



# Albemarle County

## Legislation Text

---

**File #:** 24-265, **Version:** 1

---

**AGENDA DATE:** 5/1/2024

**TITLE:**

Authorize a Public Hearing on Erosion and Stormwater Management Ordinance

**SUBJECT/PROPOSAL/REQUEST:** Authorize a public hearing to adopt a new Erosion and Stormwater Management Ordinance in compliance with the new Virginia Erosion and Stormwater Management Program, by amending Albemarle County Code Chapter 17, Water Protection

**ITEM TYPE:** Consent 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:**

In 2016, the Virginia General Assembly adopted the Virginia Erosion and Stormwater Management Act (VESMA) to combine the existing Virginia Erosion and Sediment Control Program (VЕСP) and the Virginia Stormwater Management Program (VSMP). This Act was to take effect upon the adoption of state administrative regulations. The State Water Control Board (SWCB) ultimately approved and adopted a Virginia Erosion and Stormwater Management (VESM) Regulation on December 4, 2023. Both the new state law and these implementing regulations will take effect July 1, 2024. As one of several Virginia localities subject to a Municipal Separate Storm Sewer System (MS4) permit, Albemarle County is required to also adopt and implement these new erosion and stormwater management regulations under a combined ordinance.

**STRATEGIC PLAN:** Infrastructure & Placemaking - Invest in infrastructure and amenities that create connection, opportunity, and well-being.

**DISCUSSION:**

Staff is developing a proposed new Erosion and Stormwater Management Ordinance, following a Memorandum (Attachment A) and VESMP Consolidated Model Ordinance provided by the Virginia Department of Environmental Quality (DEQ). Though the proposed County ordinance would largely mirror state regulations, optional County-specific regulations are also being incorporated into the new ordinance.

The new ESM ordinance would replace the following articles of the County's current Water Protection Ordinance (WPO):

- Article I - General
- Article II - Administration
- Article III - Applicability of the VЕСP and the VSMP to a Land Disturbing Activity or a Site Condition
- Article IV - Procedure for Submitting, Reviewing and Acting on Applications; Post-Approval Rights and

## Obligations

### • Article V - Technical Criteria

Combining the regulations would not change requirements for administration or execution of the program, with the exception of the following two optional, staff-recommended provisions:

- Agreement in Lieu of a Plan for the construction of certain farm buildings or structures.
- Responsible Land Disturber (RLD) certification not required where an agreement in lieu of a plan for construction of a single-family detached residential structure is proposed; however, the name of an RLD certificate holder can be required if a violation occurs.

In addition to these two changes, staff recommends revising § 17-301(F) and § 17-303(B) of the current County Code to clarify when a Streamside Management Zone (SMZ) is required. SMZs apply when an activity is regulated as a forestal activity. The current wording could be interpreted to require SMZs for conversions of land to *bona fide* agricultural or improved pasture. Because staff believes that this interpretation is inconsistent 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.

Staff will continue work on the proposed ordinance, blending the new state-mandated requirements with the County's existing optional elections, with a final proposed ordinance being completed and publicly available prior to the public hearing. The proposed ordinance would have a delayed effective date of July 1, 2024.

## **BUDGET IMPACT:**

Combining the VESM programs is not expected to have an impact on staff time. Allowing an Agreement in Lieu of a Plan for farm buildings and structures would reduce the time required for staff to review an application, but the savings would be negligible considering the small number of these types of applications (typically 2-4 per year).

## **RECOMMENDATION:**

Staff recommends that the Board authorize a public hearing to adopt an Erosion and Stormwater Management Ordinance consistent with the new state law and regulations that take effect July 1, 2024, in addition to other proposed revisions.

## **ATTACHMENTS:**

A - DEQ VESMP Memo