



CITY COUNCIL WORK SESSION

Tuesday, October 8, 2024 | 4:00 PM

Council Chamber- City Hall

900 Church Street

Lynchburg, VA 24504

AGENDA

- I. Welcome** *Stephanie T. Reed, Mayor*
- II. Work Session Agenda Overview** *Wynter C. Benda, City Manager*
- III. Work Session Agenda Items** *Wynter C. Benda, City Manager*
 - III.1.** City of Lynchburg and Griffin Pipe Products Co., LLC Ingress/Egress Easement - Bid Opening/Acceptance
 - III.2.** Lynchburg Regional Business Alliance Overview of Site and Building Readiness
 - III.3.** Office of Economic Development & Tourism Sports Tourism Update
- IV. Business Item Briefing(s)**
 - IV.4.** Consolidation of Erosion Control and Stormwater Management Requirements & Revising Illicit Discharge Requirements
 - IV.5.** 273 Riverside Drive - Rezoning: R-2, Low-Medium Density Residential District to R-C, Conservation District & FLUM Amendment: Low Density Residential to Resource Conservation - Riverside Conservation
 - IV.6.** 1600 Graves Mill Road - Rezoning: B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) - Rosedale Gas Station
 - IV.7.** 1101 & 1107 5th Street - Conditional Use Permit - 5th Street Auto Body Shop
 - IV.8.** 2025 Legislative Agenda Draft
- V. Roll Call**
- VI. Closed Session**
 - VI.9.** Consideration of a closed meeting to discuss the investment of public funds, where competition or bargaining is involved, where, if made public or discussed publicly initially, the financial interest and bargaining position of the City would be adversely affected, pursuant to Section 2.2-3711(A)(6) of the Code of Virginia, 1950, as amended; the subject of the closed meeting being specific to a Campbell County Utilities and Service Authority (CCUSA) sewer capacity request.
 - VI.10.** Consideration of a closed meeting to discuss appointments for vacancies to the Social Services Advisory Board, Lynchburg Redevelopment and Housing Authority, Business Development Center, Greater Lynchburg Transit Company, Lynchburg Parking Authority, and Board of Zoning Appeals, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, 1950, as amended.



AGENDA ITEM SUMMARY

MEETING DATE

October 8, 2024

PRESENTED BY

Timothy Mitchell, Director of Water
Resources

AGENDA ITEM # III.1

City of Lynchburg and Griffin Pipe Products Co., LLC Ingress/Egress Easement - Bid
Opening/Acceptance

RECOMMENDATION

In accordance with Virginia Code, proceed to a Public Hearing with the intention of granting and conveying an ingress/egress easement to Griffin Pipe Product Co., LLC for a term of 40 years upon City property; more specifically, 4 Adams Street, Lynchburg, VA 24504 (Tax Map No. 04513004) to access their employee parking lot.

SUMMARY

This is associated with the Blackwater CSO Tunnel Project and is in accordance with the Memorandum of Understanding (MOU) previously discussed with Council and executed between the City of Lynchburg and Griffin Pipe Products Co., LLC. The purpose of the ingress/egress easement is to provide Griffin Pipe employees/agents access to a newly constructed employee parking lot that will offset the loss of parking during the construction of the Blackwater CSO Tunnel.

In accordance with Virginia Code, an Invitation for Bids and a Public Hearing advertisement was published in the News & Advance on September 12, 2024, and September 20, 2024, with bids due on, or before, 5:00 p.m., on October 2, 2024. Staff will review the bids received with City Council.

PRIOR ACTION(S)

July 9, 2024 City Council Work Session Business Item Briefing

FISCAL IMPACT

None.

CONTACT(S)

Timothy Mitchell, Director of Water Resources
Matthew Freedman, City Attorney

ATTACHMENT(S)

1. Proposed Ordinance

2. Proposed Easement Deed
3. Map of Griffin Pipe Easement on 4 Adams Street
4. Ingress Egress Easement Map Overview

REVIEWED BY



Timothy Mitchell, Director of Water Resources

Date: September 26, 2024



Gregory Patrick, Deputy City Manager

Date: October 03, 2024



Alicia Finney, Clerk of Council

Date: October 03, 2024

Tax Map No(s).
04513004

AN ORDINANCE AUTHORIZING THE GRANT AND CONVEYANCE OF AN INGRESS/EGRESS EASEMENT TO GRIFFIN PIPE PRODUCTS CO., LLC ON PROPERTY OWNED BY THE CITY OF LYNCHBURG, VIRGINIA; MORE SPECIFICALLY 4 ADAMS STREET, LYNCHBURG, VA 24504

ORDINANCE:

#O-24-_____

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

**ARTICLE I. AUTHORIZATION TO GRANT
AND CONVEY AN INGRESS/EGRESS EASEMENT**

1. That, subject to the forty (40) year term limitation described under § 15.2-2100 of the Code of Virginia, 1950, as amended, the City Manager, on behalf of the City of Lynchburg (City), is hereby authorized to grant and convey an ingress/egress easement to Griffin Pipe Products Co., LLC (Griffin Pipe) on property owned by the City; more specifically 4 Adams Street, Lynchburg, VA 24504 (Tax Map No(s). 04513004). The substance of such easement is shown in the attached proposed deed of easement, dated May 31, 2024, between the City and Griffin Pipe. In general summary, the purpose of the said easement is to allow the officers and employees of Griffin Pipe to have a convenient means of accessing the employee parking lot located on property owned by Griffin Pipe, known as 2 Adams Street, Lynchburg, VA 24504 (Tax Map No. 04513005).
2. That the City Manager is hereby authorized to execute all documents and take all actions necessary to effectuate the said easement.

ARTICLE II. ADOPTION OF ORDINANCE

This Ordinance was duly adopted by the Council of the City of Lynchburg, Virginia on the _____ day of _____, 20_____, and shall be effective upon adoption.

Certified: _____
Clerk of Council

ARTICLE III. ACCEPTANCE

By joining in this Ordinance through signature of its duly authorized representative, Griffin Pipe hereby agrees to the entirety of the same as of its adoption date.

GRIFFIN PIPE PRODUCTS CO., LLC

(SEAL)

By: _____

Printed Name: _____

Its: _____

ATTEST:

By: _____

Printed Name: _____

Its: _____

Prepared by:
City of Lynchburg, Virginia
City Attorney's Office
900 Church Street, 3rd Floor
Lynchburg, VA 24504

Tax Map No. 04513004

*This deed is exempt from Grantor recordation taxes pursuant to
§ 58.1-811(C)(4) of the Code of Virginia, 1950, as amended.*

THIS DEED OF INGRESS/EGRESS EASEMENT, made this 31st day of May, 2024, by and between the **CITY OF LYNCHBURG**, a municipal corporation of the Commonwealth of Virginia, hereafter called the "Grantor", whose address is City of Lynchburg, Virginia, Attn: City Manager, 900 Church Street, Lynchburg, Virginia 24504, and **GRIFFIN PIPE PRODUCTS CO., LLC**, a Delaware limited liability company authorized to do business in Virginia, hereafter called the "Grantee", whose address is Griffin Pipe Products Co., LLC, Attn: Legal Department, 5 Concourse Parkway, Suite 1900, Atlanta, Georgia 30328.

W-I-T-N-E-S-S-E-T-H:

That for and in consideration of the sum of One Dollar (\$1.00), cash in hand paid to the Grantor by the Grantee, that certain Memorandum of Understanding dated November 3, 2023, between the Grantor and the Grantee, as amended on November 30, 2023, and other valuable considerations, the receipt of all of which is hereby acknowledged, the Grantor hereby grants to the Grantee, **without warranty and for a single term of forty (40) years commencing on November 1, 2024, and ending on October 31, 2064**, an ingress/egress easement ("Easement"), upon the following described property of the Grantor, located in the City of Lynchburg, Virginia, as shown on a plat attached hereto and to be recorded herewith, entitled: "PLAT SHOWING: 24' INGRESS/EGRESS EASEMENT ACROSS TMP 04513004 4 ADAMS STREET CITY OF LYNCHBURG, VA", made by Wiley | Wilson on May 30, 2024, designated City File No. A-3610, with the area of the Easement being more particularly described according to said plat as follows, *to-wit:*

TAX MAP NO. 045-13-004; 4 ADAMS STREET

Beginning at an iron pin found (IPF) in the southernmost corner of Tax Map No. 045-13-004, at its intersection with the northern boundary line of Tax Map No. 045-13-005 and the eastern right-of-way line of Adams Street; thence along the western boundary line of Tax Map No. 045-13-004 N 26° 34' 29" W 113.88 feet to the true point of beginning; thence N 26° 34' 29" W 19.82 feet to a point; thence N 55° 49' 37" E 12.05 feet to a point; thence N 80° 47' 22" E 59.75 feet to a point; thence in a southeasterly direction along a curve, having a radius of 64.00', a chord bearing of S 58° 36' 10" E for a length of 90.72 feet to a point; thence S 17° 59' 41" E 39.89 feet to a point, said point being on the southern boundary line of Tax Map No. 045-13-004; thence along said southern boundary line S 56° 20' 17" W 24.93 feet to a point; thence leaving said southern boundary line and going N 17° 59' 41" W 46.62 feet to a point; thence in a northwesterly direction along a curve, having a radius of 40.00', a chord bearing of N 58° 36' 10" W, for a length of 56.70 feet to a point; and thence S 80° 47' 22" W 64.76 feet to the true point of beginning; the said area of the Easement containing approximately 4,420 square feet, and being shown as a hatched area on the aforesaid attached plat.

This deed is expressly made subject to the following:

- A. It is understood and agreed the Grantor reserves the right to use its lands in any way not inconsistent with the rights herein granted. The Grantor, its employees and agents, shall have the right to enter upon the Easement area to inspect the same, but shall be under no obligation to do so. Notice of such entry and inspections shall be unnecessary given the Easement lies on the Grantor's lands. If the Grantor, in its sole discretion determines it appropriate, the Grantor may take such actions as may be reasonably necessary to protect its lands from damage to the extent such damage has resulted or may result from any condition or circumstances imposed by the Easement or the Grantee, its officers and employees. The Grantee shall be solely liable for the costs actually incurred by the Grantor in connection with the same. The Grantee shall reimburse the Grantor for any and all expenses associated with the same within thirty (30) days of being notified in writing of the amounts owed.
- B. The Grantee, its officers and employees, use the Grantor's lands at their own risk, and understand the Grantor is under no obligation whatsoever to report any defect, danger, issue, maintenance requirement, or the like related to the Easement. While the Grantor shall generally maintain the property where the Easement is located, the Grantee shall be responsible for repairing and/or replacing any damages to the Easement area and/or the Grantor's lands to the extent such damage arises as a result of the use of the Easement by the Grantee, its officers and employees. The Grantee shall perform such repair or replacement within thirty (30) days of being notified of the same. In the event the Grantee fails to perform the same, the Grantor may take such corrective actions as may be necessary. The Grantee shall be solely liable for the costs actually incurred by the Grantor in connection with the same. The Grantee shall reimburse the Grantor for any and all expenses associated with the same within thirty (30) days of being notified of the amounts owed.

- C. The Grantee shall fully indemnify, defend, and hold the Grantor, its employees, officers, officials, and agents harmless from and against any and all third-party claims, liabilities, injuries (including death), demands, penalties, and the like ("Claims") which may arise against the Grantor, its employees, officers, officials, and/or agents to the extent due to (i) the use of the Easement by the Grantee, its officers and employees; and/or (ii) the Grantee's operations within the Easement, except to the extent any such Claims arise as a result of the negligence or intentional misconduct of the Grantor, its employees, officers, officials, and/or agents. This obligation shall survive the expiration or termination of this deed for a period of five (5) calendar years.
- D. The Grantee shall obtain and maintain at its sole expense, with financially reputable insurers authorized to do business in the Commonwealth of Virginia, all the following minimum insurance coverages, with the Grantor, its employees, officers, officials, and agents as additional insureds where permitted by law/policy:
- i) Commercial General Liability insurance for bodily injury, property damage, and all risk fire and casualty insurance coverage (multi-peril) in a limit of not less than USD\$1,000,000 per occurrence and USD\$1,000,000 in the aggregate;
 - ii) Automobile Liability insurance (full coverage) in a limit of not less than USD\$1,000,000 per occurrence and USD\$1,000,000 in the aggregate;
 - iii) Workers Compensation insurance with statutory limits and Employers Liability insurance with the following limits: USD\$500,000 per accident and USD\$500,000 per disease (each employee); and
 - iv) "All risk" property insurance covering not less than the full replacement costs of any damage the Grantee may cause to the Grantor's lands.

The Grantee shall further deliver to the Grantor a Certificate of Insurance, reasonably satisfactory in form and content to the Grantor, evidencing that the above insurance is in full force and effect. The insurance required above shall require that the Grantee give the Grantor thirty (30) calendar days advance written notice of any cancellation, nonrenewal, or material modification of coverage and a binder or certificate verifying new coverage prior to any such change, cancellation, or nonrenewal date. In the event of such cancellation or nonrenewal notice, the Grantee shall pay all premiums for the renewal or replacement of the insurance required. The Grantee shall, prior to the expiration of the applicable policies, furnish the Grantor with renewals or binders for the policies, or the Grantor may order the required insurance and charge the cost to the Grantee. Any and all such insurance policies, where permitted by law/policy, shall name the Grantor, its employees, officers, officials, and agents as additional insured parties.

The insurance required hereby shall be primary, and any insurance or self-insurance maintained by the Grantor shall be in excess of and shall not contribute with any insurance required of the Grantee under this deed. Any deductibles or self-insured retentions applicable to the required coverage shall be paid by the Grantee and the Grantor shall not be required to participate therewith. All rights of subrogation against the Grantor, its employees, officers, officials, and agents shall be waived, and such waiver shall be illustrated on the said Certificate of insurance.

- E. Should the Grantee fail to honor any of the obligations described in this deed, and fail to correct the same within thirty (30) days of being notified of the same in writing, then the Grantor, in its sole discretion, may unilaterally terminate the Easement granted hereby without further notice. Upon such termination, the Grantee, its officers and employees, shall vacate the Easement within sixty (60) days of a written request to do the same.
- F. Upon the Easement's expiration, it shall be the sole responsibility of the Grantee to seek a new easement from the Grantor. The Grantor and the Grantee, where necessary, will work together in good faith to renew the Easement after its expiration. Failure to obtain a new easement from the Grantor within ninety (90) days of this deed's expiration shall permit the Grantor, in its sole discretion, to deem the Easement vacated by the Grantee.
- G. Neither this deed nor any part thereof may be transferred or assigned by the Grantee without the written consent of the Grantor, but such consent shall not be unreasonably withheld.
- H. This deed shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, and any legal proceedings related to the same shall be filed in the courts of the City of Lynchburg, Virginia and in no other forum.
- I. Written notices or other documentation to be provided to the Grantee hereunder, shall be sufficient and deemed received if sent by the Grantor United States Postal Service First-Class Mail to Griffin Pipe Products Co., LLC, Attn: Legal Department, 5 Concourse Parkway, Suite 1900, Atlanta, Georgia 30328 after five (5) days have passed from being sent. Written notices or other documentation to be provided to the Grantor hereunder, shall be sufficient and deemed received if sent by the Grantee United States Postal Service First-Class Mail to City of Lynchburg, Attn: City Engineer, 900 Church Street, Lynchburg, VA 24504 after five (5) days have passed from being sent. Any updates to such addresses must be provided in writing.
- J. The Grantee does hereby covenant that no person on the grounds of race, sex, color, national origin, or any other basis prohibited by federal or Virginia law shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the operation of any of the Grantee's services, the property subject to this deed, or the Easement. The Grantee further covenants it will not discriminate against and will make all reasonable efforts to accommodate persons with disabilities as required by the Americans with Disabilities Act.
- K. Nothing in this deed shall be deemed to create any rights to those who are not expressly made a party to this deed. There are no third-party beneficiaries to this deed.
- L. Nothing contained in this deed shall be construed as or deemed to make either the Grantor or the Grantee the agent, partner, or joint venture of the other, except as may otherwise be provided in this deed. Unless specifically provided in this deed, nothing contained in this deed shall give either the Grantee or the Grantor any authority to represent the other party before any court or governmental or regulatory agency without the express prior written authorization of the Grantor or the Grantee, as the case may be. Unless otherwise provided in this deed, neither the Grantor nor the Grantee shall be responsible or held liable for the acts or omissions of the other. Further, in performing any services or engaging in any actions pursuant to this deed, each party is and shall

be acting as an independent contractor, responsible to all parties for its acts and omissions, and the other party shall not be liable for the same.

- M. It is distinctively understood that all privileges and uses of the property applicable hereto this deed and the Easement, except to the extent herein granted to the Grantee, are expressly reserved by the Grantor to use at its discretion.
- N. In the event that any provision(s) or portion(s) of this deed shall be construed to be invalid or unenforceable by a court of competent jurisdiction, then such provision(s) or portion(s) shall be severable and stricken, and the remaining provision(s) or portion(s) of this deed shall remain in full force and effect.
- O. All provisions, covenants, terms, conditions, promises, and agreements with respect to this deed are expressly contained herein. No representative or agent of the Grantor or the Grantee has made any representation or promise with respect to this deed not contained herein.
- P. This deed may be modified by the Grantor and the Grantee by a writing executed by both of the same. Modifications which do not affect the term of the Easement and/or the area of the Easement shall not require approval of the Lynchburg City Council.
- Q. A waiver of a breach of any provision herein this deed shall not constitute a waiver of any other breach.
- R. The use of the Easement is subject to the following restrictions:
 - 1. The Easement shall only be used by the officers and employees of Griffin Pipe Products Co., LLC to allow for a convenient means of accessing the employee parking lot located on property owned by Griffin Pipe Products Co., LLC, known as 2 Adams Street, Lynchburg, VA 24504 (Tax Map No. 04513005).
 - 2. The use of the Easement is specifically restricted to vehicles belonging to the officers and employees of Griffin Pipe Products Co., LLC (which may be owned by Griffin Pipe Products Co., LLC) for the express purpose of coming to and leaving from their employment with Griffin Pipe Products Co., LLC, its successors and assigns.
 - 3. The officers and employees of Griffin Pipe Products Co., LLC are prohibited from parking their vehicles, at any time or in any way, within the Easement area, nor may they park their vehicles on any other portion of the City's property, known as 4 Adams Street, Lynchburg, Virginia 24504 (Tax Map No. 04513004).
 - 4. The officers and employees of Griffin Pipe Products Co., LLC are prohibited from blocking or restricting access, at any time or in any way, to the City's Pump House facility, located on 4 Adams Street, Lynchburg, Virginia 24504 (Tax Map No. 04513004).

5. The officers and employees of Griffin Pipe Products Co., LLC are prohibited from blocking or restricting access, at any time or in any way, to the public boat ramp to the James River, also located on 4 Adams Street Lynchburg, Virginia 24504 (Tax Map No. 04513004).
 6. Any and all trucks, trailers, or any other motor vehicles belonging to, retained by, or used by Griffin Pipe Products Co., LLC (other than vehicles described in paragraph R(3) above), are prohibited, at any time or in any way, from using the Easement.
 7. Should Griffin Pipe Products Co., LLC, their successors or assigns, cease to use the property known as 2 Adams Street, Lynchburg, VA 24504 (Tax Map No. 04513005) as an employee parking lot, then the Easement granted hereby shall be deemed automatically abandoned, terminated, and vacated.
- S. This deed shall be binding upon the Grantor and the Grantee as well as their respective successors, permitted assigns, representatives, lessees, tenants, and the like who have or may in the future have an interest in the Easement, this deed, and/or the applicable properties affected by the Easement.

The granting of this Easement was approved by Ordinance of the Lynchburg City Council on October 8, 2024 after a public hearing and after the requirements of § 15.2-2100 et seq of the Code of Virginia, 1950, as amended, were duly satisfied.

(Remainder of Page Intentionally Left Blank)

WITNESS the following signature and seal.

City of Lynchburg

By: _____(SEAL)
Wynter C. Benda

Its: City Manager

COMMONWEALTH OF VIRGINIA,
CITY OF LYNCHBURG, to-wit:

Acknowledged before me on behalf of the City of Lynchburg by Wynter C. Benda, its City
Manager, on this _____ day of _____, 20_____.

Notary Public

Notary commission expires _____

Notary registration no. _____

Affix Notary Seal:

(Seal)

Attest:

Approved as to Form:

Alicia L. Finney, Clerk of Council

Matthew C. Freedman, City Attorney

By joining in this deed through signature of its authorized representative, the Grantee hereby accepts the entirety of the same.

Griffin Pipe Products Co., LLC

By: _____ (SEAL)

Its: _____

STATE/Commonwealth of _____,
CITY/COUNTY OF _____, to-wit:

Acknowledged before me on behalf of Griffin Pipe Products Co., LLC, by
_____, its _____, on this
_____ day of _____, 20_____.

Notary Public

Notary commission expires _____

Notary registration no. _____

Affix Notary Seal:

NOTES:

- 1. THIS PLAT IS FOR THE SOLE PURPOSE OF SHOWING AN EASEMENT, NO BOUNDARY SURVEY WAS PERFORMED.
- 2. THE EASEMENT SHOWN HEREON REPRESENTS A PORTION OF THE INTEREST IN PROPERTY DESCRIBED IN DB 64 PG 93, DB K PG 99 & DB J PG 170 , AND KNOWN AS PARCEL NUMBER 04513004.
- 3. BEARINGS, DISTANCES, AND MONUMENTS SHOWN HEREON MAY OR MAY NOT CONFORM WITH THOSE THAT WOULD BE SHOWN ON AN ACTUAL BOUNDARY SURVEY, AND NO CERTIFICATION IS MADE TO THAT EFFECT.
- 4. THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT NECESSARILY INDICATE ALL ENCUMBRANCES UPON THE TITLE.

EASEMENT AREAS:

24' INGRESS/EGRESS EASEMENT: 4,420 SF

PLAT APPROVED BY:

6/3/24 *[Signature]*
DATE CITY ENGINEER

LINE TABLE		
LINE	LENGTH	BEARING
L1	12.05	N55°49'37"E
L2	10.63	N24°15'43"W
L3	19.20	N68°56'24"E
L4	6.00	S23°06'12"E
L5	59.75	N80°47'22"E
L6	39.89	S17°59'41"E
L7	46.62	N17°59'41"W
L8	64.76	S80°47'22"W

LEGEND

- IRON PIN FOUND
- ◆ RAILROAD SPIKE FOUND
- POINT
- SUBJECT PARCEL LINE
- - - ADJACENT PARCEL LINE
- - - CITY OWNED WATERLINES
- ▨ NEW INGRESS/EGRESS EASEMENT

DB DEED BOOK

PG PAGE

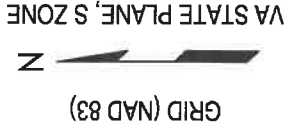
INST# INSTRUMENT NUMBER

TMP TAX MAP PARCEL



127 Nationwide Drive
Lynchburg, Virginia 24502-4272

CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	CHORD BEARING
C1	81.2157	64.00	90.72	S58°36'10"E
C2	81.2157	40.00	56.70	N58°36'10"W



IF THIS DRAWING IS REDUCED,
GRAPHIC SCALE MUST BE USED.

SCALE: 1" = 50'

CITY FILE NO. A-3610
CITY PROJECT NO. 23028-S

CITY OF LYNCHBURG CSO 52			
PLAT SHOWING: 24' INGRESS/EGRESS EASEMENT ACROSS TMP 04513004 4 ADAMS STREET CITY OF LYNCHBURG, VA			
COMM NO: 222217	DRAWN: BSH	CHECK: WRM	DATE: 05/30/24
			222217_Plat_04513004.dwg

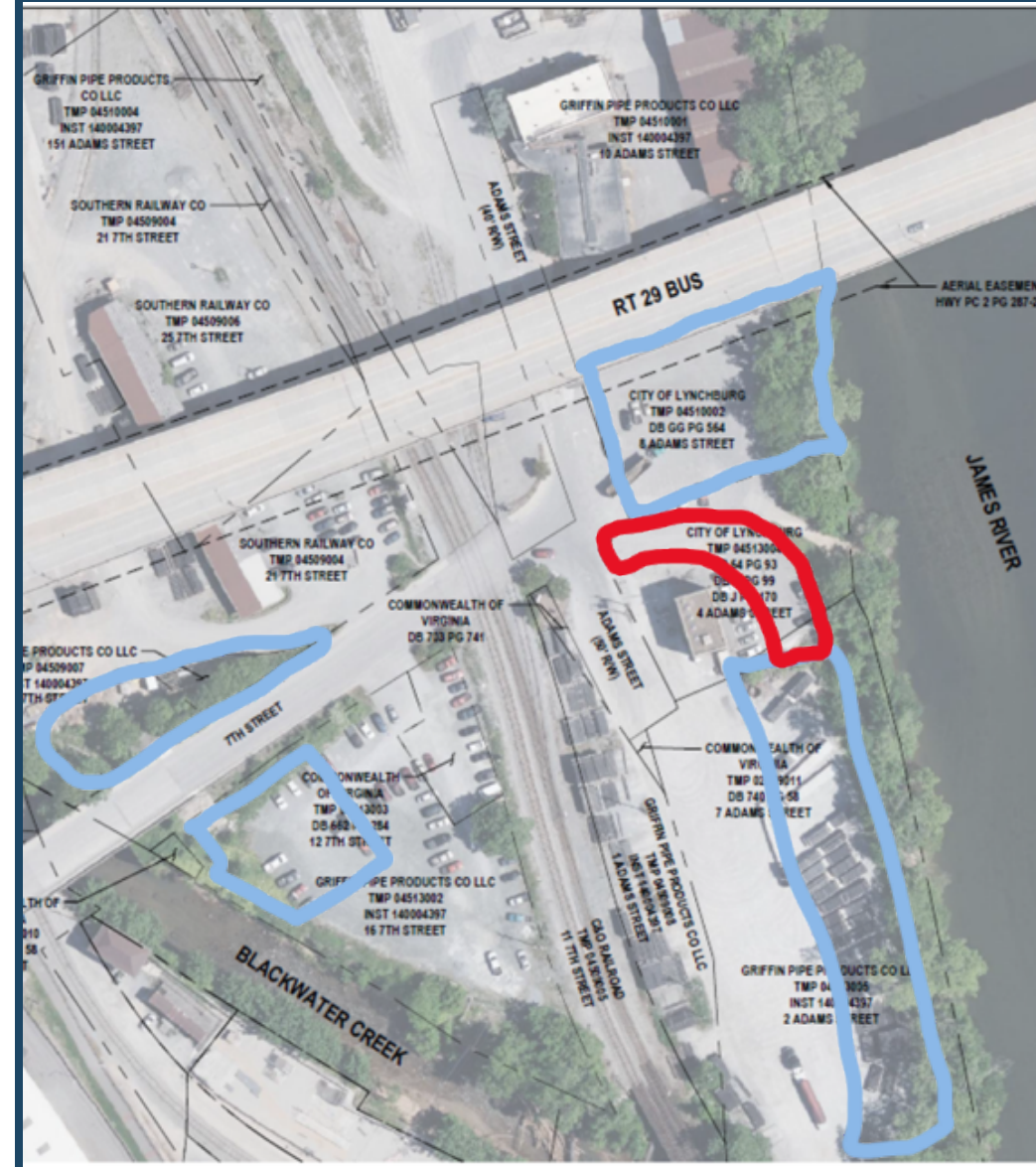
GRIFFIN PIPE PARKING INGRESS/EGRESS EASEMENT

October 8, 2024



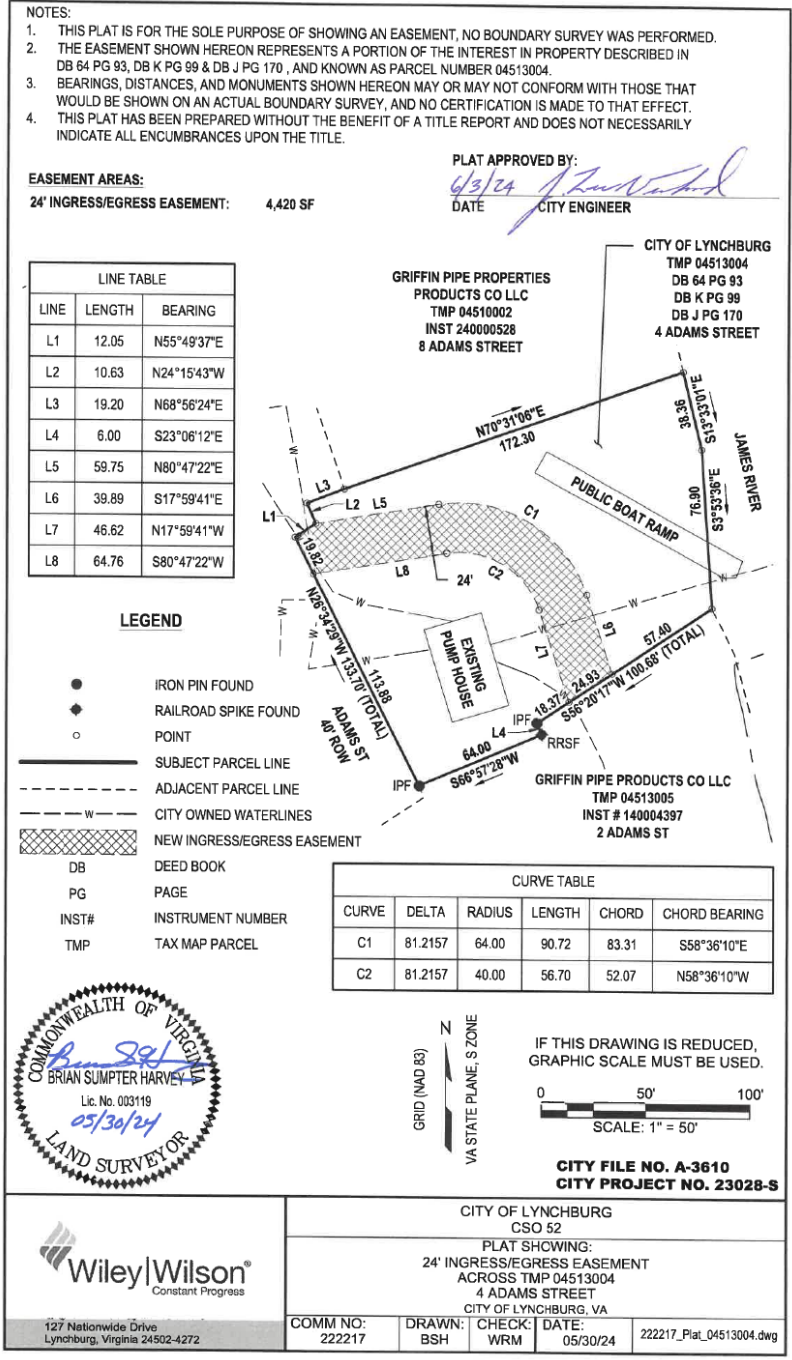
INGRESS/EGRESS EASEMENT

- Light Blue – Provisions of the MOU that are completed.
- Red - Ingress/Egress Easement on City Owned Tax Map Parcel No. 04513004 (4 Adams Street) for purposes of employee parking on Griffin Pipe Products Co., LLC property



EASEMENT PLAT

- Advertisement dates: September 12th and 20th, 2024
- Bids received October 2nd, 2024.



