



# Albemarle County

## Legislation Details (With Text)

**File #:** 24-288      **Version:** 1      **Name:**

**Type:** Ordinance      **Status:** Public Hearing

**File created:** 5/13/2024      **In control:** Board of Supervisors

**On agenda:** 6/5/2024      **Final action:**

**Title:** WTA2024-00001 Amendments to Water Protection Ordinance and Associated Fee Schedule. To receive comments on proposed ordinances to conform the County's Water Protection Ordinance (County Code Chapter 17) and fee schedule (County Code Chapter 1, Article 5) to the mandates of the new Virginia Erosion and Stormwater Management Act (Virginia Code § 62.1-44.15:24 et seq.), Virginia Erosion and Stormwater Management Regulation (9VAC25-875), and amended state regulations on the General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880), each of which takes effect July 1, 2024. These proposed ordinances would repeal County Code Sections 17-208, 17-302, 17-303, 17-810, and 17-903, and would amend County Code Sections 1-503, 17-101, 17-102, 17-103, 17-104, 17-105, 17-200, 17-201, 17-202, 17-203, 17-204, 17-205, 17-207, 17-211, 17-300, 17-301, 17-304, 17-305, 17-306, 17-400, 17-401, 17-402, 17-403, 17-404, 17-405, 17-407, 17-408, 17-410, 17-411, 17-413, 17-415, 17-416, 17-417, 17-418, 17-419, 17-421, 17-422, 17-423, 17-424, 17-500, 17-501, 17-502, 17-600, 17-602, 17-701, 17-800, 17-801, 17-802, 17-803, 17-804, 17-805, 17-806, 17-808, 17-809, 17-811, 17-813, 17-814, 17-900, 17-901, 17-902, and 17-904, among others, by replacing existing references to the Virginia Erosion and Sediment Control Program (VESCP) and the Virginia Stormwater Management Program (VSMP) (and the documents and processes associated with each) with references to the new consolidated Virginia Erosion and Stormwater Management Program (VESMP) (and its associated documents and processes). The proposed ordinances would also incorporate updated state regulations on the General VPDES Permit for Discharges of Stormwater from Construction Activities. The proposed ordinances would also make non-substantive clarifications and have a delayed effective date of July 1, 2024.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Att.A - Proposed Chapter 17 Ordinance, 2. Att.B - Proposed Chapter 1 Ordinance, 3. Att.C - Unmarked Chapter 17 ordinance, 4. Att.D - Unmarked Chapter 1 ordinance, 5. Presentation

Date	Ver.	Action By	Action	Result
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**AGENDA DATE:** 6/5/2024

**TITLE:**

WTA 2024-00001 and OTA2024-00001 -- Amendments to Water Protection Ordinance and Associated Fee Schedule

**SUBJECT/PROPOSAL/REQUEST:** Public hearing(s) to adopt a combined Erosion and Stormwater Management Ordinance in compliance with the new Virginia Erosion and Stormwater Management Program (VESMP), by amending Albemarle County Code Chapters 17 (Water Protection) and 1 (General Provisions)

**ITEM TYPE:** Regular Action Item

**STAFF CONTACT(S):** Richardson, Wall, Rosenberg, Herrick, Filardo, Svoboda, Pohl

**PRESENTER (S):** Frank Pohl

**LEGAL REVIEW:** Yes

**REVIEWED BY:** Jeffrey B. Richardson

**BACKGROUND:** The County is one of several Virginia localities subject to an MS4 (Municipal Separate Storm Sewer System) permit which are required to implement the erosion and stormwater management regulations of the State Water Control Board (SWCB). In 2016, the General Assembly enacted the Virginia Erosion and Stormwater Management Act (VESMA) to replace the existing Virginia Erosion and Sediment Control Program (VЕСP) and Virginia Stormwater Management Program (VSMP) with a combined VESMP. However, the Act had a delayed effective date, pending the SWCB's adoption and approval of implementing regulations. The SWCB only recently approved and adopted the new combined Virginia Erosion and Stormwater Management (VESM) Regulation. The Final VESM Regulation was published on December 4, 2023, in the *Virginia Register of Regulations*, Volume 40 Issue 8, and becomes effective July 1, 2024.

