

Docket Item #23
TEXT AMENDMENT #2004-0006

Planning Commission Meeting
May 4, 2004

CASE: TEXT AMENDMENT #2004-0006
CHESAPEAKE BAY REGULATIONS

ISSUE: Consideration of a text amendment to Article XIII "Environmental Management" of the Zoning Ordinance to comply with State regulatory requirements and to enhance the City's ability to protect water quality.

STAFF: Department of Planning and Zoning
Department of Transportation and Environmental Services

PLANNING COMMISSION ACTION, MAY 4, 2004: On a motion by Ms. Fossum, seconded by Mr. Robinson, the Planning Commission voted to recommend approval of the text amendment with one amendment. The motion carried on vote of 7 to 0.

Reason: The Planning Commission agreed with staff's analysis. It amended Section 13-107 (C)(4) to include stream restoration in the list of projects that are permitted to occur within an RPA. Staff supports that change (see page 19 of this report).

Speakers:

Kenyan Larson, Chair of the Environmental Policy Commission, spoke in support of the changes and referred to the Environmental Policy Commission resolution (attached).

Michael Rolband, professional engineer and wetlands specialist, expressed concern about several issues with the proposed ordinance including the vesting date, the method of measuring buffer areas and the need to include stream restoration in those projects allowed within an RPA.

Julie Crenshaw, resident, supports the improvements proposed to the Chesapeake Bay regulations and suggested that conservation easements should be promoted as a potential benefit for affected properties. She also expressed concern about the "toolbox" approach and asked that the details about what it is and how it is applied come back for public review.

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STAFF RECOMMENDATION: Staff recommends that the Planning Commission recommend approval of the proposed text amendments to Article XIII of the Zoning Ordinance.

[Article XIII with changes attached]

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DISCUSSION

The Virginia Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq*) require that the City of Alexandria adopt provisions to protect the water quality and habitats of the Chesapeake Bay from nonpoint source pollution generated from land use and development. The City adopted requirements consistent with the State regulations in 1992 in the form of Article XIII “Environmental Management.” Article XIII established two tiers of land management – Resource Management Areas (RMAs) and Resource Protection Areas (RPAs).

The Chesapeake Bay Local Assistance Board (CBLAB), the State entity responsible for oversight of the regulations, adopted amendments to the regulations in December 2001 that necessitate changes to Article XIII. The CBLAB imposed deadline for City compliance is June 30, 2004. In addition to State-mandated changes, staff is also proposing several additional changes to strengthen environmental protection in the City. The amendments have been developed by the Department of Transportation and Environmental Services, with the assistance of a consultant and with input from the Department of Planning and Zoning, the Department of Recreation, Parks, and Cultural Activities, the City Attorney, and the Environmental Policy Commission.

Principal changes to the substance of Article XIII necessitated by the changes in State regulatory requirements include the following:

- All “water bodies with perennial flow” must be protected by a 100-foot RPA buffer area. Previously, the buffer was required around all “tributary streams,” generally defined by the regulations as a blue line on a USGS quadrangle map.
- The RPA map is now guidance, rather than an official map. As a result, perennial flow and other RPA features must be field verified using the protocol adopted by the City.
- Exceptions to the RPA requirements must be heard through a public hearing process. Previously, these exceptions could be granted administratively. The Planning Commission is proposed as the body to handle exception requests. Based on comments to-date, the Environmental Policy Commission has been incorporated into the ordinance as an advisory body to the Planning Commission, subject to a process to be approved by the City Manager.
- Stormwater management calculations have been aligned with the Virginia Stormwater Management Regulations. The actual practical affect of this change is negligible.

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Additional changes proposed to strengthen environmental protection include the following:

- All intermittent streams contained in natural channels, as well as non-tidal wetlands not protected as RPAs, would be protected with a 50-foot vegetated buffer area. The proposed buffer area would not be an RPA, which provides the City with more flexibility in how to administer the protection requirements.
- A “toolbox approach” to meeting stormwater management requirements would be established, along with an Alexandria Water Quality Improvement Fund. The purpose of the change is to allow for alternatives to traditional stormwater management facilities when it can be shown that comparable water quality benefits can be achieved while at the same time other environmental goals, such as open space or tree preservation, can be met. The toolbox will be developed cooperatively among T&ES, P&Z, and RPC&A and may include stream restoration, stream daylighting, removal of existing RPA encroachments, RPA enhancement, street cleaning, combined sewer system separation, and permanent preservation of open space areas.
- Owners of structural stormwater management facilities would be required to periodically certify that the facility is being maintained to original design specifications.
- The Director of Transportation and Environmental Services would be provided with enhanced enforcement authority (via civil penalties) for ordinance violations. This authority was recently incorporated into the Chesapeake Bay Preservation Act.

In addition, the ordinance addresses the issue of “vesting” for plans that are in-process. CBLAB provides broad discretion to local governments with the caveat that a locality may not establish a “grace period” and that all plans should comply with the new State regulations to the maximum extent practicable. The amendments include language that states that complete applications for preliminary site plans, building permits, subdivision plans, plot plans, and special use permits will be subject to existing requirements if submitted on or before February 23rd, which represents the date that the draft ordinance and RPA map were released to the public. Any new project submitted after February 23rd would be subject to the new requirements.

The ordinance amendments will primarily affect citizens who own property within 100-feet of a stream that is newly classified as perennial (the basis for the City’s new RPA map) or within 50-feet of a stream that is newly classified as intermittent. The new public hearing requirements for RPA exceptions have the potential to affect all property owners within an existing or new RPA.

Although not a regulatory requirement, the Division of Environmental Quality embarked on a City-wide stream classification study to help assess the impacts of the proposed changes. During this study, field data was collected using protocols identified as suitable by CBLAB to establish the limits of perennial and intermittent streams. The study resulted in the following:

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- The addition of approximately 2.2 miles of RPA buffers to streams for which the RPA criteria did not apply under the existing ordinance;
- The removal of approximately 0.4 miles of RPA that was included under the existing ordinance; and,
- The identification of approximately one mile of intermittent stream.

The proposed ordinance and RPA map have undergone significant public review, including a public release presentation to the EPC on February 23rd and two public meetings to obtain comments from the affected community (March 22nd and April 22nd). For the two public meetings, the City mailed notification to all property owners within 300-feet of a perennial or intermittent stream, as well as to all civic association and homeowner association presidents.

Minor changes to the public review draft have been proposed as a result of public comments and a meeting with staff from the Chesapeake Bay Local Assistance Department (CBLAD). These changes were discussed at a meeting involving P&Z, T&ES, RPC&A, and the City Attorney. The following is a summary of substantive proposed changes:

Page 7, 13-106(A). CBLAD had a concern that the original language was not explicit that a site-specific delineation of RPA boundaries is required even if there is no development review process required (i.e., less than 2,500 square feet of disturbance). The language has been modified to make it clear that even if the development review process is not required, that boundaries must be delineated through the environmental site assessment.

Page 7, 13-106(B). A concern was raised that a process should be developed to allow a property owner to challenge an RPA designation on the general map even if there is no proposed land disturbing activity. Language has been added that explicitly allows for this through submitting an environmental site assessment to the Director of Transportation and Environmental Services.

Page 7, 13-106(C). A concern was raised that the ordinance should contain an explicit mechanism for resolving disputes over the delineation of RPA boundaries. Language has been added to allow for a hearing before the Director of Transportation and Environmental Services before the dispute goes through the formal appeals process.

Page 13, 13-109(E)(6)(d). Language was added to clarify that activities allowed in the 50 foot vegetated area established for intermittent streams are the same as those allowed in RPAs.

Page 13, 13-109(E)(6)(f). This sub-section sought to codify mitigation for the destruction of wetlands that is currently handled through the SUP process. The Code of Virginia was recently changed to state "No locality may impose wetlands permit requirements duplicating state or federal

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wetlands permit requirements.” As a result, this sub-section has been eliminated. Mitigation requirements can still be handled through the SUP process.

Page 24, 13-116(C). This section has been modified to provide for EPC review of exceptions, prior to consideration by the Planning Commission.

Page 26, 13-118(C). Language in this section has been changed to make it clear that once a site plan or SUP has been vested, that subsequent permits needed to complete the project are also vested, even if they were submitted after February 23rd.

Page 26, 13-118(F)(a). The Director of Planning and Zoning is provided with the authority to make a determination of whether a modification is compatible in bulk and scale to those in the surrounding neighborhood.

Docket Item #5
INITIATION OF TEXT AMENDMENT
#2004-0006-I

Planning Commission Meeting
April 6, 2004

CASE: INITIATION OF TEXT AMENDMENT #2004-0006-I
CHESAPEAKE BAY REGULATIONS

ISSUE: Consideration of initiation of a text amendment to Article XIII "Environmental Management" of the Zoning Ordinance to comply with State regulatory requirements and to enhance the City's ability to protect water quality.

STAFF: Department of Planning and Zoning
Department of Transportation and Environmental Services

PLANNING COMMISSION ACTION, APRIL 6, 2004: By unanimous consent, the Planning Commission approved the request to initiate the text amendment.

Reason: The Planning Commission agreed with the staff analysis.

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#2004-0006-I

STAFF RECOMMENDATION:

Staff recommends that the Planning Commission, pursuant to the attached motion, initiate a text amendment to the Zoning Ordinance, in order to amend Article XIII "Environmental Management," finding that the consideration of such a text amendment is consistent with public necessity, convenience, general welfare, and good zoning practice.

DISCUSSION

The Virginia Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq*) require that the City of Alexandria adopt provisions to protect the water quality and habitats of the Chesapeake Bay from nonpoint source pollution generated from land use and development. The City adopted requirements consistent with the State regulations in 1992 in the form of Article XIII "Environmental Management." Article XIII established two tiers of land management – Resource Management Areas (RMAs) and Resource Protection Areas (RPAs).

The Chesapeake Bay Local Assistance Board (CBLAB), the State entity responsible for oversight of the regulations, adopted amendments to the regulations in December 2001 that necessitate changes to Article XIII. In addition to these State-mandated changes, staff is also proposing several additional changes to strengthen environmental protection in the City. The amendments have been developed by the Department of Transportation and Environmental Services, with the assistance of a consultant and with input from the Department of Planning and Zoning, the Department of Recreation, Parks, and Cultural Activities, and the City Attorney. Two public meetings have been held in addition to informational meetings with the Environmental Policy Commission and the Alexandria Federation of Civic Associations.

There are three principal changes to the substance of Article XIII necessitated by the changes in State regulatory requirements:

- All "water bodies with perennial flow" must be protected by a 100-foot RPA buffer area. Previously, the buffer was required around all "tributary streams," generally defined by the regulations as a blue line on a USGS quadrangle map.
- The RPA map is now guidance, rather than an official map, and perennial flow must be field verified using the protocol adopted by the City.
- Exceptions to the RPA requirements must be heard through a public hearing process. Previously, these exceptions could be granted administratively.