AGENDA ITEM SUMMARY**MEETING DATE**

October 8, 2024

PRESENTED BYMegan Lucas - Lynchburg Regional
Business Alliance**AGENDA ITEM # III.2**

Lynchburg Regional Business Alliance Overview of Site and Building Readiness

RECOMMENDATION**SUMMARY**

Competition in economic development is fierce, especially in terms of attracting capital investment for business and industrial projects - among 3,141 counties, 19,000 municipalities, and 90,000 taxing jurisdictions, just in the United States. Speed to market is often a deciding factor for relocating and growing companies, and it has shortened tremendously over the years as communities have gotten aggressive in preparing themselves to recruit and retain businesses. Today, as we compete globally for new capital investment, many companies require a pad-ready site so they start producing as quickly as possible.

Megan Lucas, Chief Executive Officer & Chief Economic Development Officer of the Lynchburg Regional Business Alliance, will provide an overview of the state of site and building readiness in our region, including the progress the City of Lynchburg is making and next steps.

PRIOR ACTION(S)

N/A

FISCAL IMPACT

N/A

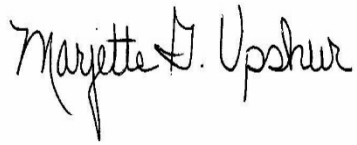
CONTACT(S)

Megan Lucas - Lynchburg Regional Business Alliance

ATTACHMENT(S)

1. Presentation

REVIEWED BY



Date: October 03, 2024

Marjette Upshur, Director of Economic Development & Tourism



Date: October 03, 2024

Kent White, Assistant City Manager



Date: October 03, 2024

Alicia Finney, Clerk of Council



LYNCHBURG REGIONAL
BUSINESS ALLIANCE
— Chamber & Economic Development —

SITES & BUILDINGS

Regional Hurdles



EVERY WHICH WAY BUT US

Lowe's warehouse to create 70 jobs in Roanoke County

Cherney Development building \$11M warehouse

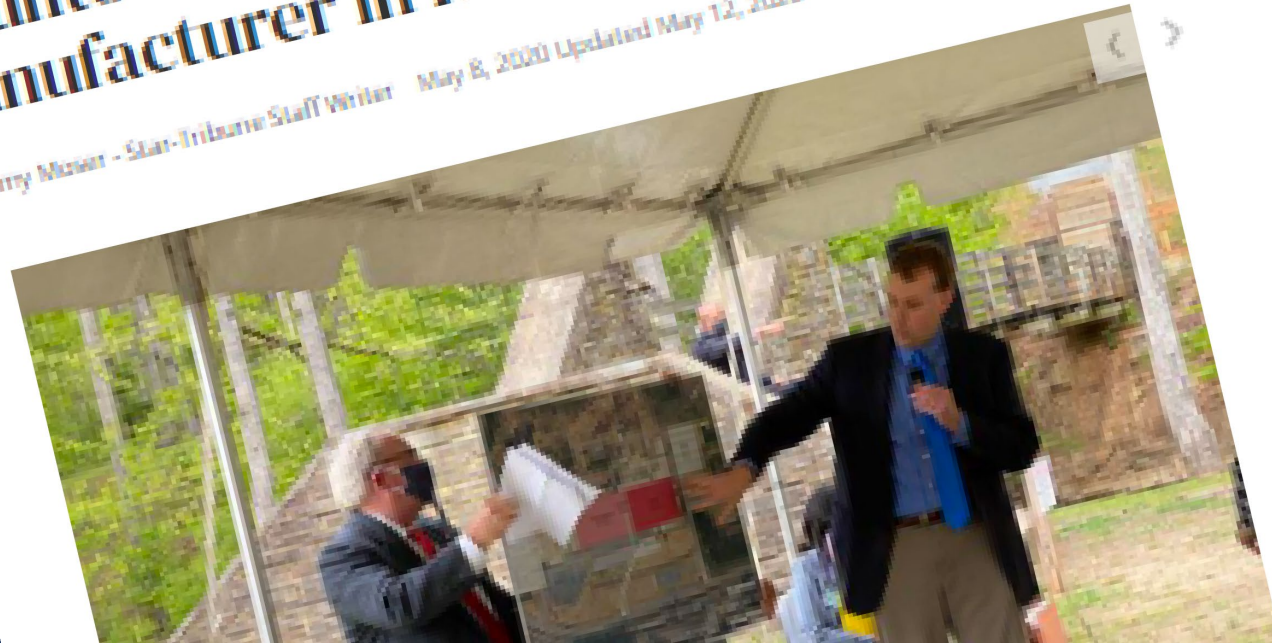
PUBLISHED FEBRUARY 7, 2022 BY KATHERINE SCHULTE

A new Lowe's warehouse and distribution center is expected to create 70 jobs in Roanoke County, the \$11 million project's developer announced Monday.

Lowe's Cos. Inc.

Staunton River RIFA announces new plastics manufacturer in Hurt to bring 200 jobs to region

By Jeremy Moser - Star-Tribune Staff Writer May 8, 2020 Updated May 12, 2020



Tyson breaks ground in Cane Creek Centre

By Zach McKnight - Star Tribune Staff Writer Oct 21, 2021 Updated Oct 21, 2021

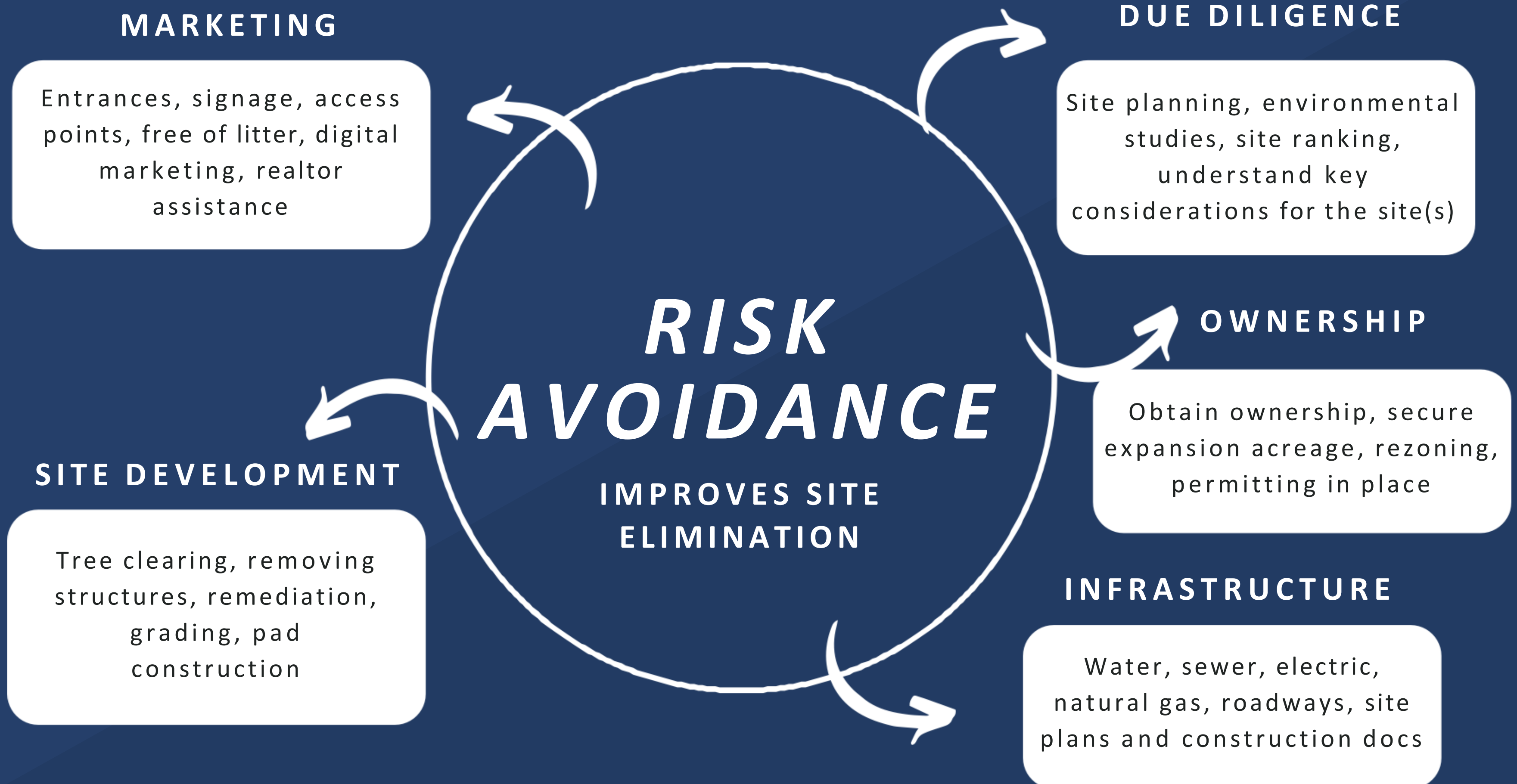


ROANOKE VALLEY NEWS 160 jobs coming to Botetourt County as Munters relocates business

by: WFXRtv.com Digital Desk
Posted: Mar 25, 2021 / 10:30 PM EDT
Updated: Mar 26, 2021 / 05:06 AM EDT

SHARE    ...

BOTETOURT COUNTY, Va. (WFXR) — A company is building a new \$36 million facility in Botetourt County. The company, Munters Group, is relocating its business to the new facility.



WHAT IS A SITE?

NOT A SITE



WHAT IS A SITE?

**PAD READY
SITE**



Bedford Co:
200,000 SF pad ready

Amherst Co:
200,000 SF pad ready

Altavista:
30,000 SF pad ready



WHAT IS SITE PLANNING?

NOT A
SITE
PLAN

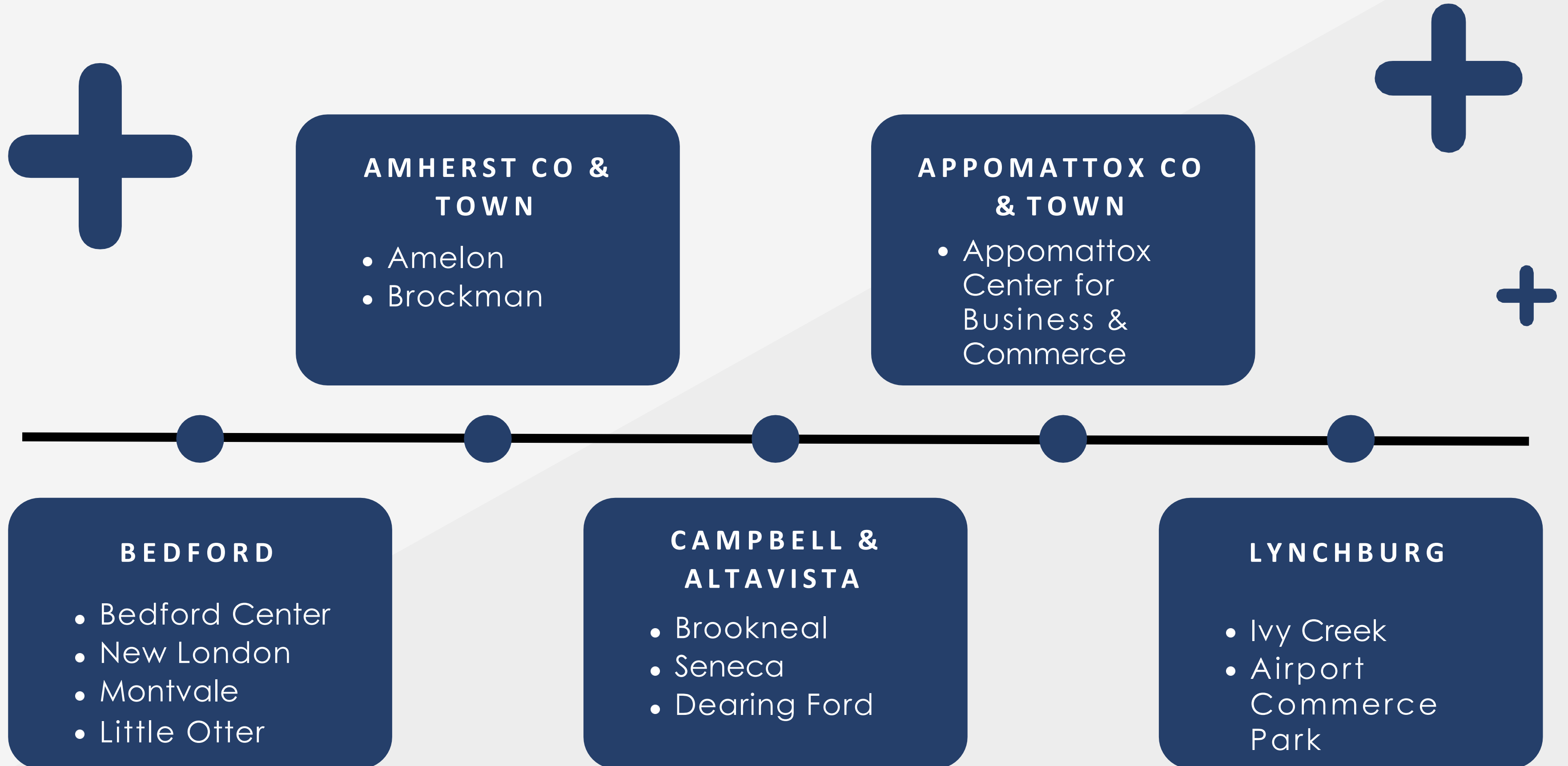


WHAT IS SITE PLANNING?

SITE PLAN



PUBLIC INDUSTRIAL SITE INVENTORY





SITE CHALLENGES

- Cost of improvement/plans
- Speed to market
- Various stages of preparedness
- Outdated or nonexistent site plans
- Not graded/cleared
- Risk aversion



Large SF INDUSTRIAL BUILDING INVENTORY



**AMHERST CO &
TOWN**

- Old VA Brick

**APPOMATTOX CO
& TOWN**

- Thomasville



BEDFORD

TEVA Pharma

**CAMPBELL &
ALTAVISTA**

- Sanfacon

LYNCHBURG

- 314 Jefferson Ridge Pkwy
- 1000 Robins Rd.



EXISTING BUILDING CHALLENGES

- Outdated infrastructure
- Low ceilings
- Costly upgrades
- Very limited inventory
- Uncooperative owners
- Available SF 100,000 +



OPPORTUNITIES

	2018	2019	2020	2021	2022	2023	2024	TOTAL
SITES	19	14	7	3		2	2	47
BUILDINGS	5	7	8	9	14	10	6	59
JOB	2411	2861	3760	4430	2374	3221	2368	21,425
INVESTMENT	\$590.6M	\$3.69B	\$931M	\$772M	\$658M	\$2.2B	\$3.4B	\$18.3B

Above includes only RFI requests shared with the Alliance as of 10/3/2024

CLEARING THE HURDLES



PROGRESS WE'VE MADE regionally:

- Utilizing programs such as GO Virginia to improve ranking of industrial sites (200 Jefferson Ridge)
- Grant to extend gas to Dearing Ford Grant to grade sites at Amelon & Brockman
- Build relationships with brokers and property owners
- Additional property secured and characterized in Altavista
- VBRSP (VA Business Ready Site Program)

CLEARING THE HURDLES



PROGRESS LYH HAS MADE:

- \$450,000 in state grant dollars for the development of the Airport Commerce Park and Ivy Creek Innovation Park
- Due Diligence completed on Airport Commerce Park and Ivy Creek Innovation Park in FY24
- Council support for CIP projects to continue site development work towards pad-ready sites
- Access road and utility extensions approved and funded for Ivy Creek Innovation Park Sites A&B in FY25

Spec BUILDING

- **Amherst County**
 - 45,000SF Multi-Tenant
- **Campbell County**
 - 10,000 SF
 - 100,000 SF
- **Bedford County**
 - 40,000 SF (Belvac)



WHAT'S AHEAD?

THE BIGGEST HURDLES YET TO CLEAR:

- Pad Ready Sites - get sites to a state of readiness for buildings Site plans
- Continue site improvement work
 - Educate local developers on incentive programs
- Create partnerships with private developers and public-sector land
- Spec building program



WHAT'S AHEAD?

Supporting Economic Development FY26 CIP :

Airport Commerce Park

Ivy Creek Innovation Park

WHAT'S AHEAD?

Supporting Economic Development FY26 CIP :

Clearing the hurdles means
Retaining **existing jobs** and
NEW Jobs for our citizens.

Finishing strong for the wins!

Thank you for
your vision and
leadership.

AGENDA ITEM SUMMARY**MEETING DATE**

October 8, 2024

PRESENTED BYMarjette Upshur, Director of Economic
Development & Tourism**AGENDA ITEM # III.3**

Office of Economic Development & Tourism Sports Tourism Update

RECOMMENDATION

Staff update on sports tourism in Lynchburg. This item is information only, with no action required.

SUMMARY

Sports Tourism is integral to local and national economies across the United States. Travelers attending sports tournaments, races, and other events, either as participants or spectators, generate significant economic benefits for households, businesses, and governments and represent a critical driver of the overall economy. While some states generate a larger share of economic impact given their size, seasonality, and location within the U.S., the Sports Events and Tourism Association State of the Industry Report ranks Virginia in the Top 10 States in Sports Tourism Impact for 2023.

The Office of Economic Development & Tourism will share the recent success of the City's sports tourism strategic plan and highlight upcoming events coming to our area.

PRIOR ACTION(S)

None

FISCAL IMPACT

N/A

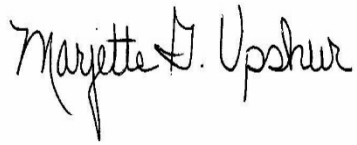
CONTACT(S)

Marjette Upshur, Director of Economic Development & Tourism

ATTACHMENT(S)

1. City Council Presentation_Sports Tourism_10-8-24

REVIEWED BY



Date: October 01, 2024

Marjette Upshur, Director of Economic Development & Tourism



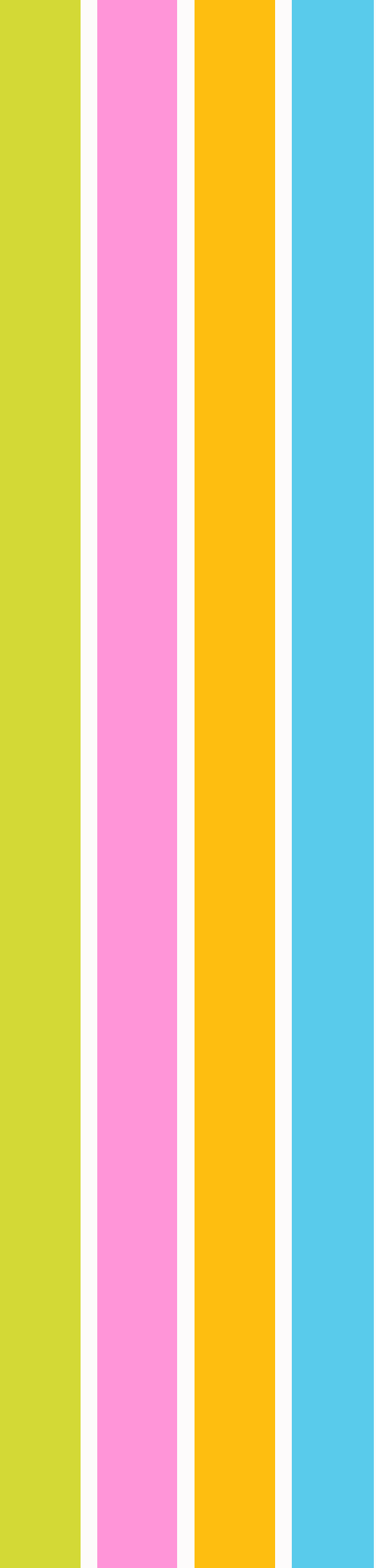
Date: October 02, 2024

Kent White, Assistant City Manager



Date: October 03, 2024

Alicia Finney, Clerk of Council

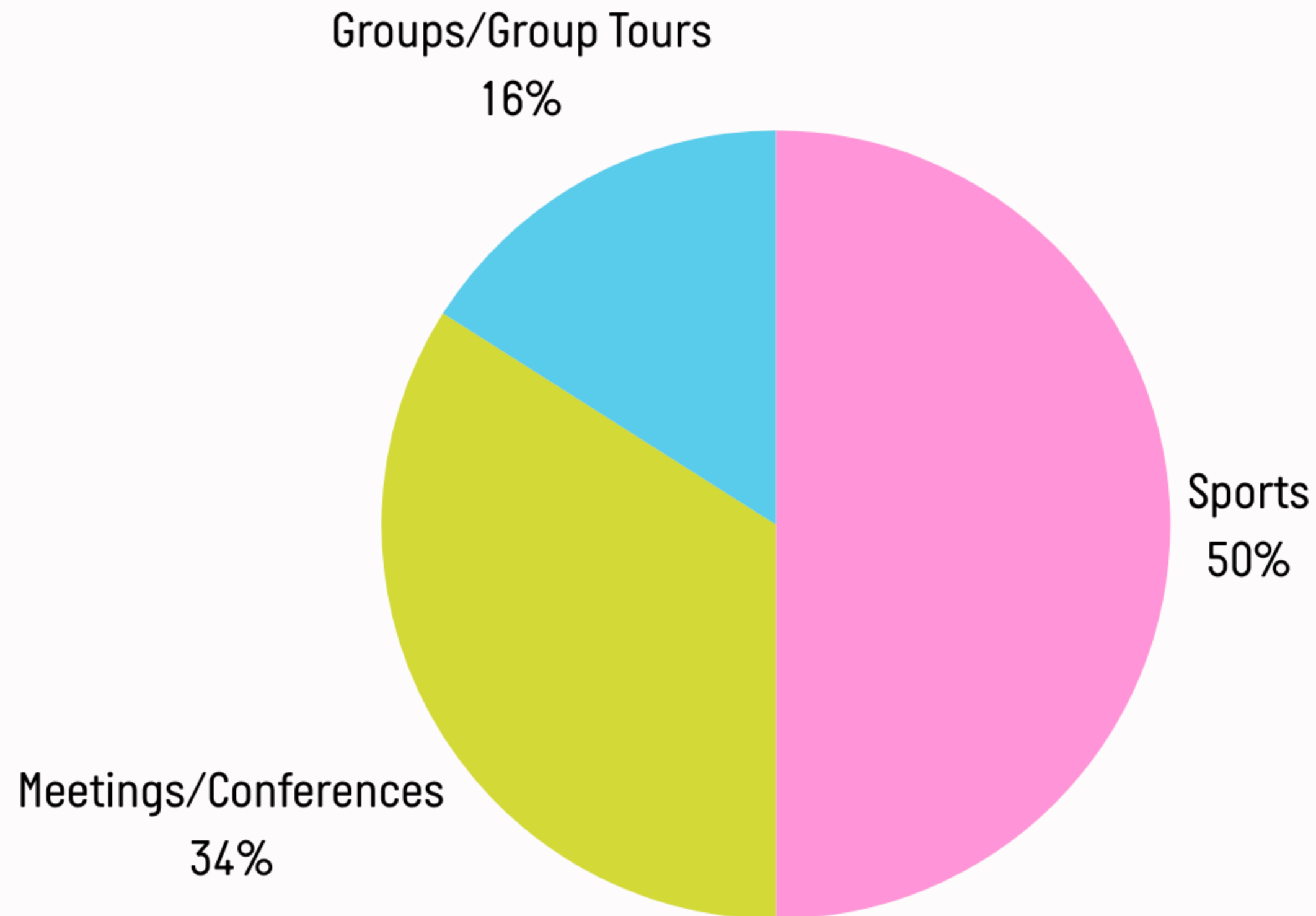


SPORTS TOURISM UPDATE

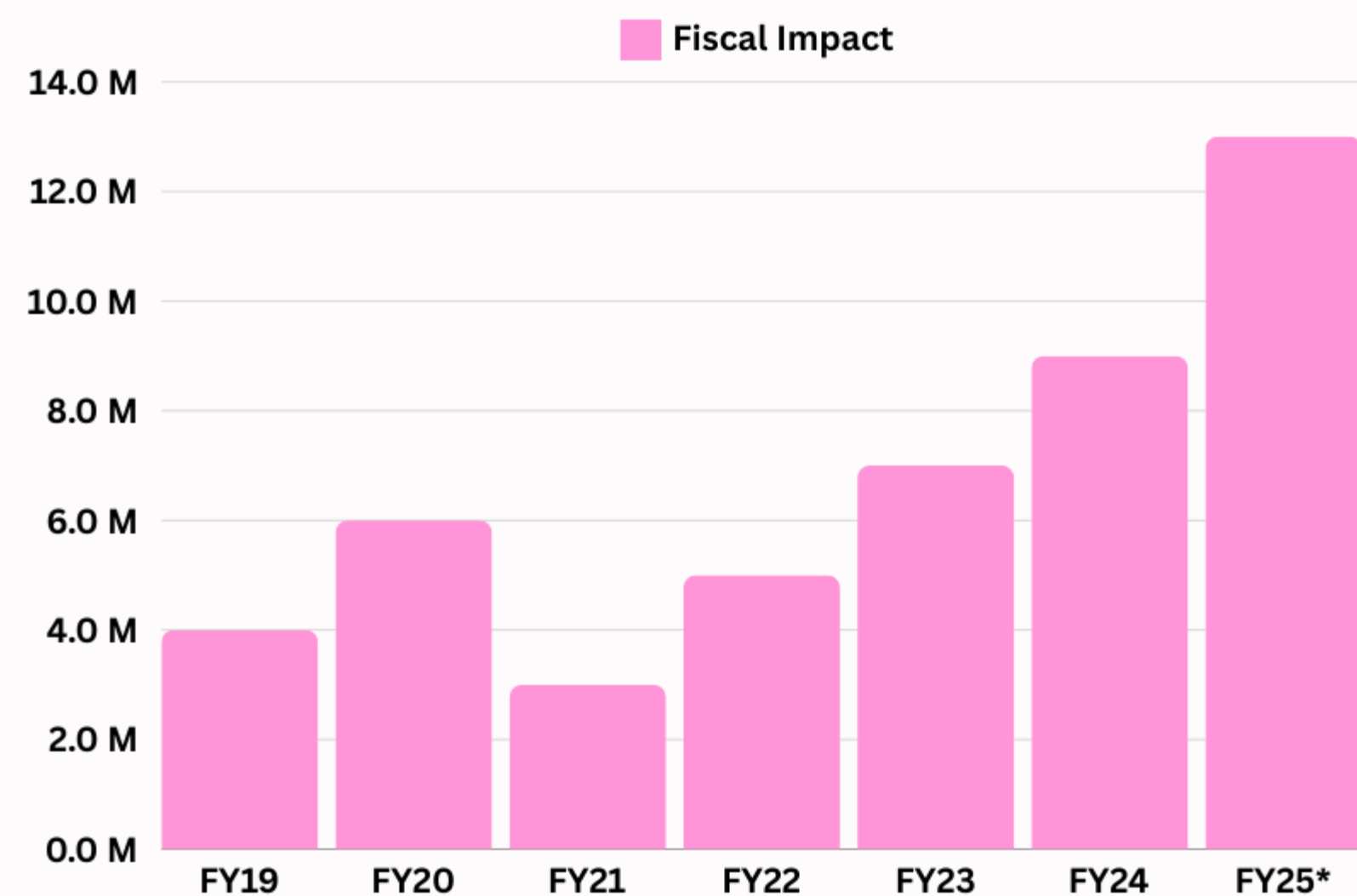
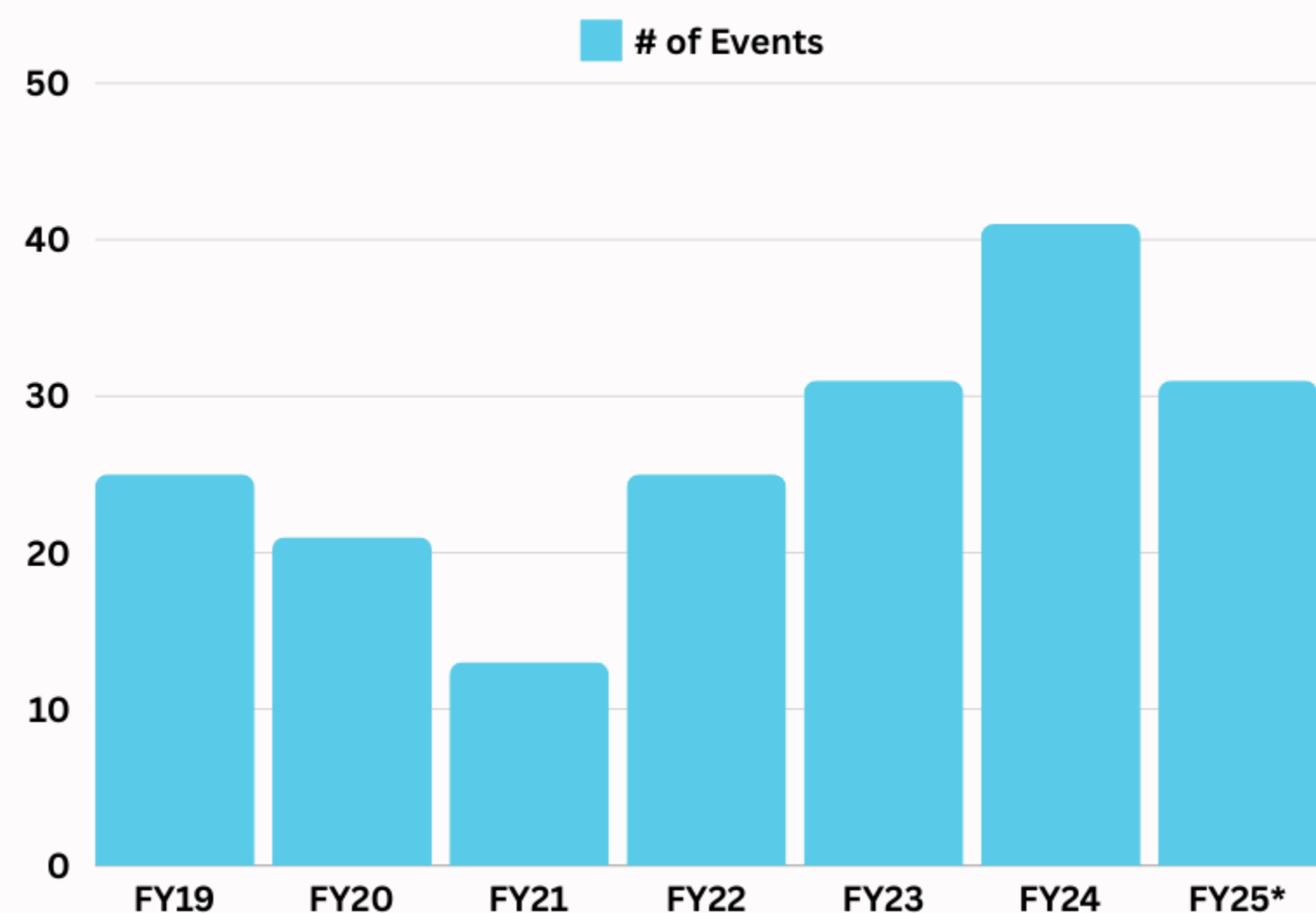
Office of Economic Development & Tourism

October 8, 2024

Of the 100 definite and assisted events/groups booked in FY 2024, half were sports-related.



