# Virginia Agricultural BMP Technical Advisory Committee Stream Protection and Forestry Subcommittee GoTo Virtual Meeting October 7, 2020 1:00pm-4:00pm

# **TIME AND PLACE**

The Stream Protection and Forestry Subcommittee meeting was held virtually on Wednesday, October 7, 2020 at 1pm.

#### **ATTENDANCE**

## Voting Members Present, 17 present, 14 required to pass any votes

Anna Killius, James River Association

Bryan Hofmann, Friends of the Rappahannock

Kevin Dunn for Charlie Wootton, Piedmont SWCD

Elizabeth Dellinger, Shenandoah Valley SWCD

Eric Paulson, Virginia State Dairymen's Association

Gary Boring, New River SWCD

Jim Riddell, Virginia Cattlemen's Association

Matt Kowalski, Chesapeake Bay Foundation

Michael Tabor, Blue Ridge SWCD

Nick Livesay, Lord Fairfax SWCD

Luke Longanecker, VACDE

Stefanie Kitchen, Virginia Farm Bureau

Darrell Marshall for Tim Higgs, VDACS

Todd Groh, DOF

Tom Turner, John Marshall SWCD

Tricia Mays, Southside SWCD

Mark Hollberg, DCR

# **Voting Members not Present**

Chris Barbour, Skyline SWCD

Robert Bradford, Culpeper SWCD

Aaron Lucas, Headwaters SWCD

#### **Non-Voting Members Present**

Chris Bradshaw, NRCS

David Bryan, DCR

Philip Davis, DEQ

Emily Francis, New Dominion Solutions VA Soil Health Coalition

Alston Horn, CBF

Marissa Roland, DCR

Sandra Stuart, Natural Bridge SWCD

Carl Thiel-Goin, DCR

Christine Watlington, DCR

#### **WELCOME**, Mark Hollberg

The following text was read by the Chair:

Good afternoon, I would like to call this virtual meeting of the Stream Protection and Forestry Subcommittee to order.

Generally, public bodies are prohibited from meeting electronically under the provisions of the Freedom of Information Act (FOIA). However, emergency language approved by the Governor and

General Assembly in the 2020 Appropriations Act allows us to move forward with certain restrictions that I will outline below.

Before I review those provisions, please let me take a moment to review how this meeting will work. We want to allow for participation by Subcommittee members, staff, and members of the public who wish to comment. However, it is essential that we are able to manage the conversation effectively.

I am chairing this meeting today; David Bryan and Christine Watlington are assisting with presentations, responding to comments, and the overall coordination of the meeting.

Please be patient with all of us as we work through this. We understand and appreciate the challenges.

Chapter 1289 of the 2020 Acts of Assembly, known as the "Budget Bill", includes language addressing the ability of public bodies to conduct electronic meetings without the need for a quorum being present in a single physical location ("Electronic Meeting").

This language was submitted as an amendment by the Governor and approved by the General Assembly at their April 22, 2020 reconvened Session. The Governor subsequently signed the Budget Bill and the Bill was effective as of July 1, 2020.

The Budget Bill allows public bodies to hold Electronic Meetings when the Governor has declared a state of emergency pursuant to §44-146.17 if:

- "(i) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assembly in a single location;
- (ii) the purpose of the meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body... and the discharge of its lawful purposes, duties, and responsibilities..." §4-0.01(g).

The Department has determined that (i) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assembly in a single location. The Department finds that the (ii) the purpose of this meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body... and the discharge of its lawful purposes, duties, and responsibilities. The Department will (iii) make available a recording or transcript of the meeting on its website in accordance with the timeframes established in §§ 2.2-3707 and 2.2-3707.1 of the Code of Virginia." The comments in the chat room will also be preserved as a public record. Official minutes of this meeting will be drafted and posted in accordance with regular procedures.

The Budget Bill does not allow an Electronic Meeting to discuss or transact business for any purpose. Rather, agenda items that the public body plans to take up must be: (a) statutorily required or (b) necessary to continue operations and discharge lawful purposes, duties and responsibilities.

The Budget Bill requires compliance with the provisions of § 2.2-3708.2. Therefore, in accordance with § 2.2-3708.2. D.2, public bodies must include a telephone number that may be used to notify the public body of any interruption in the telephonic or video broadcast of the meeting.

