts may be required for project approval).
- The City will not participate in projects or repairs if the issue is caused by unlawful action or willful misconduct by a property owner or petitioner.
- If there exists a common interest in a project, repair or improvement with another government agency (such as NCDOT, Wake County, etc.), the City may enter into an agreement with the other government agency for a sharing of expenses.

Section 5. Easements

Generally, stream stabilization projects will be located within Permanent Drainage Easements dedicated to the City for such purposes or within public street right(s)-of-way. Temporary Construction Easements may be required for construction of stream stabilization projects, including, but not limited to, construction access.

Easements necessary for work on stream stabilization projects must be donated by property owners prior to disturbance of the property within the dedicated easement limits and all easements (with the exception of those deemed "temporary" as necessary for access and construction) will be permanent. The City will not purchase easements for the purpose of implementing stream stabilization projects.

When an owner refuses to donate any easement necessary for the system improvement, the stream stabilization project will be placed on hold indefinitely until the necessary easement(s) are donated or the site conditions change thereby eliminating the need for the stream stabilization project.

Temporary Construction Easements and Right-of-Entry agreements shall expire upon City acceptance of stream stabilization projects, generally one year from completion of construction activities.

Existing private drainage easements shall remain as such until Permanent Drainage Easements to the City are executed and recorded. Until a Permanent Drainage Easement to the City has been

executed and recorded in the applicable county Register of Deeds office, maintenance of any portion of a storm drainage system on private property remains the legal responsibility of the property owner. The City shall be responsible only for the portions of the stormwater drainage system which are in City-maintained public street rights-of-way and Permanent Drainage Easements conveyed or dedicated to and accepted by the City. Repairs and improvements to the drainage system shall be in accordance with the City's established standards, policies, and schedules. Construction on a stream stabilization project cannot begin until all applicable, dedicated easement(s) to the City are of record in the applicable county Register of Deeds office. The City, in its sole discretion, will be the party to decide which types of easement(s) are to be dedicated to the City as part of the implementation of each such stream stabilization project.

Upon the dedication of a Permanent Drainage Easement and/or Conservation Easement to the City associated with a particular stream stabilization project, certain restrictions will apply to the Permanent Drainage Easement area and/or Conservation Easement area so that the applicable area(s) can function to meet the design objectives of the project. It also should be noted that the dedication of Permanent Drainage Easements and/or Conservation Easements to the City for stream stabilization projects and/or the construction or repair by the City of the drainage facilities located within such Permanent Drainage Easements and/or Conservation Easements does not constitute a warranty against stormwater hazards, including, but not limited to, flooding, erosion, or standing water.

Encroachments within a Permanent Drainage Easement may include:

- Trees whose root systems are not a threat to the performance or maintenance of the drainage system;
- Shrubs and flowers; and
- Standard paved asphalt or concrete driveways and parking lots for underground storm drainage facilities, provided the driveways and parking lots meet the requirements of the City's Unified Development Ordinance.

Encroachments within a Conservation Easement may include:

- Natural vegetation provided they are consistent with North Carolina Department of Environmental Quality buffer rules.

Items not allowed within a Permanent Drainage Easement or Conservation Easement may include, but not be limited to:

- Trees planted over stormwater pipes;
- Tennis courts, swimming pools, dams or anything else that may block the flow of water;
- Permanent structures (such as structures made of brick, block or concrete);
- Sheds or other buildings; and
- Fences, unless approved by the Engineering Services Director.

Reference: City of Raleigh Unified Development Ordinance Section 7.2.8 for more details on drainage easements.

In general, **within a dedicated Permanent Drainage Easement or Conservation Easement**, the City will only perform the necessary maintenance activities and repairs to ensure the proper functionality of the public drainage system located within. This includes:

- Removing fallen trees and large debris from creeks when those obstructions create a qualifying drainage problem;
- Clearing storm drain pipes, catch basins and culverts;
- Repairing or replacing broken storm drainage infrastructure or systems; and
- Controlling severe creek bank erosion whenever necessary to protect water quality and adjacent properties.

Activities that the City will not perform within these Permanent Drainage Easements or Conservation Easements:

- Cleaning up sticks, leaves or debris on private property after heavy rain or flooding;
- Repairing or replacing private property damaged by stormwater runoff or flooding, including, but not limited to, indoor damages, air conditioners, heating units, fences, gardens, lawns, shrubs, mail boxes, and dog houses;
- Clearing out incidental debris from creeks and drainage ditches such as trash, leaves, grass clippings or small tree branches;
- Clearing out/cutting vegetation from creek banks as part of routine maintenance;
- Mowing a ditch or Permanent Drainage Easement on private property;
- Re-grading or re-seeding a Permanent Drainage Easement after project warranty period; and
- Other actions that do not prohibit or impact the functionality of the public drainage system.

Conditions set forth in Permanent Drainage Easements and Conservation Easements shall be binding on the heirs, successors, assigns and grantees of the properties impacted. The owner and his or her successors, tenants, assigns and heirs agree to hold the City, its officers and employees, harmless from any damage or claim whatsoever arising from the work associated with a stream stabilization project. All claims for liability shall be made against the contractors doing the work on the stream stabilization projects.

Section 6. That all resolutions, orders, actions, and other policies in conflict herewith, are repealed to the extent of such conflict. This resolution shall not apply to drainage projects already approved or completed under the previous City of Raleigh Drainage Assistance Policy.

Section 7. That this resolution shall become effective immediately upon its adoption.

Section 8. That this resolution may be altered, amended, or repealed in the complete and utter discretion of the City Council; provided, no such action shall, in any way, abrogate, repeal or waive the conditions attached to any improvement already made hereunder.

Adopted: November 1, 2022

Effective: November 1, 2022

Distribution: Department Heads