Economic Impact Calculations by Fiscal Year



* FY25 booked as of August 31, 2024

LYH Legacy Sporting Events



Virginia 10 Miler

50th Anniversary in 2024



Storming of Thunder Ridge

15th Anniversary in 2024



HumanKind Turkey Trot

36th Anniversary in 2024

Anchor Institution Partnerships

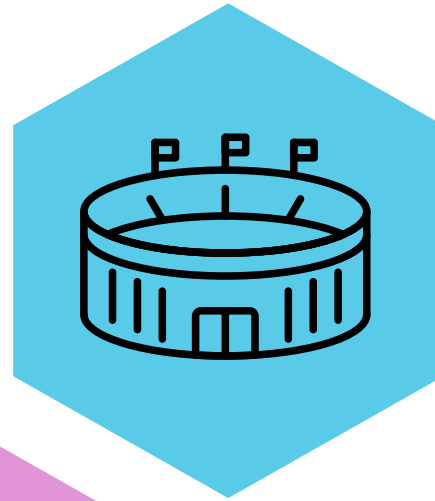
Conference
Championships

NCAA Regional &
National
Championships

Production of
Scholastic Sports
Guide

Resources

Sports Facilities
Guide



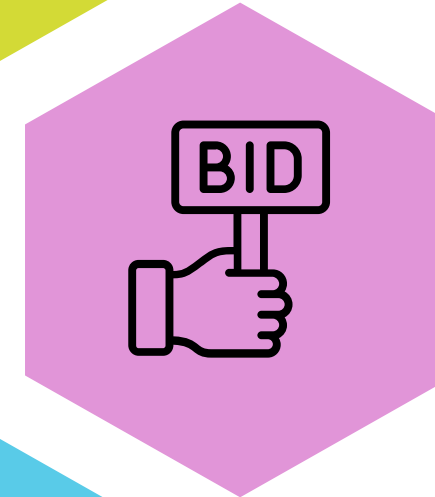
Scholastic
Visitors Guide



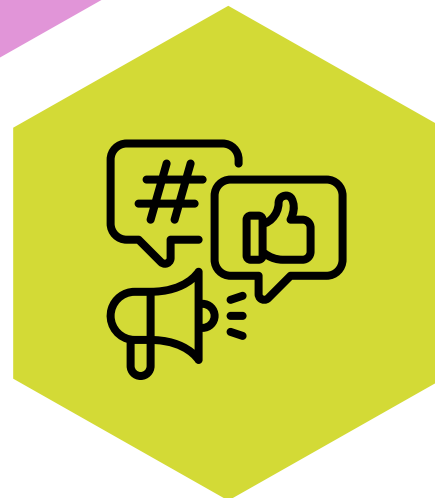
Facility Rental
Assistance



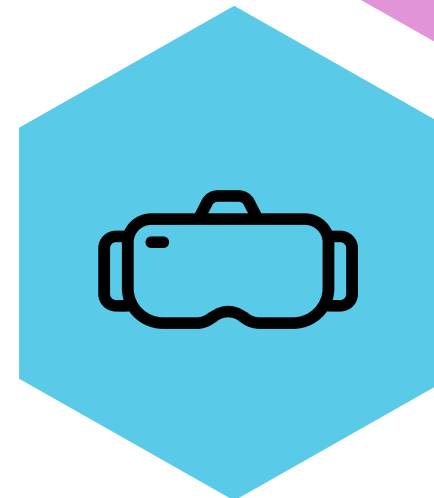
Event Bid Fees



Marketing
Partnership



Virtual Reality



Disc Golf Pro Tour Championship



Culminating 2025 Disc Golf Tour Event
October 16-19, 2025



740 professional, amateur, and junior athletes



Estimated 3,200 media, staff, player support, and spectators



98% of visitors from further than 2 hours away



Estimated economic impact of \$1.9 million



Lynchburg City and Bedford County Partnership

Future of LYH Sports Tourism

Identify new opportunities

Creative use of current facilities

Strengthen relationships

AGENDA ITEM SUMMARY**MEETING DATE**

October 8, 2024

PRESENTED BY

Erin Hawkins

AGENDA ITEM # IV.4

Consolidation of Erosion Control and Stormwater Management Requirements & Revising Illicit Discharge Requirements

RECOMMENDATION

This item will appear for City Council vote on October 22, 2024, General Business agenda. Approval of the consolidation of the City's erosion control and stormwater control requirements and revising the City's illicit discharge requirements.

SUMMARY

The City is one of many cities in the Commonwealth required to have ordinances to meet federal and state requirements for erosion and sediment control management, stormwater runoff, and illicit discharge controls. City Code chapters 16.1 and 16.2 currently outline those requirements.

Recent changes by the state require the consolidation of the erosion control requirements and stormwater control requirements into one ordinance. The illicit discharge revisions are separate, related, and included as part of this process under the proposed revised City Code chapter 16.2. The proposed ordinance amendments to the erosion control requirements and stormwater control requirements are consistent with the state-mandated regulations.

PRIOR ACTION(S)**FISCAL IMPACT**

N/A

CONTACT(S)

Erin Hawkins
Timothy Mitchell, Director of Water Resources

ATTACHMENT(S)

1. Proposed Ordinance - SWM/ESC Combined & Illicit Discharges into MS4
2. Ordinance Consolidation

REVIEWED BY



Timothy Mitchell, Director of Water Resources

Date: October 03, 2024



Gregory Patrick, Deputy City Manager

Date: October 03, 2024



Alicia Finney, Clerk of Council

Date: October 03, 2024

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981, BY AMENDING SECTIONS 16.1-1 THROUGH 16.1-14 OF CHAPTER 16.1 (INCLUDING THE CHAPTER'S TITLE AND SECTION 16.1-11.1); REPEALING SECTIONS 16.1-15 AND 16.1-16 OF CHAPTER 16.1; AMENDING SECTIONS 16.1-17 AND 16.1-18 OF CHAPTER 16.1; CREATING NEW SECTIONS 16.1-19 AND 16.1-20 OF CHAPTER 16.1; AMENDING SECTIONS 16.2-1 THROUGH 16.2-6 OF ARTICLE I OF CHAPTER 16.2 (INCLUDING THE CHAPTER'S TITLE); REPEALING SECTION 16.2-7 OF ARTICLE I OF CHAPTER 16.2; AMENDING SECTIONS 16.2-8 AND 16.2-9 OF ARTICLE I OF CHAPTER 16.2; AND REPEALING SECTIONS 16.2-10 THROUGH 16.2-76 OF ARTICLES II THROUGH VI OF CHAPTER 16.2; WITH ALL OF THE SAME BEING CONNECTED TO UPDATING THE CITY'S EROSION AND SEDIMENT CONTROL AND STORMWATER MANGEMENT PROGRAM AND THE PROHIBITIONS SPECIFIC TO ILLICIT DISCHARGES INTO THE CITY'S SEPARATE STORM SEWER SYSTEM ("MS4")

ORDINANCE:

#O-24-__

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That the Code of City of Lynchburg, 1981, be and the same is hereby amended and reenacted by (i) amending Sections 16.1-1 through 16.1-14 of Chapter 16.1 (including the Chapter's title and Section 16.1-11.1); (ii) repealing Sections 16.1-15 and 16.1-16 of Chapter 16.1; (iii) amending Sections 16.1-17 and 16.1-18 of Chapter 16.1; and (iv) creating new Sections 16.1-19 and 16.1-20 of Chapter 16.1 of such code, all as follows:

Chapter 16.1

EROSION AND SEDIMENT CONTROL
EROSION AND STORMWATER MANAGEMENT

This chapter is adopted as part of an initiative to integrate the City's stormwater management program with its erosion and sediment control program. Further, it is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities for land-disturbing activities into a more convenient and efficient manner for both the City and those responsible for compliance.

Sec. 16.1-1. Purpose Title, Purpose, and Authority.

~~The purpose of this chapter is to conserve the land, water, air and other natural resources of the City of Lynchburg and promote the public health and welfare of the people in the city by establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced. These procedures will apply to any land disturbing activity as done by government and private entities in the City of Lynchburg.~~

(a) This chapter shall be known as the "Erosion and Stormwater Management Ordinance".

(b) The purpose of this chapter is to ensure the general health, safety, and welfare of the citizens of the City, protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion, including protection from a land-disturbing activity causing unreasonable degradation of property, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water

quality and quantity shall be administered and enforced.

(c) This chapter is authorized by § 62.1-44.15:27 of the Code of Virginia.

(d) Unless excepted by applicable law, all construction activities occurring in the City shall be subject to the requirements of this chapter.

Sec. 16.1-2. Authority for chapter Definitions.

This chapter is authorized by the Code of Virginia, 1950, as amended, Title 10.1, Chapter 5, Article 4, (10.1-560 et seq.), known as the Virginia Erosion and Sediment Control Law.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

"Agreement in lieu of a plan" means a contract between the City and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of the Virginia Erosion and Stormwater Management Act, "VESMA", and this chapter for the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five (5) percent; such contract may be executed by the City in lieu of a soil erosion control and stormwater management plan.

"Applicant" means person submitting a soil erosion control and stormwater management plan to the City for approval in order to obtain authorization to commence a land-disturbing activity.

"Best management practice" or "BMP" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems.

(a) "Nonproprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are in the public domain and are not protected by trademark, patent, or copyright.

(b) "Proprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark, patent, or copyright.

"Board" means the State Water Control Board.

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Channel" means a natural stream or manmade waterway.

"City" means the City of Lynchburg, Virginia.

"Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 *et seq.*), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

"Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations that specifies how the water quality components, quantity components, or both of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

"Construction activity" means any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

"Control measure" means any BMP, stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

"CWA and regulations" means the Clean Water Act and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Dam" means a barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

"Denuded" means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

"Department" means the Virginia Department of Environmental Quality.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The regulation of discharges from development, for purposes of stormwater management, does not include the exclusions found in 9VAC25-875-860.

"Dike" means an earthen embankment constructed to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; levee.

"Discharge" when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

(a) Any addition of any pollutant or combination of pollutants to state waters from any point source; or

(b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Diversion" means a channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

"Dormant" means denuded land that is not actively being brought to a desired grade or condition.

"Drainage area" means a land area, water area, or both from which runoff flows to a common point.

"Energy dissipator" means a nonerodible structure which reduces the velocity of concentrated flow to reduce its erosive effects.

"Environmental Planner" means the Environmental Planner of the City, or his/her designee(s). The Environmental Planner acts on behalf of the City as the VESMP Authority.

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

"Erosion and sediment control plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion impact area" means an area of land that is not associated with a current land-disturbing activity but is subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of ten thousand (10,000) square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

"ESC" means erosion and sediment control.

"ESM plan" means a soil erosion control and stormwater management plan, commonly referred to as the erosion control and stormwater management plan.

"Farm building or structure" means the same as that term is defined in § 36-97 of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in §

3.2-6400 of the Code of Virginia, and any related impervious services including roads, driveways, and parking areas.

"Flood fringe" means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes the flood or floodway fringe designated by the Federal Emergency Management Agency.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Floodplain" means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes the floodplain designated by the Federal Emergency Management Agency.

"Flood-prone area" means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes the floodway designated by the Federal Emergency Management Agency.

"Flume" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

"General permit" means a permit authorizing a category of discharges under the CWA and the VESMA within a geographical area.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified as another order.

"Impervious cover" means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

"Inspection" means an on-site review of the project's compliance with any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the VESMA and applicable regulations.

"Karst area" means any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

"Land-disturbance approval" means an approval allowing a land-disturbing activity to commence issued by the City after the requirements of § 62.1-44.15:34 of the Code of Virginia have been met.

"Large construction activity" means construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five (5) acres of total land area. Large construction activity also includes the disturbance of less than five (5) acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five (5) acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, the construction of electric and telephone utility lines, and natural gas pipelines; the construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; highway construction projects; construction of stormwater channels and stream restoration activities; and water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

"Live watercourse" means a definite channel with bed and banks within which concentrated water flows continuously.

"Locality" means the City of Lynchburg, Virginia.

"Localized flooding" means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

"Main channel" means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

"Manmade" means constructed by man.

"Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

"Minor modification" means modifications and amendments not requiring extensive review and evaluation including changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Natural stream" means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being

irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

"Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater.

"Operator" means the owner or operator of any facility or activity subject to the VESMA and this chapter. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (a) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (b) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit or VESMP authority permit conditions (i.e. they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions).

"Owner" means the same as that term is defined in § 62.1-44.3 of the Code of Virginia. For a regulated land-disturbing activity that does not require a permit, "owner" also means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by one hundred.

"Permit" means VPDES permit coverage issued by the Department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity.

"Permittee" means the person to whom the permit is issued.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Point of discharge" means a location at which concentrated stormwater runoff is released.

"Point source" means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (a) harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Post-development" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Predevelopment" refers to the conditions that exist at the time that plans for the land-disturbing activity are submitted to the City acting as the VESMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the commencement of land-disturbing activity shall establish predevelopment conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

"Qualified personnel" means a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity.

"Responsible land disturber" or "RLD" means an individual holding a certificate issued by the Department who is responsible for carrying out the land-disturbing activity in accordance with the approved erosion and sediment control plan or ESM plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan, ESM plan, or permit as defined in this chapter as a prerequisite for engaging in land disturbance.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Sediment basin" means a temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

"Sediment trap" means a temporary impoundment built to retain sediment and debris which is formed by constructing an earthen embankment with a stone outlet.

"Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

"Shoreline erosion control project" means an erosion control project approved by local wetlands boards, the Virginia Marine Resources Commission, the Department, or the United States Army Corps of Engineers and located on tidal waters and within nonvegetated or vegetated wetlands as defined in Title 28.2 of the Code of Virginia.

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"Site hydrology" means the movement of water on, across, through, and off the site as determined by parameters including soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope with an energy dissipator at the outlet end.

"Small construction activity" means:

(a) Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one (1) acre and less than five (5) acres. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

(b) Any other construction activity designated by either the Department or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Soil erosion control and stormwater management plan," commonly referred to as the erosion control and stormwater management plan, or "ESM plan" means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements

adopted pursuant to the VESMA. The ESM plan may consist of aspects of the erosion and sediment control plan and the stormwater management plan as each is described in this chapter.

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

"State" means the Commonwealth of Virginia.

"State application" means the standard form or forms, including any additions, revisions, or modifications to the forms, approved by the administrator and the Department for applying for a permit.

"State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Storm sewer inlet" means a structure through which stormwater is introduced into an underground conveyance system.

"Stormwater", for the purposes of the VESMA, means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater conveyance system" means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity, including the following:

(a) "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;

(b) "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or

(c) "Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

"Stormwater detention" means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream conveyance system.

"Stormwater management facility" means a control measure that controls stormwater runoff and changes the characteristics of that runoff including the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document containing material describing methods for complying with the requirements of the VESMP.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under the VESMP for construction activities shall identify and require the implementation of control measures and shall include or incorporate by reference an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"Surface waters" means:

- (a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate wetlands;
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (i) That are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) That are used or could be used for industrial purposes by industries in interstate commerce.
- (d) All impoundments of waters otherwise defined as surface waters under this definition;
- (e) Tributaries of waters identified in subdivisions 1 through 4 of this definition;
- (f) The territorial sea; and
- (g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions a through f of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

"SWM" means stormwater management.

"Temporary vehicular stream crossing" means a temporary nonerodible structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in ten (10) years. It may also be expressed as an exceedance probability with a ten (10) percent chance of being equaled or exceeded in any given year.

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two (2) years. It may also be expressed as an exceedance probability with a fifty (50) percent chance of being equaled or exceeded in any given year.

"Virginia Erosion and Stormwater Management Act" or "VESMA" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1, State Water Control Law, of Title 62.1 of the Code of Virginia.

"Virginia Erosion and Stormwater Management Program" or "VESMP" means a program established by the VESMP authority for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of the VESMA.

"Virginia Erosion and Stormwater Management Program authority" or "VESMP authority" means the City is the designated program authority through its Department of Community Development, approved by the Department to operate the VESMP.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the Department pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"Virginia Stormwater BMP Clearinghouse" means a collection that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the VESMA and associated regulations.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the VESMA and associated regulations and is developed by the Department with advice from a stakeholder advisory committee.

"Wasteload allocation" or "wasteload" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. Wasteload allocations are a type of water quality-based effluent limitation.

"Water quality technical criteria" means standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control nonpoint source pollution.

"Water quantity technical criteria" means standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

"Wetlands" means those areas that are inundated or saturated by surface water or groundwater 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. Wetlands generally include swamps, marshes, bogs, and similar areas.

Sec. 16.1-3. Terms beginning with "A" through "C" Program Established.

As used in this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

- ~~(a) Agreement in lieu of a plan: Means a contract between the plan approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single family residence; this contract may be executed by the plan approving authority in lieu of a formal site plan.~~
- ~~(b) Applicant: Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land disturbing activities to commence.~~
- ~~(c) Board: The Virginia Soil and Water Conservation Board, created under Sec. 10.1-502, Code of Virginia.~~
- ~~(d) Certified inspector: Means an employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of project inspection or (ii) is enrolled in the board's training program for project inspection and successfully completes such program within one year after enrollment.~~
- ~~(e) Certified plan reviewer: Means an employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of plan review, (ii) is enrolled in the board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or landscape surveyor pursuant to Article 1 (§ 54.1-400 et. seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.~~
- ~~(f) Certified program administrator: Means an employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of program administration or (ii) is enrolled in the board's training program for program administration and successfully completes such program within one year after enrollment.~~
- ~~(g) Channel: A natural stream or manmade waterway.~~
- ~~(h) City: The City of Lynchburg.~~

- ~~(i) Clearing: Any activity which removes the vegetative ground cover including, but not limited to, root mat removal and/or topsoil removal.~~
- ~~(j) Conservation plan, erosion and sediment control plan, or plan: A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water control plan inventory, and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives. It shall also address the stormwater management criteria as specified by this chapter.~~

Pursuant to § 62.1-44.15:27 of the Code of Virginia, the City hereby establishes a Virginia Erosion and Stormwater Management Program for land-disturbing activities and adopts the Virginia Erosion and Stormwater Management Regulation(s) that specify(ies) standards and specifications for VESMPs promulgated by the State Water Control Board and expressly incorporates the same herein by reference. The Environmental Planner with the City's Department of Community Development shall serve as the Administrator of the City's Virginia Erosion and Stormwater Management Program.

Sec. 16.1-4. Terms beginning with "D" through "F" Regulated Land Disturbing Activities.

~~As used in this chapter, the following words and phrases shall have the meanings respectively ascribed to them:~~

- ~~(a) *Denuded*: A term applied to land that has been physically disturbed and presently does not supports vegetative cover.~~
- ~~(b) *Development*: A tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or contained within a subdivision for residential dwelling units.~~
- ~~(c) *District or soil and water conservation district*: A political subdivision of the commonwealth organized in accordance with the provisions of Article 3, Sec. 10.1-506 et seq., Chapter 5, of the Code of Virginia.~~
- ~~(d) *Dormant*: Denuded land not actively being brought to a desired grade or condition.~~
- ~~(e) *Erosion impact area*: An area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 1,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.~~
- ~~(f) *Excavating*: Any digging, scooping or other methods of removing earth materials.~~
- ~~(g) *Filling*: Any depositing or stockpiling of earth materials.~~
- ~~(h) *Floodplain*: Those areas adjoining a river, stream, channel, ocean, bay or lake which are likely to be covered by flooding.~~

(a) Land-disturbing activities that meet one of the criteria below are regulated as follows:

(i) Land-disturbing activity that disturbs one thousand (1,000) square feet or more, is less than five thousand (5,000) square feet, and is not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 *et seq.*) of Part V of the Virginia Erosion and Stormwater Management Regulation (the "Regulation").

(ii) Land-disturbing activity that disturbs five thousand (5,000) square feet or more, is less than one (1) acre, and is not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 *et seq.*) and Article 3 (9VAC25-875-570 *et seq.*) of Part V of the Regulation.

(iii) Land-disturbing activity that disturbs less than one (1) acre, but is part of a larger common plan of development or sale that disturbs one (1) acre or more, is subject to criteria defined in Article 2 (9VAC25-875-540 *et seq.*) and Article 3 (9VAC25-875-570 *et seq.*) of Part V of the Regulation unless Article 4 (9VAC25-875-670 *et seq.*) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

(iv) Land-disturbing activity that disturbs one (1) acre or more is subject to criteria defined in Article 2 (9VAC25-875-540 *et seq.*) and Article 3 (9VAC25-875-570 *et seq.*) of Part V of the Regulation unless Article 4 (9VAC25-875-670 *et seq.*) of Part V of the same is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

(b) Land-disturbing activities exempt per 9VAC25-875-90 are not required to comply with the requirements of the VESMA unless otherwise required by federal law or section 16.1-6 of this chapter.

Sec. 16.1-5. Terms beginning with "G" through "K" Review and Approval of Plans; Prohibitions.

~~(a) *Governing body*: The council of the City of Lynchburg.~~

~~(b) *Grading*: Any excavating or filling with earth materials or any combination thereof, including the land in its excavated or filled condition.~~

~~(c) *Inspection*: An on-site review of compliance with the approved plan, and any applicable design criteria.~~

(a) The Environmental Planner shall review and approve soil erosion control and stormwater management (ESM) plans, except for activities not required to comply with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA). Activities not required to comply with VESMA are defined in 9VAC25-875-90.

(b) A person shall not conduct any land-disturbing activity in the City until:

(i) An application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, has been submitted to the Environmental Planner;

(ii) The name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia is submitted to the Environmental Planner, except that such certificate shall not be required where an agreement in lieu of a plan is provided; however, if a violation occurs during the land-disturbing activity, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided by the VESMA; and

(iii) The Environmental Planner has issued its land-disturbance approval on behalf of the City.

(c) The Environmental Planner may require changes to an approved ESM plan in the following cases:

(i) Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or

(ii) Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of the Act, are agreed to by the City and the owner.

(d) In order to prevent further erosion, the Environmental Planner may require approval of an erosion and sediment control plan and a stormwater management plan for any land it identifies as an erosion impact area.

(e) Prior to issuance of any land-disturbance approval, the Environmental Planner may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement it finds acceptable, to ensure that it can take measures at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions it imposes as a result of his land-disturbing activity. If the Environmental Planner takes such action upon such failure by the applicant, it may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within sixty (60) days of the completion of Environmental Planner's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

(f) No exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements shall be granted unless offsite options have been considered and found not available in accordance with subsection D of § 62.1-44.15:35 of the Code of Virginia.

Sec. 16.1-6. ~~Terms beginning with "L" through "O"~~ Stormwater Permit Requirement; Exemptions.

~~As used in this chapter, the following words and phrases shall have the meanings respectively ascribed to them:~~

- ~~(a) *Land disturbing activity*: Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:~~
- ~~(1) Minor land disturbing activities such as home gardens and individual home landscaping, repair and maintenance work;~~
 - ~~(2) Individual service connections;~~
 - ~~(3) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk provided such land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;~~
 - ~~(4) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system;~~
 - ~~(5) Surface or deep mining;~~
 - ~~(6) Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site disposal areas;~~
 - ~~(7) Tilling, planting or harvesting of agricultural, horticultural or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act Article 2, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with Chapter 11 (§ 10.1-1100 et. seq.) of this title or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;~~
 - ~~(8) Agricultural engineering operations including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Chapter 8.1 (Sec. 62.1-115.1 et. seq.), ditches, strip cropping lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;~~
 - ~~(9) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;~~

- ~~(10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;~~
- ~~(11) Shore erosion control projects or projects on tidal waters when the projects are approved by local wetlands boards, the Marine Resources Commission or the U.S. Army Corps of Engineers;~~
- ~~(12) Emergency work to protect life, limb, or property, and emergency repairs; provided that if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this chapter;~~
- ~~(13) Disturbed land areas of less than 1,000 square feet in size.~~

~~Best management practices will be encouraged to all exceptions to land disturbing activity.~~

- ~~(b) *Land disturbing permit*: A permit issued by the city for the clearing, filling, excavating, grading, or transferring, or any combination thereof, or for any purpose set forth herein.~~
- ~~(c) *Licensed design professional*: A professional engineer, land surveyor III B, or landscape architect certified and licensed by the Commonwealth of Virginia.~~
- ~~(d) *Local erosion and sediment control program or local control program*: An outline or explanation of the various elements or methods employed by the city to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinance, policies and guidelines, technical materials, inspection, enforcement and evaluation.~~
- ~~(e) *Locality*: The City of Lynchburg.~~
- ~~(f) *Owner*: The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.~~

(a) Except as provided herein, no person may engage in any land-disturbing activity until a land-disturbance approval has been issued by the Environmental Planner in accordance with the provisions of this chapter.

(b) Notwithstanding any other provisions of this chapter, the following activities are not required to comply with the requirements of this chapter unless required by federal law:

- (i) Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;
- (ii) Installation, maintenance, or repair of any individual service connection;
- (iii) Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or

sidewalk that is hard surfaced;

(iv) Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

(v) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;

(vi) Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation, or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 *et seq.* of the Code of Virginia) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;

(vii) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

(viii) Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers, however, any associated land that is disturbed outside of this exempted area shall remain subject to the VESMA and the regulations adopted pursuant thereto;

(ix) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

(x) Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Environmental Planner shall be advised of the disturbance within seven (7) days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection (a) above is required within thirty (30) days of commencing the land-disturbing activity; and

(xi) Discharges to a sanitary sewer or a combined sewer system; that are not from a land-disturbing activity.

(c) Notwithstanding the requirements of this chapter and in accordance with the Virginia Erosion and Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 *et seq.*) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the following activities are required to comply with the soil erosion control requirements, but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

- (i) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
- (ii) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and
- (iii) Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

Sec. 16.1-7. Terms beginning with "P" through "R" Stormwater Pollution Prevention Plan; Contents.

~~As used in this chapter, the following words and phrases shall have the meanings respectively ascribed to them:~~

- ~~(a) *Peak flow rate*: The maximum instantaneous flow from a given storm condition at a particular location.~~
- ~~(b) *Permittee*: The person to whom the permit authorizing land disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.~~
- ~~(c) *Person*: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the commonwealth, any interstate body, or any other legal entity.~~
- ~~(d) *Plan approving authority*: The city's certified plan reviewer is responsible for determining the adequacy of a conservation plan submitted for land disturbing activities on a unit or units of land and for approving plans.~~
- ~~(e) *Post-development*: Conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.~~
- ~~(f) *Pre-development*: Conditions existing at the time the erosion and sediment control plan is submitted to the plan approving authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.~~
- ~~(g) *Program authority*: Means a district, county, city or town which has adopted a soil erosion and sediment control program which has been approved by the board. The City of Lynchburg is the designated program authority through the department of community development.~~
- ~~(h) *Responsible land disturber*: An individual from the project or development team, who will be in charge of and responsible for carrying out a land disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a responsible land~~

~~disturber certificate of competence, (ii) hold a current certificate of competence from the board in the areas of combined administration, program administration, inspection or plan review, (iii) holds a current contractor certificate of competence for erosion and sediment control or (iv) is licensed in Virginia as a professional engineer, certified landscape architect or land surveyor pursuant to Article 1 (Section 54.1-1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.~~

~~(i) *Runoff*: That portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.~~

~~(j) *Runoff volume*: The volume of water that runs off the land development project from a prescribed storm event.~~

(a) A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection (d) of this section.