Additional changes proposed to strengthen environmental protection include: (1) protecting all intermittent streams contained in natural channels and non-tidal wetlands not protected as RPAs with a 50-foot buffer area; (2) establishing a "toolbox approach to meeting stormwater management requirements and the creation of an Alexandria Water Quality Improvement Fund; and (3) strengthening maintenance requirements for owners of structural stormwater management facilities. The City is also taking the opportunity to reorganize and make clarifications to Article XIII for ease of use. Draft text and a draft RPA map have been published and discussed at the two public meetings mentioned above.

Recommendation

Staff recommends that the Commission initiate a text amendment to amend Article XIII, because consideration of changes is consistent with public necessity, convenience, general welfare and good zoning practice.

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INITIATION MOTION

Whereas the Alexandria Planning Commission may initiate the amendment of the Alexandria Zoning Ordinance whenever it determines that public necessity, convenience, general welfare or good zoning practice requires an amendment; and,

Whereas Article XIII "Environmental Management" of the Alexandria Zoning Ordinance was adopted in 1992 to comply with the provisions of the Virginia Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 et seq);

Whereas recent amendments adopted by the Chesapeake Bay Local Assistance Board necessitate changes to Article XIII in order for the City to maintain compliance with the State regulations;

Whereas the State regulations allow the City to adopt additional provisions to further protect water quality in the Chesapeake Bay as well as local water bodies; and,

Whereas certain provisions of Article XIII could be rewritten for clarity and organizational consistency;

Now, therefore, I move that the Alexandria Planning Commission find that the public necessity, convenience, general welfare or good zoning practice requires consideration of an updated Article Chapter XIII "Environmental Management" in the Zoning Ordinance; and,

I further move that the Alexandria Planning Commission initiate such text amendment.



Environmental Management Ordinance With Highlights of Major Proposed Changes

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The following presents proposed amendments to the City of Alexandria's Environmental Management Ordinance for consideration by the Planning Commission along with explanatory text boxes to provide context where needed. Underlined text indicates where substantive changes have been made; however, due to the extensive nature of the changes, literal modifications from the original text are not shown. A double-line border around explanatory text indicates that the change is mandated by the Chesapeake Bay Preservation Area Designation and Management Regulations. A single-line border around explanatory text indicates that the change is voluntary.

In addition, text that has been added or deleted as a result of comments received on the February 23rd public release draft is designated by a dashed underline.

Article XIII. ENVIRONMENTAL MANAGEMENT

Section 13-100 General findings.

The Chesapeake Bay is one of the most productive estuaries in the world, providing substantial economic and social benefits to the people of the Commonwealth of Virginia. Healthy state and local economies are integrally related to and dependent upon the health of the Chesapeake Bay. The general welfare of the people of the Commonwealth depends upon the health of the Bay.

The waters of the Chesapeake Bay and its tributaries, including the Potomac River and Alexandria's local streams, have been degraded significantly by point source and nonpoint source pollution, which threatens public health and safety and the general welfare.

Appropriate land use regulations and construction and maintenance practices have proven ability to reduce pollution that damages water quality of the Chesapeake Bay and its tributaries.

13-101 Purpose.

- (A) It is the policy of the City of Alexandria, Virginia to protect the quality of water in the Chesapeake Bay and its tributaries and, to that end, to require all land uses and land development in the City to:
- (1) Safeguard the waters of the Commonwealth from pollution;
 - (2) Prevent any increase in pollution of state waters;
 - (3) Reduce existing pollution of state waters; and,
 - (4) Promote water resource conservation.
- (B) To fulfill this policy, this Article XIII is adopted to minimize potential pollution from stormwater runoff, minimize potential erosion and

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sedimentation, reduce the introduction of harmful nutrients and toxins into state waters, maximize rainwater infiltration while protecting groundwater, and ensure the long-term performance of the measures employed to accomplish the statutory purpose.

13-102 *Authority.* This Article XIII is issued under the authority of Sec. 10.1-2108 of Chapter 21, Title 10.1 of the Code of Virginia (the Chesapeake Bay Preservation Act, hereinafter "the Act"), the regulations promulgated thereunder by the Chesapeake Bay Local Assistance Board, and Sec. 10.1-603.3 of the Code of Virginia, which authorizes the City to adopt a local stormwater management program. Authority to protect water quality is also provided by Sec. 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.

- (A) *Applicant.* Means a person who has submitted, or plans to submit, a plan of development or an exception request to the City.
- (B) *Best management practice (BMP).* A practice, or combination of practices, that is determined by the Director of Transportation and Environmental Services to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with the purpose of this Article XIII.
- (C) *Buffer area.* An area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances. To effectively perform this function, the buffer area will achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. A 100 foot wide buffer area shall be considered to meet this standard.
- (D) *Development.* The construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures.
- (E) *Director of T&ES/Director of P&Z.* Director of T&ES means the Director of Transportation and Environmental Services of the City of Alexandria. Director of P&Z means the Director of Planning and Zoning of the City of Alexandria.
- (F) *Floodway.* All lands as defined in Sec. 6-303(K) of this ordinance.
- (G) *Highly erodible soils.* Soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.
- (H) *Highly permeable soils.* Soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid"), as found in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Dept. of Agriculture Natural Resources Conversation Service.
- (I) *Impervious cover.* A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious

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surfaces include, but are not limited to: roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

Definition used in the regulations, but not previously used in Article XIII. Included to help clarify what is considered an impervious surface cover.

- (J) Intermittent stream. Any natural or engineered channel with flowing water during certain times of the year, when groundwater provides for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow. Acceptable methodologies for establishing the presence of an intermittent stream will be provided by the Director of T&ES pursuant to Sec. 13-104(C).

This definition supports proposed protection of intermittent streams under the ordinance's general performance criteria, discussed under Sec. 109(E)(6).

- (K) Isolated wetlands of minimal ecological value. Those wetlands, as defined in 9VAC25-210-10, that: (i) do not have a surface water connection to other state waters; (ii) are less than one-tenth of an acre in size; (iii) are not located in a Federal Emergency Management Agency designated 100-year floodplain; (iv) are not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) are not forested; and (vi) do not contain listed federal or state threatened or endangered species.

This definition supports proposed protection of all non-tidal wetlands, except for very small pocket wetlands, under the ordinance's general performance criteria, discussed under Sec. 109(E)(6). The Virginia Code makes this valuable distinction, which is the cut-off for when a wetland is covered by DEQ and Army Corps regulatory requirements.

- (L) Land disturbance. Any land change that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land.
- (M) Natural channel. Means a nontidal waterway that is part of the natural topography and is generally characterized as being irregular in cross section with a meandering course.

This definition makes a distinction between natural and engineered channels.

- (N) Nonpoint source pollution. Contamination from diffuse sources that is not regulated as point source pollution under Sec. 402 of the Clean Water Act.
- (O) Nontidal wetlands. Those wetlands, other than tidal wetlands, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to Sec. 404 of the Federal Clean Water Act, in 33 CFR 328.3b.
- (P) Pre-development. The land use that exists at the time that plans for the development are submitted to the City. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the land use at the time the first item is submitted shall establish pre-development conditions.
- (Q) Post-development. Conditions that reasonably may be expected or anticipated to exist after completion of the development activity on a specific site or tract of land.

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- (R) 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 (Sec. 10.1-560 *et seq.* of the Code of Virginia) and (ii) the Virginia Stormwater Management Act (Sec. 10.1-603.1 *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.

This definition comes from the amended State regulations and supports the language regarding exemptions found in Sec. 13-119.

- (S) *Redevelopment.* The process of developing land that is or has been previously developed.
- (T) *Shoreline.* Land contiguous to a body of water.
- (U) *State waters.* All waters on the surface or in the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.
- (V) *Stormwater management facility.* A device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.
- (W) *Stormwater runoff.* That portion of precipitation that is discharged across the land surfaces or through conveyances to one or more waterways.
- (X) *Substantial alteration.* Means expansion or modification of a building or development that would result in land disturbance exceeding an area of 2,500 square feet in the Resource Management Area only.
- (Y) *Tidal shore.* Land contiguous to a tidal body of water between the mean low water level and the mean high water level.
- (Z) *Tidal wetlands.* Vegetated and nonvegetated wetlands as defined in Sec. 28.2-1300 of the Code of Virginia.
- (AA) *Use.* Any activity on the land other than development, including, but not limited to agriculture, horticulture, and silviculture.
- (BB) Water body with perennial flow. A body of water that flows in a natural or engineered channel year-round during a year of normal precipitation. This includes, but is not limited to streams, estuaries, and tidal embayments and may include drainage ditches or channels constructed in wetlands or from former natural drainage ways that convey perennial flow. Lakes and ponds, through which a perennial stream flows, are a part of the perennial stream. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. The width of the perennial stream extends from top-of-bank to top-of-bank of the channel or to the limits of the normal water level for a pond or lake when there is no definable top-of-bank. Acceptable methodologies for establishing the presence of a water body with perennial flow will be provided by the Director of T&ES pursuant to Sec. 13-104(C).

State regulations do not provide a definition of water body with perennial flow although establishment of a protocol to determine perennial flow is an essential part of local program implementation. However, subsequent formal guidance from CBLAD endorses this definition.

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(CC) *Water-dependent facility.* A development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to: (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking facilities; (iv) beaches and other public water-oriented recreation areas; and, (v) fisheries or other marine resources facilities.

(DD) *Water quality volume.* The volume equal to the first 0.5 inch of runoff multiplied by the total impervious area of the tax map parcel.

This is a standard definition long used by the City and included in the Northern Virginia BMP Handbook, but not included in the original ordinance. It is included here for clarity.

(EE) *Watershed.* The total drainage area contributing runoff to a single point.

(FF) *Wetlands.* Tidal and nontidal wetlands.

13-104 *Administration.*

(A) *Responsibility for administration.* The Director is charged with responsibility for the administration of this Article XIII.

(B) *Duties and authority.* In the administration of this Article XIII the duties and authority of the Director of T&ES shall include, without limitation:

- (1) Receiving applications for plan of development approval;
- (2) Reviewing applications to determine if they contain all information required and necessary for a determination of their merit;
- (3) Reviewing applications to determine their compliance with the provisions and intent of this Article XIII and their merit;
- (4) Docketing items for hearing before the Planning Commission and conferring with the City Manager to schedule public hearings before the City Council as necessary on applications;
- (5) Preparing a staff report for each application; and,
- (6) Interpreting the provisions of this Article XIII to ensure that its intent is carried out.

(C) *Rules, regulations, and procedures.* The Director of T&ES shall promulgate rules, regulations, and procedures for the administration and enforcement of this Article XIII and shall promulgate rules, regulations, and procedures for the processing of applications that ensure full review, comment, and recommendations on each application by the Department of Transportation and Environmental Services. The City Manager shall promulgate rules and procedures for review by other departments of applications, where such review is determined to be necessary or desirable and such procedures may include the establishment of a development review committee composed of departments of the City whose expertise is necessary or desirable in the review of applications. All such rules, regulations, and procedures shall be transmitted to the City Council at the time of issuance.

(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.