In the event that a disruption occurs, participants should contact Christine by phone or text at 804-564-1897. Additionally, if there is an interruption in the broadcast, the meeting must be suspended until public access is restored.

Those provisions of the Virginia Freedom of Information Act not addressed by the Budget Bill remain in effect.

Before we continue with the business portion of the meeting, I will ask David to call the roll for Subcommittee members and anticipated staff. Other participants will be recorded through the chat window. If you are participating by phone and your name is not called, please call or text Christine at 804-564-1897.

In addition, if at any time you lose connection and are unable to reconnect, please contact Christine at the same number.

*I will now turn to David for the calling of the roll:* 

(Bryan calls the roll and certifies a quorum present): A quorum was established with 17 voting members present.

After the roll, the following text was read by the Chair:

I want to explain further how we will handle participation by subcommittee members, staff, and the public. Everyone, except the individual presenting materials for an agenda item, will be muted. Once the presentation is completed, the Subcommittee members, and only Subcommittee members, will be unmuted for discussion. David and Christine will assist me with ensuring members are recognized when they have questions or comments. As needed, staff will be unmuted to address questions or concerns. Members of the public will be able to ask questions and provide input by utilizing the chat box function only. As time allows, we will respond to those questions and comments.

We will now proceed with the business of the Subcommittee as outlined in the agenda.

# **DISCUSSION**, Mark Hollberg

Mark Hollberg opened the floor for discussion on 9/15 meeting minutes. Mr. Gary Boring motioned to approve the meeting minutes, Mr. Matt Kowalski seconds. Motion #1: roll call vote to approve the September 15, 2020 meeting minutes.

Mr. Hollberg presented the revised WP-2P draft specification (see Attachment 1) with edits discussed from the previous meeting. The lifespan was changed from a one-year practice to a five-year practice, with a provision for forgiveness by the District Board in the case of renters losing their lease. The WP-2P practice is eligible for re-enrollment but is not eligible to enroll in a CCI practice.

Mr. Hollberg opened the floor for discussion.

## **Policy and Specification**

• Questions were raised about the last sentence in B.11. There was concern about how Districts would be able to ask producers not to participate in a CCI practice. The way the

language is drafted it seems that a producer would not be able to install a more permanent fence at a later time in the same area and be eligible for a CCI practice. David Bryan explained that CCIs have been intended to assist with maintenance cost associated with more permanent fencing.

- A member requested to revise the sentence to say "unless the fence installed under this specification is replace by a permanent type of fencing system." Another member suggested using the phrase "non-portable" instead of "more permanent".
- A member said the idea of WP-2P is to incentivize producers to participate and CCI is to maintain it. CCI is a perfectly acceptable option once they have done this for five years. He is uncomfortable with the language change because there is no definition of "permanent".

#### Motion #2

- o Gary Boring motioned to accept item B.11 as changed to add "unless the fencing installed under this specification is replaced by or converted to a non-portable fencing system", seconded by Kevin Dunn.
  - Motion #2 failed the roll call vote with 12 yes, 5 no.

#### • Motion #3

- Tom Turner motioned to delete the last sentence in B.11 that reads, "However, participants may not re-enroll this practice in any VACS Continuing Conservation Initiative (CCI) maintenance practice.", seconded by Matt Kowalski.
- O Motion #3 passed with 16 yes, 1 no in the roll call vote.
- A member requested to delete the last sentence in B.4 and mentioning just the water is responsibility of the producer in the field. Another member is concerned that removing reference to hardened access points would allow cattle in sensitive areas and cause a resource concern greater than the one present. The member believes there is value to leaving the sentence in as a reference for technician.

#### • Motion #4

- Kevin Dunn motioned to remove the last sentence in B.4 that reads, "permanent watering systems, hardened limited access points, solar systems, stream pick-ups, temporary troughs and portable waterers are all acceptable options" seconded by Mark Hollberg.
- o Motion #4 failed to pass the roll call vote with 8 no, 9 yes.