(b) A soil erosion control and stormwater management (ESM) plan consistent with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA) and applicable regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the Environmental Planner in accordance with the VESMA, this chapter, and applicable regulations.

(c) A pollution prevention plan shall identify potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from a construction site, describe control measures that will be used to minimize pollutants in stormwater discharges from a construction site, and be developed before land disturbance commences.

(d) In addition to the requirements of subsections (a) through (c) above, if a specific wasteload allocation for a pollutant has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the wasteload allocation.

(e) The stormwater pollution prevention plan must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit:

(i) Control stormwater volume and velocity within the site to minimize soil erosion;

(ii) Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

(iii) Minimize the amount of soil exposed during construction activity;

(iv) Minimize the disturbance of steep slopes;

(v) Minimize sediment discharges from the site because the design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

(vi) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;

(vii) Minimize soil compaction and, unless infeasible, preserve topsoil;

(viii) Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding fourteen (14) days. Stabilization must be completed within a period of time determined by the VESMP authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VESMP authority; and

(ix) Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

(f) The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

Sec. 16.1-8. Terms beginning with "S" through "Z" Stormwater Management Plan; Contents.

~~As used in this chapter, the following words and phrases shall have the meanings respectively ascribed to them:~~

- ~~(a) *Single-family residence*: A noncommercial dwelling that is occupied exclusively by one family and not part of a residential subdivision development.~~
- ~~(b) *Stabilized*: An area expected to withstand normal exposure to atmospheric conditions without incurring erosion damage.~~
- ~~(c) *State erosion and sediment control program or state program*: The program administered by the Virginia Soil and Water Conservation Board pursuant to the state code including regulations designed to minimize erosion and sedimentation.~~
- ~~(d) *State waters*: All waters on the surface and under the ground wholly or partially within or bordering the commonwealth or within its jurisdictions.~~

~~(e) *Subdivision*: Division of any tract, parcel or lot of land into two or more parts at one time or any extended period of time; except, however:~~

~~(1) The term "subdivision" shall not include the division of land into ten acres or more for agricultural purposes, provided no new streets are required;~~

~~(2) The agent may, however, permit the separation of one parcel from a tract of land without complying with all requirements of this chapter if it is (a) not in conflict with the general meaning and purpose of the chapter, and (b) no new streets are required to serve the parcel; and~~

~~(3) The word "subdivide" and any derivative thereof shall have reference to the term "subdivision" as defined in section 24.1-5(26) of the subdivision ordinance.~~

~~(f) *Transporting*: Any moving of earth materials from one place to another place, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.~~

~~(g) *Water quality volume*: The volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.~~

(a) A stormwater management plan shall be developed and submitted to the Environmental Planner. The stormwater management plan shall be implemented as approved or modified by the Environmental Planner, and shall be developed in accordance with all the following:

(i) A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this chapter and Article 3 (9VAC25-875-570 *et seq.*) of Part V of the Regulation to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.

(ii) A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

(b) A complete stormwater management plan shall include the following elements:

(i) Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and post-development drainage areas;

(ii) Contact information including the name, address, telephone number, and email address of the owner and the tax reference number and parcel number of the property or properties affected;

(iii) A narrative that includes a description of current site conditions and final site conditions or if allowed by the VESMP authority, the information provided and

documented during the review process that addresses the current and final site conditions;

(iv) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

(v) Information on the proposed stormwater management facilities, including a detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure, the type of facilities, the location, including geographic coordinates, acres treated; and the surface waters or karst features into which the facility will discharge;

(vi) Hydrologic and hydraulic computations, including runoff characteristics;

(vii) Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;

(viii) A map of the site that depicts the topography of the site and includes:

1. All contributing drainage areas;

2. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

3. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

4. Current land use including existing structures, roads, and locations of known utilities and easements;

5. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;

6. The limits of clearing and grading, and the proposed drainage patterns on the site;

7. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

8. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including planned locations of utilities, roads, and easements.

(ix) If an operator intends to meet the requirements established in 9VAC25-875-580 or 9VAC25-875-600 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and

(x) If the Environmental Planner requires payment of a fee with the stormwater management plan submission, the fee and the required fee form in accordance with section 16.1-19 of this chapter must have been submitted.

(c) All final plan elements, specifications, or calculations of the stormwater management plans whose preparation requires a license under Chapters 4 (§ 54.1-400 *et seq.*) or 22 (§ 54.1- 2200 *et seq.*) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence or licensing.

Sec. 16.1-9. Local erosion and sediment control program Pollution Prevention Plan:
Contents.

~~(a) The City of Lynchburg adopts the regulations promulgated by the Virginia Soil and Water Conservation Board pursuant to section 10.1-562 of the Code of Virginia for the effective control of soil erosion, sediment deposition and nonagricultural runoff to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. The Virginia Erosion and Control Regulations, The Virginia Erosion and Sediment Control Handbook, as amended, and the Lynchburg Erosion and Sediment Handbook, are adopted as the standards, reference and guidelines for the local program. The standards and amendments contained within these publications are to be used by the applicant when making a submittal under the provisions of this chapter and in the preparation of an erosion and sediment control plan. The plan approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the state regulations shall take precedence.~~

~~(b) Any erosion and sediment plan submitted for review must address stormwater management in accordance with the Lynchburg Stormwater Ordinance, Chapter 16.2.~~

~~(c) Violators of this chapter shall be deemed guilty of a class 1 misdemeanor for each violation. In addition to any criminal penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the City of Lynchburg in a civil action for damages. The civil penalty for any one violation shall be not less than \$100.00, nor more than \$1,000.00, except that the civil penalty for commencement of land disturbing activities without an approved plan as provided in subsection 16.1-10(a) shall be \$1,000.00. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000.00 and a series of violations arising from the commencement of land disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.00.~~

(a) A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) and 40 CFR 450.21(c) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

(i) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(ii) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater;

(iii) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures; and

(iv) Prohibit discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed by lawful controls described under 40 CFR 450.21(c).

(b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):

(i) Wastewater from washout of concrete, unless managed by an appropriate control;

(ii) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

(iii) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(iv) Soaps or solvents used in vehicle and equipment washing.

Sec. 16.1-10. Regulated land disturbing activities Erosion and Sediment Control Plan; Contents.

~~(a) Except as provided herein, no person shall engage in any land disturbing activity until he has submitted to the department of community development an erosion and sediment plan for land disturbing activity and such plan has been approved by the plan approving authority. Where land disturbing activities involve lands under the jurisdiction of more than one local control program an erosion and sediment control plan may, at the option of the applicant, be submitted to the board for review and approval rather than each jurisdiction concerned. Where land disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan approving authority.~~

~~(b) As a prerequisite to engaging in land disturbing activities shown on an approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the program administrator and/or designee, as provided in § 10.1-561 of the Code of Virginia, who will be in charge of and responsible for carrying out the land disturbing activity. However, the plan approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan when construction of a single-family residence is the purpose of a land disturbing activity. Failure to provide the name of~~

~~an individual holding a certificate of competence prior to engaging in land disturbing activities may result in revocation of the approval of the plan.~~

~~(c) The plan shall be acted upon within 30 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval. When a plan is determined to be inadequate, the plan approving authority shall specify such modifications, terms, and conditions that will permit approval of the plan. If no action is taken within 30 days, the plan shall be deemed approved and the applicant authorized to proceed with the proposed activity.~~

~~(d) An approved plan may be changed by the plan approving authority when:~~

~~(1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or~~

~~(2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the plan approving authority and the person responsible for carrying out the plan.~~

~~No changes may be made to an approved plan without review and written approval by the plan approving authority. The plan shall be acted upon within 15 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval. When a plan is determined to be inadequate, the plan approving authority shall specify such modifications, terms, and conditions that will permit approval of the plan. If no action is taken within 15 days, the plan shall be deemed approved and the applicant authorized to proceed with the proposed activity.~~

~~(e) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall file general erosion and sediment control specifications annually with the Virginia Soil and Water Conservation Board for review and approval. The specifications shall apply to:~~

~~(1) Construction, installation or maintenance of electric transmission, natural gas and telephone utility lines and pipelines; and~~

~~(2) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.~~

~~The Virginia Soil and Water Conservation Board shall have 60 days in which to approve the specifications. If no action is taken by the board within 60 days, the specifications shall be deemed approved. Individual approval of separate projects within subdivisions (1) and (2) of this subsection is not necessary when approved specifications are followed. Projects not included in subdivisions (1) and (2) of this subsection shall comply with the requirements of the city erosion and sediment control program. The board shall have the authority to enforce approved specifications.~~

~~(f) In order to prevent further erosion, the administrator may require approval of a conservation plan for any land identified in the local program as an erosion impact area.~~

~~(g) When land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.~~

(a) An erosion and sediment control plan, which is a component of the ESM plan, shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:

(i) Appropriate maps;

(ii) An appropriate soil and water plan inventory and management information with needed interpretations; and

(iii) A record of decisions contributing to conservation treatment.

(b) The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the Environmental Planner.

(c) If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan, or an "Agreement in Lieu of a Plan" signed by the property owner.

(d) Land-disturbing activity of less than one thousand (1,000) square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA if the total land-disturbing activity in the development is equal to or greater than one thousand (1,000) square feet.

Sec. 16.1-11. Administrative procedures; conditions of approval Technical Criteria for Regulated Land-Disturbing Activities.

~~Each plan approved by a locality shall be subject to the following conditions:~~

~~(a) The applicant shall comply with all applicable requirements of the approved plan, the local program, these regulations and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan. Certification by a licensed design professional is required for all land disturbing activities where it is anticipated that the effects of erosion will have a significant detrimental impact on adjacent properties. It is the responsibility of the licensed design professional to insure that the plan meets or exceeds all the criteria outlined in this chapter.~~

~~(b) The land development project shall be conducted only within the area specified in the approved plan.~~

~~(c) The locality shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project.~~

- ~~(d) No transfer, assignment or sale of the rights granted by virtue of an approved plan shall be made unless a written notice of transfer is filed with the locality and the transferee certifies agreement to comply with all obligations and conditions of the approved plan.~~

(a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the City hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part V of 9VAC25-875 of the Regulation expressly to include 9VAC25-875-580 [water quality design criteria requirements], 9VAC25-875-590 [water quality compliance], 9VAC25-875-600 [water quantity], 9VAC25-875-610 [offsite compliance options], 9VAC25-875-620 [design storms and hydrologic methods], 9VAC25-875-630 [stormwater harvesting], 9VAC25-875-640 [linear development project], and 9VAC25-875-650 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this chapter, except as expressly set forth in subsection (b) below. The City adopts 9VAC25-875-480 and 9VAC25-875-490 for time limited and grandfathered projects.

(b) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

Sec. 16.1-11.1. State agency projects Long-Term Maintenance of Permanent Stormwater Facilities.

- ~~(a) A state agency shall not undertake a project involving a land disturbing activity unless (i) the state agency has submitted annual specifications for its conduct of land disturbing activities which have been reviewed and approved by the State Department of Conservation and Recreation as being consistent with the state program or (ii) the state agency has submitted a conservation plan for the project which has been reviewed and approved by the department.~~
- ~~(b) The department shall not approve a conservation plan submitted by a federal or state agency for a project involving a land disturbing activity (i) in any locality which has not adopted a local program with more stringent regulations than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the conservation plan is consistent with the requirements of the state program.~~
- ~~(c) The department shall not approve a conservation plan submitted by a federal or state agency for a project involving a land disturbing activity in one locality with a local program with more stringent regulations than those of the state program unless the conservation plan is consistent with the requirements of the local program. If a locality has not submitted a copy of its local program regulations to the department, the provisions of section (b) of this section shall apply.~~
- ~~(d) The department shall have 60 days in which to comment on any specifications or conservation plan submitted to it for review and its comments shall be binding on the state agency and any private business hired by the state agency.~~
- ~~(e) As on-site changes occur, the state agency shall submit changes in a conservation plan to the department.~~

~~(f) The state agency responsible for the land disturbing activity shall ensure compliance with the approved plan or specifications.~~

(a) The operator shall submit a construction record drawing for permanent stormwater management facilities to the Environmental Planner in accordance with 9VAC25-875-535. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, stating that to the best of their knowledge the construction record drawing shows all adjustments and revisions to the Stormwater Management Plan made during construction and serve as a permanent record of the actual location of all constructed elements.

(b) The operator shall submit documentation to the Environmental Planner providing for long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to general permit termination or earlier as required by the Environmental Planner and shall at a minimum:

(i) Be submitted to the Environmental Planner on a form prescribed by the City for review and approval prior to the approval of the stormwater management plan;

(ii) Be stated to run with the land;

(iii) Where portions of land are to be sold (versus entire parcels), provide for continuing permanent maintenance responsibilities to manage quality and quantity of runoff;

(iv) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

(v) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Environmental Planner;

(vi) Be enforceable by all appropriate governmental parties; and

(vii) Allow for the Environmental Planner to enter upon applicable property to inspect, maintain, and repair a stormwater maintenance facility where the owner of the same fails to fulfill their duties.

(c) In the event that a stormwater management facility needs maintenance or becomes a danger to public safety or public health, the owner of the same shall be notified in writing, and given a reasonable period of time to take necessary action. If the owner of the same fails or refuses to perform such maintenance and repair, the City may perform the work and to recover the costs from the owner of the facility. Any costs which remain unpaid, may be collected in any manner permitted by applicable law, ordinance, and/or written agreement.

(d) To ensure proper performance of a stormwater management facility, the owner of the same is responsible for inspecting the stormwater management facility on an annual basis and after any storm which causes the capacity of the facility to be exceeded. More frequent inspections may be required if deemed necessary by the Administrator. The owner must file written record of inspections to the City within five (5) working days of the inspection.

Sec. 16.1-12. ~~Administrative procedures; exceptions~~ Monitoring and Inspections.

- (a) ~~A request for an exception shall be submitted, in writing, to the locality. An exception from the erosion and sediment control regulations may be granted, provided that: (1) exceptions to the criteria are the minimum necessary to afford relief, and (2) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so the purpose and intent of the erosion and sediment control plan is preserved.~~
- (b) ~~Economic hardship is not sufficient reason to grant an exception from the requirements of these regulations.~~

(a) The land-disturbing activity is subject to monitoring and inspections during construction by the Environmental Planner for:

- (i) Compliance with the approved erosion and sediment control plan;
- (ii) Compliance with the approved stormwater management plan;
- (iii) Development, updating, and implementation of a pollution prevention plan; and
- (iv) Development and implementation of any additional control measures necessary to address a TMDL.

(b) The land-disturbing activity is subject to periodic inspections by the Environmental Planner on the following schedule:

- (i) An inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within forty-eight (48) hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or
- (ii) If the City has established an alternative inspection program, on that schedule.

(c) Permanent stormwater management facilities are subject to an inspection program by the City's Department of Water Resources that ensures that facilities are being adequately maintained as designed after completion of land-disturbing activities.

- (i) The City's Department of Water Resources may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection (b) of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the Department.
- (ii) If a recorded instrument is not required pursuant to 9VAC25-875-130, the City's Department of Water Resources shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater

runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the City's Department of Water Resources.

Sec. 16.1-13. Land-disturbing permits; fees; bonding; and maintenance agreement Circuit Court Appeal.

- ~~(a) No person shall engage in any land disturbing activity until he has acquired a land disturbing permit, and has paid the fees and posted the required bond, unless the proposed land disturbing activity is specifically exempt from the provisions of this chapter.~~
- ~~(b) Fees: A plan review fee and inspection fee for (1) one and two-family residential development of \$50.00 per acre and (2) multi-family/commercial/industrial development of \$150.00 per acre, not to exceed \$5,000.00, paid to the city at the time of filing erosion and sediment control plans.~~
- ~~(c) No land disturbing permit shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed. An approved plan is required for issuance of grading, building or other permits.~~
- ~~(d) Bond: All applicants for permits shall provide to the city a performance bond with surety, cash escrow, or an irrevocable letter of credit equal to the amount necessary to implement and maintain all approved erosion and sediment control measures, including stormwater control measures in accordance with the Lynchburg Stormwater Ordinance, chapter 16.2 on the approved plan. The city reserves the right to use this performance bond, cash escrow, or letter of credit to implement these measures should the applicant fail within the time specified to initiate or maintain appropriate conservation measures required of him as a result of his land disturbing activity. Should it be necessary for the city to take such conservation action, the city may collect from the applicant any costs in excess of the amount of the surety held. Within 60 days of the achievement of adequate stabilization, as determined by the department of community development, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements of such permits.~~

(a) A final decision by the City, shall be subject to judicial review, provided that an appeal is filed in the appropriate court within thirty (30) days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in a land-disturbing activity.

(b) The appeal must be filed in writing with the Clerk of the City's Circuit Court within thirty (30) days of the final decision being rendered. Such petition must specify the grounds on which the appeal is based. The filing of the petition shall not stay the decision of the locality unless otherwise ordered by the circuit court.

(c) The burden of proof shall be upon the party filing the appeal to designate and demonstrate that the decision of the City's decision was arbitrary and capricious, failed to comply with this chapter, and/or Virginia law.

Sec. 16.1-14. Monitoring, reports, and inspections Right of Entry.

- ~~(a) The program administrator or his designee shall provide for and/or conduct inspections at least once in every two-week period and within 48 hours following any runoff producing storm event of the land disturbing activity and may require monitoring and reports from the person responsible for carrying out the plan to assure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. The owner, occupier or operator shall be given an opportunity to accompany the inspector. If the administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this chapter and, upon conviction, shall be subject to the penalties provided by the chapter.~~
- ~~(b) Upon receipt of a sworn complaint of violation of this chapter, the program administrator or his designee either may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this chapter. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit court of Lynchburg. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the administrator or his designee may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or land records of the locality in which the site is located. The owner may appeal the issuance of an order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Any person violating or failing, neglecting or refusing to obey an order issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in the Lynchburg Circuit Court to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the administrator from taking any other action authorized by this chapter.~~

(a) Where permitted by agreement and/or as otherwise authorized by Virginia law, the Environmental Planner or any duly authorized agent thereof may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this chapter.

(b) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, the Environmental Planner may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by conditions imposed by the Environmental Planner on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified. The owner shall be responsible for all costs and expenses that may be incurred by the City in relation to the same, and the owner all such amounts to the City within thirty (30) days of a written demand being made.

Sec. 16.1-15. Penalties, injunctions and other legal actions. Repealed.

- ~~(a) Violators of this chapter shall be deemed guilty of a class 1 misdemeanor for each violation.~~
- ~~(b) The City of Lynchburg may apply to the circuit court of the City of Lynchburg to enjoin a violation or a threatened violation of this chapter, without the necessity of showing that an adequate remedy at law does not exist.~~
- ~~(c) In addition to any criminal penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the City of Lynchburg in a civil action for damages.~~
- ~~(d) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation.~~
- ~~(e) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this chapter, the City of Lynchburg may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in paragraph (d) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under paragraph (d).~~
- ~~(f) For the purpose of enforcing the provisions of this chapter, the program administrator, or his duly authorized agent, shall have the authority to apply for the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The program administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a violation of this chapter has occurred, request that the magistrate or court grant the program administrator or his agent an inspection warrant to enable the program administrator or his agent to enter the subject property for the purpose of determining whether violations of this chapter exist. The program administrator or his agent shall make a reasonable effort to obtain consent from the owner or managing agent of the subject property prior to seeking the issuance of an inspection warrant under this section. It shall be a violation of this chapter for any owner, managing agent or other person, to deny the program administrator, or his duly authorized agent, access to any property after the program administrator, or his duly authorized agent have obtained an inspection warrant from a magistrate or a court of competent jurisdiction.~~
- ~~(g) The city attorney shall, upon request of the city, take legal civil action to enforce the provisions of this chapter.~~

- ~~(h) Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.~~

Sec. 16.1-16. Administrative appeal; judicial review Repealed.

- ~~(a) Final decisions of the administrator under this chapter shall be subject to review by the city board of adjustments and appeals, provided an appeal is filed within 30 days from the date of any written decision by the administrator which adversely affects the rights, duties, or privileges of the person engaging in or proposing to engage in land disturbing activities.~~
- ~~(b) Final decisions of the city board of adjustments and appeals under this chapter shall be subject to review of the circuit court of the city; provided an appeal is filed within 30 days from the date of the final written decision which adversely affects the rights, duties, or privileges of the person engaging in or proposing to engage in land disturbing activities.~~

Sec. 16.1-17. Self-imposed restrictions Enforcement.

~~The subdivider may place restrictions on the development greater than the provisions of this chapter or the city zoning ordinance. Such restrictions, if any, shall be indicated on the subdivision plat.~~

(a) If the Environmental Planner determines that there is a failure to obtain a required land-disturbance approval, failure to comply with the land-disturbance approval conditions or any ordinance or provision of the City's program adopted pursuant to State Law, notice shall be served upon the operator or person responsible for carrying out the conditions or other requirements by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the application or by delivery at the site of the development activities to the agent or employee supervising such activities.

(i) The notice shall specify the measures needed to comply with the land-disturbance approval conditions or other requirements and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a Stop Work Order may be issued in accordance with subsections (ii) and (iii) below or the land-disturbance approval may be revoked by the Administrator.

(ii) If an operator or other person fails to comply with a notice issued in accordance with this section within the time specified, the Environmental Planner may issue a Stop Work order requiring the owner, operator, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required land-disturbance approval to cease all land-disturbing activities until the violation has ceased, or an approved plan and required approvals are obtained, and specified corrective measures have been completed.

(iii) Stop Work Orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address on record with the City,

or by personal delivery by the Environmental Planner. However, if the Environmental Planner finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Environmental Planner may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with subsection (c).

(b) In addition to any other remedy provided by this chapter, if the Environmental Planner or his designee determines that there is a failure to obtain a required land-disturbance approval, to comply with the land-disturbance approval, or to comply with any ordinance or provision of the City's program adopted pursuant to State Law, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with local policy. Such procedures may include, but are not limited to:

- (i) Verbal warning;
- (ii) Notices of corrective actions;
- (iii) Consent special orders and civil charges pursuant to subsection (e) below;
- (iv) Notices to comply; and
- (v) Special and emergency special orders.

(c) Any person violating or failing, neglecting, or refusing to obey any provision of the City's ordinance or order or any condition issued by the Environmental Planner may be compelled in a proceeding instituted in Circuit Court by the City of Lynchburg to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Any person violating or failing, neglecting, or refusing to object any injunction, mandamus, or other remedy obtained pursuant to the City's Code or State law shall be subject, in the discretion of the court, to a civil penalty that shall be assessed and used in accordance with the provisions of section (f) below.

(d) Violations for which a penalty may be imposed under this subsection shall include, but not be limited to, the following:

- (i) No state permit registration;
- (ii) No SWPPP;
- (iii) Incomplete SWPPP;
- (iv) SWPPP not available for review;
- (v) No approved erosion and sediment control plan;

- (vi) Failure to install stormwater BMPs or erosion and sediment controls;
- (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
- (viii) Operational deficiencies;
- (ix) Failure to conduct required inspections;
- (x) Incomplete, improper, or missed inspections; or
- (xi) Discharges not in compliance with 9VAC25-880-70.

(e) The Environmental Planner may seek payment of a civil penalty not exceeding \$5,000 per violation with a limit of \$50,000 within the discretion of the court, and the action may be prosecuted in an appropriate court. Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$50,000. When imposing a civil penalty pursuant to this subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance. Any civil penalties assessed by a court as a result of a summons issued by the City shall be paid into a fund specific to the City's stormwater management program.

(f) Notwithstanding any other civil or equitable remedy provided by this chapter or by applicable law, any person who willfully or negligently violates any provision of this chapter or applicable State law, any order of the Environmental Planner, any condition of a land-disturbance approval, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than twelve (12) months or a fine of not less than \$2,500 nor more than \$32,500, or both.

(g) If addition to other penalties provided by this chapter and/or by applicable law, any person violating subsection (e)(xi) above shall be responsible for all costs and expenses that may be incurred by the City in relation to the same, and such person shall pay all such amounts to the City within thirty (30) days of a written demand being made.

Sec. 16.1-18. Projects commenced before adoption of conservation standards not affected Fees.

~~Nothing in this chapter shall affect any project commenced prior to the adoption of this chapter.~~

(a) Fees to cover costs associated with implementation of a VESMP related to land-disturbing activities and issuance of general permit coverage and VESMP authority approvals shall be imposed in accordance with Table 1. [NOTE: Such fee attributes include the costs associated with plan review, VESMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with land-disturbing activities as well as state program oversight costs.] When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by applicant" column) in accordance with the disturbed acreage of their site or sites according to Table 1.

Table 1: Fees for permit issuance

<u>Fee type</u>	<u>Total fee to be paid by applicant (includes both VESMP authority and department portions where applicable)</u>	<u>Department portion of “total fee to be paid by applicant” (based on 28% of total fee paid*)</u>
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)</u>	<u>\$290</u>	<u>\$81</u>
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 acres)</u>	<u>\$2,700</u>	<u>\$756</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>	<u>\$3,400</u>	<u>\$952</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$4,500</u>	<u>\$1,260</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$6,100</u>	<u>\$1,708</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)</u>	<u>\$9,600</u>	<u>\$2,688</u>

* If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.

(b) Fees for the modification or transfer of registration statements from the general permit issued by the department shall be imposed in accordance with Table 2. If the general permit modifications result in changes to stormwater management plans that require additional review by the City, such reviews shall be subject to the fees set out in Table 2. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee

paid and the permit fee that would have applied for the total disturbed acreage in Table 1.

Table 2: Fees for the modification or transfer of registration statements for the General Permit for Discharges of Stormwater from Construction Activities

Type of Permit	Fee Amount
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$20
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 acres)	\$200
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$250
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$700

(c) The following annual permit maintenance shall be imposed in accordance with Table 3, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated.

Table 3: Permit Maintenance Fees

Type of Permit	Fee Amount
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$50
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)	\$400
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$500

<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$650</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$900</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)</u>	<u>\$1,400</u>

General permit coverage maintenance fees shall be paid annually to the City by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

(d) The fees set forth in subsections (a) through (c) of this section, shall apply to:

- (i) All persons seeking coverage under the general permit.
- (ii) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
- (iii) Persons whose coverage under the general permit has been revoked shall apply to the department for an Individual Permit for Discharges of Stormwater from Construction Activities.

(e) Permit and permit coverage maintenance fees outlined under section 16.1-19 may apply to each general permit holder.

(f) No general permit application fees will be assessed to:

- (i) Permittees who request minor modifications to general permits as defined in section 16.1-2 of this chapter. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Environmental Planner shall not be exempt pursuant to this section.
- (ii) Permittees whose general permits are modified or amended at the initiative of the department, excluding errors in the registration statement identified by the Environmental Planner or errors related to the acreage of the site.

(g) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over ninety (90) days

past due) account. The City shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

Sec. 16.1- 19. Sureties and Bonds.

Prior to issuance of any land-disturbance approval, the applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the City Attorney and the Environmental Planner, to ensure that measures could be taken by the City at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the land-disturbance approval conditions as a result of his land-disturbing activity. If the City takes such action upon such failure by the applicant, the City may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within ninety (90) days of the completion of the requirements of the land-disturbance approval, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

Sec. 16.1-20. Severability.

The provisions of this chapter are hereby declared to be severable, and, in the event that any section, subsection, paragraph, subparagraph, sentence, clause, phrase or word of this chapter is declared to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this chapter, since the same would have been enacted without the incorporation in this chapter of any such invalid or unconstitutional word, phrase, clause, sentence, subparagraph, paragraph, subsection or section.

Secs. 16.1-21 — 16.1-50. Reserved.

2. That the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted by (i) amending Sections 16.2-1 through 16.2-6 of Article I of Chapter 16.2 (including the Chapter's title); (ii) repealing Section 16.2-7 of Article I of Chapter 16.2; (iii) amending Sections 16.2-8 and 16.2-9 of Article I of Chapter 16.2; and (iv) repealing Sections 16.2-10 through 16.2-76 of Articles II through VI of Chapter 16.2, all as follows:

Chapter 16.2

STORMWATER MANAGEMENT DISCHARGES

Article I. General Provisions

Sec. 16.2-1. Purpose.

~~The purpose of this chapter is to reduce the adverse impacts of stormwater runoff from development sites in the City of Lynchburg to the greatest extent possible, by establishing minimum requirements and procedures to control the quantity and quality of stormwater runoff associated with land development. By converting more or less natural landscapes to sites with impervious surfaces, development can cause increases in the quantity and velocity of stormwater runoff and decreases in the water quality of stormwater runoff. Adverse impacts from development~~

~~shall not be allowed to affect adjacent or downstream property owners. The Lynchburg City Council has determined that the lands and waters comprising the watersheds of the city are valuable and important natural resources, which provide subsistence for life. Therefore, it is in the public interest to establish requirements to regulate the discharge of stormwater runoff from land development projects as provided for in this chapter. The waters and waterways within the city are at times subjected to flooding. Such flooding is a danger to the lives and property of the public and is also a danger to the natural resources of the city. Land development tends to accentuate such flooding by increasing stormwater runoff, due to alteration of the hydrologic response of the watershed in changing from the undeveloped to the developed condition. The flooding produced by the development of real property contributes increased quantities of water-borne pollutants, and tends to increase channel erosion. Such flooding, erosion, and pollution constitute deterioration of the water resources of the City of Lynchburg and downstream communities. The adverse environmental effects of development can be limited by the regulation of stormwater runoff from such land development. Proper management of stormwater runoff will minimize damage to public and private property, reduce the effects of development on land and stream channel erosion, assist in the attainment and maintenance of water quality standards, reduce local flooding, and maintain as nearly as possible, the pre-development runoff characteristics of the area. Procedures provided in this document to reduce stormwater runoff will apply to land-disturbing activity, as done by public and private entities in the City of Lynchburg.~~

The purpose of this chapter is to deter discharges of pollutants into the City's municipal separate storm sewer system ("MS4"). The City finds the health, safety, and general welfare of the public is well served in protecting its lands and waters. Illicit discharges and placement of substances other than stormwater could result in a significant source of pollutants to the City's MS4 and receiving waters.