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- (E) *Responsibility for enforcement.* The Director of T&ES shall have the authority and the responsibility of Sec. 11-200 and Sec. 13-120 to ensure that all buildings and structures and the use of all land complies with the provisions of this Article XIII.
- (F) The Director of T&ES shall review, approve, disapprove, or approve with modifications or conditions or both the following elements of the plan of development:
 - (1) The environmental site assessment, required pursuant to Sec. 13-112.
 - (2) The stormwater management plan, required pursuant to Sec. 13-113.
 - (3) The water quality impact assessment, if required, pursuant to Sec. 13-114.
 - (4) Compliance of the plan of development with Sec. 13-106 through Sec. 13-110.
- (G) Review and decision on applications for exceptions shall be as provided in Sec. 13-116.
- (H) Review and decision on applications for modifications to noncomplying land uses and structures shall be as provided in Sec. 13-118.
- (I) Review and decision on applications for exemptions shall be as provided in Sec. 13-119.
- (J) Review and decision on the remaining elements of the plan of development shall be as provided in the regulations of this ordinance and the City Code applicable to each such element.

13-105 *Designation of Chesapeake Bay Preservation Area Overlay District.*

- (A) All land within the corporate limits of the City is designated as a Chesapeake Bay Preservation Area (CBPA). The CBPA is divided into Resource Protection Areas and Resource Management Areas. The regulations set forth in this Article XIII shall apply as an overlay district, and shall supersede any zoning, land use, or land development regulation of the City Code that is inconsistent with the provisions of this Article XIII.
- (B) Resource Protection Areas (RPAs) consist of sensitive land that has either an intrinsic water quality value due to the ecological and biological processes such land performs or that is sensitive to uses or activities such that the use results in significant degradation to the quality of state waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of nonpoint source pollution entering the bay and its tributaries. An area of land that includes any one of the following land types shall be considered to be within the RPA:
 - (1) Tidal wetlands;
 - (2) Tidal shores;
 - (3) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
 - (4) A buffer area of 100 feet located adjacent to and landward of the components listed in paragraphs (1) through (3) above and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA

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notwithstanding the presence of permitted uses, encroachments, and vegetation clearing in compliance with this Article XIII.

These changes reflect amendments to the State regulations requiring the protection of all "water bodies with perennial flow" rather than "tributary streams."

- (C) Resource Management Areas (RMAs) include land that, if improperly used or developed, has a potential for causing significant water quality degradation or for diminishing the functional value of the RPA. Therefore, all lands in the City, not included in the RPA, shall constitute the RMA since all such land drains through natural or manmade conveyances to the Potomac River and Chesapeake Bay.

13-106 Establishment of CBPA boundaries.

- (A) Chesapeake Bay Preservation Area boundaries are established by text, as provided in Sec. 13-105. The City shall publish and update in a manner established by the Director of T&ES pursuant to Sec. 13-104(C) a general map depicting the location of identified CBPA features. However, in all cases it is the burden of the applicant to identify CBPA features and to delineate the appropriate RPA boundaries in accordance with the development review process required pursuant to Sec. 13-111, or if no development review process is required, then through the environmental site assessment pursuant to Sec. 13-112.
- (B) Any property owner wishing to change the depiction of an RPA feature on the general map may conduct an environmental site assessment in Sec. 13-112 and submit it to the Director of T&ES. The Director of T&ES may accept, modify, or reject the RPA delineation based on the evidence presented by the property owner and in consideration of all other available information.
- (C) In the event that a site-specific RPA boundary delineation is contested by an applicant or property owner, the applicant or property owner may request a meeting with the Director of T&ES to review the decision. Requests for the meeting shall be made no more than 30 calendar days after notification of a modification or rejection of a proposed RPA delineation. The Director of T&ES will preside over the meeting of the involved parties and reconsider the decision. The meeting participants will be notified by the Director of T&ES within 30 calendar days after the meeting of the result of the reconsideration.

Sec. 13-106 has been revised so that the City will publish a general location map rather than a definitive map. This is in response to changes in the regulations. While the burden of delineation has been placed on the applicant, in effect, the City's stream mapping project will help to ease the burden on property owners. In addition, the environmental site assessment provides for an abbreviated process if there are clearly no RPA features on a site to be assessed.

- 13-107 Development, redevelopment, and uses permitted in RPAs. The following criteria shall apply in RPAs unless the development, redevelopment, use, or land disturbing activity is exempted under Sec. 13-119 or granted an exception pursuant to Sec. 13-116. All development, redevelopment, and uses within the RPA must comply with the general performance criteria for CBPA's provided in Sec. 13-109.

This section has been changed for clarity, based on comments from CBLAD. Previously, the language regarding exceptions and exemptions was at the very end of Sec. 13-107.

Deleted from this section per the amended State regulations is the provision in the old ordinance stating "The buffer area may be reduced to 50 feet if the director of transportation and environmental services

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determines that a combination of a smaller buffer and appropriate BMPs located landward of the buffer area achieves a 75 percent reduction of sediment and 40 percent reduction in nutrients." However, Alexandria does not presently allow for this provision to be used, so the practical impact of the change is very limited.

- (A) The following are permitted within the RPA provided they do not require development, redevelopment, structures, grading, fill, draining, or dredging:
 - (1) Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife;
 - (2) Passive recreational activities, including but not limited to fishing, bird watching, hiking, boating, horseback riding, swimming, and canoeing; and,
 - (3) Educational activities and scientific research.
- (B) The following are permitted within the RPA if approved by the Director of T&ES. A water quality impact assessment may be required by the Director of T&ES in accordance with Sec. 13-114 if the project is located within an environmentally sensitive area, or is of sufficient scale to affect water quality.

While a WQIA is not required for these activities, there was concern on the part of staff that some of these activities could lead to significant impacts on water quality. The Director of T&ES has the authority to require a WQIA in these cases, and the language is added here to emphasize this authority.

- (1) Repair and maintenance of existing piers, walkways, observation decks, wildlife management shelters, boathouses, and other similar water-related structures provided that there is no increase in structure footprint and that any required excavating and filling results in a land disturbing activity of 2,500 square feet or less;
- (2) Boardwalks, trails, and pathways;
- (3) Historic preservation and archeological activities; and,
- (4) Repair and maintenance of existing flood control and stormwater management facilities.

The original ordinance allowed: "Required construction, installation, minor modification, and maintenance of in-stream or regional best management practices." The new language is broader and clears up some of the ambiguity that there was before regarding the ability to clear vegetation from existing flood control facilities such as the Four Mile Run channel. CBLAD had argued in the past that this kind of activity required an exception and a WQIA.

- (C) The following, if permitted in the underlying zone, are allowed within the RPA if approved by the Director of T&ES and provided that a water quality impact assessment is performed and accepted by the Director of T&ES as complete in accordance with Sec. 13-114.
 - (1) A new or expanded water-dependant facility may be allowed provided that the following criteria are met:
 - (a) It does not conflict with the City Master Plan;
 - (b) Any non water-dependent component is located outside of the RPA; and,
 - (c) Access to the water-dependent facility is provided with the minimum disturbance necessary, and where practical, a single point of access is provided.

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- (2) Redevelopment may be allowed provided that the following criteria are met:
- (a) There is no increase in impervious surface cover;
 - (b) There is no further encroachment within the RPA;

The language below was added so that redevelopment is allowed in the RPA only if it is also consistent with the Master Plan. While any noncomplying use or structure can continue in perpetuity, the primary application of this language is to prevent the conversion of a relatively temporary use (such as a gravel parking area) to a more permanent use unless it is part of a larger planning process. This language is more restrictive than the current ordinance, but allowed under the State regulations.

- (c) The proposed redevelopment is consistent with the City Master Plan; and,
 - (d) The proposed redevelopment complies with Sec. 5-4-1 et seq of the City Code (Erosion and Sediment Control) and applicable stormwater management requirements contained in Sec. 13-109(E), as well as all applicable stormwater management requirements of state and federal agencies.
- (3) Public flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed, may be allowed provided that:
- (a) The Director of T&ES has conclusively established that the location of the facility within the RPA is the optimum location;
 - (b) The size of the facility is the minimum necessary for flood control or stormwater quality treatment, or both;
 - (c) All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the Army Corps or Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission; and,
 - (d) The facility is consistent with a City stormwater management program approved by the Chesapeake Bay Local Assistance Board.

This section was added to reflect new regulatory language. It is not anticipated that this will be used often, since it is essentially the equivalent of damming an active perennial stream – a practice that is discouraged by DEQ and the EPA. However, there may be circumstances in the future, particularly regarding flood control, that may warrant this approach. In order for this section to become effective, any facility must be part of a stormwater management program approved by CBLAB.

- (4) Shoreline erosion control or stabilization projects, including removal of trees and woody vegetation, employment of necessary control techniques, and establishment of appropriate vegetation, may be allowed in accordance with the best available technical advice and applicable permit conditions or requirements if approved by the City Arborist.
- (D) In order to maintain the functional value of the RPA buffer area, existing vegetation may be removed if approved by the Director of T&ES and only to provide for reasonable sight lines, access paths, general woodlot

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management, and best management practices to prevent upland erosion and concentrated flows of stormwater, as follows:

- (1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Replacement vegetation shall require the approval of the Director of T&ES, in consultation with the Department of Recreation, Parks, and Cultural Activities and the Department of Planning and Zoning.
 - (2) Any path shall be constructed and surfaced so as to effectively control erosion.
 - (3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be conducted. The Director of T&ES may approve a long term management plan for a specific RPA that complies with professionally recognized management practices.
- (E) The following encroachments, if permitted in the underlying zone, are allowed to the RPA buffer area if approved by the Director of T&ES and provided that a water quality impact assessment is performed and accepted by the Director of T&ES as complete in accordance with Sec. 13-114.
- (1) When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be approved by the Director of T&ES in accordance with the following criteria:
 - (a) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 - (b) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot; and,
 - (c) The encroachment may not extend into the seaward 50 feet of the buffer area.
 - (2) When the application of the buffer area would result in the loss of buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, encroachments into the buffer area may be approved by the Director of T&ES in accordance with the following criteria:
 - (a) The lot or parcel was created as a result of a legal process conducted in conformity with the City's subdivision regulations;
 - (b) Any conditions or mitigation measures imposed through previously approved exceptions must be met;
 - (c) If a stormwater BMP was previously required, the BMP shall be evaluated to determine if it continues to function effectively, and, if necessary, the BMP shall be

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reestablished or repaired and maintained as required;
and,

- (d) The criteria in (1) above of this section shall be met.

This section expands allowable encroachments into the RPA to account for the fact that additional parcels will be affected by the change in the definition of RPAs. While the City's ordinance will take effect after March 1, 2002, the amended regulations specifically reference this date.

- 13-108 *Development and uses permitted in RMAs.* Development, redevelopment, and uses authorized by the underlying zone are permitted in the RMA provided such activity is carried out in accordance with all applicable criteria in this Article XIII. The Director of T&ES may, due to the unique characteristics of a site or the intensity of the proposed development, redevelopment, or use require a water quality impact assessment as provided in Sec. 13-114 (C) and (D).