#### Motion #5

- Matt Kowalski motioned to change "hardened" to "stable" in the last sentence in B.4 and add to the sentence to B.2 to include "except for where stable limited access points are utilized." Tom Turner seconded.
- o Motion #5 passed unanimously.
- A member suggested changing language for B.10, to what previously approved by the Subcommittee in a motion at the last meeting. The Subcommittee voted to allow lifespan waivers for any producer that loses control of the land and not just renters.

#### • Motion #6

- Michael Tabor motioned to revert to language in the September 15, 2020 minutes for B10, "A District board may waive the lifespan requirement of this practice for any participant that loses control of the land.", Eric Paulson seconded.
- o Motion #6 passed with 15 yes, 2 no in roll call vote.

#### Rates

Motion #7

- Matt Kowalski motioned to accept section C, Elizabeth Dellinger seconded but requested an amendment from "flat payment" to "flat rate payment". Matt Kowalski accepted the amendment.
- O Motion #7 failed to pass the roll call vote with 6 no, 11 yes.
- A member stated that the payment is too low based on Virginia Tech research. He thinks the Subcommittee needs to go for a higher rate. There is discussion from the Subcommittee that this practice is designed to entice producers to participate, thus the rate should be higher. A question is raised about flat rate payment versus a percentage payment rate.
- Carl Thiel-Goin presents material prices from Tractor Supply Co. to the Subcommittee. A producer could purchase a 12.5-gauge charger with panel included for \$200, and step in posts for \$1-2/each.
- A member suggested a rate of 60 cents per linear foot. Further discussion from the Subcommittee lowers the rate to 40 cents per linear foot and raises the rate of the charger to \$250.
- A member is concerned that the Subcommittee is throwing numbers out without considering where the numbers come from. He said when comparing this practice with a CCI, there should be more benefit for CCI. Temporary options should be paid at a lower rate.
- The Subcommittee is reminded by a member that practices should be least cost, technically feasible.

#### Motion #8

- o Jim Riddell motioned to raise the rate per linear foot to 40 cents and charger to \$250, Michael Tabor seconded.
- o Motion #8 failed to pass the roll call vote with 9 no, 8 yes.
- David Bryan asked those that voted no on Motion #8 to discuss what an acceptable rate
  would be. A member presented his calculated cost for a fence and charger and explains
  that 25 cents appears to be the upper limit.

#### • Motion #9

- o Bryan Hofmann motioned for a 30 cent per linear foot of fence rate and \$250 charger, Matt Kowalski seconded.
- Motion #9 passed with 2 abstentions, 2 no, 13 yes in the roll call vote.

#### Motion #10

- o Gary Boring motioned for a vote on the entire specification, as amended during the meeting, Bryan Hofmann seconded
- Motion #10 passed and the WP-2P specification (see Attachment 2) will be presented to the full TAC on 11/4.

# **SUBCOMMITTEE ACTIONS**

*Motion #1* Gary Boring motioned to approve 9/15 meeting minutes, Matt Kowalski seconded.

Anna Killius, yes

Bryan Hofmann, yes

Kevin Dunn for Charlie Wootton, yes

Elizabeth Dellinger, yes

Eric Paulson, yes

Gary Boring, yes

Jim Riddell, yes

Luke Longanecker, yes

Matt Kowalski, yes

Michael Tabor, yes

Nick Livesay, yes Stefanie Kitchen, yes Darrell Marshall for Tim Higgs, yes Todd Groh, yes Tom Turner, yes Tricia Mays, yes Mark Hollberg, yes

# Motion #1 passed unanimously.

#### Motion #2

Gary Boring motioned to accept a change to B.11 to add the phrase "unless the fencing installed under this specification is replaced by a non-portable fencing system", seconded by Kevin Dunn.

Anna Killius, yes Bryan Hofmann, yes Kevin Dunn for Charlie Wootton, yes Elizabeth Dellinger, yes Eric Paulson, yes Gary Boring, yes Jim Riddell, no Luke Longanecker, yes Matt Kowalski, no Michael Tabor, yes Nick Livesay, yes Stefanie Kitchen, no Darrell Marshall for Tim Higgs, no Todd Groh, yes Tom Turner, no Tricia Mays, yes Mark Hollberg, yes

# 12 yes, 5 no, the motion failed to pass.

#### Motion #3

Tom Turner motioned to delete the last sentence in B.11 that reads, "However, participants may not re-enroll this practice in any VACS Continuing Conservation Initiative (CCI) maintenance practice.", seconded by Matt Kowalski.