Sec. 16.2-2. Title and Authority.

~~The provisions of this chapter shall constitute and be known as the "Lynchburg Stormwater Management Ordinance," as authorized by the Virginia Stormwater Management Act, Title 62.1, Chapter 3.1, Article 2.3 of the Code of Virginia as amended through 2014.~~

The provisions of this chapter shall be known as the "Stormwater Discharge Ordinance". The adoption of this chapter is permitted by § 62.1-44.15:27 *et seq.* of the Code of Virginia.

Amendments to the Federal Water Pollution Control Act, commonly known as the Clean Water Act, established the National Pollutant Discharge Elimination System (NPDES) Program, which requires permits for discharges from certain municipal separate storm drain systems into the waters of the United States of America. The United States Environmental Protection Agency (EPA) has promulgated regulations implementing the NPDES program. Moreover, the EPA has authorized the Commonwealth of Virginia to issue NPDES permits under the Virginia Pollutant Discharge and Elimination System (VPDES) permit system. Pursuant to the same, stormwater discharges require certain municipalities, including the City, to work to control the contribution of unauthorized nonstormwater discharges to the City's MS4, to prohibit illicit discharges to the City's MS4, and to inspect, monitor, and enforce, as appropriate, the prohibitions of illicit discharges to the City's MS4.

Sec. 16.2-3. Authority Definitions.

- (a) ~~The provisions of this chapter are adopted pursuant to the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:27 et seq.) of Chapter 3.1 of Title 62.1, of the Code of Virginia, which enables counties, cities and towns to prepare and adopt a stormwater management program and implement the ordinance. The application of this chapter and the provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other powers granted by the state statute.~~
- (b) ~~Except as specifically provided here in the stormwater management standards contained in this ordinance are based on the stormwater regulations adopted by the Commonwealth of Virginia and the Federal government.~~

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Best Management Practices (BMPs)" means the schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce pollutants from entering the storm drain system or being improperly discharged from the storm drain system. BMPs include, but are not limited to, treatment methods and practices to control the discharge of pollutants.

"City" means the City of Lynchburg, Virginia.

"Control measure" means any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

"Discharge" means to dispose, deposit, spill, pour, inject, dump, pump, leak, or place by any means, or that which is disposed, deposited, spilled, poured, injected, dumped, pumped, leaked, or placed by any means.

"Illicit connection" means any connections to the city's storm drain system which are not authorized by the city, by a valid NPDES or VPDES permit, or as may otherwise be authorized by law.

"Illicit discharge" means any discharge to the City's MS4 that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or State permit (other than the state permit for discharges from the municipal separate storm sewer), discharges resulting from firefighting activities, and discharges listed in section 16.2-4(b) of this chapter unless the City identifies such discharges as a significant contributor of pollutants discharging to the City's MS4.

"Inspection" means an on-site review of a project's or work's compliance with applicable permits, laws, ordinances, and/or regulations or an onsite review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of State law or regulations.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, stormwater management BMPs, or storm drains, that is:

1. Owned or operated by a federal entity, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including a special district under state law such as a sewer district, flood control district, drainage district or similar entity, or a designated and approved management agency under § 208 of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) that discharges to state waters;
2. Designed or used for collecting or conveying stormwater;
3. Not a combined sewer; or
4. Not part of a publicly owned treatment works.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Pollution prevention plan" means a stand-alone management document that provides information on the facility operations that directly or indirectly produce waste or use toxic substances. This written plan will record the toxic substance use, emissions, and waste from current work practices, outline potential pollution prevention opportunities and provide specific performance goals including a schedule for implementing these pollution prevention activities.

"Sanitary sewer system" means the pipelines, conduits, pumping stations, force mains, and other structures, devices, appurtenances, and facilities for collecting and conveying domestic, commercial and industrial sanitary wastewater.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, surface runoff and drainage.

Sec. 16.2-4. Program administration Unlawful Discharges to the City's Municipal Separate Storm Sewer System.

~~The City of Lynchburg administrator or his/her designee shall be responsible for the coordination, administration and enforcement of the provisions of this chapter.~~

(a) It shall be unlawful for any person to:

- (i) Connect, cause, or allow to be connected, any sanitary sewer to the City's municipal separate storm sewer system ("MS4");
- (ii) Discharge anything that is not composed entirely of stormwater in any amount to the City's municipal separate storm sewer system ("MS4") unless the discharge is permitted by a Virginia pollution discharge elimination system [VPDES] permit;

1. Sewage;

2. Greases;
3. Fuels;
4. Oil or oil waste;
5. Antifreeze;
6. Other automotive, motor or equipment fluids;
7. Paints and/or organic solvents;
8. PCBs;
9. Toxic materials;
10. Waste disposal site leachate;
11. Radioactive materials;
12. Fertilizers, Pesticides, and/or Herbicides;
13. Organic matter;
14. Any fluid at a temperature greater than 65° celsius;
15. Any fluid having a pH less than 5.0 or greater than 9.0;
16. Any fluid containing more than 15 milligrams per liter of total suspended solids;
17. Any fluid containing dyes or coloring material which discolor the water no more than 50 American dye manufacturers institute [ADMI] units;
18. Any fluid containing material which causes a visible film, sheen or discoloration on the water surface;
19. Any substance which may cause or do any injury to, interfere with the proper operation of, obstruct the flow into or through, or pollute a stormwater management facility;
20. Any commercial, industrial, or manufacturing process water, wash water, or unpermitted discharge;
21. Boiler blowdown;
22. Any substance of non-stormwater origin unless specifically exempted from this article; or

23. Matter of any type which may result in a hazard to any person, animal, property, or vegetation, or, impair the quality of the water in any well, lake, river, pond, spring, stream, reservoir or other water or watercourse.

(b) Subject to the provisions of subsection (c) of this section, the non-stormwater discharges or flows listed below have not been identified by the City as significant contributors of pollutants to the City's municipal separate storm sewer system ("MS4"):

(i) Water line flushing, managed in a manner to avoid an instream impact;

(ii) Landscape irrigation;

(iii) Diverted stream flows;

(iv) Rising groundwaters;

(v) Uncontaminated groundwater infiltration, as defined at 40 CFR 35.2005(20);

(vi) Uncontaminated pumped groundwater;

(vii) Discharges from potable water sources managed in a manner to avoid instream impact;

(viii) Foundation drains;

(ix) Air conditioning condensation;

(x) Irrigation water;

(xi) Springs;

(xii) Water from crawl space pumps;

(xiii) Footing drains;

(xiv) Lawn watering;

(xv) Individual residential car washing;

(xvi) Flows from riparian habitats and wetlands;

(xvii) Dechlorinated freshwater swimming pool discharges managed in a manner to avoid instream impact;

(xviii) Street and pavement wash waters that do not contain cleaning additives or are otherwise managed in a manner to avoid instream impact;

(xix) Routine external building washdown provided no soaps, solvents, or detergents are used, external building surfaces do not contain hazardous

substances, and the wash water is filtered, settled, or similarly treated prior to discharge;

(xx) Discharges or flows from emergency firefighting activities;

(xxi) Discharges or flows of water for fire prevention or firefighting training activities managed in a manner to avoid instream impact in accordance with § 9.1-207.1 of the Code of Virginia;

(xxii) Discharges from noncommercial fundraising car washes if the washing uses only biodegradable, phosphate-free, water-based cleaners in accordance with § 15.2-2114.1 of the Code of Virginia; or

(xxiii) Other activities generating discharges identified by the department as not requiring VPDES authorization.

(c) If any of the activities listed in subsection (b) of this section are found to be significant contributors of pollutants to the City's municipal separate storm sewer system ("MS4"), the Director of the City's Water Resources Department, or his/her designee, shall so notify the person performing such activities and shall order that such activities be stopped or performed in such a manner as to avoid discharge of pollutants into the City's municipal separate storm sewer system ("MS4"). The failure to comply with any such order shall be unlawful and a violation of this section.

(d) The City's Director of Water Resources, or his/her designee, shall enforce this chapter.

Sec. 16.2-5. Scope of chapter Inspections and monitoring.

~~For land development projects that disturb 5,000 square feet or more of land area, no person shall develop any land for residential, commercial, industrial or institutional use without having provided for appropriate stormwater management measures that control or manage stormwater runoff quality, quantity, and velocity as provided within this article, except those development activities exempted in accordance with subsections 16.2-9(c)2, 16.2-9(c)3, 16.2-9(c)4, 16.2-9(c)5, 16.2-9(c)6, 16.2-9(c)7 and 16.2-9(c)8. A VSMP authority permit is only required for projects that disturb one acre or more of land or are part of a common plan of development, except as provided in subsection 16.2-9(b).~~

(a) The City's Director of Water Resources, or his/her designee, shall have authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with the provisions of this chapter, including the prohibition of illicit discharges to the City's municipal separate storm sewer system ("MS4"). The City's Director of Water Resources, or his/her designee, may monitor stormwater outfalls or other components of the municipal separate storm sewer system ("MS4") as may be appropriate in the administration and enforcement of this chapter.

(b) The City's Director of Water Resources, or his/her designee, shall have the authority to prohibit any discharges that cause or may cause a violation of the MS4 permit.

(c) The City's Director of Water Resources, or his/her designee, shall have the authority to enter into private property to conduct investigations relative to this chapter. No inspection shall be conducted without the consent of the tenant, occupant, property owner or the owner's

representative or pursuant to a duly issued administrative inspection warrant or as authorized by other lawful means.

Sec. 16.2-6. ~~Compatibility with other permit and ordinance requirements~~ Good Housekeeping Requirements.

~~Approvals issued pursuant to this chapter do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act or ordinance. If more stringent requirements concerning the regulation of stormwater runoff are contained in the other code, rule, act or ordinance, the more stringent regulation shall apply.~~

The following good housekeeping requirements shall be adhered to by all persons in the City:

(a) The uncovered outdoor storage of unsealed containers containing hazardous substances or waste material is prohibited.

(b) Unless otherwise approved, objects such as vehicle motor parts containing grease, oil, or other hazardous materials, shall not be stored in such a manner as to cause leaks, spills, or discharges into the City's municipal separate storm sewer system ("MS4") or stormwater management facilities owned by the City.

(c) Unless otherwise approved, work on any machine that is to be repaired or maintained in an uncovered outdoor area shall be performed in such a manner as to prevent leaks, spills, or discharges into the City's municipal separate storm sewer system or stormwater management facilities owned by the City.

(d) Fuel and chemical residue or other types of potentially harmful material, garbage, or batteries, which are located in an area susceptible to runoff, shall be removed immediately and disposed at a hazardous waste collection site.

Sec. 16.2-7. ~~Severability~~ Repealed.

~~The provisions of this chapter are hereby declared to be severable, and, in the event that any section, subsection, paragraph, subparagraph, sentence, clause, phrase or word of this chapter is declared to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this chapter, since the same would have been enacted without the incorporation in this chapter of any such invalid or unconstitutional word, phrase, clause, sentence, subparagraph, paragraph, subsection or section.~~

Sec. 16.2-8. ~~Definitions~~ Violations and penalties.

~~Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.~~

~~(1) "Administrator" means the VSMP authority including the City of Lynchburg department or staff person responsible for administering the VSMP on behalf of the locality.~~

- (2) ~~"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.~~
- (3) ~~"Applicant" means any person submitting an application for a permit or requesting issuance of a permit under this chapter.~~
- (4) ~~"Best management practice (BMP)" means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.~~
- (5) ~~"Board" means the State Water Control Board.~~
- (6) ~~"Channel" means a natural or manmade waterway.~~
- (7) ~~"Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.~~
- (8) ~~"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.~~
- (9) ~~"Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.~~
- (10) ~~"Control measure" means any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.~~
- (11) ~~"Department" means the Department of Environmental Quality.~~
- (12) ~~"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.~~
- (13) ~~"Disturbed area" means all ground surface area which will be physically impacted by construction activities, including material storage areas and adequate vehicular access routes to all construction activities. No construction activity including material storage and vehicle access will be permitted outside the area designated as "disturbed area" on the approved plan. If use of such area is desired, a plan revision must be submitted for review and approval prior to such use.~~

- (14) ~~"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, causing or threatening damage.~~
- (15) ~~"Floodplain" means those areas adjacent to a channel, river stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes, but is not limited to, the floodplain designated by the Federal Emergency Management Agency.~~
- (16) ~~"General permit" means the state permit titled general permit for discharges of stormwater from construction activities found at 9VAC25-880-1 et seq., of the regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.~~
- (17) ~~"Illicit discharge" means any discharge to a municipal separate storm sewer system that is not composed entirely of stormwater, except discharges pursuant to a Virginia Pollutant Discharge Elimination System (VPDES) permit. This definition shall not include the discharges listed in subsection 16.2-71(b) unless the city identifies such discharges as sources of pollutants to state waters.~~
- (18) ~~"Impervious cover" means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil. For the purposes of billing stormwater utility fees as provided in chapter 16.3 of City Code, impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.~~
- (19) ~~"Infiltration facility" means a stormwater management facility, which temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during non-rainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.~~
- (20) ~~"Inspection" means an on-site review of the project's compliance with the permit or state permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation of this chapter.~~
- (21) ~~"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in section 16.2-9 of this chapter.~~
- (22) ~~"Layout" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.~~
- (23) ~~"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to the construction of (i) electric and telephone utility lines and natural gas pipelines; (ii) tracks, rights-of-way, bridges, communication facilities or other related structures of a railroad company; (iii) highway reconstruction projects; (iv)~~

construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development.

- (24) ~~"Local stormwater management program" or "local program" means a statement of the various methods adopted by this chapter and implemented by the City of Lynchburg to manage the runoff from land development projects with provisions to require the control of post-development stormwater runoff rate of flow and may include such items as local ordinances, policies and guidelines, technical materials, inspections, enforcement and evaluation.~~
- (25) ~~"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 9VAC25-870-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor state permit modification or amendment does not substantially alter state permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.~~
- (26) ~~"Onsite stormwater management facilities" means facilities, which are designed to control stormwater runoff emanating from a specific site, at the specific site.~~
- (27) ~~"Operator" means the owner or operator of any facility or activity subject to regulation under this ordinance.~~
- (28) ~~"Percent impervious" means the impervious area within the site divided by the total area of the site multiplied by 100.~~
- (29) ~~"Permit" or "VSMP Authority Permit" means an approval to conduct a land-disturbing activity issued by the administrator for the initiation of a land-disturbing activity, in accordance with this ordinance, and which may only be issued after evidence of general permit coverage has been provided by the department.~~
- (30) ~~"Permittee" means the person to whom the VSMP Authority Permit is issued.~~
- (31) ~~"Person" means any individual, partnership, firm, association, public or private corporation, commission, city, town or other political subdivision of the Commonwealth, state or political subdivision of a state, governmental body, including federal, state or local entity as applicable, any interstate body or any other legal entity.~~
- (32) ~~"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.~~

- (33) ~~"Plan approving authority" refers to the administrative person or body responsible for the review and approval of land development and stormwater management in the jurisdiction in which the project is located.~~
- (34) ~~"Pollution prevention plan" means a stand-alone management document that provides information on the facility operations that directly or indirectly produce waste or use toxic substances. This written plan will record the toxic substance use, emissions, and waste from current work practices, outline potential pollution prevention opportunities and provide specific performance goals including a schedule for implementing these pollution prevention activities.~~
- (35) ~~"Post-development" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.~~
- (36) ~~"Pre-development" refers to the land use conditions that exist at the time that plans for the land development are submitted for approval. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.); the existing land use conditions at the time the first item/phase is submitted shall establish pre-development conditions.~~
- (37) ~~"Regional stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a specific contributing watershed area, although only portions of the watershed may experience land development.~~
- (38) ~~"Regional stormwater management plan" or "regional plan" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.~~
- (39) ~~"Runoff" means stormwater runoff.~~
- (40) ~~"Regulations" means the Virginia Stormwater Management Program Regulations (9VAC25-870 et seq.) as amended.~~
- (41) ~~"Sanitary sewer system" means the pipelines, conduits, pumping stations, force mains, and other structures, devices, appurtenances, and facilities for collecting and conveying domestic, commercial and industrial sanitary wastewater.~~
- (42) ~~"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.~~
- (43) ~~"State" means the Commonwealth of Virginia.~~
- (44) ~~"State board" means the Virginia State Water Control Board.~~
- (45) ~~"State permit" means an approval to conduct a land-disturbing activity issued by the state board in the form of a state stormwater individual permit or coverage issued under~~

- ~~a state general permit or an approval issued by the state board for stormwater discharges from a municipal separate storm sewer system (MS4). Under these state permits, the commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act and the regulations.~~
- (46) ~~"State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.~~
- (47) ~~"State waters" means all waters, on the surface or under the ground, wholly or partially within or bordering the commonwealth or within its jurisdiction, including wetlands.~~
- (48) ~~"Storm sewer system" means stormwater management system.~~
- (49) ~~"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, surface runoff and drainage.~~
- (50) ~~"Stormwater management" is the design and use of structural or nonstructural practices to achieve the responsible discharge of stormwater runoff as defined by the requirements of this chapter.~~
- (51) ~~"Stormwater management facility" or "stormwater facility" means a device that controls or conveys stormwater runoff or changes the characteristics of that runoff including, but not limited to, the quantity, quality, period of release or velocity of flow.~~
- (52) ~~"Stormwater management plan" or "plan" means a document describing how a land development project shall comply with the requirements of this chapter.~~
- (53) ~~"Stormwater management system" means one of or a series of structural and non-structural stormwater management facilities and best management practices.~~
- (54) ~~"Stormwater pollution prevention plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this chapter. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.~~
- (55) ~~"Subdivision" means the division of a parcel of land into five or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.~~
- (56) ~~"Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.~~

~~(57) "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.~~

~~(58) "Virginia stormwater BMP clearinghouse website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.~~

~~(59) "Virginia stormwater management program" or "VSMP" means a program approved by the State Board after September 13, 2011, that has been established by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.~~

~~(60) "Virginia stormwater management program authority" or "VSMP authority" means an authority approved by the state board after September 13, 2011, to operate a Virginia Stormwater Management Program.~~

~~(61) "Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.~~

(a) A willful violation of the provisions of this chapter shall constitute a Class 1 misdemeanor. Each day that a continuing violation of this chapter is maintained or permitted to remain shall constitute a separate offense.

(b) Any person who commits any act prohibited by this chapter shall be liable to the City for all costs of detecting, tracing, testing, containment, cleanup, abatement, removal, and disposal of any substance unlawfully discharged into the City's municipal separate storm sewer system ("MS4").

(c) Any person who commits any act prohibited by this chapter shall be subject to a civil penalty in an amount not to exceed \$1,000.00 for each day that a violation exists. The City may issue a summons for the collection of the civil penalty and the action may be prosecuted in the local courts. Any civil penalties assessed by a court as a result of a summons issued by the City shall be paid into the treasury of the City for the purpose of abating, preventing or mitigating environmental pollution.

(d) The City may bring legal action to enjoin the continuing violation of and to ensure compliance with the provisions of this chapter, including injunction, abatement or other appropriate action or proceeding. The existence of any other remedy, at law or in equity, shall be no defense to any such action.

(e) The City's Director of Water Resources, or his/her designee, shall have authority to order that any activity found to be in violation of this chapter be stopped or conducted in such a manner as to avoid the discharge of any illicit materials into the City's municipal separate storm sewer system ("MS4").

(f) Any discharge caused or permitted to exist in violation of any provisions of this chapter constitutes a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance. Following receipt of written notice of such nuisance from those authorized to enforce this section, if the responsible person fails to abate or obviate such nuisance, then the City may do so and charge and collect the cost thereof from the responsible person, in any manner provided by law (including any manner provided for the collection of unpaid local taxes).

(g) The remedies set forth in this chapter shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.

Sec. 16.2-9. Stormwater permit requirement; exemptions Severability.

~~(a) Except as provided herein, no person may engage in any land-disturbing activity until a stormwater management plan or an executed agreement in lieu of a stormwater management plan and a VSMP authority permit, if such permit is required, has been issued by the administrator, in accordance with the provisions of this chapter.~~

~~(b) For construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale, projects must adhere to the requirements of General Permit for Discharges of Stormwater from Construction Activities but neither a registration statement nor payment of the department's portion of the statewide permit fee shall be required for coverage under the permit.~~

~~(c) Notwithstanding any other provisions of this chapter, the following activities are exempt, unless otherwise required by federal law:~~

~~(1) Land-disturbing activities that disturb less than one acre of land that are not part of a larger common plan of development or sale that is one acre or greater of disturbance;~~

~~(2) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;~~

~~(3) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;~~

- ~~(4) Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;~~
- ~~(5) Discharges to a sanitary sewer or combined sewer system;~~
- ~~(6) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;~~
- ~~(7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and~~
- ~~(8) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of subsection (a) is required within 30 days of commencing the land-disturbing activity.~~

The provisions of this chapter are hereby declared to be severable, and, in the event that any section, subsection, paragraph, subparagraph, sentence, clause, phrase or word of this chapter is declared to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this chapter, since the same would have been enacted without the incorporation in this chapter of any such invalid or unconstitutional word, phrase, clause, sentence, subparagraph, paragraph, subsection or section.

Sec. 16.2-10. Establishment of a stormwater management program.

- ~~(a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, the City of Lynchburg hereby establishes a Virginia Stormwater Management Program for land-disturbing activities and adopts the applicable regulations that specify standards and specifications for VSMPs promulgated by the state board for the purposes set out in section 16.2-1 of this chapter. The City of Lynchburg hereby designates the ESC program administrator or designee as the administrator of the Virginia Stormwater Management Program.~~
- ~~(b) No VSMP authority permit shall be issued by the administrator, until the following items have been submitted to and approved by the administrator as prescribed herein:~~
 - ~~(1) A permit application that includes a general permit registration statement;~~
 - ~~(2) An erosion and sediment control plan approved in accordance with the City of Lynchburg's erosion and sediment control ordinance as found in City Code Chapter 16.1; and~~
 - ~~(3) A stormwater management plan approved in accordance with section 16.2-20 of this chapter.~~

- ~~(c) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.~~
- ~~(d) No VSMP authority permit shall be issued until the fees required to be paid pursuant to section 16.2-56, are received, and a reasonable performance bond required pursuant to section 16.2-42 of this chapter has been submitted.~~
- ~~(e) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.~~
- ~~(f) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the administrator.~~

Secs. 16.2-11—16.2-19. Reserved.

ARTICLE II. DESIGN CRITERIA

Sec. 16.2-20. Technical criteria.

- ~~(a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the City of Lynchburg hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the regulations, as amended, expressly to include 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [offsite compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; and, 9VAC25-870-85 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this article, except as provided for in 9VAC25-870-48 or as expressly set forth in subsection (b) of this section.~~
- ~~(b) Until June 30, 2019, any land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, was approved by a locality prior to July 1, 2012, and for which no coverage under the general permit for discharges of stormwater from construction activities has been issued prior to July 1, 2014, shall be considered grandfathered by the VSMP authority and shall not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of Part II C [9VAC25-870-93 through VAC25-870-99] for those areas that were included in the approval, provided that the VSMP authority finds that such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, (i) provides for a layout and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C [9VAC25-870-93 through VAC25-870-99]. In the event that the locality-approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through~~

~~stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.~~

- ~~(c) Until June 30, 2019, for locality, state, and federal projects for which there has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the department has approved a stormwater management plan prior to July 1, 2012, such projects shall be considered grandfathered by the VSMP authority and shall not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of Part II C [9VAC25-870-93 through VAC25-870-99] for those areas that were included in the approval.~~
- ~~(d) For land-disturbing activities grandfathered under subsections (a) and (b) of this section, construction must be completed by June 30, 2019, or portions of the project not under construction shall become subject to the technical criteria of Part II B.~~
- ~~(e) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C [9VAC25-870-93 through VAC25-870-99].~~
- ~~(f) Nothing in this section shall preclude an operator from constructing to a more stringent standard at their discretion.~~

Sec. 16.2-21. Regional stormwater management.

~~Where possible all subdivisions, especially those for commercial and industrial use, shall employ a regional detention facility for all lots within the development. If a regional stormwater management plan has been adopted by the City of Lynchburg for the watershed in which the proposed land development is located, the applicant shall comply with the requirements of the regional watershed plan.~~

Sec. 16.2-22. Floodplain management.

- ~~(a) A study will be required for all new construction that provides a net increase in impervious area of the site and/or filling within the floodplain as determined by the most recent floodplain study adopted by the City of Lynchburg. This study shall meet the requirements as specified in section 35.1-45, Flood hazard districts.~~
- ~~(b) In addition, such construction shall be in compliance with all applicable regulations under the national flood insurance program and code of the City of Lynchburg.~~

Secs. 16.2-23—16.2-35. Reserved.

ARTICLE III. STORMWATER MANAGEMENT PLAN REQUIREMENTS

Sec. 16.2-36. Plan required.

- ~~(a) Except as provided for in subsection 16.2-5(b) of this chapter, no land-disturbing, building, or other permit shall be issued for land development unless a stormwater management plan has been submitted to and approved by the administrator or his designee.~~

- ~~(b) The applicant shall demonstrate that the project meets the criteria set forth in this chapter including the technical criteria in article II of this chapter which shall apply to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities.~~
- ~~(c) A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.~~
- ~~(d) Failure of the applicant to demonstrate that the project meets the criteria set forth in this chapter shall be reason to deny the applicant's underlying application for approval.~~
- ~~(e) Planning, design, and approach to storm water management in the City of Lynchburg shall be in conformance with this chapter.~~

~~Sec. 16.2-37. Plan submission.~~

- ~~(1) The applicant shall submit, to the plan approving authority, the material required in a stormwater management plan in accordance with section 16.2-38 of this chapter.~~
- ~~(2) Five copies of the stormwater management plan shall be submitted.~~
- ~~(3) The fee specified in section 16.2-56 of this chapter shall accompany the stormwater management plan.~~

~~Sec. 16.2-38. Plan contents.~~

~~The following information, where applicable, shall be required for each proposed project subject to review under this chapter. Stormwater management plans (maps, plans, designs and calculations) shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 (54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations.~~

~~(a) *General:*~~

- ~~(1) General description of the project.~~
- ~~(2) General description of the erosion and sediment controls.~~
- ~~(3) Information on type/location of stormwater discharges, information on features to which stormwater is being discharged, including surface waters or karst features if present, and predevelopment/postdevelopment drainage areas.~~
- ~~(4) General description of temporary and permanent stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete.~~
- ~~(5) Information on proposed stormwater management facilities, including (i) type of facilities; (ii) location, including geographic coordinates; (iii) acres treated; and (iv) surface waters or karst features into which the facility will discharge~~

- ~~(6) Project schedule and narrative, including a sequence of construction.~~
- ~~(7) Names and contact information, including email addresses of the project owner, and the submitting agent.~~
- ~~(8) The acreage of the disturbed area of the project.~~
- ~~(9) An estimate of the amount of security for a bond or other instrument based on current construction costs; however, the city may use an average cost to determine this amount. The city shall not be required to use this estimated amount as its bond requirement.~~

~~(b) *Technical:*~~

- ~~(1) Map or maps of the project area showing:~~
 - ~~a. The watershed in which the project site is located using hydrologic unit maps (as found in the design protocol manual) and the boundary of the drainage area tributary to the project site using United States Geological Survey quadrangle map or City of Lynchburg topography for offsite areas.~~
 - ~~b. Contributing drainage areas.~~
 - ~~c. The location of the project relative to significant features in the general surroundings such as roads, adjacent land uses, property lines, existing manmade structures and public facilities.~~
 - ~~d. Existing contours at two-foot intervals for the on-site area.~~
 - ~~e. Existing streams, lakes, ponds, culverts, ditches, drainage swales, wetlands, other water bodies, floodplains, and other physical features within or adjacent to the project area.~~
 - ~~f. Unique, unusual, or environmentally sensitive features that provide particular opportunities or constraints for development.~~
 - ~~g. Soil types, geologic formations if karst features are present in the area, forest cover and other vegetative areas.~~
 - ~~h. Sufficient information on adjoining parcels to assess impacts of stormwater from the site on these parcels;~~
 - ~~i. Current land use including existing structures, roads, locations of known utilities, sewers water lines and easements.~~
 - ~~j. General alterations in the natural terrain, cover, and grade including lawns and other landscaping.~~
 - ~~k. The location of proposed buildings, roads, parking areas, utilities and other permanent structures.~~

- ~~l. Proposed contours at two-foot intervals.~~
- ~~m. All stormwater management facilities including details, plan, profile, and cross-sections.~~
- ~~n. If any infiltration facilities are proposed, the locations of existing and proposed wells and septic system drain fields must be shown.~~
- ~~o. Limits of construction, clearing and grading and proposed drainage patterns on site.~~
- ~~p. Proposed land use with tabulation of percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads and easements.~~

Sec. 16.2-39. Reports.

- ~~(a) Comprehensive hydrologic, hydraulic and water quality design calculations, including all assumptions and criteria, for the pre-development and post-development conditions for the design storms specified in article II of this chapter.~~
- ~~(b) A soils report/geotechnical analysis and boring logs, for infiltration facilities.~~
- ~~(c) A signed maintenance agreement, in a format designated by the plan approving authority, suitable for recording at the Lynchburg Circuit Court, including a) a drawing indicating the facilities to be maintained, b) the person or entity responsible for maintenance of the stormwater management facilities, c) the prescribed maintenance program for the proposed stormwater management facilities and d) the annual reporting requirements.~~

Sec. 16.2-40. Plan approval.

