



***DOCKET ITEM # 5***  
***Zoning Text Amendment #2024-00003***  
***Environmental Management Ordinance***

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<b>Issue:</b> (A) Initiation of a text amendment and (B) public hearing and consideration of a text amendment to the zoning ordinance to amend various sections of Article XIII to: revise existing sections 13-102 through 13-126 to reflect updated language due to the Commonwealth's consolidation efforts that combine the Erosion and Sedimentation Control and Stormwater Management Program regulations. The amendments will merge existing Code of Virginia regulations related to stormwater and erosion and sediment control into a single regulatory chapter.	Planning Commission Hearing:	March 5, 2024
	City Council Hearing:	March 16, 2024
<b>Staff:</b> William J. Skrabak, Deputy Director Jesse E. Maines, Division Chief Christina Zechman Brown, Deputy City Attorney Lindsay Dubin, Assistant City Attorney Gavin Pellitteri, Stormwater Principal Planner		

## **I. Issue**

Consideration of adoption of administrative, non-substantive revisions to Zoning Ordinance Article XIII (Environmental Management), to be consistent with new numbering related to the state’s consolidation of the Virginia Stormwater Management Program Regulations and Erosion and Sediment Control Regulations into a single chapter with different numbering.

## **II. Background**

Pursuant to Chapters 68 and 758 of the 2016 Acts of the General Assembly, the Virginia Department of Environmental Quality has consolidated 9VAC25-840, the Erosion and Sediment Control (ESC) Regulations, 9VAC25-850, the Erosion and Sediment Control and Stormwater Management Certification Regulations, and 9VAC25-870, the Virginia Stormwater Management Program Regulations into a single regulatory chapter 9VAC25-875, the Virginia Erosion and Stormwater Management (VESM) Regulation effective July 1, 2024. Also on July 1, 2024, Chapters 68 and 758 of the 2016 Acts of Assembly become effective. Those Acts, referred to as the “Consolidation Bill,” combine stormwater management and erosion and sediment control requirements under the Virginia Erosion and Stormwater Management Act (VESMA), §§ 62.1-44.15:24 through 62.1-44.15:50 of the Code of Virginia. Through consolidation, the new regulation clarifies program requirements, eliminates redundancies, and corrects inconsistencies between erosion and sediment control regulations and stormwater management program regulations. No substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria are part of this regulatory action.

These non-substantive revisions to Article XIII of the Zoning Ordinance are recommended for consistency with the consolidation and must also be effective July 1, 2024, to comply with Virginia requirements for locality adoption by the effective date.

## **III. Discussion of Proposed Text Changes**

*Name, numbering, and definitions: Consolidation of the VSMP and the ESC created a combined Act and naming of the local program authority requiring non-substantive changes to reflect the updated name, numbering, and definitions of the program.*

13-102 - Authority.

This Article XIII is issued under the authority of Section 62.1-44.15:73 of the Code of Virginia (the Chesapeake Bay Preservation Act), 62.1-44.15:24 et seq. of the Code of Virginia (~~the Virginia Stormwater Management Act~~) (the Virginia Erosion and Stormwater Management Act) and attendant regulations as adopted by the Virginia State Water Control Board. Code of Virginia Section 62.1-44.15:27 specifically requires the City to adopt a ~~Virginia Stormwater Management Program~~ Virginia Erosion and Stormwater Management Program. Authority to protect water quality is also provided by Section 15.2-2283 of the Code of Virginia.

13-103 - Definitions.

The following words and terms used in this Article XIII have the following meanings, unless the context clearly indicates otherwise.

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- (M) Floodway. All lands as defined in subsection 6-303(~~K~~O) of this ordinance.
- (N) General permit. The state permit titled General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities found in 9VAC25-880 et seq.) of the Virginia Stormwater Management Regulations Virginia Erosion and Stormwater Management Regulations authorizing a category of discharges under the federal Clean Water Act and the ~~Virginia Stormwater Management Act~~ Virginia Erosion and Stormwater Management Act within a geographical area of the Commonwealth of Virginia.

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- (EE) Public road. For the purpose of this Article XIII, public road means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) ~~the Erosion and Sediment Control Law (Section 64.1-44.15:51 et seq. of the Code of Virginia)~~ and (ii) ~~the Virginia Stormwater Management Act (Section 64.1-44.15:24 et seq. of the Code of Virginia)~~ the Virginia Erosion and Stormwater Management Act (Section 62.1-44.15:51 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where roads are constructed or maintained, or both, by the City of Alexandria.