Anna Killius, yes
Bryan Hofmann, yes
Kevin Dunn for Charlie Wootton, yes
Elizabeth Dellinger, yes
Eric Paulson, yes
Gary Boring, yes
Jim Riddell, yes
Luke Longanecker, yes
Matt Kowalski, yes
Michael T, yes
Nick L, yes
Stefanie Kitchen, yes

Darrell Marshall for Tim Higgs, yes Todd Groh, yes Tom Turner, yes Tricia Mays, yes Mark Hollberg, no

# 16 yes, 1 no, motion passed.

#### Motion #4

Kevin Dunn motioned to remove the last sentence in B.4 that reads, "permanent watering systems, hardened limited access points, solar systems, stream pick-ups, temporary troughs and portable waterers are all acceptable options." Mark Hollberg seconded.

Anna Killius, no Bryan Hofmann, no Kevin Dunn for Charlie Wootton, yes Elizabeth Dellinger, no Eric Paulson, yes Gary Boring, no Jim Riddell, yes Luke Longanecker, no Matt Kowalski, no Michael Tabor, yes Nick Livesay, no Stefanie Kitchen, yes Darrell Marshall for Tim Higgs, yes Todd Groh, yes Tom Turner, no Tricia Mays, yes Mark Hollberg, yes

# 8 no, 9 yes, motion failed to pass.

#### Motion #5

Matt Kowalski motioned to add change verbiage in B.4 from "hardened to stable" and add to the sentence in B.2 to include "except for where stable limited access points are utilized." Tom Turner seconded.

Anna Killius, yes
Bryan Hofmann, abstain
Kevin Dunn for Charlie Wootton, yes
Elizabeth Dellinger, yes
Eric Paulson, yes
Gary Boring, yes
Jim Riddell, yes
Luke Longanecker, yes
Matt Kowalski, yes
Michael Tabor, yes
Nick Livesay, yes
Stefanie Kitchen, yes
Darrell Marshall for Tim Higgs, yes
Todd Groh, yes

Tom Turner, yes Tricia Mays, yes Mark Hollberg, yes

#### Motion passed unanimously.

#### **Motion #6**

Michael Tabor motioned to revert to language in the September 15, 2020 minutes for B.10. "A District Board may waive the lifespan requirement of this practice for any participant that loses control of the land." Eric Paulson seconded.

Anna Killis, no Bryan Hofmann, yes Kevin Dunn for Charlie Wootton, yes Elizabeth Dellinger, yes Eric Paulson, yes Gary Boring, yes Jim Riddell, yes Luke Longanecker, yes Matt Kowalski, yes Michael Tabor, yes Nick Livesay, yes Stefanie Kitchen, yes Darrell Marshall for Tim Higgs, yes Todd Groh, yes Tom Turner, yes Tricia Mays, yes Mark Hollberg, no

# 15 yes, 2 opposed, motion passed.

#### Motion #7

Tom Turner, yes Tricia Mays, yes

Matt Kowalski motioned to accept section C with addition of the word "rate", seconded by Elizabeth Dellinger.

Anna Killius, yes
Bryan Hofmann, yes
Kevin Dunn for Charlie Wootton, yes
Elizabeth Dellinger, yes
Eric Paulson, no
Gary Boring, yes
Jim Riddell, no
Luke Longanecker, no
Matt Kowalski, yes
Michael Tabor, no
Nick Livesay, yes
Stefanie Kitchen, no
Darrell Marshall for Tim Higgs, no
Todd Groh, yes

# Mark Hollberg, yes

# 6 no, 11 yes, Motion failed to pass.

#### Motion #8

Jim Riddell motioned to raise the rate per linear foot to 40 cents and charger to \$250, Michael Tabor seconded.