Again, this section highlights the authority of the Director of T&ES to require a WQIA even within an RMA if there is a potential for significant water quality degradation.

- 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.

The original Article XIII contained separate general performance requirements for both RMAs and RPAs. CBLAD considered this confusing since most of the requirements are identical. As a result, these sections have been consolidated into Sec. 13-109. The few differences, which pertained to RPAs, were incorporated into Sec. 13-107 above.

- (A) No more land shall be disturbed than is necessary to provide for the proposed use, development, or redevelopment.
- (B) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use, development, or redevelopment proposed.
- (C) Development or redevelopment shall minimize impervious cover consistent with the proposed use or development.
- (D) The proposed development or redevelopment shall comply with Sec. 5-4-1 *et seq* of the City Code (Erosion and Sediment Control).
- (E) All development, redevelopment, and uses shall meet the following storm water quality management performance requirements:
 - (1) The entire water quality volume from the site shall be treated. When the development, redevelopment, or use constitutes disturbing only a small portion of a large tax map parcel, the Director of T&ES may establish criteria for allowing the parcel to be divided into sub-basins.

This addition codifies an existing practice that makes it possible to divide a large parcel for the purposes of water quality treatment. This is particularly relevant for large parcels with existing impervious surface cover where the new use only constitutes a minor part of the parcel.

- (2) Where the existing percent impervious cover is less than or equal to the average land cover condition, and the proposed improvements will create a total percent impervious cover that is greater than the average land cover condition, then the post-

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development pollutant discharge must not exceed the existing pollutant discharge based on the average land cover condition.

- (3) Where the existing percent impervious cover is greater than the average land cover condition, the following shall apply:
- (a) If currently served by a stormwater quality BMP, the regulated activity shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP will be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.
 - (b) If not currently served by a stormwater quality BMP, the regulated activity shall not exceed the pollutant discharge based on existing conditions less ten percent (10%) or the pollutant discharge based on the average land cover condition, whichever is greater.

The amended regulations require that the City use the stormwater quality requirements of the Virginia Stormwater Management Regulations. While very similar to the original requirements, there is an advantage to the new approach in that it does not rely on a judgment call over what is new development and what is redevelopment. The Stormwater Management Regulations tie decisions on how the development relates to the jurisdiction-wide average impervious cover (41% for Alexandria). As a result, the new language makes the requirements much less ambiguous.

- (4) For the purpose of this section, average land cover condition is defined as the City-wide impervious cover existing at the original adoption of this Article XIII, and is hereby established at 41%.
- (5) Water quality management performance criteria shall be met by employing one or a combination of the following, subject to the discretion and approval of the Director of T&ES. All pollutant removal calculation procedures and pollutant removal efficiencies shall be consistent with good engineering practices, established by the Director of T&ES pursuant to section 13-104(C).
- (a) Incorporation of onsite treatment by a BMP approved by the Director of T&ES. The site may include multiple projects or properties that are adjacent to each other or lie within the same drainage area where a single BMP is utilized by those projects to satisfy water quality protection requirements.
 - (b) Compliance with the provisions for alternative stormwater management equivalency options presented in Sec. 13-110.

Changes to this section allow for a "tool-box" approach to water quality management. Rather than requiring only on-site water quality treatment, the Director of T&ES may work with the property owner to identify the most effective combination of onsite and offsite treatment.

- (c) Compliance with a site-specific VPDES permit issued by the Virginia Department of Environmental Quality may be considered to meet the stormwater quality performance criteria requirements if equivalency in pollutant removal can be established by the applicant.

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- (6) Notwithstanding the above requirements, any site with (a) an intermittent stream contained within an existing natural channel, or (b) a non-tidal wetland that does not meet the criteria for designation as a Resource Protection Area in Sec. 13-105(B), must meet the following additional water quality performance criteria:
- (a) Measures must be taken to protect these features from direct stormwater runoff from impervious surfaces and to preserve their water quality functions.
 - (b) A 50 foot wide vegetated area preserved where present, or established where not present, on the outward edge of these features shall be considered a sufficient BMP to meet this standard if the vegetated area is designed to prevent erosion and scouring.
 - (c) The BMP requirement in (b) above may alternatively be met through the use of a smaller vegetated area in combination with equivalent on-site stormwater treatment and/or equivalent off-site options presented in Sec. 13-110 if approved by the Director of T&ES.
 - (d) Development, redevelopment, uses, and land disturbing activities allowed in the vegetated area shall be the same as those allowed in RPAs as described in Sec. 13-107. Delineation of the vegetated area shall be accomplished in the manner prescribed in Sec. 13-106.
 - (e) The Director of T&ES may waive the requirements of (b) above if the non-tidal wetland is demonstrated to the Director of T&ES's satisfaction that it qualifies as an isolated wetland of minimal ecological value defined in Sec. 13-103(K).
 - ~~(f) Notwithstanding the above requirements, destruction of any non-tidal wetland covered under this section for which requirements have not been waived must provide mitigation at a 2:1 ratio if performed on-site and a 3:1 ratio if performed off-site. Mitigation through enhancements to existing wetlands or vegetated RPAs shall be at double the aforementioned ratios.~~

This section allows for some protection of intermittent streams and non-tidal wetlands not connected by surface flow to a perennial stream. This approach was suggested by CBLAD staff as an alternative approach to protecting these features. Basically, a property owner may satisfy the performance requirement by providing a 50 foot buffer area. However, unlike an RPA buffer, the City has the ability to negotiate a reduction in the vegetated area for equivalent on-site and off-site options. The 50 foot buffer is based on the findings of The Chesapeake Bay Riparian Handbook (1998) published by the Chesapeake Bay Program and is considered the "minimum" necessary to afford habitat protection benefits and nitrogen and sediment load reduction.

- (F) All development and redevelopment shall meet the following stormwater volume performance requirements:
- (1) Post-development peak runoff rate from a two-year storm and a ten-year storm, considered individually, shall not exceed their respective predevelopment rates. If multiple outfalls exist on the site, the post-development peak runoff rates shall not exceed their respective pre-development rates at each outfall. This peak

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flow rate requirement shall not apply to single-family residences separately built and not part of a subdivision, including additions or modifications to existing single-family detached residential structures.

- (2) When the requirements of Sec. 5-4-1 *et seq* of the City Code (Erosion and Sediment Control) are otherwise complied with, the Director of T&ES may waive this peak flow rate requirement for other development not exceeding one-half acre of land disturbance.
 - (3) The Director of T&ES may also waive this requirement in cases where stormwater detention would conflict with the City's flood management programs.
 - (4) Post-development concentrated surface waters shall not be discharged on adjoining property, unless an easement expressly authorizing such discharge has been granted by the owner of the affected land.
 - (5) The owner or developer may continue to discharge stormwater that has not been concentrated (sheet flow) into lower lying property if:
 - (a) The peak flow rate for a 10-year storm after development does not exceed the predevelopment peak flow rate;
 - (b) The increase in total volume of runoff caused by the development will not have an adverse impact on the lower-lying property; and,
 - (c) There will be no exacerbation of existing drainage problems on the lower-lying property, or other downstream property
- (G) It shall be the responsibility of the owner of any stormwater quality or quantity management facility established to meet the requirements of (E) and (F) above to provide adequate maintenance for proper functioning of the system. The following requirements apply to all existing and future facilities constructed in the City:
- (1) The owner shall enter into a maintenance agreement with the City. Facility-specific maintenance requirements shall be described as required in Sec. 13-113(E). Maintenance agreement forms will be provided by the Director of T&ES in accordance with Sec. 13-104(C).
 - (2) The owner shall prepare and submit a certification of maintenance to the City on a schedule determined adequate by the Director of T&ES for the specific facility. Certification shall be made by a Registered Engineer or Licensed Surveyor using forms provided by the Director of T&ES. Such certification shall state that the facility is functioning properly.
 - (3) The owner shall provide the City with access to the facility to perform quality assurance inspections. If inadequate maintenance is observed by the City, the owner will be notified and an adequate period specified for corrective action. If the corrective action is not performed within the specified time, the City may perform the necessary corrections and bill the property

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owner. In cases of repeated instances of failure to perform required maintenance, sanctions may be imposed as provided in Sec. 13-120.

New language places two new maintenance related requirements on owners and operators of stormwater management facilities. Subsection (2) requires the owner/operator to certify that the facility is being maintained in good working order. Arlington County recently implemented a similar program and had an 80% response rate in the first year. Subsection (3) provides authority for the City to inspect the facilities and to perform maintenance if the owner/operator does not take necessary corrective action.

13-110 Alternative stormwater management equivalency options and establishment of the Alexandria Water Quality Improvement Fund.

- (A) The Director of T&ES, in consultation with Director of Planning and Zoning and the Director of Recreation, Parks, and Cultural Activities, shall establish equivalent stormwater management options that may be used to comply with the requirements of Sec. 13-109(E)(5). Options shall include the following:
- (1) Specific onsite and offsite improvements that have been determined by the Director of T&ES to achieve a pollutant removal equal to or greater than what would have been achieved had a traditional BMP been required; and,
 - (2) Monetary contributions to the Alexandria Water Quality Improvement Fund provided for in (C) below.
- (B) Improvements may include, but not necessarily be limited to, stream restoration, stream daylighting, removal of existing RPA encroachments, RPA enhancement, street cleaning, combined sewer system separation, and permanent preservation of open space areas.
- (C) Monetary contributions to the Alexandria Water Quality Improvement Fund shall be calculated by the Director of T&ES based on estimates of the cost of actually installing and maintaining onsite BMPs through their life cycle. These costs will be updated on a periodic basis by the Director of T&ES as required.
- (D) In determining whether to permit equivalent stormwater options, as well as the appropriate combination of onsite and offsite controls, the Director of T&ES shall take into consideration the following:
- (1) Whether there is an opportunity to control impervious surface cover that comes into routine contact with vehicles, including but not limited to parking areas, streets and roadways except for public roads exempt under Sec. 13-109; loading docks; equipment, material, and waste storage areas; and vehicle fueling, washing, storage, maintenance, and repair areas.
 - (2) Whether other environmental and public benefits such as site design, open space, tree preservation, and landscaping can be achieved.
 - (3) Whether onsite stormwater detention would conflict with the City's flood management programs.
 - (4) Whether site-specific constraints would make onsite treatment difficult or impractical, especially when the site consists of a single-family residence separately built and not part of a subdivision.