- ~~(a) The VSMP authority shall determine the completeness of a plan in accordance with 9VAC25-870-55, and shall notify the applicant of any determination, within 15 calendar days of receipt. Where available to the applicant, electronic communication may be considered communication in writing.~~
 - ~~(1) If within those 15 calendar days the plan is deemed to be incomplete, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.~~
 - ~~(2) If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.~~
 - ~~(3) If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60 calendar days from the date of submission will be allowed for the review of the plan.~~
 - ~~(4) The VSMP authority shall review, within 45 calendar days of the date of resubmission, any plan that has been previously disapproved.~~

- ~~(b) The applicant or any aggrieved party authorized by law may appeal the plan approving authority's decision of approval or disapproval of a stormwater management plan application within 30 days after the rendering of such a decision, to the City of Lynchburg Circuit Court.~~
- ~~(c) Judicial review shall be on the record previously established and shall otherwise be in accordance with the provisions of the Administrative Process Act (Sec. 9-6.14:1 et seq. of the Code of Virginia).~~

Sec. 16.2-41. Conditions of plan approval.

Each approved stormwater management plan shall be subject to the following conditions:

- ~~(a) A stormwater management plan approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners.~~
- ~~(b) The applicant shall comply with all applicable requirements of the approved plan and the local program and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.~~
- ~~(c) The land development project shall be conducted only within the limits of construction, clearing and grading specified in the approved plan.~~
- ~~(d) The City of Lynchburg or its designee shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project. The owner, occupier or operator shall be given the opportunity to accompany the inspector.~~
- ~~(e) No transfer, assignment or sale of the rights granted by virtue of an approved plan shall be made unless the transferee certifies agreement to comply with all obligations and conditions of the approved plan.~~
- ~~(f) A set of certified as-built plans for the stormwater management facilities and cover letter from the design professional with the appropriate seal stating that the objectives of the design have been achieved by the facility as constructed shall be submitted to the City of Lynchburg upon completion of the project. Said as-builts shall include volume confirmation with supporting computations and include structural elevations and dimensions.~~
- ~~(g) While the project is under bond, the person responsible for implementing the approved plan shall conduct monitoring and submit reports to ensure compliance with the approved plan and to determine whether the plan provides effective stormwater management.~~

Sec. 16.2-42. Performance bond required.

- ~~(a) All applicants shall submit to the City of Lynchburg a performance bond with surety, cash escrow, letter of credit, or such other legal arrangement acceptable to the city attorney, to ensure that measures could be taken by the city at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate~~

~~actions which may be required of the applicant by the approved stormwater management plan.~~

- ~~(b) If the City of Lynchburg takes such action upon such failure by the applicant, the city may collect from the applicant the costs of such action in excess of the amount of the security held.~~
- ~~(c) Within 60 days of the completion of the requirements of the approved stormwater management plan, including necessary stabilization, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.~~
- ~~(d) These requirements are in addition to all other provisions of law relating to the issuance of such plans and are not intended to otherwise affect the requirements for such plans.~~

Sec. 16.2-43. Changes to an approved plan.

~~No changes may be made to an approved plan without review and written approval by the City of Lynchburg. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the administrator. The administrator shall have 60 calendar days to respond in writing either approving or disapproving such request. The administrator may also require amendments to an approved stormwater management plan, within a time prescribed by the administrator, to address any deficiencies noted during inspection. Upon the release of the land disturbance bond, any proposed changes to the site layout, increases in impervious area or alterations of stormwater conveyance systems, easements or facilities must be submitted to the plan approving authority of the City of Lynchburg for review and approval.~~

Secs. 16.2-44—16.2-52. Reserved.

ARTICLE IV. STORMWATER POLLUTION PREVENTION PLAN REQUIREMENTS

Sec. 16.2-53. Plan contents.

- ~~(a) The stormwater pollution prevention plan (SWPPP) shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL as specified by Section 9VAC25-870-54 and must also comply with the requirements and general information set forth in Section 9VAC25-880-70 of the general permit.~~
- ~~(b) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.~~
- ~~(c) The SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.~~

~~Sec. 16.2-54. Pollution prevention plan.~~

- ~~(a) Pollution prevention plan, required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
 - ~~(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;~~
 - ~~(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and~~
 - ~~(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.~~~~
- ~~(b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:
 - ~~(1) Wastewater from washout of concrete, unless managed by an appropriate control;~~
 - ~~(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;~~
 - ~~(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and~~
 - ~~(4) Soaps or solvents used in vehicle and equipment washing.~~~~
- ~~(c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.~~

ARTICLE V. ENFORCEMENT AND FEES

~~Sec. 16.2-55. Exceptions.~~

- ~~(a) A request for an exception shall be submitted, in writing, to the administrator. An exception from this chapter may be granted, provided that: (i) exceptions to the criteria are the minimum necessary to afford relief, and (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the purpose and intent of this chapter is preserved.~~
- ~~(b) Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.~~

Sec. 16.2-56. Fees.

(a) — An applicant shall pay the fees provided in Table 1 for initial issuance of general permit coverage and VSMP authority permit coverage. No more than 50 percent of the total fee to be paid by the applicant set out in Table 1 shall be due at the time a stormwater management plan or an initial stormwater management plan is submitted to the City of Lynchburg for review. The balance shall be paid prior to the issuance of coverage under the general permit. When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of the site or sites according to the following table.

Table 1: Fees for permit issuance

Fee type	Total fee to be paid by Applicant (includes both VSMP authority and Department portions where applicable)	Department portion of "total fee to be paid by Applicant" (based on 28% of total fee paid*)
General/Stormwater Management — Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre, except for a single family detached residential structure.)	\$290	\$81
General/ Stormwater Management — Small Construction Activity/Land Clearing (Single family detached residential structure, within or outside a common plan of development or sale, with land disturbance acreage less than five acres. Residential subdivisions that require the construction of new streets will be considered General/Stormwater Management — Small Construction Activity/Land Clearing activities as defined below.)	\$209	N/A
General/Stormwater Management — Small Construction Activity/Land Clearing (Sites or areas with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres), including the development of residential subdivision that require the construction of new streets.	\$2,700	\$756
General/Stormwater Management — Large Construction Activity/Land Clearing (Sites or areas with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$3,400	\$952
General/Stormwater Management — Large Construction Activity/Land Clearing (Sites or areas with land disturbance acreage equal to	\$4,500	\$1,260

or greater than 10 acres and less than 50 acres)		
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100	\$1,708
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas with land disturbance acreage equal to or greater than 100 acres)	\$9,600	\$2,688

* If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.

- (b) Fees for the modification or transfer of registration statements from the general permit issued by the state board shall be imposed in accordance with Table 2. If the general permit modifications result in changes to stormwater management plans that require additional review by the City of Lynchburg, such reviews shall be subject to the fees set out in Table 2. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in Table 1. Fees required by this section go to the City of Lynchburg.

Table 2: Fees for the modification or transfer of registration statements for the General Permit for Discharges of Stormwater from Construction Activities

Type of Permit	Fee Amount
General/Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$20
General/Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 acres)	\$200
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$250
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450

General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$700
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- (c) ~~The following annual permit maintenance shall be imposed in accordance with Table 3, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated. Fees specified by this section will go to the City of Lynchburg.~~

Table 3: Permit Maintenance Fees

Type of Permit	Fee Amount
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$50
General/Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$50
General/Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)	\$400
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$500
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)	\$1,400

~~General permit coverage maintenance fees shall be paid annually to the City of Lynchburg by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a notice of termination is effective.~~

- (d) ~~The fees set forth in subsections (a) through (c) above, shall apply to:~~

- (1) ~~All persons seeking coverage under the general permit.~~
- (2) ~~All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.~~

- ~~(3) Persons whose coverage under the general permit has been revoked shall apply to the department for an individual permit for discharges of stormwater from construction activities.~~
- ~~(4) Permit and permit coverage maintenance fees outlined in this section may apply to each general permit holder.~~
- ~~(e) No general permit application fees will be assessed to:~~
 - ~~(1) Permittees who request minor modifications to general permits as defined in subsection 16.2-8(25) of this chapter. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the administrator shall not be exempt pursuant to this section.~~
 - ~~(2) Permittees whose general permits are modified or amended at the initiative of the department, excluding errors in the registration statement identified by the administrator or errors related to the acreage of the site.~~
- ~~(f) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in Section 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A ten percent late payment fee shall be charged to any delinquent (over 90 days past due) account. The City of Lynchburg shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.~~

Sec. 16.2-57. Inspections and monitoring.

- ~~(a) The administrator or designee shall inspect the land-disturbing activity during construction for:~~
 - ~~(1) Compliance with the approved erosion and sediment control plan;~~
 - ~~(2) Compliance with the approved stormwater management plan;~~
 - ~~(3) Development, updating, and implementation of a pollution prevention plan; and~~
 - ~~(4) Development and implementation of any additional control measures necessary to address a TMDL.~~
- ~~(b) The applicant shall notify the city 48 hours prior to the commencement of any activity covered by this chapter so that appropriate inspections can be made to ensure compliance with this chapter.~~
- ~~(c) The administrator or any duly authorized agent of the administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this chapter.~~
- ~~(d) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions~~

~~associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.~~

- ~~(e) The administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this chapter, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter.~~
- ~~(f) Post-construction inspections of stormwater management facilities required by the provisions of this chapter shall be conducted by the administrator or any duly authorized agent of the administrator pursuant to the City of Lynchburg's adopted and state board approved inspection program, and shall occur, at minimum, at least once every five years.~~
- ~~(g) Inspection reports shall be maintained as part of the land development project file.~~
- ~~(h) In order to assure compliance with the provisions of this chapter, and all applicable city ordinances, state and federal laws, orders or regulations, the stormwater administrator or his agent shall have the right to inspect any property on which a stormwater maintenance facility is located, public or private, within the city at any reasonable time. In the event the stormwater administrator or his agent shall be denied access to property, the stormwater administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes (i) probable cause that a violation of this chapter has occurred, or (ii) that the stormwater administrator or his agent has been denied access to property as part of a routine inspection program, request that the magistrate or court grant the stormwater administrator or his agent an inspection warrant to enable the stormwater administrator or his agent to enter the property for the purpose of determining whether a violation of this chapter exists. The stormwater administrator or his agent shall make a reasonable effort to obtain consent from the owner or occupant of the subject property prior to seeking the issuance of an inspection warrant under this section. It shall be a violation of this section for any person to deny the stormwater administrator or his agent access to any property after the stormwater administrator or his agent has obtained an inspection warrant from a magistrate or a court of competent jurisdiction for the inspection of such property. Nothing herein shall be construed to authorize the stormwater administrator or his agent to enter or inspect the interior portions of any structure situated on such property unless the inspection is reasonably necessary to verify the presence and character of a stormwater maintenance facility or control measure that the owner of the property claims to be installed therein.~~

~~Sec. 16.2-58. Hearings by the city manager, or his designee.~~

- ~~(a) Any permit applicant or permittee, or person subject to the requirements of this chapter, who is aggrieved by a permit of enforcement decision of the city, may request in writing a hearing by the city manager, or his designee, provided a written request of a hearing is filed with the city manager, or his designee, within 15 days of the incident giving rise to the request for a hearing.~~
- ~~(b) Within 30 calendar days after receiving a written request for a hearing, the city manager, or his designee, will meet with the person filing the request for a hearing.~~

- ~~(c) A record of the hearing shall be taken and retained by the city manager, or his designee, pending an appeal to the circuit court as provided in section 16.2-60. The record shall contain documentation of the date the hearing took place, the decision made, and the date the decision was provided to the person requesting the hearing.~~
- ~~(d) Within 15 calendar days after the hearing takes place, the city manager, or his designee, shall issue a written decision in the matter and shall provide a copy of the decision to the person requesting the hearing. The written decision will be retained as part of the record.~~
- ~~(e) All hearings shall be in accordance with the process adopted by the city manager. The hearing before the city manager, or his designee, is not intended to be conducted like a court proceeding, and the rules of evidence do not apply to such hearing. The city manager, or his designee, shall have the discretion to determine the propriety of attendance of persons at the hearing, and the admissibility of evidence, so long as a fair and full opportunity is afforded to all parties for the presentation of their evidence.~~
- ~~(f) The time frames in these procedures, may be extended by the mutual agreement of the city manager, or his designee, and the person requesting the hearing.~~
- ~~(g) The decision of the city manager, or his designee, may be appealed to the circuit court as provided in section 16.2-60.~~

Sec. 16.2-59. Appeals to circuit court.

- ~~(a) Any permit applicant or permittee, or person subject to the requirements of this chapter, who is aggrieved by a permit or enforcement decision of the city manager, or his designee, may file with the clerk of the circuit court a petition for the review of such decision. An appeal must be filed in writing with the clerk of the circuit court within 30 days after a final decision is rendered by the city manager, or his designee, and must specify the grounds on which the appeal is based. The filing of the said petition shall stay the decision of the city manager, or his designee, pending the outcome of the appeal.~~
- ~~(b) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the city manager, or his designee, and shall prescribe therein the time within which a return thereto must be made to the petition. A copy of the writ of certiorari shall be served upon the city manager. Within 15 calendar days after the writ of certiorari is served upon the city manager, the city manager shall transmit to the clerk of the court: a copy of the city manager's, or his designee's, decision, a copy of the record, and the exhibits. The court, sitting without a jury, shall hear the appeal on the record transmitted by the city manager and such additional evidence as the court determines may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require.~~
- ~~(c) The burden of proof shall be upon the party filing the appeal to designate and demonstrate that the decision of the city manager or his designee, was arbitrary and capricious, or contrary to the law. When the decision on review is to be made on the record, the duty of the court with respect to issues of fact shall be to determine whether there was substantial evidence in the record to support the city manager's, or his designee's, decision. The duty of the court with respect to the issues of law shall be to review the city manager's, or his designee's, decision de novo to determine if there was an error of law. Whether the fact issues are reviewed on the record submitted by the city manager, or a record made during~~

~~a review action, the court shall take due account of the presumption of the validity of the city's ordinances, the experience and specialized competence of city staff, and the purposes of the basic laws, regulations, and ordinances under which the city has acted.~~

- ~~(d) A party shall be deemed to be an aggrieved party for the purpose of filing an appeal if (i) such party has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized, (ii) such injury is fairly traceable to the decision of the city and not the result of the independent action of some third party not before the court, and (iii) such injury will likely be redressed by a favorable decision by the court.~~

~~Sec. 16.2-60. Maintenance agreement.~~

- ~~(a) A maintenance agreement, on a form prescribed by the City of Lynchburg, between the city and the owner of any permanent stormwater control facility shall be submitted and recorded prior to approval of the stormwater management plan required by this chapter.~~
- ~~(b) Responsibility for the operation and maintenance of stormwater management facilities, unless assumed by the city or other governmental agency, shall run with the land and remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each parcel the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.~~
- ~~(c) In the event that the stormwater management facilities are in need of maintenance or become a danger to public safety or public health, the responsible person shall be notified in writing, and given a reasonable period of time to take necessary action. If the responsible person fails or refuses to perform such maintenance and repair, the city has the authority to perform the work and to recover the costs from the responsible person. Any costs, including interest, which remain unpaid, may be collected in the same manner as unpaid taxes are collected, and shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes.~~
- ~~(d) To ensure proper performance of the stormwater management facility, the owner is responsible for inspecting the stormwater management facility on an annual basis and after any storm, which causes the capacity of the facility to be exceeded. More frequent inspections may be required if deemed necessary by the administrator. The owner must file written record of inspections to the department of water resources within five working days of the inspection.~~
- ~~(e) The maintenance agreement submitted to the City of Lynchburg shall allow for the city to enter the property for purposes of inspection by the administrator or designee shall permit the city or designee to enter the property for the purpose of maintenance and repair should the responsible party not fulfill these duties, shall provide for the submission of inspection and maintenance reports as required by the city, and shall be enforceable by all appropriate governmental parties.~~

Sec. 16.2-61. Maintenance of stormwater management facilities.

- (a) Any property owner that has a stormwater management facility on his property, shall maintain such facility in a good operating condition. The maintenance of the stormwater management facility shall be in accordance with all applicable city and state requirements and regulations, and shall include but shall not be limited to the following:
- ~~(1) The filing of an annual inspection of the facility by a qualified inspector and the filing of an annual written inspection report with the city's stormwater administrator, describing the condition of the stormwater management facility. The annual inspection report shall be due by the end of each calendar year, and the inspection shall have been performed within two months prior to the date of the report. The report shall state the property's address, the owner's name, the inspection date, the inspector's name and qualifications, and shall describe any deficiencies and any required maintenance that is needed to bring the stormwater management facility into compliance with city and state requirements and regulations;~~
 - ~~(2) The filing of a supplementary report on the remediation of any deficiencies identified in the annual inspection report; such supplementary report on remediation efforts shall be due within three months of the date of the inspection report;~~
 - ~~(3) The removal and proper disposal of sediment when the flow or storage of the stormwater has been significantly restricted or reduced by sediment;~~
 - ~~(4) The removal and proper disposal of trash, debris, loose brush and other growth from the stormwater management facility, as needed;~~
 - ~~(5) The removal and proper disposal of any oil or grease which has accumulated within the stormwater management facility;~~
 - ~~(6) The replacement and proper disposal of any chemical treatment media and any filter media which have ceased to function at design levels;~~
 - ~~(7) The annual cutting of any brush and other woody growth on and around any embankment fill, and the stabilization of the banks of the stormwater management facility, as needed;~~
 - ~~(8) The inspection, maintenance and repair of any fence installed around the stormwater management facility;~~
 - ~~(9) Any necessary repairs to the dam, emergency spillway and any low spots in any stormwater retention pond; and~~
 - ~~(10) All other repairs and improvements which are reasonably necessary to keep the stormwater management facility operating in an efficient, safe and sanitary manner.~~
- (b) In the event that the stormwater management facilities are in need of maintenance or become a danger to public safety or public health, the property owner shall be notified in writing, and given a reasonable period of time to take necessary action. If the property owner fails or refuses to perform such maintenance and repair, the city has the authority to perform the work and to recover the costs from the property owner. Any costs, including interest,

~~which remain unpaid, may be collected in the same manner as unpaid taxes are collected, and shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes.~~

- ~~(c) For purposes of this chapter, "property owner" means the owner or owners of the freehold of the property or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee in control of the property.~~

~~Sec. 16.2-62. Enforcement.~~

- ~~(a) If the administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for implementing the plan by registered or certified mail to the address specified in the application or plan certification, or by delivery at the land development site to the agent or employee supervising such activities.~~
- ~~(b) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed.~~
- ~~(c) Upon failure to comply within the time specified, a stop work order may be issued or the permit or approval may be revoked and the applicant or person responsible for implementing the plan shall be deemed to be in violation of this ordinance.~~
- ~~(d) Any person who violates any provision of this ordinance shall be guilty of a misdemeanor and shall be subject to a fine or imprisonment for each violation, or both, as provided for in Section 62.1-44.15.48 of the Code of Virginia.~~
- ~~(e) The administrator may apply to the circuit court to enjoin a violation or a threatened violation of this chapter as provided for in Section 62.1-44.15.48 of the Code of Virginia without the necessity of showing that an adequate remedy at law does not exist.~~
- ~~(f) Without limiting the remedies, which may be obtained in this section, the administrator may bring a civil action against any person for violation of this chapter, or any condition of the permit or approval, or any provision of the local program. The action may seek to impose of a civil penalty of not more than \$32,500.00 for each violation as provided for in Section 62.1-44.15.48 of the Code of Virginia.~~
- ~~(g) In addition to any other remedy provided by this chapter, if the administrator determines there is a failure to comply with the provisions of this chapter, the administrator may initiate such informal and/or formal administrative enforcement procedures in a manner authorized by this chapter and any applicable city-issued policies. Such procedures may include, but are not limited to:~~
- ~~(i) Verbal warning;~~
 - ~~(ii) Notices of corrective actions;~~
 - ~~(iii) Consent special orders and civil charges pursuant to subsection (h) below;~~
 - ~~(iv) Notices to comply;~~
 - ~~(v) Special and emergency special orders;~~

- ~~(h) With the consent of any person who has violated or failed, neglected or refused to obey this chapter or any condition of the permit or approval or any provision of the local program, the administrator may issue an order against or to such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (f) of this section. Such civil charges shall be instead of any appropriate civil penalty, which could be imposed under subsection (f).~~
- ~~(i) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:~~
- ~~(i) No state permit registration;~~
 - ~~(ii) No SW PPP;~~
 - ~~(iii) Incomplete SW PPP;~~
 - ~~(iv) SWPPP not available for review;~~
 - ~~(v) No approved erosion and sediment control plan;~~
 - ~~(vi) Failure to install stormwater BMPs or erosion and sediment controls;~~
 - ~~(vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;~~
 - ~~(viii) Operational deficiencies;~~
 - ~~(ix) Failure to conduct required inspections;~~
 - ~~(x) Incomplete, improper, or missed inspections; and~~
 - ~~(xi) Discharges not in compliance with the requirements of Section 9VAC25-880-1170 of the general permit.~~

~~(Ord. No. O-01-079, 4-24-01, eff. 5-1-01; Ord. No. O-14-070, § 1, 6-10-14)~~

~~Secs. 16.2-63—16.2-69. Reserved.~~

~~ARTICLE VI. STORMWATER POLLUTION CONTROL~~

~~Sec. 16.2-70. Purpose.~~

- ~~(a) The 1987 amendments to the federal clean water act (CWA) required the United States environmental protection agency to establish national pollutant discharge elimination system (NPDES) requirements for municipal separate storm sewer systems (MS4). NPDES regulations require the city to reduce the flow of pollutants into waters of the United States through ordinance, permit, contract or other available means.~~
- ~~(b) Pollutants discharged from the city's municipal separate storm sewer system (MS4) have an adverse impact upon the quality of receiving waters. Stormwater, and any other materials which enter the city's MS4, travel through the system and are discharged into receiving~~

~~waters with minimal or no treatment. Since pollutants entering this system come from many sources and are to date largely uncontrolled, reduction of pollutant discharges can only be achieved by a broad restriction on a variety of activities occurring throughout the city. This article is intended to prevent pollutants from being discharged by the city's stormwater collection system by requiring all citizens to prevent such pollutants from initially entering the system.~~

~~(c) This article is adopted as an integral part of the city's stormwater management program.~~

~~Sec. 16.2-71. Discharges to the city's storm sewer system.~~

~~(a) It shall be unlawful and a violation of this article to:~~

- ~~(1) Connect, cause, or allow to be connected, any sanitary sewer to the separate storm sewer system;~~
- ~~(2) Discharge the following in any amount to the city's storm sewer system, to any private stormwater conveyance system, or to any stormwater management system whether intended for water quality or water quantity control, unless the system conveys the fluids to an appropriate water treatment facility or the discharge is permitted by a Virginia pollution discharge elimination system [VPDES] permit or by a national pollution discharge elimination system [NPDES] permit:~~
 - ~~(i) Sewage;~~
 - ~~(ii) Greases;~~
 - ~~(iii) Fuels;~~
 - ~~(iv) Oil or oil waste;~~
 - ~~(v) Antifreeze;~~
 - ~~(vi) Other automotive, motor or equipment fluids;~~
 - ~~(vii) Paints and/or organic solvents;~~
 - ~~(viii) PCBs;~~
 - ~~(ix) Pesticides; (x) Herbicides;~~
 - ~~(xi) Toxic materials;~~
 - ~~(xii) Waste disposal site leachate;~~
 - ~~(xiii) Radioactive materials;~~
 - ~~(xiv) Fertilizers~~
 - ~~(xv) Organic matter;~~

- ~~(xvi) — Any fluid at a temperature greater than 65° celsius;~~
- ~~(xvii) — Any fluid having a pH less than 5.0 or greater than 9.0;~~
- ~~(xviii) — Any fluid containing more than 15 milligrams per liter of total suspended solids;~~
- ~~(xix) — Any fluid containing dyes or coloring material which discolor the water no more than 50 American dye manufacturers institute [ADMI] units;~~
- ~~(xx) — Any fluid containing material which causes a visible film, sheen or discoloration on the water surface;~~
- ~~(xxi) — Any substance which may cause or do any injury to, interfere with the proper operation of, obstruct the flow into or through, or pollute a stormwater management facility;~~
- ~~(xxii) — Any commercial, industrial, or manufacturing process water, wash water, or unpermitted discharge;~~
- ~~(xxiii) — Boiler blowdown;~~
- ~~(xxiv) — Any substance of non-stormwater origin unless specifically exempted from this article;~~
- ~~(xxv) — Matter of any type which may:
 - ~~a. Result in a hazard to any person, animal, property, or vegetation; or,~~
 - ~~b. Impair the quality of the water in any well, lake, river, pond, spring, stream, reservoir or other water or watercourse.~~~~
- ~~(b) Subject to the provisions of subsection (c) of this section, the following activities shall be allowed:
 - ~~(1) Potable water line flushing;~~
 - ~~(2) Lawn watering;~~
 - ~~(3) Landscape irrigation;~~
 - ~~(4) Diverting stream flows or uncontaminated groundwater flows;~~
 - ~~(5) Water from public safety activities, including, but not limited to, law enforcement and fire suppression;~~
 - ~~(6) Pumping or drainage of uncontaminated groundwater from potable water sources, foundation drains, basements, springs, or water from crawl spaces, or footing drains;~~
 - ~~(7) Non-commercial car washing;~~
 - ~~(8) Swimming pool discharges with less than one parts per million [PPM] chlorine;~~~~

- ~~(9) Street washing;~~
 - ~~(10) Any activity authorized by a valid national pollutant discharge elimination system (NPDES) permit, waiver, or discharge order; a Virginia pollutant discharge elimination system (VPDES) permit, waiver, or discharge order; or a Virginia pollution abatement (VPA) permit;~~
 - ~~(11) Any activity by a governmental entity or its employees and agents in accordance with federal, state, and local regulations and standards for the maintenance or repair of drinking water reservoirs or water treatment or distribution systems;~~
 - ~~(12) Any activity by a governmental entity or its employees and agents in accordance with federal, state, and local regulations and standards, for the maintenance of any component of its stormwater management system;~~
 - ~~(13) Discharges specified in writing by the program administrator and/or his or her designee as being necessary to protect public health and safety;~~
 - ~~(14) Dye testing, following notification to the program administrator;~~
 - ~~(15) Residential yard maintenance, including seasonal leaf pick-up and brush removal.~~
- ~~(c) If any of the activities listed in subsection (b), above, of this section are found to be sources of pollutants to public waters, the program administrator shall so notify the person performing such activities and shall order that such activities be stopped or performed in such a manner as to avoid discharge of pollutants into such waters. The failure to comply with any such order shall be unlawful and a violation of this article.~~

~~Sec. 16.2-72. Pesticides, herbicides, and fertilizers.~~

- ~~(a) Pesticides, herbicides, and fertilizers are common household products that have beneficial uses in the homes, lawns and gardens of many city residents. When used properly and in accordance with manufacturer's recommendations they provide significant enhancement of our quality of life. When used inappropriately, however, these products can have unintended negative impacts on the quality of public waters. These consequences frequently are not readily apparent to the individual responsible for the improper usage.~~

~~Therefore to reduce the incidences of negative environmental impacts to water quality, the city enacts the following restrictions on the uses of pesticides, herbicides, and fertilizers:~~

- ~~(b) Pesticides and herbicides. It shall be unlawful:~~
- ~~(1) To use any pesticide or herbicide not approved by the U.S. environmental protection agency (EPA).~~
 - ~~(2) To use any pesticide or herbicide in a fashion not in accordance with manufacturer's recommendations or label directions as approved by the Virginia Department of Agriculture and Consumer Services [VDACS] and the U.S. Environmental Protection Agency (EPA).~~
- ~~(c) Fertilizers. To avoid contamination of water bodies and aquifers:~~

~~(1) Fertilizers should be applied in a manner which does not exceed manufacturer's recommendations for frequency and rates approved by the Virginia Department of Agriculture and Consumer Services [VDACS] and the U.S. Environmental Protection Agency (EPA).~~

~~(2) Fertilizers should not be directly applied to impervious areas subject to runoff.~~

~~Sec. 16.2-73. Construction activities.~~

~~Stormwater management at all construction activities shall be governed by the city's erosion and sediment control and stormwater ordinance.~~

~~Sec. 16.2-74. Good housekeeping requirements.~~

~~The following good housekeeping requirements shall be adhered to by all persons within the City of Lynchburg:~~

- ~~(a) The uncovered outdoor storage of unsealed containers containing hazardous substances or waste material is prohibited.~~
- ~~(b) Unless otherwise approved, objects such as vehicle motor parts containing grease, oil, or other hazardous materials, shall not be stored in such a manner as to cause leaks, spills, or discharges into stormwater management facilities.~~
- ~~(c) Unless otherwise approved, work on any machine that is to be repaired or maintained in an uncovered outdoor area shall be performed in such a manner as to prevent leaks, spills, or discharges into any stormwater management facilities and/or any municipal separate storm sewer system.~~
- ~~(d) Fuel and chemical residue or other types of potentially harmful material, garbage, or batteries, which are located in an area susceptible to runoff, shall be removed immediately and disposed at a hazardous waste collection site.~~

Sec. 16.2-75. Inspections and monitoring.

- ~~(a) The administrator and/or his or her designee(s) shall have authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with the provisions of this article, including the prohibition of illicit discharges to the storm sewer system. The program administrator and/or his or her designee(s) may monitor stormwater outfalls or other components of the municipal storm sewer system as may be appropriate in the administration and enforcement of this article.~~
- ~~(b) The administrator and/or his or her designee(s) shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of any VPDES permit, including the one held by the city.~~
- ~~(c) The administrator and/or his designee(s) shall have the authority to enter into private property to conduct investigations relative to this article. No inspection shall be conducted without the consent of the tenant, occupant, property owner or the owner's representative or pursuant to a duly issued administrative inspection warrant or as authorized by other lawful means.~~

Sec. 16.2-76. Violations and penalties.