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- (GG) Regulations. ~~The Virginia Stormwater Management Program (VSMP) Permit Regulations, 9VAC 25-870, as amended.~~ The Virginia Erosion and Stormwater Management Program (VESMP) Permit Regulations, 9VAC25-875, as amended.

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- (NN) State permit. An approval to conduct a land-disturbing activity issued by the Virginia State Water Control Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued

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by the Virginia State Water Control Board for stormwater discharges from an MS4. Under these state permits, the state imposes and enforces requirements pursuant to the federal Clean Water Act, the ~~Virginia Stormwater Management Act~~ Virginia Erosion and Stormwater Management Act, and their attendant regulations.

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- (BBB) ~~Virginia Stormwater Management Act. Article 2.3~~ Virginia Erosion and Stormwater Management Act (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.
- (CCC) Virginia Stormwater BMP Clearinghouse website. A website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the ~~Virginia Stormwater Management Act~~ Virginia Erosion and Stormwater Management Act and regulations.
- (DDD) ~~Virginia Stormwater Management Program (VSMP)~~ Virginia Erosion and Stormwater Management Program (VESMP). A program approved by the Virginia State Water Control Board that has been established by a ~~locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permits, requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection and enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations~~ VESMP authority for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of the Virginia Erosion and Stormwater Management Act.
- (EEE) ~~VSMP~~ VESMP authority. An authority approved by the Virginia State Water Control Board to operate a ~~VSMP~~ VESMP. For the purposes of this article, the city is the ~~VSMP~~ VESMP authority.
- (FFF) ~~VSMP~~ VESMP authority permit. An approval to conduct a land-disturbing activity issued by the city for the initiation of a land-disturbing activity after evidence of general permit coverage has been provided where applicable. In the City of Alexandria a ~~VSMP~~ VESMP authority permit is not a separate permit. Rather, the issuance of a building, land use, or other land development permit is contingent on a proposed land-disturbing activity meeting all ~~VSMP~~ VESMP

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authority permit requirements in ~~9VAC 25-870~~ 9VAC25-875 and the requirements of this article.

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13-104 - Administration.

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- (D) Establishment of fees. The director of T&ES shall by general rule approved by city council establish a schedule of fees required for each application under this Article XIII to be paid at the time an application is submitted. The schedule of fees shall include those authorized by ~~9VAC25-870-700~~ 9VAC25-875-1290 et seq. The schedule of fees is set per approved council docket.

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13-109 - General performance requirements for CBPAs.

The director of T&ES shall approve development, redevelopment, uses, or land-disturbing activities in the CBPA only if it is found that the activity is in compliance with this Article XIII and that the applicant has demonstrated, by a preponderance of the evidence, that the proposed development, redevelopment, use, or land-disturbing activity meets or exceeds the following standards.

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- (E) All development, redevelopment, and uses disturbing greater than 2,500 square feet shall meet the following storm water quality management performance requirements. For purposes of this section, the following shall be used to define the site area for determining water quality requirements: for projects disturbing less than 50 percent of the tax parcel (or if multiple parcels are involved, the land subject to the application), the disturbed area shall be used as the site area; for projects disturbing greater than or equal to 50 percent of the tax parcel (or if multiple parcels are involved, the land subject to the application), the entire tax parcel shall be used as the site area.

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- (2) Single-unit residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-unit detached residential structures are exempt from subsections (4) and (5) below. The Alexandria water quality volume default requirement in subsection (6) still applies. “Single unit residences separately built” shall mean “single family detached residential structures” as used in § 62.1-44.15:34 C. 3.

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- (3) In order to protect the quality of state waters located within the City of Alexandria and to control the discharge of stormwater pollutants from regulated activities, the following minimum design criteria and statewide standards for stormwater management, per ~~9VAC25-870-63~~ 9VAC25-875-580 shall be applied.
- (4) New development. The total phosphorus load of new development projects shall ~~not exceed 0.41 pounds per acre per year~~ comply with the water quality design criteria requirements in 9VAC25-875-580, as calculated pursuant to this section.
- (5) Development of prior developed lands:

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- (d) In lieu of subsection (c), the total phosphorus load of a linear development project as defined in ~~9VAC25-870-10~~ 9VAC25-875-580 occurring on prior developed lands shall be reduced 20 percent below the predevelopment total phosphorus load.

