

Docket Item #23
TEXT AMENDMENT
#2004-0006

Planning Commission Meeting
May 4, 2004

CASE: TEXT AMENDMENT #2004-0006
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

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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.