- ~~(a) A willful violation of the provisions of this article shall constitute a Class 1 misdemeanor. Each day that a continuing violation of this article is maintained or permitted to remain shall constitute a separate offense.~~
- ~~(b) Any person who commits any act prohibited by this article shall be liable to the city for all costs of detecting, tracing, testing, containment, cleanup, abatement, removal, and disposal of any substance unlawfully discharged into the storm sewer system.~~
- ~~(c) Any person who commits any act prohibited by this article shall be subject to a civil penalty in an amount not to exceed \$1,000.00 for each day that a violation exists. The city may issue a summons for the collection of the civil penalty and the action may be prosecuted in the local courts. Any civil penalties assessed by a court as a result of a summons issued by the city shall be paid into the treasury of the city for the purpose of abating, preventing or mitigating environmental pollution.~~
- ~~(d) The city may bring legal action to enjoin the continuing violation of and to ensure compliance with the provisions of this chapter, including injunction, abatement or other appropriate action or proceeding. The existence of any other remedy, at law or in equity, shall be no defense to any such action.~~
- ~~(e) The administrator and/or his or her designee(s) shall have authority to order that any activity found to be in violation of this article be stopped or conducted in such a manner as to avoid the discharge of any illicit materials into the storm sewer system.~~
- ~~(f) Any discharge caused or permitted to exist in violation of any provisions of this article constitutes a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance. Following receipt of written notice of such nuisance from the administrator and/or his or her designee(s), if the responsible person fails to abate or obviate such nuisance, then the city may do so and charge and collect the cost thereof from the~~

~~responsible person, in any manner provided by law (including, without limitation, any manner provided by law for the collection of state or local taxes).~~

- ~~(g) The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.~~

Secs. 16.2-10—16.2-76. Reserved.

3. That, in accordance with § 38 – A (1) of the Charter for the City of Lynchburg, Virginia, this Ordinance shall be published by “pamphlet” by the Clerk of Council and become effective December 1, 2024, which is no less than thirty (30) days from the adoption date of this Ordinance.

Adopted:

Certified: _____
Clerk of Council

ORDINANCE CONSOLIDATION: EROSION CONTROL & STORMWATER MANAGEMENT

October 8, 2024



PRESENTATION OVERVIEW

- Summary of existing City programs
- Summary of Recent State Actions
- Proposed Council Action
- Next Steps



CITY BACKGROUND

The City of Lynchburg holds a MS4 General Permit from DEQ requiring the implementation of an Erosion and Sediment Control, Stormwater Management, and Illicit Discharge programs, managed across multiple departments:

Community Development

- Erosion & Sediment Control (1997)
- Stormwater Management (2008)

Water Resources

- Illicit Discharges (Stormwater Discharges, 2008)



RECENT STATE ACTIONS

Combine and clarify:

1. Erosion and Sediment Control Regulations.
 2. Erosion and Sediment Control and Stormwater Certification Regulations.
 3. Virginia Stormwater Management Program Regulations.
- Clarifies program requirements, eliminates redundancies, and corrects inconsistencies between erosion and sediment control regulations and stormwater management program regulations.
 - No changes to the regulatory environment.

PROPOSED COUNCIL ACTION

- Consolidate Erosion and Sediment Control and Stormwater Management ordinances.
 - Aligns with clerical changes to the state legislation.
 - No changes to the regulatory requirements.
- Keep the Illicit discharge requirements remain unchanged as a separate ordinance.
 - No changes to the regulatory requirements.

NEXT STEPS

- This will come before Council for adoption on October 22nd at the regular meeting.



AGENDA ITEM SUMMARY**MEETING DATE**

October 8, 2024

PRESENTED BY

Rachel Frischeisen, City Planner

AGENDA ITEM # IV.5

273 Riverside Drive - Rezoning: R-2, Low-Medium Density Residential District to R-C, Conservation District & FLUM Amendment: Low Density Residential to Resource Conservation - Riverside Conservation

RECOMMENDATION

This item will appear for City Council vote on the October 22, 2024, Public Hearing agenda. Approval of the petition to rezone 273 Riverside Drive from R-2, Low-Medium Density Residential District to R-C, Conservation District and amend the Future Land Use Map (FLUM) from Low Density Residential to Resource Conservation to allow the conservation of the property.

SUMMARY

James and Carolyn Wicks are petitioning to amend the Future Land Use Map (FLUM) from Low Density Residential to Resource Conservation and to rezone approximately two and one hundred twenty-five thousandths (2.125) acres from R-2, Low-Medium Density Residential District to R-C, Conservation District located at 273 Riverside Drive to allow the conservation of the property.

The property is recommended for Low Density Residential and Resource Conservation uses on the City's Future Land Use Map (FLUM). The property fits the description of a Resource Conservation area in its current state, which is undeveloped, vegetated open space. The absence of street frontage and presence of steep terrain severely limit any development potential on the property. No future improvements are proposed.

PRIOR ACTION(S)

September 11, 2024: The Planning Commission recommended approval (7-0) of the rezoning and FLUM amendment petition.

September 11, 2024: The Planning Division recommended approval of the rezoning and FLUM amendment petition.

FISCAL IMPACT

N/A

CONTACT(S)

Rachel Frischeisen, City Planner

ATTACHMENT(S)

1. Planning Commission Minutes, Report, and Attachments

REVIEWED BY



William Martin, Community Development Director

Date: September 26, 2024



Kent White, Assistant City Manager

Date: October 01, 2024



Alicia Finney, Clerk of Council

Date: October 03, 2024

MINUTES OF THE SEPTEMBER 11, 2024 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED):

Petition of James and Carolyn Wicks to amend the Future Land Use Map from Low Density Residential to Resource Conservation and to rezone approximately two and one hundred twenty-five thousandths (2.125) acres from R-2, Low-Medium Density Residential District to R-C, Conservation District located at 273 Riverside Drive to allow the conservation of the property.

Ms. Eve Mergenthaler, Senior Planner, provided the following summary to the Commission. The subject property is located at 273 Riverside Drive and contains approximately eight and one hundred sixty-seven thousandths acres (8.167). The northern portion of the property is zoned R-C, Conservation District, and the southern portion of the property consists of approximately two and one hundred twenty-five thousandths acres (2.125) and is zoned R-2, Low-Medium Density Residential District. Both zoning districts were established in 1978. The purpose of this petition is to rezone the property from R-2, Low-Medium Density Residential District to R-C, Conservation District and amend the future land use map from Low Density Residential to Resource Conservation to allow the continued conservation of the undeveloped property. The Future Land Use Map (FLUM) currently recommends Low Density Residential and Resource Conservation uses for the property. These areas are dominated by single-family detached housing at densities of up to four (4) dwelling units per acre. In addition to residential uses, they may include public and institutional uses compatible in scale with single-family residential homes. Private recreation uses, including country clubs and swim and racket clubs, and private open space, are also appropriate for low-density residential areas. Resource Conservation areas encompass lands with special natural characteristics that limit land use and development to protect the city's environmental health. These areas may include steep slopes of 25% or greater or stream valleys and are planned to remain in vegetated open space with development limited to one, trails and other passive recreational facilities that involve minimal removal of vegetation, and two, public facilities that must be located in stream valleys. The goal is to keep resource conservation areas as natural as possible to stabilize slopes, prevent soil erosion, provide natural absorption areas for urban runoff, moderate climate, and provide wooded areas for wildlife and for the respite of city dwellers. In its current state, the property fits the description of a resource conservation area. It is undeveloped, consisting of vegetated open space, and the terrain is characterized as having steep slopes of twenty-five percent or greater. Pigeon Creek and its tributary form the western borders of the property. In addition, it is likely unfeasible to develop residential uses on the property as there is insufficient frontage for a city street. The proposed resource conservation use should be compatible with the adjacent single-family homes, and no improvements are proposed for the property. The City's Technical Review Committee (TRC) reviewed the petition on July 23, 2024, and the Planning Division recommends approval of the petition.

Chair Johnson asked if there was anyone to speak on behalf of the petition.

Mrs. Carolyn Wicks was present to represent the petition. She referenced the petition of support that residents of the Riverside community signed in favor of the rezoning. Changing the lot to Conservation District will help in keeping a balance between green space and development and will preserve old growth areas for the younger generation. After having a survey done, it was determined that the lot was actually eight and seventeen hundred acres (8.17) and does not connect to any paper roads, which is necessary for R-2 development. It also does not have water, power, or gas utilities.

Chair Johnson asked if there was anyone to speak in favor of the petition.

Ms. Carla Hamilton stated that she lived in the Riverwood subdivision and that one of the reasons that people desire to live there is because of the green space. Those who live within the subdivision care about the area and make effort to keep it looking nice. She brought images showing the green space.

Chair Johnson asked if there was anyone present to speak in opposition to the petition. With there being none, Chair Johnson closed the public hearing.

Commissioner Rogers asked if there was any incentive for changing the zoning to Conservation District.

Commissioner Marion noted that there may be a tax incentive.

Ms. Rachel Frischeisen, City Planner, stated that it was the petitioner's choice to move forward with the rezoning. Staff did speak with them about different mechanisms, like conservation easements, that they could utilize if the goal was conservation. The rezoning does not place it into a conservation easement, but it does limit development potential.

Commissioner Perault asked if the City taxed R-C land differently in terms of assessment value.

Ms. Frischeisen replied that would have to be verified. The assessor's office may also consider the topography of the area in this case.

Mrs. Wicks responded that it is not the sole reason for rezoning the property but assessment was part of the reason. The property was originally assessed at five thousand six hundred dollars (\$5,600) but last year, it was assessed for twenty thousand dollars (\$20,000). After speaking with the Assessor's Office, the assessment was reduced to the original amount but they chose to pursue the rezoning. The other reason for the rezoning is the desire to preserve this area for future generations and leave this as their legacy.

Commissioner Gammon asked about the topography regarding installation of a road.

Ms. Frischeisen stated that the property does not have frontage on a City right of way. Cool Springs Avenue right-of-way can be seen on the map but, as determined by the survey, the property doesn't actually adjoin it. Even if the property did adjoin, it would likely not be sufficient width, as the City standard is fifty (50) feet of right of way.

Commissioner Gammon stated that the area seems to be heavily ravined.

Ms. Frischeisen replied that the topography has a thirty percent (30%) plus slope

Commissioner Gammon stated that there seems to be a tax benefit to rezoning.

Commissioner Perault responded that it is common at the state level with conservation easements to get a tax break. It is one of the incentives. It should be encouraged.

Commissioner Rogers shared agreement.

Commissioner Perault stated that the Resource Conservation Districts typically gets chipped away at in the City. The value of the R-C district should be reinforced.

Commissioner Bowden shared agreement. He noted that this property has a water source that empties out into the James River and will be preserved.

Commissioner Bowden made the following motion, seconded by Commissioner Marion, and approved by the following vote:

"Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of the request of James and Carolyn Wicks to amend the Future Land Use Map from Low Density Residential to Resource Conservation and to rezone approximately two and one hundred twenty-five thousandths (2.125) acres from R-2, Low-Medium Density Residential

District to R-C, Conservation District located at 273 Riverside Drive to allow the conservation of the property."

AYES: Bowden, Gammon, Henderson, Johnson, Marion, Perault, Rogers	7
NOES:	0
ABSTENTIONS:	0
ABSENT:	0

The Department of Community Development

City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission
From: Planning Division
Date: September 11, 2024
Re: **Rezoning: R-2, Low-Medium Density Residential District to R-C, Conservation District – 273 Riverside Drive.**

I. PETITIONER

James and Carolyn Wicks, 415 Riverside Drive, Lynchburg, Virginia 24503

Property Owner: Same as petitioner.

II. LOCATION

The subject property proposed to be rezoned consists of approximately two and one hundred twenty-five thousandths (2.125) acres located at 273 Riverside Drive.

III. PURPOSE

The purpose of the rezoning petition is to conserve the undeveloped property.

IV. SUMMARY

- The City's *Future Land Use Map (FLUM)* recommends Low Density Residential and Resource Conservation uses. The petition proposes to amend the Low Density Residential portion to Resource Conservation.
- In its current state, the property fits the description of a Resource Conservation area. It is undeveloped, consisting of vegetated open space.
- It is likely unfeasible to develop Low Density Residential uses on the property as there is insufficient frontage for a City street and steep terrain.
- The subject property proposed to be rezoned is currently zoned R-2 Low-Medium Density Residential District. The petition proposes to rezone the entire property to R-C, Conservation District.

The Planning Division recommends approval of the rezoning petition.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The *Comprehensive Plan 2013-2030* recommends Low Density Residential use for the area proposed for rezoning. Low Density Residential areas are dominated by single family detached housing at densities of up to four dwelling units per acre. In addition to residential uses, they may include public and institutional uses compatible in scale with single family residential homes. Private recreation uses, including country clubs and swim and racquet clubs, and private open space are also appropriate for Low Density Residential areas (p.72).

The City's *Future Land Use Map (FLUM)* also recommends Resource Conservation for the northern portion of this property. Resource Conservation Areas encompass lands with special natural characteristics that limit land uses and development to protect the City's environmental health. The mapped Resource Conservation Areas include the steep slopes of Candler's

Mountain as well as the City's stream valleys. The stream valleys, as defined in this Comprehensive Plan, include streams and rivers, their 100-year floodplains, connected wetlands and adjacent steep slopes. Steep slopes are defined as slopes of 25% or greater. The actual boundaries of the Resource Conservation Area should be determined on a site-by-site basis using the best available environmental data.

Resource Conservation Areas are planned to remain in vegetated open space with development limited to: 1) trails and other passive recreational facilities that involve minimal removal of vegetation, and 2) public facilities that must be located in stream valleys. These include sewer mains, wastewater treatment plants, water intakes and outfalls, road crossings, and public boat ramps. The goal is to keep Resource Conservation Areas as natural as possible to stabilize slopes, prevent soil erosion, provide natural absorption areas for urban runoff, moderate climate, and provide wooded areas for wildlife and for the respite of City dwellers. Many of the stream valley Resource Conservation Areas are recommended to become greenways in the Parks and Recreation element, and thus may have public access trails. Other Resource Conservation Areas, not designated as greenways on the Parks & Recreation Map, are to remain in natural vegetation for purely environmental protection reasons. On privately owned land within conservation areas, the intent of this Plan is to allow appropriate land uses and infrastructure as long as the environmental value of the areas is conserved or enhanced and public safety is protected through buffers and other best management practices (p 77).

2. **Zoning.** The subject property was annexed into the City in 1926. A portion of the property is already zoned R-C, Conservation District. The other portion of the property, proposed to be rezoned, is zoned R-2, Low-Medium Density Residential District. Both zoning districts were established in 1978.
3. **Proffers.** The petitioner has not submitted proffers.
4. **Board of Zoning Appeals (BZA).** The Zoning Administrator has determined that no variances are needed for the development of the property as proposed.
5. **Surrounding Area.** There have been a few items requiring City Council approval in the immediate area:
 - On January 13, 1981, City Council approved Mr. R. Schaefer Oglesby's petition to rezone two and seventy-five hundredths (2.75) acres located near the end of Riverside Drive to the North from R-C, Conservation District to R-2, Single-Family Residential District, to allow the construction of four (4) single-family residences.
 - On May 13, 2008, City Council approved Hernan and Guadalupe Garces' petition for a CUP to allow the operation of a bed and breakfast in an R-2, Low-Medium Density Single-Family Residential District located at 1 Vista Avenue.
6. **Site Description.** The subject property is comprised of eight and one hundred sixty-seven thousandths (8.167) acres located at 273 Riverside Drive. The portion proposed for rezoning is comprised of two and one hundred twenty-five thousandths (2.125) acres and is currently undeveloped. The property is surrounded by vacant land and single-family homes. The terrain is characterized as having steep slopes of 25% or greater. Pigeon Creek and its tributary form the western border.
7. **Proposed Use of Property.** If the petition is approved, the property will remain undeveloped, according to the submitted narrative.

8. **Traffic, Parking and Public Transit.** The City Traffic Engineer had no comments of concern regarding the petition.

The property does not have improved street frontage or access.

The property is not served by the Greater Lynchburg Transit Company (GLTC).

9. **Stormwater Management.** An Erosion & Sediment Control and Stormwater Plan will not be required as there is no development proposed.

10. **Emergency Services.** The City's Fire Marshal and Police Department had no comments of concern regarding the petition.

11. **Impact.** This petition proposes to rezone the R-2, Low-Medium Density Residential District portion of this property to R-C, Conservation District, which should have little impact on the area.

The petition proposes to amend the *Future Land Use Map (FLUM)* Low Density Residential portion of the property to Resource Conservation. The area is currently designated for both Low Density Residential and Resource Conservation. In its current state, the property fits the description of a Resource Conservation area. It is undeveloped, consisting of vegetated open space. The terrain is characterized as having steep slopes of 25% or greater. Pigeon Creek and its tributary form the western borders of the property. In addition, it is likely unfeasible to develop Low Density Residential use on the property as there is insufficient frontage for a City street. The proposed Resource Conservation use should be compatible with the adjacent residential uses.

12. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the petition on July 23, 2024. Comments were minor in nature.

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of the request of James and Carolyn Wicks to amend the Future Land Use Map from Low Density Residential to Resource Conservation and to rezone approximately two and one hundred twenty-five thousandths (2.125) acres from R-2, Low-Medium Density Residential District to R-C, Conservation District located at 273 Riverside Drive to allow the conservation of the property.

This matter is respectfully offered for your consideration.



Rachel Frischeisen
City Planner

pc: Wynter Benda, City Manager
Greg Patrick, Deputy City Manager
Kent White, Assistant City Manager

Tom Martin, Director of Community Development
Matthew Freedman, City Attorney
J. Lee Newland, City Engineer
Cynthia Kozerow, Lynchburg Police Department
Candace Brown, Fire Marshal
Doug Saunders, Building Official
Kevin Henry, Zoning Administrator
James and Carolyn Wicks, Petitioner

VII. ATTACHMENTS

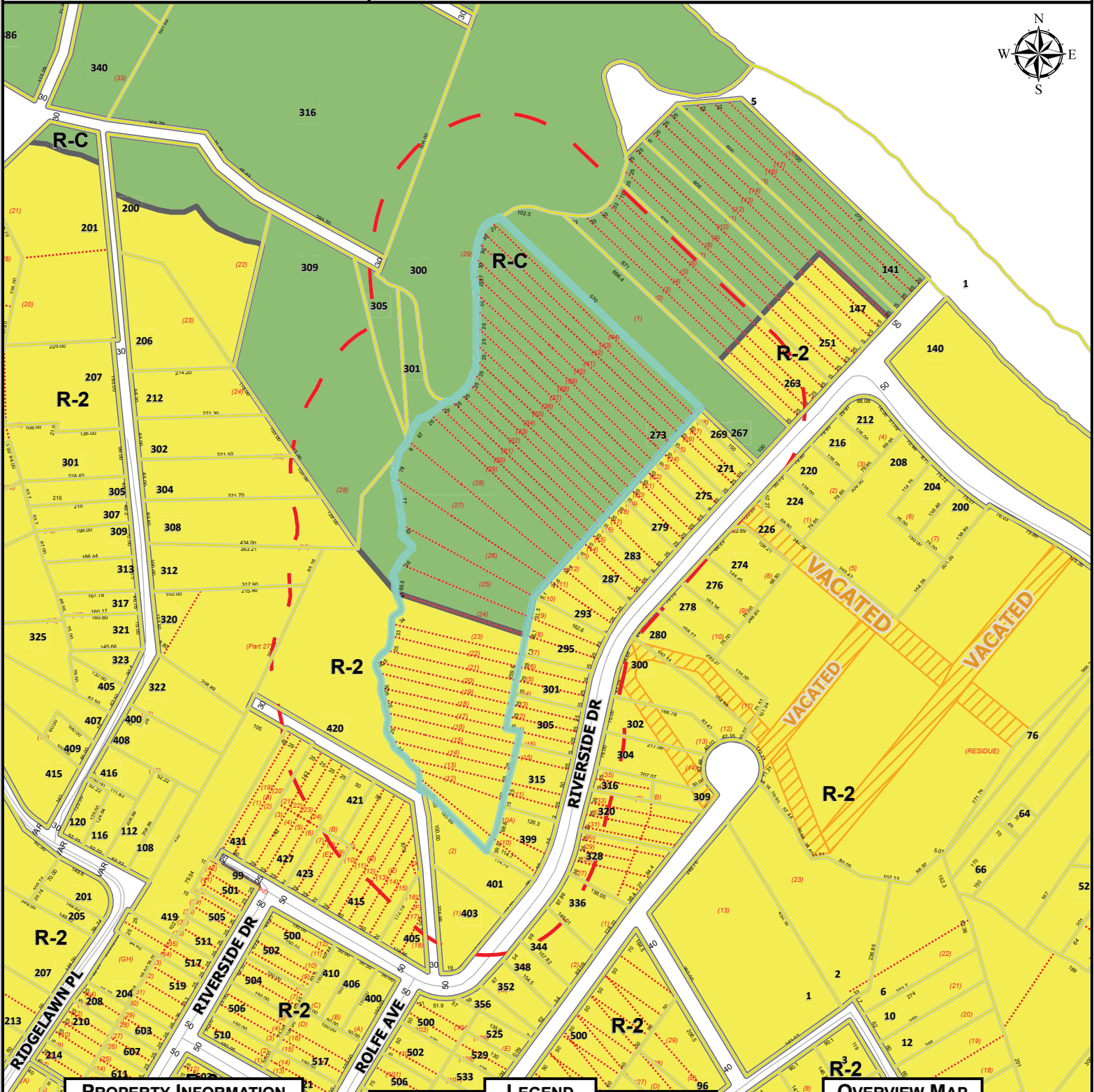
- 1. Zoning Map with Adjoining Property Owners**
- 2. Future Land Use Map**
- 3. Watershed Map**
- 4. Planimetric and Topographic Map**
- 5. Resurvey of Property**
- 6. Narrative**
- 7. Neighborhood Petition**
- 8. Property Photograph**

Zoning

TRC

273 RIVERSIDE DR

James A. & Carolyn J. Wicks



PROPERTY INFORMATION

PARCEL ID

ADDRESS

04001051 273 RIVERSIDE DR

LEGEND

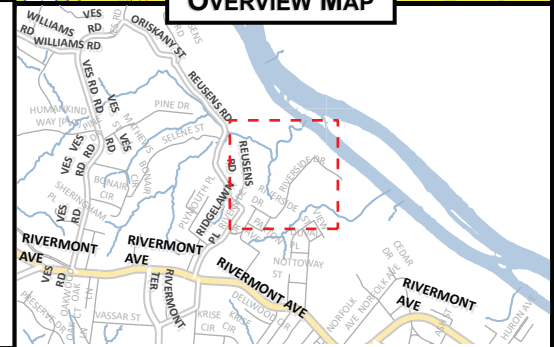
Subject Property

215 Foot Buffer

 B-1	 I-1	 R-1
 B-3	 I-2	 R-2
 B-4	 I-3	 R-3
 B-5	 IN-1	 R-4
 R-C	 IN-2	

MAP SCALE: 1:3,324 DATE PRINTED: 6/4/2024

OVERVIEW MAP

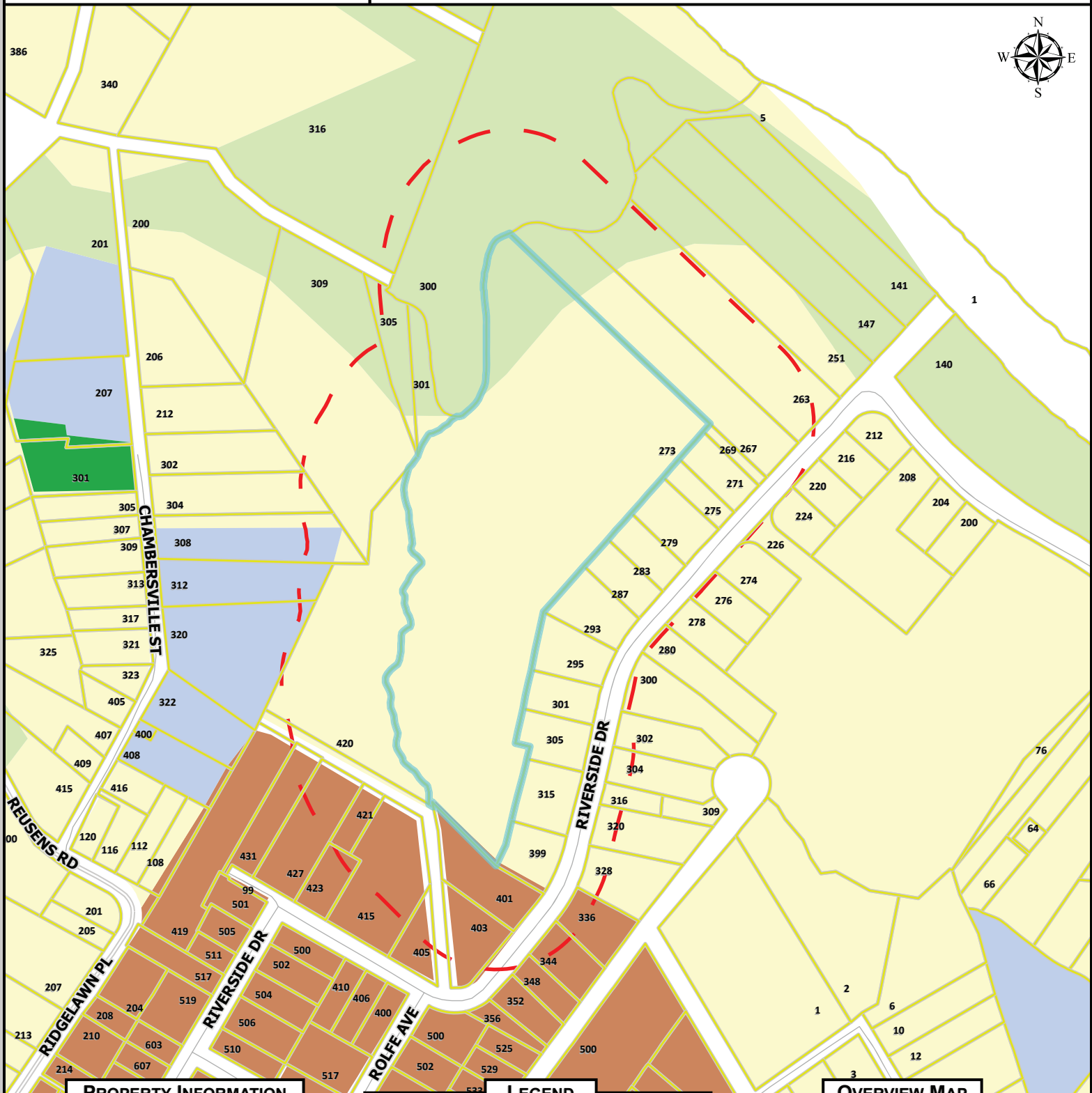


273 Riverside Drive

Parcel ID	Address	Owner
04003021	348 RIVERSIDE DR	POWELL, MELODY L
04003019	344 RIVERSIDE DR	WILLIAMSON, MARK & JUANITA
04003016	336 RIVERSIDE DR	TERRELL, BRANSON & KOCOL, KENDALL
04003012	328 RIVERSIDE DR	BAKER, KATHERINE P
04003009	320 RIVERSIDE DR	FUNICELLO, JAYSON T & JESSICA C
04003037	316 RIVERSIDE DR	STENGL, CHRISTOPHER &
04001049	315 RIVERSIDE DR	MILLWARD, FREDERICK C & LESLIE K
04112006	304 RIVERSIDE DR	HARRISON, BETHANY A S & ERIC E
04112005	302 RIVERSIDE DR	BANKS, PHILLIP E
04001045	305 RIVERSIDE DR	FARRINGER, NATALIE A &
04001042	301 RIVERSIDE DR	HARRISON, ERIC E & BETHANY A S
04112004	300 RIVERSIDE DR	BANKS, PHILLIP E
04112003	280 RIVERSIDE DR	MOORE, CHRISTOPHER & KELSEY
04001039	295 RIVERSIDE DR	BRAFFORD, RICKY D JR & SAMANTHA S
07105006	320 CHAMBERSVILLE ST	WINGFIELD BAPTIST CHURCH TRS
04112002	278 RIVERSIDE DR	SIMMONS, CLIFTON C & MOOSE K
04112022	276 RIVERSIDE DR	SIMMONS, CLIFTON C & MOOSE K
04001036	293 RIVERSIDE DR	CHEATHAM, MICHELE THURMAN
07105008	312 CHAMBERSVILLE ST	WINGFIELD BAPTIST CHURCH TRS
04001033	287 RIVERSIDE DR	SZANDZIK, DAVID WAYNE
04001030	283 RIVERSIDE DR	FAISON, ROY & BRENDA T
07105009	308 CHAMBERSVILLE ST	SCOTT, ROY K
04001026	279 RIVERSIDE DR	HAMILTON, CARLA
07105016	304 CHAMBERSVILLE ST	SCOTT, OLETHA
04001024	275 RIVERSIDE DR	HAMILTON, CARLA BERRY
04001021	271 RIVERSIDE DR	HUSSAMY, OMAR D
07105017	302 CHAMBERSVILLE ST	SCOTT, CHERYL J
04001020	269 RIVERSIDE DR	HUSSAMY, OMAR D
04001069	301 REUSENS RD	ARGENBRIGHT, KENNETH
04001068	305 REUSENS RD	ARGENBRIGHT, KENNETH
04001067	309 REUSENS RD	HUSSAMY, OMAR D
04001019	267 RIVERSIDE DR	HALLSTROM, HENRY A E & ELAINE C
04001014	263 RIVERSIDE DR	BANKS, EUGENE R
07104004	316 REUSENS RD	DAVIS, MADELINE P
04001070	300 REUSENS RD	BANKS, EUGENE R
04004012	405 RIVERSIDE DR	FERGUSON, PALMER W
04001057	403 RIVERSIDE DR	BARRETT, JOSEPH A & AMBER M CLOSS
04004014	423 RIVERSIDE DR	MLD PROPERTIES LLC
04001055	399 RIVERSIDE DR	VINSON, GREGORY JR & CANDACE
04001058	401 RIVERSIDE DR	PLAYER, TIMOTHY M
04004008	415 RIVERSIDE DR	WICKS, JAMES A & CAROLYN J
04004007	421 COOL SPRING DR	WICKS, JAMES A & CAROLYN J
04004003	427 RIVERSIDE DR	BRUDKE, KARL PETER & GRAY, MARSHALL & GRAY, PATRICIA
04004002	431 RIVERSIDE DR	MONTAGUE, CHER R
04004001	419 RIDGELAWN PL	COALSON, MCKENNA & COALSON, SUSAN &
04001066	420 COOL SPRING DR	BURNETTE, TIMOTHY L
04001051	273 RIVERSIDE DR	WICKS, JAMES A & CAROLYN J
04112001	274 RIVERSIDE DR	BRAFFORD, RICK D SR & KIMBROUGH L
04111001	226 RIVERSIDE DR	FRANK GOOD BUILDING CONTRACTORS INC
04113001	224 RIVERSIDE DR	FLORES, FERDINAND L & GLYNDA R
		JEREMY BRYANT, AMHERST COUNTY ADMINISTRATOR
		VDOT ATTN: RICK YOUNGBLOOD