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- (5) Whether there are opportunities readily available for offsite improvements within the general vicinity of the site that will provide greater water quality benefits than onsite improvements;
 - (6) Whether there are opportunities to control specific pollutants of concern identified within the watershed or subwatershed, including but not limited to those identified by the Department of Environmental Quality in its most recent 303(d) Total Maximum Daily Load (TMDL) Priority List;
 - (7) Whether there are opportunities to implement the Water Quality Management Supplement to the City Master Plan and the City's VPDES permit for its municipally owned separate storm sewer system discharges as issued by the Department of Environmental Quality; and,
 - (8) Whether the cost of implementing available offsite improvements is reasonably equivalent to that of a monetary contribution.
- (E) Final approval of equivalency options used for a particular site shall be made at the sole discretion of the Director of T&ES.
- (F) The City hereby establishes a dedicated fund known as the Alexandria Water Quality Improvement Fund to be used in conjunction with this Article XIII, the Water Quality Management Supplement to the City Master Plan, and the City's VPDES permit for its municipally owned separate storm sewer system discharges as issued by the Department of Environmental Quality. The purpose of the fund is to reduce nonpoint source pollution and improve stream quality and habitat through appropriate activities including, but not limited to: BMP retrofits, stream bank stabilization and/or restoration, public education and outreach, demonstration projects, and water quality monitoring and analysis.

This section allows for a "tool-box" approach to water quality management by providing the City with alternatives to requiring traditional on-site BMPs. Control of the decision-making process remains with the City – therefore allowing the Director of T&ES to better direct resources to where they will be most effective in providing the greatest environmental benefit on a case-by-case basis.

13-111 Development review process.

- (A) Any development, redevelopment, or use exceeding 2,500 square feet of land disturbance within the CBPA shall be subject to the development review process outlined in (C) below prior to any clearing of the site or the issuance of any building, land use, or land development permit.
- (B) Notwithstanding (A) above, all development, redevelopment, or use in the RPA, or in the vegetated area established under Sec. 13-109(E)(6), regardless of the amount of land disturbance, shall be subject to the review criteria established in Sec. 13-107 prior to any clearing of the site or the issuance of any building, land use, or land development permit.
- (C) The development review process application shall consist of the plans and studies identified below, such application forms as the Director of T&ES shall require and the appropriate fees, which together shall constitute the plan of development. The plans and studies identified in this section may be coordinated or combined with other required submission materials, as deemed appropriate by the Director of T&ES. The plan of development shall contain the following elements:
 - (1) A site plan in accordance with the provisions of Sec. 11-400 of this ordinance or other applicable law and, if applicable, a

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subdivision plat in accordance with the provisions of Chapter 5, Title 7 of the City Code;

- (2) An environmental site assessment as detailed in Sec. 13-112;
- (3) A landscape plan in accordance with the provisions of Sec. 11-410(CC) of this ordinance certified by qualified design professionals practicing within their areas of competence;
- (4) A stormwater management plan as detailed in Sec. 13-113;
- (5) An erosion and sediment control plan in accordance with the provisions of Chapter 4, Title 5 of the City Code; and,
- (6) For all land disturbance, development, or redevelopment within an RPA, or within an environmentally sensitive area as determined by the Director of T&ES pursuant to Sec. 13-114(C) or Sec. 13-114(D), or for an exception under Sec. 13-116, a water quality impact assessment as detailed in Sec. 13-114.

13-112 *Environmental site assessment.*

- (A) The environmental site assessment shall clearly delineate the individual components of the RPA as well as the total geographic extent of the RPA as defined in Sec. 13-105(B) through a methodology approved by the Director of T&ES under the authority of Sec. 13-104(C).
- (B) The environmental site assessment shall also clearly describe, map, or explain the following:
 - (1) Intermittent streams contained within a natural channel through a methodology approved by the Director of T&ES under the authority of Sec. 13-104(C).
 - (2) Highly erodible and highly permeable soils if available from existing public documents or documents available to the applicant;
 - (3) Steep slopes greater than 15 percent in grade;
 - (4) Known areas of contamination;
 - (5) Springs, seeps, and related features; and.
 - (6) A listing of all wetlands permits required by law (evidence that such permits have been obtained shall be presented to the Director of T&ES before permits will be issued to allow commencement of grading or other on-site activity).
- (C) Wetlands delineations shall be performed consistent with current procedures promulgated by the U.S. Army Corps of Engineers and the Environmental Protection Agency.
- (D) Site-specific evaluations or delineations of RPA boundaries shall be certified by a professional engineer, land surveyor, landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the Commonwealth of Virginia.
- (E) In the event that no part of the site plan area contains any elements described in (A) or (B) above, the applicant and the party responsible for the evaluation may, in lieu of providing an environmental site assessment plan, so certify the finding, in writing and under oath, to the Director of T&ES. Any permit issued in reliance upon such a certification where said certification is factually inaccurate or incorrect shall be void

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ab initio. Such invalidity shall be in addition to any other penalties which may be imposed upon the makers of such certification.

- (F) The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat, and shall be certified as complete and accurate by a professional engineer or a certified land surveyor. This requirement may be waived by the Director of T&ES when the proposed use or development would result in less than 5,000 square feet of disturbed area.

13-113 *Stormwater management plan.*

- (A) The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, calculations, and citations to supporting references as appropriate to communicate the information required by this Article XIII. At a minimum, the stormwater management plan must contain the following:
 - (1) Location and design of all planned stormwater control devices;
 - (2) Procedures for implementing non-structural stormwater control practices and techniques;
 - (3) Plans for implementing any equivalent stormwater management options proposed by the applicant;
 - (4) Pre- and post-development nonpoint source pollutant loadings with supporting documentation of all utilized coefficients and calculations;
 - (5) Pre- and post-development peak runoff rates from the site for both a two-year storm and ten year storm, considered individually, with supporting documentation of all utilized coefficients and calculations; and,
 - (6) For facilities, verification of structural soundness, including a professional engineer certification as applicable.
- (B) Site specific facilities for phased projects shall be designed for the ultimate development of the contributing project watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.
- (C) All engineering calculations must be certified by a professional engineer or a licensed class IIIB surveyor and performed in accordance with procedures, consistent with good engineering practice, established by the Director of T&ES pursuant to Sec. 13-104(C).
- (D) All stormwater designs that require analysis of pressure hydraulic systems and/or inclusion and design of flow control structures must be sealed by a professional engineer registered in the Commonwealth of Virginia.
- (E) The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the City of Alexandria, then a maintenance agreement shall be executed between the responsible party and the City.

13-114 *Water quality impact assessment.*

- (A) The purpose of the water quality impact assessment is to:

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- (1) Identify the impacts of a proposed use, development, or redevelopment on water quality and lands within an RPA;
 - (2) Ensure that, where a use, development, or redevelopment does take place within an RPA, it will be located on those portions of the site and in a manner that will be least disruptive to the natural functions of the RPA;
 - (3) Identify the impacts of a proposed use, development, or redevelopment within an RMA where the Director of T&ES has determined that the proximity to an RPA, the environmentally sensitive characteristics of the site, or the proposed scale and intensity has the potential to affect water quality.
 - (4) Specify mitigation that will address water quality protection under the foregoing circumstances or under an exception under Sec. 13-116.
- (B) A water quality impact assessment is required for any proposed development or redevelopment in the RPA, except that at the discretion of the Director of T&ES a water quality impact assessment may not be required if the activity is addressed under Sec. 13-107(A), Sec. 13-107(B), or Sec. 13-107(D). There are two types of water quality impact assessments: water quality minor impact assessments and water quality major impact assessments.
- (C) A water quality minor impact assessment is required for development or redevelopment within RPAs or under an exception which involves 5,000 or less square feet of land disturbance; or for any development or redevelopment within the RMA that involves 5,000 or less square feet of land disturbance adjacent to an RPA, if required by the Director of T&ES due to the presence or proximity of wetlands, potential for harmful discharge of contaminants from the property, or slopes greater than 15 percent which are proposed to be disturbed. A minor assessment must demonstrate that the undisturbed buffer area, enhanced vegetative plantings, and any required BMPs will result in the removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater runoff and that will retard runoff, prevent erosion, and filter nonpoint source pollution the equivalent of the full undisturbed buffer area. Such an assessment shall include a site plan that shows the following:
- (1) Location and description of the existing characteristics and conditions of the components of the RPA as identified in Sec. 13-105(B) and delineated in the environmental site assessment required by Sec. 13-112;
 - (2) Location and nature of the proposed encroachment into the buffer area, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites; and,
 - (3) Type and location of enhanced vegetation and/or proposed BMPs to mitigate the proposed encroachment.
 - (4) Location of existing vegetation onsite, including the number and types of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification.

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- (5) Revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion, and runoff control. The revegetation plan will incorporate native vegetation to the extent practicable.

(D) A water quality major impact assessment is required for development or redevelopment within RPAs or under an exception that involves more than 5,000 square feet of land disturbance; or for any development or redevelopment within the RMA which involves more than 5,000 square feet of land disturbance adjacent to an RPA, if required by the Director of T&ES due to the presence or proximity of wetlands, potential for harmful discharge of contaminants from the property, or slopes greater than 15 percent which are proposed to be disturbed. The following elements shall be included in a water quality major impact assessment:

- (1) All of the information required in a water quality minor impact assessment as specified in (C) above;
- (2) A hydrogeological element that:
 - (a) Describes the existing topography, soils, hydrology, and geology of the site;
 - (b) Describes the impacts of the proposed development or redevelopment on topography, soils, hydrology, and geology on the site;
 - (c) Indicates the following:
 - (i) Disturbance or reduction of wetlands and justification for such action;
 - (ii) Disruption or reductions in the supply of water to wetlands, streams, lakes, rivers, or other water bodies;
 - (iii) Disruptions to existing hydrology, including wetland and stream circulation patterns;
 - (iv) Source location and description of proposed fill material (may, at applicant's risk, be provided when the U.S. Army Corps of Engineers permit application is submitted);
 - (v) Location of dredge materials and location of dumping area for such materials (may, at applicant's risk, be provided when the U.S. Army Corps of Engineers permit application is submitted);
 - (vi) Locations of and impacts on adjacent shellfish beds, submerged aquatic vegetation, and fish spawning areas (may, at applicant's risk, be provided when the U.S. Army Corps of Engineers permit application is submitted);
 - (vii) The estimated pre- and post-development pollutant loads in runoff as delineated in the stormwater management plan required by Sec. 13-113;

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- (viii) Estimation of percent increase in impervious surface on the site and identification of the type(s) of surfacing materials to be used;
 - (ix) Percent of the site to be cleared for the project;
 - (x) Anticipated duration and phasing schedule of the construction period; and,
 - (xi) Listing of all requisite permits from all applicable agencies necessary to develop the project.
- (d) Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:
- (i) Proposed erosion and sediment control measures, which may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;
 - (ii) Proposed stormwater management system;
 - (iii) Creation of wetlands to replace those lost; and,
 - (iv) Minimizing cut and fill.
- (3) A supplement to the landscape plan that:
- (a) Identifies and delineates the location of all significant plant material, including all trees on site six inches or greater diameter breast height. Where there are groups of trees, stands shall be outlined.
 - (b) Describes the impacts the development or use will have on the existing vegetation. Information should include:
 - (i) General limits of clearing based on all anticipated improvements, including buildings, drives, and utilities;
 - (ii) Clear delineation of all trees which will be removed; and,
 - (iii) Description of plant species to be disturbed or removed.
 - (c) Describes the potential measures for mitigation. Possible mitigation measures include:
 - (i) Replanting schedule for trees and other significant vegetation removed for construction, including a list of possible plants and trees to be used;
 - (ii) Demonstration that the proposed plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion and overland flow benefits from such vegetation;