Anna Killius, yes Bryan Hofmann, no Kevin Dunn for Charlie Wootton, no Elizabeth Dellinger, yes Eric Paulson, yes Gary Boring, no Jim Riddell, yes Luke Longanecker, yes Matt Kowalski, no Michael Tabor, yes Nick Livesay, no Stefanie Kitchen, yes Darrell Marshall, yes Todd Groh, no Tom Turner, no Tricia Mays, no Mark Hollberg, no

# 8 yes, 9 no, motion failed to pass.

## **Motion #9**

Bryan Hofmann motioned for a 30 cent per linear foot of fence rate and \$250 charger, Matt Kowalski seconded.

Anna Killius, yes Bryan Hofmann, yes Kevin Dunn for Charlie Wootton, no Elizabeth Dellinger, yes Eric Paulson, abstain Gary Boring, yes Jim Riddell, abstain Luke Longanecker, yes Matt Kowalski, yes Michael Tabor, yes Nick Livesay, yes Stefanie Kitchen, yes Darrell Marshall for Tim Higgs, yes Todd Groh, yes Tom Turner, yes Tricia Mays, no

Mark Hollberg, yes

## 2 abstentions, 2 no, 13 yes, motion passed.

#### Motion #10

Gary Boring motioned to accept the WP-2P draft as amended, Bryan Hofmann seconded.

Anna Killius, yes

Bryan Hofman, yes

Kevin Dunn for Charlie Wootton, yes

Elizabeth Dellinger, yes

Eric Paulson, yes

Gary Boring, yes

Jim Riddell, yes

Luke Longanecker, yes

Matt Kowalski, yes

Michael Tabor, yes

Nick Livesay, yes

Stefanie Kitchen, yes

Darrell Marshall for Tim Higgs, yes

Todd Groh, yes

Tom Turner, yes

Tricia Mays, yes

Mark Hollberg, yes

# Motion #10 passed unanimously.

# **PUBLIC COMMENT**

David Bryan and Mark Hollberg thanked the subcommittee for their discussion and assistance on creating the specification.

# FUTURE MEETING DATES, TIMES AND LOCATIONS

Full TAC meeting webinar on 11/4 at 1pm.

Stream Protection and Forestry Subcommittee webinar on 12/1 at 1pm.

TAC year wrap-up webinar will be held virtually on 12/17 at 1pm.

# **ADJOURN-3:35PM**

#### Attachment 1

Name of Practice: PORTABLE FENCING FOR STREAM PROTECTION DCR Specifications for No. WP-2P

This document specifies terms and conditions for the Virginia Department of Conservation and Recreation's portable fencing for stream protection best management practice that are applicable to all contracts entered into with respect to that practice.

# A. <u>Description and Purpose</u>

Protection by portable fencing along <u>all live streams or live water</u> in a field to reduce erosion, sedimentation and the pollution of water from agricultural nonpoint sources.

The purpose of this practice is to offer an incentive to exclude livestock from all live streams or live water, thereby effectively controlling soil erosion, sedimentation, and nutrient loss from surface runoff to improve water quality.

# B. Policies and Specifications

- This practice will provide a portable fencing system for protection of all live streams or live water to prevent direct deposition of livestock waste and protect stream banks and other water features such as: wetlands, intermittent springs, seeps, ponds connected to streams, sensitive karst features, and gullies adjacent to springs.
- 2. No minimum fencing standards are required. However, the producer is required to exclude livestock from all live streams and live water in the field(s) at all times during the lifespan of this practice.
- 3. The portable fence may be placed at the top of bank or with a buffer setback.
- 4. Due to the temporary nature of this portable fencing practice, provision of water is the responsibility of the producer in the field(s) where the portable fencing system will be utilized. Permanent watering systems, hardened limited access points, solar systems, stream pick-ups, temporary troughs and portable waterers are all acceptable options.
- 5. Wildlife, environmental, and livestock shade considerations must be given when designing the practice.
  - 6. Flash grazing (allowing livestock to graze the excluded riparian area) is not allowed as a management alternative during the lifespan of this practice.

- 7. All practice components implemented must be maintained for a minimum of 5 years. The lifespan begins on Jan. 1 of the calendar year following the year of certification of completion. By accepting a cost-share payment for this practice the participant agrees to maintain all practice components for the specified lifespan.
- 8. This practice is subject to spot checks from District staff annually for the lifespan of the practice and failure to maintain the practice may result in reimbursement of cost-share.
- 9. Lifespan requirements can be waived at the discretion of the District Board if the portable fencing system is destroyed by flooding.
- 10. Lifespan requirements can be waived at the discretion of the District Board due to loss of lease by the participant (i.e. in the case of rented land) in situations where the loss of lease was no fault of the participant.
- 11. This practice is eligible for re-enrollment and replacement after the practice lifespan expires. However, participants may not re-enroll this practice in any VACS Continuing Conservation Initiative (CCI) maintenance practice.