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- (7) Compliance with subsections (4) and (5) above shall be determined using the runoff reduction method and through the use of stormwater BMPs established in ~~9VAC25-870-65~~ 9VAC25-875-590 or found at the Virginia BMP Clearinghouse website, except as may be limited in accordance with policies established by the director of T&ES in accordance with subsection 13-104(C).
- (8) Compliance with subsections (4) and (5) may be achieved by the applicant in accordance with off-site compliance options in ~~9VAC25-870-69~~ 9VAC25-875-610 under the following circumstances:
  - (a) Less than five acres of land will be disturbed;
  - (b) The post-construction phosphorus control requirement is less than ten pounds per year; or
  - (c) At least 75 percent of the required phosphorus nutrient reductions are achieved on-site. If at least 75 percent of the require phosphorus nutrient reductions cannot be met on-site, and the operator can demonstrate to the satisfaction of the director of T&ES that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with post-development nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options.

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- (10) Notwithstanding those exemptions granted under section 13-123, all such land-disturbing activities shall be subject to the design storm and hydrologic methods set out in ~~9VAC25-870-72~~ 9VAC25-875-620, linear development controls in ~~9VAC25-870-76~~ 9VAC25-875-640, and criteria associated with stormwater impoundment structures in ~~9VAC25-870-85~~ 9VAC25-875-650.

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13-110 - Alexandria water quality improvement fund and alternative stormwater management equivalency options.

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- (D) In determining whether to allow equivalent stormwater options, as well as the appropriate combination of on-site and off-site controls, the director of T&ES shall take into consideration the following:

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- (7) Whether there are opportunities to implement the ~~Water Quality Management Supplement~~ Chesapeake Bay Preservation Plan to the city master plan and the city's ~~Virginia Stormwater Management Permit (VSMP)~~ Virginia Erosion and Stormwater Management Permit (VESMP) for its municipally owned separate storm sewer system discharges as issued by the Department of Environmental Quality; and

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- (9) Single-unit residential development projects that are exempt from the water quality requirements of section 13-123(A) are considered eligible to contribute to the Alexandria water quality improvement fund in section 13-110(A)(2) to meet the Alexandria water quality volume default requirement in section 13-107(E)(3) with no further consideration of items (1) through (8) above. For purposes of this section “single unit residential development” means a “single-family detached residential structure” as used in § 62.1-44.15:34 C.3.

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13-113 - Stormwater pollution prevention plan.

- (A) The stormwater pollution prevention plan (SWPPP) shall include the content specified in ~~9VAC25-870-54~~ 9VAC25-875-500, which includes but is not limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a

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description of any additional control measures necessary to address a TMDL. The SWPPP must also comply with the requirements and general information set forth in 9VAC25-880-70 Section II of the general VPDES permit for discharges of stormwater from construction activities (construction general permit).

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13-116 - Pollution prevention plan.

- (A) The pollution prevention plan is required by ~~9VAC25-870-56~~ 9VAC25-875-500 and shall be developed, implemented, and updated as necessary, and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
- (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
  - (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
  - (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

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13-119 - Exceptions.

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- (E) Under no circumstances shall the city allow the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse website, or as applicable for projects subject to ~~9VAC25-870 Part II.C~~ 9VAC25-875-480. Notwithstanding, this shall not preclude the director of T&ES from placing reasonable limitations on a BMP on the Virginia Stormwater BMP Clearinghouse website.
- (F) Exceptions to the requirements for phosphorus reductions required under section 13-109(E)(4) and (5) will not be allowed unless off-site options available through ~~9VAC25-870-69~~ 9VAC25-875-610 have been considered and found not available.

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13-124 - Time limits on applicability of design criteria and grandfathering.



(A) The time limits on applicability of design criteria shall apply provided:

- (1) Land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014 shall be conducted in accordance with the technical criteria in ~~9VAC 25-870-93 through 9VAC25-870-99~~ 9VAC25-875-670 et seq. Such projects shall remain subject to these technical criteria for two additional state construction general permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

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- (B) Grandfathering provisions established in ~~9VAC25-870-48~~ 9VAC25-875-490 shall apply to this article as applicable. Any land-disturbing activity shall be considered grandfathered by the ~~VSM~~ VESMP authority and shall be subject to the technical criteria of ~~9VAC25-870-93 through 9VAC25-870-99~~ Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation, provided:

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- (xi) Discharges not in compliance with the requirements of ~~4FAC50-60-1170~~ 9VAC25-880-70 of the general permit.

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### **III. Recommendation**

Staff recommends that the text amendments contained above be initiated and recommends approval of each of the attached Zoning Ordinance text changes.

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