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- (iii) Demonstration that indigenous plants are to be used to the greatest extent possible; and,
 - (iv) Identification of the natural processes and ecological relationships inherent at the site, and an assessment of the impact of the proposed use and development of the land, including mitigating measures proposed in the water quality impact assessment, on these processes and relationships.
- (E) A water quality minor impact assessment shall be certified as complete and accurate by a professional engineer or a certified land surveyor. The additional elements required in a water quality major impact assessment shall be certified as complete and accurate by a professional engineer and by a qualified environmental scientist.
- (F) For any water quality impact assessment to proceed, the Director of T&ES must first approve it for completeness and compliance with this Article XIII. Upon receipt of any water quality major impact assessment application, the Director of T&ES may determine if review by the Chesapeake Bay Local Assistance Department (CBLAD) is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by CBLAD will be incorporated into the final review by the Director of T&ES provided that such comments are provided by CBLAD within 90 days of the request.
- (1) For a water quality minor impact assessment, the Director of T&ES shall base this finding on the following criteria:
 - (a) The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 - (b) Impervious surface is minimized;
 - (c) Proposed BMPs, where required achieve the requisite reductions in pollutant loadings;
 - (d) The development, as proposed, meets the purpose and intent of these regulations;
 - (e) The cumulative impact of the proposed development when considered in relation to other development within the RPA in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
 - (2) For a water quality major impact assessment, the Director of T&ES shall base this finding on the following criteria:
 - (a) Within any RPA, the proposed development is water-dependent or constitutes redevelopment;
 - (b) The disturbance of wetlands shall comply with state and federal regulations;
 - (c) The development will not result in significant disruption of the hydrology of the site;
 - (d) The development will not result in significant degradation of water quality that could adversely affect aquatic vegetation or life;

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- (e) The development will not result in unnecessary destruction of plant material on site;
- (f) Proposed erosion and sediment control measures are adequate to achieve the required reductions in runoff, and prevent off-site transport of sediment during and after construction;
- (g) Proposed stormwater management measures are adequate to control the stormwater runoff to achieve the required standard for pollutant control; and,
- (h) Proposed revegetation of disturbed areas will provide adequate erosion and sediment control benefits, as determined by the Director of T&ES.

13-115 Final plans.

- (A) Final site plans and subdivision plats subject to this Article XIII for all lands within the CBPA shall include the following additional information:
 - (1) A copy showing issuance of all wetlands permits required by law; and,
 - (2) A maintenance agreement between the City and applicant as deemed necessary and appropriate by the Director of T&ES to ensure proper maintenance of best management practices in order to assure their continued performance.
- (B) The following installation and bonding requirements shall be met.
 - (1) Where buffer areas, landscaping, stormwater management facilities or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed, in accordance with the approved site plan.
 - (2) When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the city a surety bond or equivalent satisfactory to the Director of T&ES in amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or facilities and/or maintenance costs for any required stormwater management facilities during the construction period.
 - (3) Unless otherwise approved by the Director of T&ES for a phased project, all required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety bond may be forfeited to the City.
 - (4) Unless otherwise approved by the Director of T&ES for a phased project, all required stormwater management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety bond may be forfeited to the City. The City may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of surety held.

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- (5) After all required actions of the approved site plan have been completed, the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Director of T&ES, such unexpended or unobligated portion of the surety bond held shall be refunded to the applicant or terminated within 60 days following the receipt of the applicant's request for final inspection. The Director of T&ES may require a certificate of substantial completion from a professional engineer or licensed surveyor before making a final inspection.

13-116 *Exceptions.*

- (A) Unless otherwise provided in this Article XIII, a request for an exception to the requirements of this Article XIII shall be made pursuant to this section in writing to the Director of T&ES. The request shall identify the impacts of the proposed exception on water quality and on lands within the RMA and RPA through the performance of a water quality impact assessment that complies with the provisions of Sec. 13-114 to the extent applicable.
- (B) The Director of T&ES shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article XIII if the Director of T&ES finds that the applicant has demonstrated by a preponderance of the evidence that:
- (1) Granting the exception will not confer upon the applicant any special privileges that are denied to other property owners in the CBPA overlay district;
 - (2) The exception is not based upon conditions or circumstances that are self-created or self-imposed, nor does the exception arise from conditions or circumstances either permitted or noncomplying that are related to adjacent parcels;
 - (3) The exception is the minimum necessary to afford relief;
 - (4) The exception will be consistent with the purpose and intent of the overlay district, and not injurious to water quality, the neighborhood or otherwise detrimental to the public welfare;
 - ~~(5) Due to the particular physical surroundings, shape, topographical condition, geotechnical characteristics of the site's soils and rock materials or other extraordinary situation or condition of the specific property involved, the strict application of the requirements of this Article XIII would effectively prohibit or unreasonably restrict the utilization of the property or would constitute a clearly demonstrable hardship approaching confiscation; and,~~
 - (6) Reasonable and appropriate conditions are imposed, as warranted, to prevent the allowed activity from causing degradation of water quality.
- (C) Notwithstanding the above, exceptions to Sec. 13-107 shall be heard and determined by the Planning Commission after hearing and notice pursuant to Sec. 11-300. The schedule for reviewing the exception shall be made by the Director of T&ES and the Director of Planning and Zoning. The schedule shall provide, in a manner approved by the City Manager, reasonable opportunity for review and action by the

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Environmental Policy Commission prior to any formal action by the Planning Commission so that any recommendation of support, denial, or modification can be considered as part of the Planning Commission's deliberations.

This section has been changed so that all exceptions that no longer can be handled administratively are handled by the Planning Commission. The EPC has been added as an advisory body to the Planning Commission.

- (D) Any person aggrieved by a decision of the Director of T&ES or Planning Commission under this section may appeal as provided in section 13-117.

13-117 Appeals.

- (A) Any person aggrieved by a final case decision of the Director of T&ES in the administration, interpretation or enforcement of this Article XIII or on any application hereunder may appeal such decision to the Planning Commission, by filing a notice of appeal, in writing, stating the grounds of appeal, with the Secretary of the Planning Commission within 14 days of the issuance of such decision; provided, that any person aggrieved, who had no actual knowledge of the issuance of such decision, may file an appeal within 14 days of the last day on which notice provided in Sec. 11-300 or Sec. 11-408 of this ordinance is given for any element of the plan of development. A notice of appeal shall be accompanied by a filing fee of \$100.00.
- (B) The Planning Commission shall conduct a public hearing on any appeal filed pursuant to Sec. 13-117(A), notice for which shall be provided in accordance with the applicable provisions of Sec. 11-300 of this ordinance. Following the conclusion of the hearing, the Planning Commission may affirm, reverse or modify the decision of the Director of T&ES, or vacate the decision and remand the matter to the Director of T&ES for further consideration.
- (C) Any person aggrieved by a decision of the Planning Commission issued pursuant to Sec 13-116(D) or Sec. 13-117(B), or the City Manager, may appeal the decision to the City Council, by filing a notice of appeal, in writing, stating the grounds of appeal, with the City Clerk within 14 days of the issuance of the decision.
- (D) The City Council shall conduct a public hearing on any appeal filed pursuant to subsection (C), notice for which shall be provided in accordance with the applicable provisions of Sec. 11-300 of this ordinance. Following the conclusion of the hearing, the Council may affirm, reverse or modify the decision of the commission, or vacate the decision and remand the matter to the Planning Commission or the Director of T&ES for further consideration.
- (E) Notwithstanding the provisions of subsections (A) through (D) above, an applicant or any aggrieved party who elects to appeal shall appeal the Director of T&ES's decision of approval or disapproval of a stormwater management plan application by filing a notice of appeal with the Director of T&ES within 30 days after service of such decision. The filing of such notice, and proceedings thereafter, shall be governed by Part 2A of the Rules of the Supreme Court of Virginia, and judicial review shall be had in the Circuit Court of the City of Alexandria on the record previously established, and shall otherwise be in accordance with the Administrative Process Act, Virginia Code sections 9-6.14:1 *et seq.*

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13-118 Noncomplying land uses and structures.

- (A) Any land use or structure lawfully existing on January 28, 1992, or any land use or structure that exists at the time of any amendment to this Article XIII that does not comply as a result of the amendment, shall be deemed noncomplying.
- (B) Any proposed land use or structure for which an applicant has filed a complete application for a preliminary site plan, building permit, subdivision plan, plot plan, or special use permit on or before February 23, 2004 that would not comply under proposed amendments to Article XIII pursuant to the December 10, 2001 amendments to 9VAC10-20-10 et seq may be constructed in accordance with the provisions of this Article XIII in effect at the time of submittal, except that the proposed land use or structure shall comply with any new requirements to the maximum extent practicable. Upon completion, the land use or structure shall be deemed noncomplying.
- (C) Any application for a proposed land use or structure that is not exempt pursuant to (A) or (B) above shall comply with amendments to Article XIII adopted pursuant to the December 10, 2001 amendments to 9VAC10-20-10 et seq.

The language in (A), (B), and (C) establishes a date of February 23, 2004 as the dividing line between compliance with the existing version of Article XIII and the proposed amendments to Article XIII. February 23rd represents the date of release for the draft RPA map and the draft amended Article XIII.

- (D) Nothing in this Article XIII shall prevent the reconstruction of noncomplying structures destroyed by any casualty unless the reconstruction is otherwise restricted by this ordinance or other portions of the City Code. Such reconstruction shall occur within two years after the destruction or damage and there shall be no increase in the amount of impervious area and no further encroachment in the RPA, to the extent possible by sound engineering practices.
- (E) Any noncomplying land use or structure may continue and be maintained, including renovation, remodeling, and other cosmetic alterations provided that the activity does not result in land disturbance and that there is no net increase in nonpoint source pollutant load.
- (F) A request to enlarge or expand a principal noncomplying structure within an RPA buffer area may be approved by the Director of T&ES through an administrative process provided that:
 - (a) The principal structure remains intact and the modification is compatible in bulk and scale to those in the surrounding neighborhood area, as determined by the Director of Planning and Zoning. If these criteria are not met, the modification shall be subject to the exception request process requirements of Sec. 13-116.
 - (b) There will be no increase in nonpoint source pollution load.
 - (c) Any development or land disturbance exceeding and area of 2,500 square feet complies with Sec. 5-4-1 et seq of the City Code (Erosion and Sediment Control).
 - (d) The Director of T&ES finds that the request is consistent with the criteria provided in Sec. 13-116(B).

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- (G) A request to construct or modify a non-attached noncomplying accessory structure, or a request to modify or expand a noncomplying land use (e.g., a parking area, boat storage area, active recreation fields, etc.), shall only be approved through the exceptions process outlined in Sec. 13-116.

This section has been changed to reflect a more detailed understanding of what is allowed with respect to non-conforming uses and is based on CBLAD's guidance document "Nonconforming Structures and Uses" published September 16, 2002.