# C. Rate(s)

The state cost-share rate is a single payment of \$0.25 per linear foot of fence plus a flat payment of \$200.00 per fencing charger required for effective use of the portable fencing system in the least cost, technically feasible manner of design.

# D. Technical Responsibility

Technical and administrative responsibility is assigned to qualified technical DCR and District staff in consultation, where appropriate and based on the controlling standard, with DCR, Virginia Certified Nutrient Management Planner(s), NRCS, DOF, and VCE. Individuals certifying technical need and technical practice installation shall have appropriate certifications as identified above and/or Engineering Job Approval Authority (EJAA) for the designed and installed component(s). All practices are subject to spot check procedures and any other quality control measures.

Created April 2021

#### **Attachment 2**

# Name of Practice: PORTABLE FENCING FOR STREAM PROTECTION DCR Specifications for No. WP-2P

This document specifies terms and conditions for the Virginia Department of Conservation and Recreation's portable fencing for stream protection best management practice that are applicable to all contracts entered into with respect to that practice.

# A. Description and Purpose

Protection by portable fencing along <u>all live streams or live water</u> in a field to reduce erosion, sedimentation and the pollution of water from agricultural nonpoint sources.

The purpose of this practice is to offer an incentive to exclude livestock from all live streams or live water, thereby effectively controlling soil erosion, sedimentation, and nutrient loss from surface runoff to improve water quality.

# B. Policies and Specifications

- 1. This practice will provide a portable fencing system for protection of all live streams or live water to prevent direct deposition of livestock waste and protect stream banks and other water features such as: wetlands, intermittent springs, seeps, ponds connected to streams, sensitive karst features, and gullies adjacent to springs.
- 2. No minimum fencing standards are required. However, the producer is required to exclude livestock from all live streams and live water in the field(s) at all times during the lifespan of this practice, except for where stable limited access points are utilized.
- 3. The portable fence may be placed at the top of bank or with a buffer setback.
- 4. Due to the temporary nature of this portable fencing practice, provision of water is the responsibility of the producer in the field(s) where the portable fencing system will be utilized. Permanent watering systems, stable limited access points, solar systems, stream pick-ups, temporary troughs and portable waterers are all acceptable options.
- 5. Wildlife, environmental, and livestock shade considerations must be given when designing the practice.
- 6. Flash grazing (allowing livestock to graze the excluded riparian area) is not allowed as a management alternative during the lifespan of this practice.

- 7. All practice components implemented must be maintained for a minimum of 5 years. The lifespan begins on Jan. 1 of the calendar year following the year of certification of completion. By accepting a cost-share payment for this practice the participant agrees to maintain all practice components for the specified lifespan.
- 8. This practice is subject to spot checks from District staff annually for the lifespan of the practice and failure to maintain the practice may result in reimbursement of cost-share.
- 9. Lifespan requirements can be waived at the discretion of the District Board if the portable fencing system is destroyed by flooding.
- 10. A District Board may waive the lifespan requirement of this practice for any participant that loses the land.
- 11. This practice is eligible for re-enrollment and replacement after the practice lifespan expires.

#### C. Rate(s)

The state cost-share rate is a single payment of \$0.30 per linear foot of fence plus a flat rate payment of \$250.00 per fencing charger required for effective use of the portable fencing system in the least cost, technically feasible manner of design.

#### D. Technical Responsibility

Technical and administrative responsibility is assigned to qualified technical DCR and District staff in consultation, where appropriate and based on the controlling standard, with DCR, Virginia Certified Nutrient Management Planner(s), NRCS, DOF, and VCE. Individuals certifying technical need and technical practice installation shall have appropriate certifications as identified above and/or Engineering Job Approval Authority (EJAA) for the designed and installed component(s). All practices are subject to spot check procedures and any other quality control measures.

Created April 2021