The County must now incorporate the new combined program in the County Code. To match the new state law, the proposed ordinance amendments would likewise become effective July 1, 2024.

**STRATEGIC PLAN:** Resilient, Equitable & Engaged Community - Design programs and services that promote an equitable, engaged and climate-resilient community.

**DISCUSSION:** The proposed Water Protection Ordinance amendments (Attachment A) incorporate the new combined VESM Regulation. Though the proposed amendments would largely mirror State regulations, where applicable, more stringent County-specific regulations have been carried-over to the proposed new ordinance, including the following:

1. A reduced land disturbance threshold of 10,000 square feet for stormwater management (SWM) [§ 17-300], except for exempt activities [§ 17-301], which are largely state-mandated. The Department of Environmental Quality (DEQ) default SWM threshold is one acre.
2. Time restrictions on development to qualify as an exempt activity for constructing a farm road [§ 17-300].
3. The requirement for streamside management zones (SMZs) for a forestal activity to remain an exempt activity [§ 17-301].
4. The requirement for stream buffers throughout the County when a regulated land disturbing activity occurs, including intermittent streams within rural areas [§§ 17-600 *et. seq.*]. The Chesapeake Bay Preservation Act (CBPA) does not require buffers within Albemarle County and requires buffers only on perennial streams within CBPA designated areas (east of I-95).
5. Exclusion of erosion and sediment control measures from stream buffers, where feasible, and where not feasible, removal and restoration prior to project completion [§ 17-604].
6. The requirement for the developer to transfer maintenance responsibilities of stormwater management facilities to a property owner's association or to post a maintenance bond prior to release of the bond [§ 17-423].

In addition to combining the regulations, staff is recommending the following clarifications:

- Revise § 17-301(F) and § 17-303(B) to clarify when an SMZ is required. Consistent with exemptions established in Virginia Code § 10.1-1163(B), staff proposes clarifying that SMZs are required only for activities that remain regulated as a forestal activity.
- Specify that a County-issued Land Disturbance Permit, not just a DEQ general permit, is also a prerequisite to commencing a regulated land disturbing activity [§ 17-417].
- Eliminate applicants' ability to obtain default approval without administrative review [§ 17-410(G)],

which is neither best practice nor enabled under state law.

Combining the regulations would also require terminology changes to the Water Protection Fees in Chapter 1, Article 5 [§ 1-503] of the County Code (Attachment B) to replace references to the VESCP and VSMP programs. These changes would not affect the number or amount of any fees. Please also note that on December 6, 2023, as part of a comprehensive re-structuring of Community Development fees, the Board previously approved amendments to certain sections in Chapter 17 and the addition of Chapter 1, Article 5, both with delayed effective dates of July 1, 2024. Except where noted, those previously approved amendments would be unaffected and would still take effect July 1.

Except where needed to track new terminology, the pending ordinances do not propose substantive changes to the existing stream buffer provisions in Chapter 17, Article 6. Proposed substantive amendments to County stream buffers will be addressed in the forthcoming Riparian Buffer Overlay District (RBOD) project, which remains under staff review.

The proposed changes are not expected to have an impact on the administration or execution of the County's water protection program.

The proposed ordinances would have a delayed effective date of July 1, 2024.

For reference, unmarked versions of the Chapter 17 (water protection) and Chapter 1 (fee schedule) ordinances are attached as Attachments C and D, respectively.

**BUDGET IMPACT:** Combining the VESCP and VSMP programs into the VESMP program and adopting the proposed amendments are not expected to have an impact on the budget.

**RECOMMENDATION:**

Staff recommends that the Board adopt the proposed ordinances (Attachments A and B), each with an effective date of July 1, 2024.

**ATTACHMENTS:**

- A - Proposed Chapter 17 (Water Protection) Ordinance
- B - Proposed Chapter 1 (Fee Schedule) Ordinance
- C - Unmarked version of Proposed Chapter 17 (Water Protection) Ordinance
- D - Unmarked version of Proposed Chapter 1 (Fee Schedule) Ordinance