13-119 Exemptions.

- (A) The following uses, which may involve structures, fill, flooding, draining, dredging, or excavating, shall be exempted from this Article XIII, to the extent specifically enumerated in these regulations and not prohibited by any other provision of the City Code or applicable law and subject to the Director of T&ES review and approval of design and construction plans for compliance with this Article XIII:
- (1) Construction, installation, operation and maintenance of electric, natural gas, fiber-optic, and telephone lines, railroads and public roads constructed by VDOT or by or for the City of Alexandria in accordance with VDOT standards (built separately from development projects regulated under section 13-106), and their appurtenant structures, in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (Sec. 10.1-560 *et seq* of the Code of Virginia and the Stormwater Management Act (Sec. 10.1-603.1 *et seq* of the Code of Virginia); (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation; or (iii) by the City of Alexandria under local water quality protection criteria at least as stringent as the above state requirements shall be deemed to constitute compliance with these regulations. The exemption of public roads is further conditioned on the alignments being designed to prevent or otherwise minimize the encroachment in the RPA buffer and to minimize adverse effects on water quality.
 - (2) Construction, installation, and maintenance of water, sewer, natural gas, underground telecommunications and cable television lines owned or permitted by the City of Alexandria or a service authority shall be exempt from the requirements of Article XIII provided that:
 - (a) To the degree possible, the location of such utilities and facilities shall be outside RPAs;
 - (b) No more land shall be disturbed than is necessary to provide for the proposed utility installation;
 - (c) All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits, and designed and conducted in a manner that protects water quality;
 - (d) Any land disturbance exceeding an area of 2,500 square feet shall comply with Sec. 5-4-1 *et seq* of the City Code (Erosion and Sediment Control).

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April 23, 2004

13-120 Penalties. Under the authority of section 10.1-2109.E of the Code of Virginia; and in addition to the enforcement provisions available to the Director of T&ES in Sec. 11-200 of this ordinance, the Director of T&ES may promulgate rules, regulations, and procedures in accordance with 13-104(C) to implement the following civil penalties:

- (A) Any person who: (i) violates any provision of this ordinance or (ii) violates or fails, neglects, or refuses to obey any final notice, order, rule, regulation, or variance or permit condition authorized under this ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the Alexandria Water Quality Improvement Fund for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the City itself or its agent, the court shall direct the penalty to be paid into the state treasury.
- (B) With the consent of any person who: (i) violates any provision of this ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any notice, order, rule, regulation, or variance or permit condition authorized under this ordinance, the City may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the City Water Quality Improvement Fund for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the City itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under (A) above. Civil charges may be in addition to the cost of any restoration required or ordered by the City.

Amendments to the Code of Virginia allow for the imposition of specific civil penalties in the form of tickets to enhance enforcement. This is boiler-plate language used by several localities including Fairfax County.

ReedSmith

J. Howard Middleton
Direct Phone: 703.641.4225
Email: jmiddleton@reedsmith.com



Reed Smith LLP
3110 Fairview Park Drive
Suite 1400
Falls Church, VA 22042-4503
703.641.4200
Fax 703.641.4340

April 19, 2004

*PC Docket Item # 23
TA 2004-0000*

Richard Baier, Director
Transportation and Environmental Services
City of Alexandria
City Hall
301 King Street
Alexandria, Virginia 22314

Eileen Fogarty, Director
Planning and Zoning
City of Alexandria
City Hall
301 King Street
Alexandria, Virginia 22314

Re: Proposed Amendments to Chesapeake Bay Ordinance
Article XIII, Alexandria Zoning Ordinance

Dear Mr. Baier and Ms. Fogarty:

The purpose of this letter is to suggest a change to the proposed Chesapeake Bay Ordinance amendments now under consideration by the City. I have attended two public meetings and a Planning Commission work session on April 6, and have discussed the issues with Mr. William Skrabak, the Director of the Division of Environmental Quality. I understand that many, if not most, of the changes have been mandated by the State Chesapeake Bay Local Assistance Department, but I am concerned about the terminology used in one of the provisions in the proposed ordinance.

These comments are directed to the proposed Section 13-118 of the Ordinance, entitled Nonconforming Land Uses and Structures.

- The term "Nonconforming Land Uses and Structures:" I suggest that the term "noncomplying" be substituted for the word "nonconforming." Although the term nonconforming may be appropriate for other jurisdictions, the Alexandria Zoning Ordinance definition and regulations regarding "noncomplying structures and uses" is more appropriate for this ordinance. For those structures that are grandfathered by the proposed Section 13-118, the noncomplying regulations should apply. In fact, the grandfather sections of the existing ordinance, Section 13-122, use the word noncomplying, not nonconforming. This change will make the amendment compatible with the terminology in the Alexandria Zoning Ordinance.

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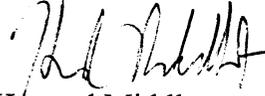
Richard Baier
Eileen Fogarty
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ReedSmith

Thank you for the opportunity to comment of this process.

Yours truly,

Reed Smith LLP



J. Howard Middleton

JHM/vmi

cc: Ignacio Pessoa, City Attorney
William Skrabak, Director, Division of Environmental Quality

AMENDMENTS TO THE ALEXANDRIA ENVIRONMENTAL MANAGEMENT ORDINANCE

Alexandria Environmental Policy Commission Resolution

May 3, 2004

Approved 8-0

WHEREAS, the history, economy, and culture of the City of Alexandria are interwoven with the Chesapeake Bay and the Potomac River; and,

WHEREAS, the Virginia Chesapeake Bay Preservation Area Designation and Management Regulations require that the City of Alexandria adopt provisions to protect the water quality and habitats of the Chesapeake Bay from pollution; and,

WHEREAS, the City complied with these regulatory requirements by adopting the Environmental Management Ordinance (Article XIII of the City Code) in 1992 and the Water Quality Management Supplement to the City's Master Plan in 2001; and,

WHEREAS, the Chesapeake Bay Local Assistance Board recently adopted amendments to the State regulations that require the City to make changes to the Environmental Management Ordinance, including a key requirement that all "water bodies with perennial flow" must be protected by a 100-foot RPA buffer area; and,

WHEREAS, the State regulations allow the City to go above and beyond the minimum regulatory requirements; and,

WHEREAS, a growing body of scientific evidence demonstrates that intermittent streams serve an integral role in protecting water quality and aquatic habitats; and,

WHEREAS, the City has undertaken a comprehensive stream classification study to identify the location and extent of both perennial and intermittent streams using protocols acceptable to the Chesapeake Bay Local Assistance Department; and,

WHEREAS, the City has undergone an extensive ordinance development and review process, including several presentations to the Environmental Policy Commission and two public meetings with affected members of the community; and,

WHEREAS, the City has addressed comments from the Environmental Policy Commission and the community;

WHEREAS, the proposed Environmental Management Ordinance maintains the City's position as a leader in protecting Virginia's environment while balancing the unique challenges presented by the City's urban environment;

THEREFORE BE IT RESOLVED, that the Environmental Policy Commission endorses the proposed amendments to the Environmental Management Ordinance; and,

BE IT FURTHER RESOLVED, that the Environmental Policy Commission specifically endorses the provisions of the ordinance that:

- protect intermittent streams in natural channels, as well all non-tidal wetlands not included as Resource Protection Areas, with a 50-foot vegetated area;
- establish the Environmental Policy Commission as an advisory body to the Planning Commission during the RPA exceptions hearing process; and,
- strengthen maintenance requirements for owners of structural stormwater management facilities.

BE IT FURTHER RESOLVED, that the Environmental Policy Commission commends the City for its proactive efforts to map perennial and intermittent streams and for its extensive community outreach efforts.

A handwritten signature in black ink, appearing to read "Kenyon A. Larsen", is written over a horizontal line.

Kenyon A. Larsen, Chair

Overview of Changes to Alexandria's Environmental Management Ordinance

Stream Protection

New State mandates require that all City streams with perennial flow must be protected by a 100-foot Resource Protection Area buffer.

- Existing regulations already protect approximately 20 miles of streams and Potomac River shoreline with buffer areas.
- The City will protect an additional 1.8 miles of stream based on the results of a City-wide stream assessment.
- The City's RPA map is now only guidance. An assessment must be performed before a land disturbing activity to determine if any perennial waterbodies are present.

The City proposes to protect intermittent streams in natural channels with a 50-foot buffer area.

- Protecting intermittent streams is above and beyond what is required by State minimum standards.
- The 50-foot buffer area is not a Resource Protection Area and therefore affords greater flexibility in how to meet the requirement.



City of Alexandria
Department of Transportation & Environmental Services
Division of Environmental Quality
301 King Street - City Hall Room 3900
Alexandria, Virginia 22314
(703) 838-4334

March 22, 2004

Exceptions Process

New State mandates require that all exceptions to the Resource Protection Area requirements go through a public hearing process.

- The City proposes to meet this requirement by having the Planning Commission conduct the hearing.

Maintenance

The City proposes to strengthen maintenance requirements for stormwater facilities.

- Owners of stormwater management facilities will be required to submit certification that maintenance is being performed.
- Reporting requirements will be based on the maintenance needs of the particular facility.
- The City will have the ability to perform needed maintenance and bill the owner if it is not being done.

Public Input

Public hearings will be held by the Planning Commission on May 4th and the City Council on May 15th.

- Comments may also be submitted in writing to the Division of Environmental Quality.

Water Quality

The City proposes to adopt a "toolbox" approach to meeting the ordinance's water quality requirements.

- The existing regulations require the use of traditional on-site stormwater management techniques such as wet and dry ponds and sand filter systems.
- On-site and off-site alternatives to these traditional facilities can in many cases result in additional environmental benefits such as improved habitat and more open space and result in fewer waivers .

- What will be in the toolbox?

Traditional on-site stormwater facilities.

Stream and buffer restoration

Stream daylighting.

Removal of encroachments into RPAs.

Combined sewer separation.

Green rooftops.

Permanent preservation of open space.

Contribution to the Alexandria Water Quality Improvement Fund.

Other tools identified by the City

- The City, working with the property owner, will determine the best approach for a site using eight criteria.

Frequently Asked QUESTIONS

Page 1

What is the Environmental Management Ordinance?

The Environmental Management Ordinance was adopted by the City in 1992 to comply with the Virginia Chesapeake Bay Preservation Area Designation and Management Regulations. The purpose of these regulations is to help protect the Chesapeake Bay and our local streams from pollution caused by changes in land use. The regulations establish two levels of protection.



■ **Resource Protection Areas.** RPAs are sensitive environmental corridors that should be preserved in a natural condition. The City adopted an RPA map in 1992 based on criteria provided in the regulations.

■ **Resource Management Areas.** The remainder of the City has been designated as an RMA. RMAs do not regulate the type of development that can occur. However, all development and redevelopment must engage in land management techniques designed to minimize adverse impacts on water quality.

Why are the amendments to the ordinance necessary and what has changed?

Recently, the Chesapeake Bay Local Assistance Board (CBLAB), the State oversight entity, adopted changes to the regulations. To comply with these changes, the City must approve amendments to the Environmental Management Ordinance.

A key change in the State regulations is that a 100-foot RPA buffer must now be designated around all "waterbodies with perennial flow." This differs from the existing requirement that protects all "tributary streams." As a result of this definition change, the scope of the City's RPAs will also change. In addition to the minimum

Frequently Asked QUESTIONS

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State requirements, the City is also proposing to protect natural intermittent streams with a 50 foot buffer area.

What is a perennial stream versus an intermittent stream?

A perennial stream is a body of water that flows year-round during a year of normal precipitation. Generally, groundwater is the primary source for stream flow. An intermittent stream is any natural or engineered channel with flowing water during certain times of the year, when groundwater provides for stream flow. During dry periods, intermittent streams may not have flowing water or may only have flowing water after a storm event.

Why did the City choose to protect natural intermittent streams?

Intermittent streams are often the most critical in terms of protecting downstream water quality and living resources. Intermittent streams with vegetated buffers assist in reducing sediments and nutrients delivered to larger streams, help prevent flooding, and provide valuable aquatic habitats. The 50 foot buffer is based on the findings of the 1998 Chesapeake Bay Riparian Handbook and is considered the "minimum" necessary to afford habitat protection benefits and nutrient and sediment load reductions.

How will the amendments affect my property?

Unless you are proposing to develop or redevelop your property, most homeowners will only be affected by the amendments if the property is located within an RPA. As a result of the new State regulations, the City has added approximately 1.8 miles of new RPAs and lost approximately 0.3 miles of existing RPAs. A location map of identified perennial and intermittent streams can be found at www.ci.alexandria.va.us/tes/eq/environmental_management_ordinance.html.

How did the City map these streams?

The City conducted an assessment of over 13.6 stream miles during the fall of 2004, classifying each stream as perennial, intermittent, or ephemeral based on protocols acceptable to the Chesapeake Bay Local Assistance Board. Streams classified as perennial became the basis of the new RPA map.



Understanding Proposed Amendments to Alexandria's Environmental Management Ordinance

Information for City of Alexandria homeowners.

March 22, 2004



City of Alexandria Department of
Transportation & Environmental Services
Division of Environmental Quality
301 King Street - City Hall Room 3900
Alexandria, Virginia 22314
(703) 838-4334

Frequently Asked QUESTIONS

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What if the map doesn't show an RPA on my property?

The map is only a guidance tool. If you are proposing a land disturbing activity on your property, you will still need to have someone assess whether there is a stream or a wetland on your property.

What if I disagree with the City's mapping results?

Any property owner who feels that the mapping results are in error may have a qualified professional perform a field test using City approved protocols.

The City will take the results of the new information into consideration in making a decision about whether an RPA feature exists.



What am I allowed to do in the RPA area?

All land uses and structures within the RPA that exist at the time of ordinance adoption may continue as "non-conforming" uses. Property owners may also engage in passive recreational activities such as fishing, bird watching, hiking, boating, and canoeing. Except under very specific circumstances, new development in the RPA is limited to those that are considered "water dependent uses."

All land disturbing activities proposed in the RPA must first be approved by the City. The property owner will need to submit a Water Quality Impact Assessment explaining the impacts of the activity and what actions will be taken to reduce these impacts.

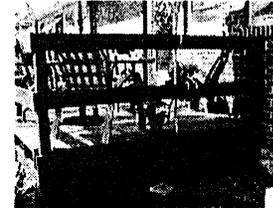
If my home is in an RPA, can I still make an addition?

Under certain circumstances, the answer is yes. For lots that existed before March 2002, minor additions can be made to the principal structure as long as it remains

Frequently Asked QUESTIONS

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intact and the modification is compatible in bulk and scale to the surrounding neighborhood. Examples are attached sun rooms, decks, garages, carports, and minor room additions. Larger additions will require an exception to the ordinance. In all cases, the addition must first be approved by the City.



Are decks allowed in the RPA?

Yes, but only if it is attached to the principal structure and approved by the City. Otherwise, the deck must be approved through the exceptions process.

Are new sheds allowed within an RPA?

Sheds are considered to be accessory structures and may not be built without an exception to the ordinance. An existing shed may continue to be maintained, but may not be expanded.

Can I remove vegetation within an RPA?

In accordance with State regulations, existing vegetation may be removed only if approved by the City and only to provide for reasonable sight lines, access paths, removal of invasive plant species, general woodlot management, and best management practices to prevent erosion. The City determines what is reasonable through guidance provided by the Chesapeake Bay Local Assistance Board.

What if I want to redevelop my property?

You may redevelop your property as long as there is no additional encroachment into the RPA and no increase in pollution. The redevelopment must also be found compatible with the City's Master Plan.

What if the new RPA buffer prevents me from being able to develop my property?

The ordinance contains specific provisions to handle cases where applying the RPA would mean the loss of buildable area. For lots

Frequently Asked QUESTIONS

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that existed before March 2002, the ordinance allows an encroachment into the first 50 feet of the RPA only if it is found that there is no other reasonable alternative and measures are taken to mitigate the impacts on water quality. Any encroachment greater than 50 feet must go through an exceptions process.

What is the exception process?

While exceptions to the ordinance's RMA requirements are handled administratively by the City, exceptions to the RPA requirements must be heard by the Planning Commission at a public hearing. This hearing process is a new State mandate.

When will the amendments become effective?

The City must adopt amendments before June 30, 2004. However, the City has proposed to begin enforcement of the new RPA requirements at the time of the map release, which occurred on February 23, 2004.

Are there penalties for violating RPA restrictions.

Non-compliance with the ordinance may result in civil and criminal penalties. Violators will also be required to restore RPAs in accordance with City guidelines.

Where can I get additional information?

Additional information can be found at www.ci.alexandria.va.us/tes/eq or by calling (703) 838-4334.

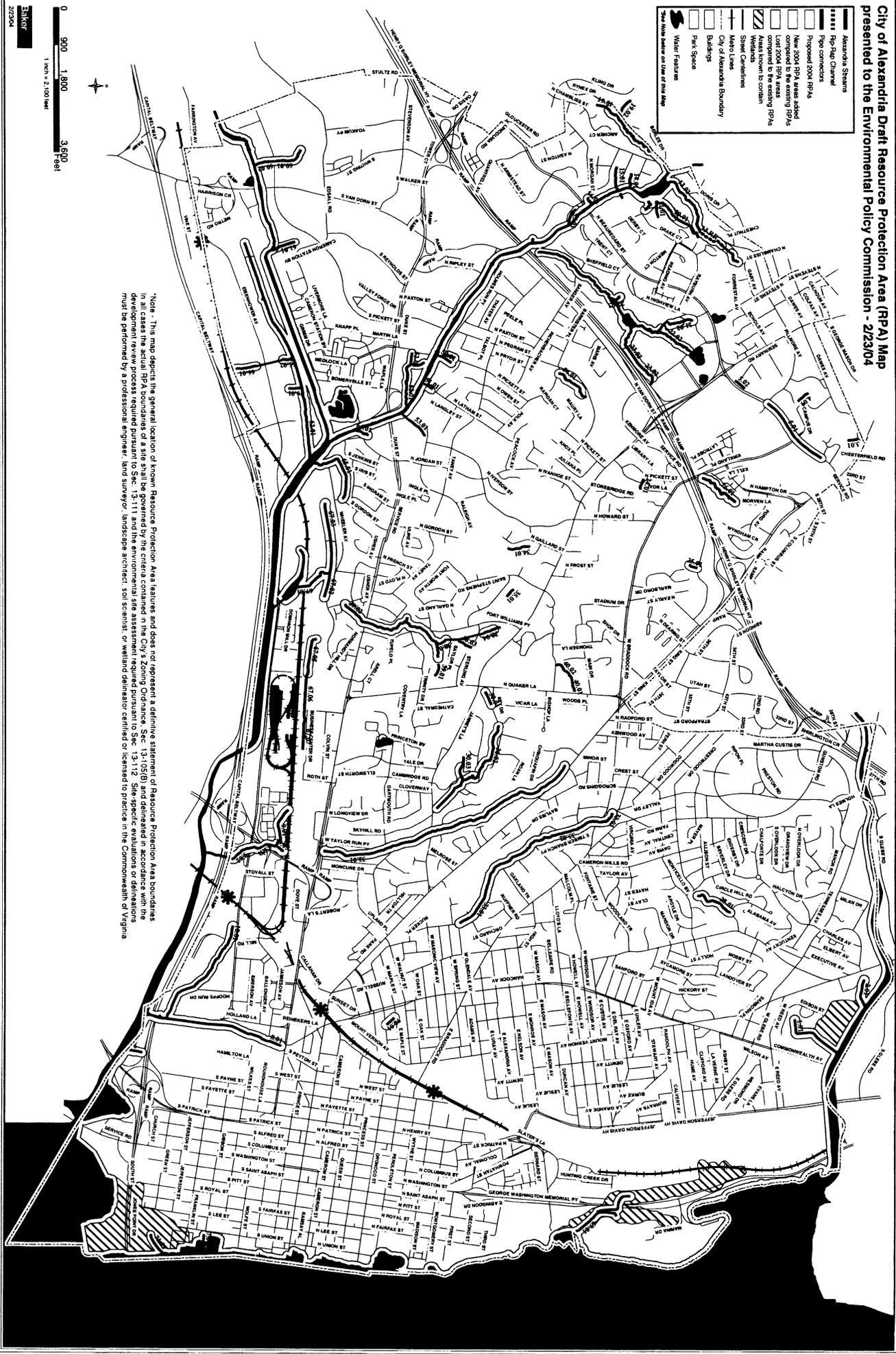
The current proposed schedule calls for a public hearing by the Planning Commission on May 4th and a public hearing by the City Council on May 15th. Adoption is tentatively scheduled for June. Written comments may also be provided to the Division of Environmental Quality, 301 King Street, Room 3900, Alexandria, Virginia 22314.

**City of Alexandria Draft Resource Protection Area (RPA) Map
presented to the Environmental Policy Commission - 2/23/04**

	Alexandria Streams
	Rip-Rip Channel
	Pipe connectors
	Proposed 2004 RPAs
	New 2004 RPA areas added compared to the existing RPAs
	Lost 2004 RPA areas compared to the existing RPAs
	Areas to be retained
	Streets
	Street Centerlines
	Major Lines
	City of Alexandria Boundary
	Buildings
	Park Spaces
	Water Features

Note: Refer to the map for the full map.

0 900 1,800 3,600
1 inch = 2,100 feet



Note: - This map depicts the general location of known Resource Protection Area features and does not represent a definitive statement of Resource Protection Area boundaries. In all cases the actual RPA boundaries of a site shall be governed by the criteria contained in the City's Zoning Ordinance, Sec. 13.105(f) and delineated in accordance with the development review process required pursuant to Sec. 13.111 and the environmental site assessment required pursuant to Sec. 13.112. Site-specific evaluations or delineations must be performed by a professional engineer, land surveyor, landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the Commonwealth of Virginia.