273 RIVERSIDE DR

James A. & Carolyn J. Wicks



PROPERTY INFORMATION

PARCEL ID

ADDRESS

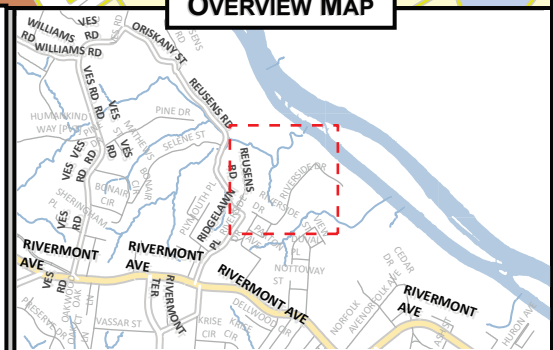
04001051 273 RIVERSIDE DR

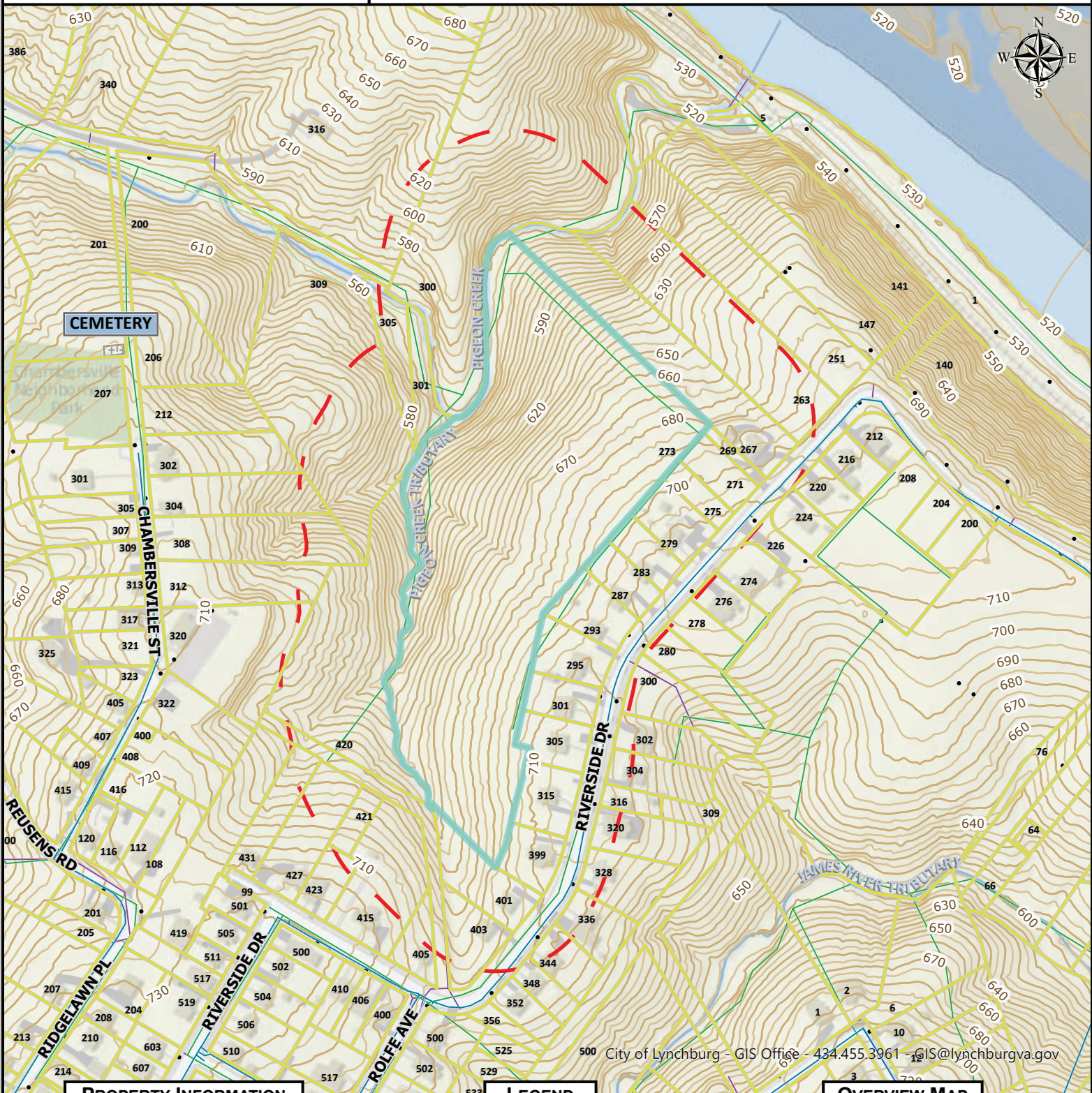
LEGEND

- | | |
|--|---|
|  Local Historic District |  Employment 1 |
|  Traditional Residential |  Employment 2 |
|  Low Density Residential |  Downtown |
|  Medium Density Residential |  Institution |
|  High Density Residential |  Public Use |
|  Neighborhood Commercial |  Public Parks |
|  Community Commercial |  Resource Conservation |
| |  Mixed Use |

MAP SCALE: 1:3,324 DATE PRINTED: 6/4/2024

OVERVIEW MAP





City of Lynchburg - GIS Office - 434.455.3961 - GIS@lynchburgva.gov

PROPERTY INFORMATION

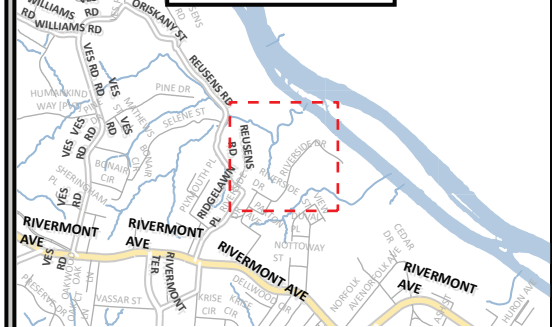
PARCEL ID	ADDRESS
04001051	273 RIVERSIDE DR

LEGEND

	Active	Proposed	Abandoned
Utilities			
Water			
Sanitary			
Storm			
	Paved	Unpaved	Other
Planimetrics			
Structure			
Roadway			
Parking			
Sidewalk			
Driveway			
Topography			
Contour			
	100'	20'	5'
	50'	10'	1'

MAP SCALE: 1:3,324 DATE PRINTED: 6/4/2024

OVERVIEW MAP



REF
D.B. 322, PG. 198

N/F
KENNETH ARGENTBRIGHT
D.B. 1132, PG. 805
PID #04001069
ZONED R-C

N/F
KENNETH ARGENTBRIGHT
C/O ANGEL OSBORNE
D.B. 1132, PG. 805
PID #04001068
ZONED R-C

N/F
OMAR D. HUSSAMY
DOC. #230004982
PID #04001067
ZONED R-C

N/F
TIMOTHY L. BURNETTE
D.B. 848, PG. 426
PID #04001066
ZONED R-2

N/F
JAMES A. WICKS &
CAROLYN J. WICKS
DOC. #120003443
PID #04004008
ZONED R-2

N/F
PALMER W. FERGUSON
DOC. #170007049
PID #04004012
ZONED R-2

N/F
EUGENE R. BANKS
D.B. 810, PG. 596
PID #04001070
ZONED R-C

N/F
HENRY A. E. HALLSTROM
& ELAINE C. HALLSTROM
D.B. 1117, PG. 843
PID #04001019
ZONED R-C

PROPERTY LINES FROM POINT "A"
TO POINT "B" TO POINT "C" ARE
FOR CALCULATION OF AREA ONLY

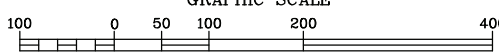
LINE	BEARING	LENGTH
L1	N 19°32'05" W	48.60'
L2	N 21°51'58" W	128.70'
L3	N 08°55'13" W	96.69'
L4	N 30°06'27" E	42.29'
L5	N 18°59'58" E	97.62'
L6	N 05°39'51" W	56.91'
L7	N 33°44'37" E	54.10'
L8	N 30°31'40" E	18.51'
L9	N 27°47'41" W	34.33'
L10	N 05°37'33" W	88.17'
L11	N 02°54'03" E	60.88'
L12	N 38°48'10" E	105.33'
L13	N 53°33'32" E	40.74'
L14	N 68°06'36" E	46.77'
L15	N 34°58'11" E	67.85'
L16	N 08°07'07" E	68.19'
L17	N 03°01'48" E	72.74'
L18	N 06°19'06" E	91.20'
L19	N 07°24'31" E	24.42'

LINE	BEARING	LENGTH
L20	S 74°07'00" E	25.00'
L21	S 15°53'00" W	25.00'
L22	S 15°53'00" W	100.00'
L23	S 17°44'38" W	119.46'

NOTES:

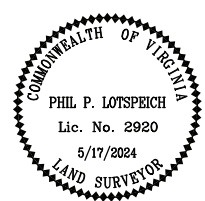
1. THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE REPORT AND DOES NOT, THEREFORE NECESSARILY INDICATE ALL ENCUMBRANCES UPON THE PROPERTY.
2. THIS PROPERTY IS IN FLOOD ZONE "X" AS SHOWN AND SCALED OFF F.E.M.A. MAP # 5100930033D, EFFECTIVE DATE JUNE 3, 2008.
3. THIS PLAT HAS BEEN PREPARED FROM AN ACTUAL FIELD SURVEY DONE PER DATE OF THIS PLAT AND THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS EXCEPT AS SHOWN HEREON.
4. NO DETERMINATION OF WETLANDS HAS REQUESTED, NOR WAS ANY DETERMINATION MADE BY JAMES C. MAY & ASSOCIATES, P.C. OR THIS SURVEYOR. THIS PLAT DOES NOT ADDRESS THE EXISTENCE OF THE AFOREMENTIONED IN OR AROUND THE BOUNDARIES OF THIS PROPERTY.
5. NO SUBSURFACE INVESTIGATIONS HAVE BEEN PERFORMED AND THE SURVEYOR DISCLAIMS RESPONSIBILITY FOR THE EXISTENCE OR NON-EXISTENCE OF ANY AND ALL UNDERGROUND UTILITIES, STRUCTURES, ROCK-DEPOSITS, ETC. ASSOCIATED WITH THIS PROJECT.
6. THIS PROPERTY IS ZONED R-2 LOW-MEDIUM DENSITY SINGLE-FAMILY RESIDENTIAL AND R-C RESOURCE CONSERVATION.
7. THIS PROPERTY IS SERVED BY PUBLIC WATER AND PUBLIC SEWER SYSTEMS.
8. THIS PROPERTY IS IN THE OPOSSUM CREEK-JAMES RIVER WATERSHED DISTRICT. THEREFORE A 75' WIDE VEGETATED STREAM BUFFER IS REQUIRED ON EACH SIDE OF THE STREAM AS SHOWN ON THIS PLAT. THE FOLLOWING ARE NOT PERMITTED WITHIN THE BUFFERS: ANY ON-SITE SEWAGE SYSTEM, DRAINFIELD, RESERVE DRAINFIELD, WASTE PUMP STATION, OR WASTE FORCE MAIN; BUILDING STRUCTURES, DRAINAGE DITCHES WHICH CONCENTRATE THE FLOW OF SURFACE WATER ACROSS THE STRIP; ABOVE OR BELOW GROUND STORAGE TANKS; ROW CROPS REQUIRING TILLAGE, EXCEPT IN STRICT ACCORDANCE WITH BEST MANAGEMENT PRACTICES AND A CONSERVATION PLAN; OR LOGGING OR SILVICULTURAL ACTIVITIES, EXCEPT IN STRICT ACCORDANCE WITH BEST MANAGEMENT PRACTICES FOR PUBLIC WATER SYSTEMS.
9. FROM POINT "A" TO POINT "B" TO POINT "C" THE CENTERLINE OF THE BRANCH AND PIGEON CREEK AS IT MEANDERS IS THE PROPERTY LINE. BEARINGS AND DISTANCES ARE FOR COMPUTATION OF AREA ONLY.
10. TOPOGRAPHIC LINES ON THIS PLAT WERE SCALED FROM CITY OF LYNCHBURG GIS SITE.

GRAPHIC SCALE



REVISED 6/19/2024: AS SHOWN ACREAGE FOR R-2 ZONING AND CALLS.

JAMES C. MAY AND ASSOCIATES, P.C. SURVEYORS-PLANNERS 4449 S. AMHERST HWY, MADISON HEIGHTS, VA., 24572 434-528-1005		PLAT SHOWING RESURVEY OF LAND STANDING IN THE NAMES OF JAMES A. WICKS & CAROLYN J. WICKS, DESCRIBED IN DOC. #200000989 CITY OF LYNCHBURG, VIRGINIA	
SOURCE OF TITLE: JAMES A. WICKS & CAROLYN J. WICKS DOC. # 200000989		TAX ID.: 04001051, 52, 54	
SCALE: 1" = 100' DATE: 5/17/2024 COMM. NO.: 24018 F.B. REF.: PPL			
FOR: JAMES A. WICKS & CAROLYN J. WICKS			



273 Riverside Drive Rezoning Narrative

Planning Commission and City Council,

Our family requests you consider rezoning 273 Riverside Drive, a forested lot, to only R-C Conservation which is a change from its current mixed zoning of R-C Conservation and R-2 Low-Medium Density Single-Family Residential. This is a beneficial and needed change for several reasons:

- 1) This change supports the desire of Lynchburg City to balance development with beautification. This forested lot beautifies Riverside Drive for many houses that border this undeveloped land. The petition signed by the residents of Riverside Drive (see 61 signatures on 5 page signature petition) speaks to residents' desire to preserve this land in an undeveloped state with only R-C Conservation zoning. As the owners of this parcel, it is our purpose to maintain this forest land in an undeveloped state with only R-C Conservation zoning for the beautification of our residence/neighborhood and the preservation of animal habitat.
- 2) Zoning precedence for the connecting forest lots of which 273 Riverside Drive is part of the canyon is only R-C Conservation (see PID #04001067, PID #04001068, PID #04001069, PID #04001070, and PID #04001019). The one forested lot (PID #04001066) that is zoned R-2 is connected to the paper road "Cool Spring Ave".
- 3) The forested lot, 273 Riverside Drive, does not have any paper road or paved, maintained road access (see 2024 plat map) which is needed for R-2 development. The lot does not have water, power, or gas utilities.
- 4) Updating the zoning of 273 Riverside Drive to only R-C Conservation will heighten the accuracy of the city master development plan, zoning, and GIS based on the updated 2024 plat (for example, see GIS discrepancy in acreage 6.8 to 8.1 acres). We believe the mixed zoning was a discrepancy in the record based on a perception that 273 Riverside Drive connected to a paper road. The 2024 plat shows that 273 Riverside Drive does not legally connect at any point to the paper road "Cool Spring Ave." or any other road access point which is needed for R-2 development.

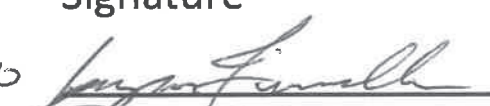
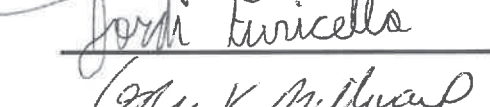
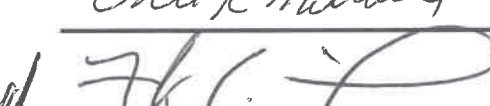
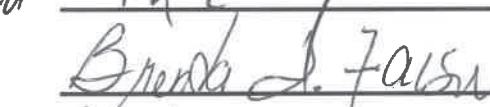
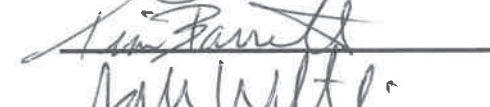
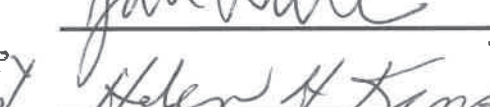
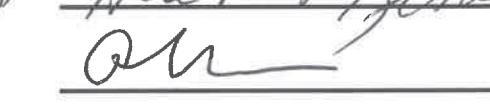
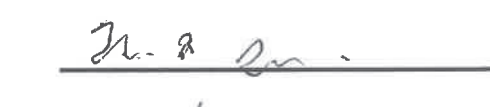
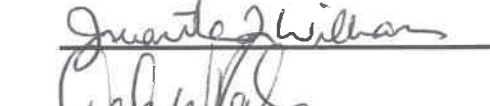
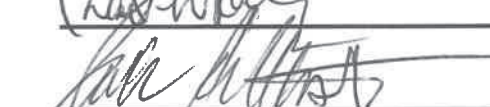
We are grateful for your consideration of our family request to rezone the forested lot, 273 Riverside Drive, to only R-C Conservation.

Signed: James A. Wicks and Carolyn J. Wicks (Owners)

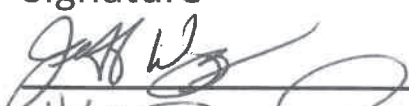
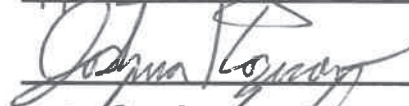
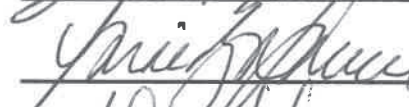
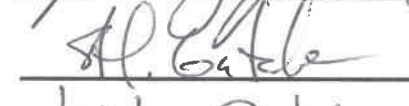
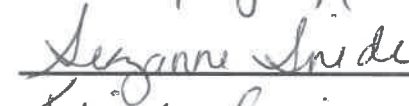
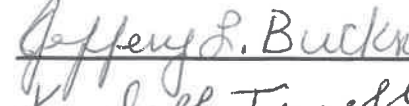
I am a resident of the Riverside Community and
I want the forest lot, 273 Riverside Dr., to be
rezoned to only R-C Conservation.

Print name	Signature	House #
Madeleine Fergus		405
Palmer Fergus		405
Patrick Fergus		405
Amber Barrett		403
Joseph Barrett		403
Anderson Barrett		403
Timothy Player		401
Gres Vinson		399
Rosemary Sule		301
Pick Bradford, Jr.		295
DAVID SZANDZIK		287
Carla Hamilton		279
Henry Hallstrom		267
Telle Willis		212
Kari Marshall		216

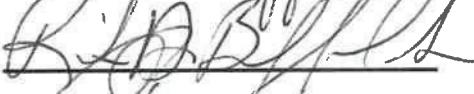
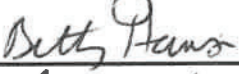
I am a resident of the Riverside Community and
I want the forest lot, 273 Riverside Dr., to be
rezoned to only R-C Conservation.

Print name	Signature	House #
Jayson Funicello		320
Jessica Funicello		320
Jordi Funicello		320
Leslie Millward		315
Frederick C. Millward		315
Brenda J. Faison		283
Vicki Z Barrett		506
Tim Barrett		506
Joshua Williams		500 Rolfe
Helen H Kinsey		607
Allison Jablonski		406
Brian Jablonski		406
Juanita Williams		344
DAVID ROBERTS		517
Joseph Hallstrom		267

I am a resident of the Riverside Community and
I want the forest lot, 273 Riverside Dr., to be
rezoned to only R-C Conservation.

Print name	Signature	House #
Jeff Wissins		521
Heather Ryan-Siger		410
Joshua Kozarov		504
Lisa Broughman		506
Steve Gatzke		612
Libby Gatzke		612
Suzanne Snider		511
Klint Snider		511
Sara Kozarov		504
Jeremiah Guelzo		505
Mark Williamson		344
Karl P Brudke		427
Jeffery L. Buckner		352
Kendall Terrell		336
Branson Terrell		336

I am a resident of the Riverside Community and
I want the forest lot, 273 Riverside Dr., to be
rezoned to only R-C Conservation.

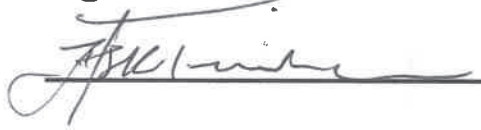
Print name	Signature	House #
GLYNDA FLORES		224
Kim Brafford		274
Rice BrAFFORD		274
CHRIS MOORE		280
Ashley Farringer		305
Bethany Harrison		304
Eric Harrison		304
Chris Stangl		316
Frances Carey Stangl		316
Quinton Williamson		344
Melody Powell		319/24
Colt Riley		502
Emma Balmer		510
Cole Balmer		510
TRICIA Kirby-WISSINS		521

I am a resident of the Riverside Community and
I want the forest lot, 273 Riverside Dr., to be
rezoned to only R-C Conservation.

Print name

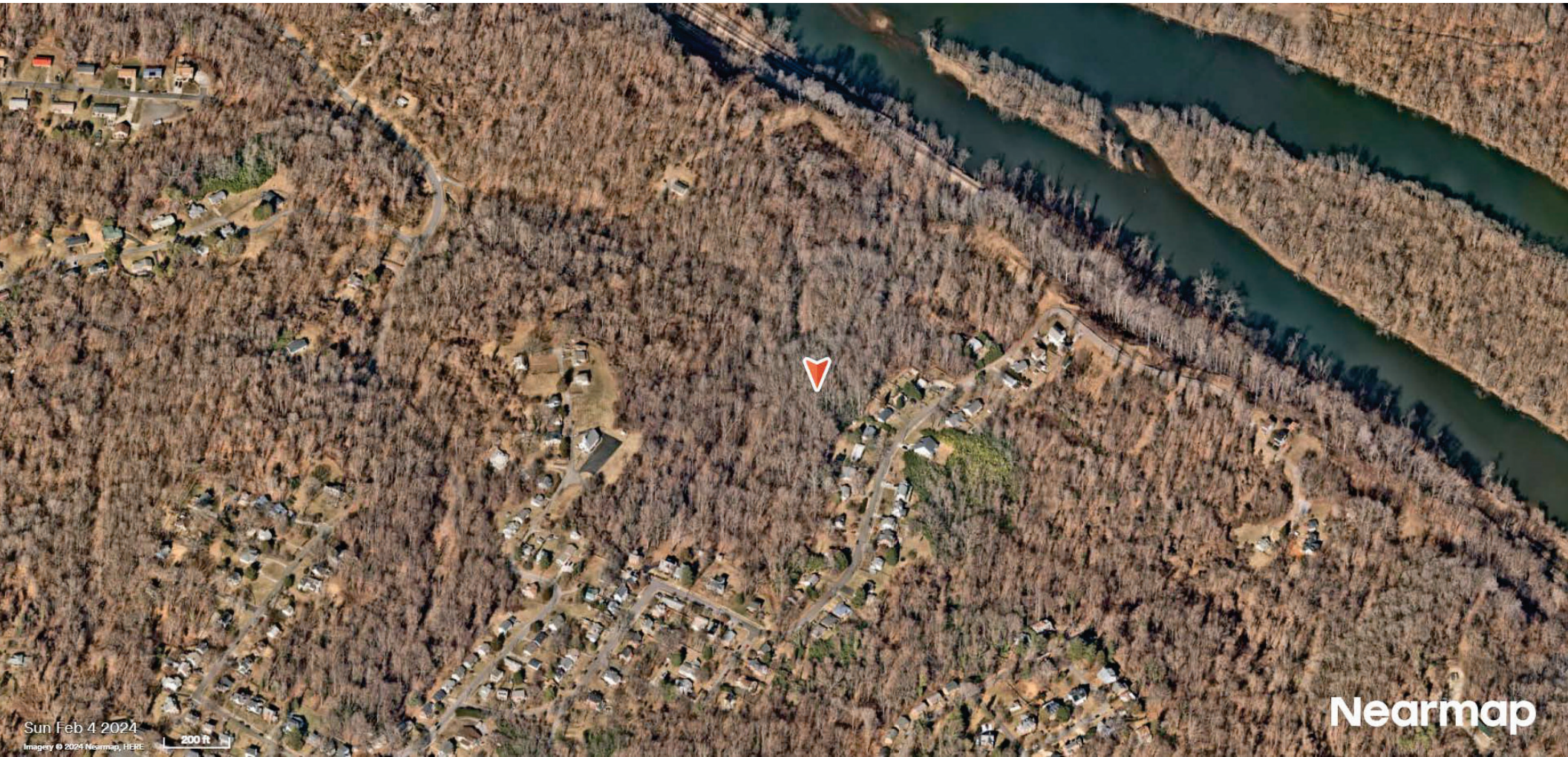
Jacqueline Timmer

Signature



House #

615



Rezoning: R-2 to R-C & FLUM Amendment
273 Riverside Drive
September 11, 2024

PLEASE PRINT CLEARLY

NAME	ADDRESS	PHONE	IN FAVOR	IN OPPOSITION	NEUTRAL
Carolyn Alicks			X		
James Wild			X		
Aiden Wild			X		
Carla Hamblin			X		

AGENDA ITEM SUMMARY**MEETING DATE**

October 8, 2024

PRESENTED BY

Rachel Frischeisen, City Planner

AGENDA ITEM # IV.6

1600 Graves Mill Road - Rezoning: B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) - Rosedale Gas Station

RECOMMENDATION

This item will appear for City Council vote on the October 22, 2024, Public Hearing agenda. Denial of the petition to rezone 1600 Graves Mill Road from B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) to revise proffers and allow an adjustment in orientation of a fueling station canopy.

SUMMARY

Daniel Cyrus, on behalf of Rosedale Investments, LLC, is petitioning to rezone approximately three and three tenths (3.3) acres located at 1600 Graves Mill Road from B-3C, Community Business District Conditional to B-3C, Community Business District Conditional to revise proffers and allow an adjustment in orientation of a fueling station canopy and parking area.

The property is recommended for Mixed Use on the City's Future Land Use Map (FLUM). A fueling station design was proffered with the Phase 1 & 2 concept plan as part of the 2014 rezoning. The design showed an intentional canopy orientation that was discussed with staff and reviewed by the Design Review Board (DRB). The proffered site layout from 2014 also follows development principles for connectivity, mixed use, and building placement as called for by the *Comprehensive Plan 2013-2030's* Goals and Policies in *Chapter 6: Land Use Development & Community Design*.

The voluntarily submitted proffer indicates development in conformance with a revised concept plan, which shows the canopy located in front of the store, along Graves Mill Road, with a parking area fronting Rosedale Boulevard. This is contrary to the walkable, mixed use development that the area received previous approvals to become.

PRIOR ACTION(S)

September 11, 2024: The Planning Commission recommended denial (5-2, Gammon and Henderson) of the rezoning petition.

September 11, 2024: The Planning Division recommended denial of the rezoning petition.

FISCAL IMPACT

N/A

CONTACT(S)

Rachel Frischeisen, City Planner

ATTACHMENT(S)

1. Planning Commission Minutes, Report, and Attachments

REVIEWED BY



William Martin, Community Development Director

Date: September 26, 2024



Kent White, Assistant City Manager

Date: October 01, 2024



Alicia Finney, Clerk of Council

Date: October 03, 2024

MINUTES OF THE SEPTEMBER 11, 2024 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED):

Petition of Daniel Cyrus, on behalf of Rosedale Investments, LLC, to rezone approximately three and three tenths (3.3) acres located at 1600 Graves Mill Road from B-3C, Community Business District Conditional to B-3C, Community Business District Conditional to revise proffers and allow an adjustment in orientation of a fueling station canopy.

Ms. Rachel Frischeisen, City Planner, provided the following summary to the Commission. The property is located at 1600 Graves Mill Road. It is a three and three tenths (3.3) acre portion of the sixty-two (62) acre tract that is proposed for rezoning. The subject property was annexed into the city in 1976. The portion proposed for rezoning is considered part of the Rosedale cluster commercial development and is zoned B-3C, Community Business District (Conditional). This zoning was established in two phases in 2014 and 2015. Prior to that, the property was zoned R-1 Low Density Residential. Along with the rezoning, Conditional Use Permits were also issued to create the Rosedale Cluster Commercial Development district. The Comprehensive Plan recommends Mixed Use for the area. These areas do not fit into any single land use category, as they are planned for a mix of uses carefully designed to mitigate potential land use conflicts. The petition proposes to amend previously approved proffers by allowing an adjustment in the orientation of a proposed fueling site canopy. The 2014 plan which showed the gas station and convenience store on the corner at the intersection of Graves Road and Rosedale Boulevard with gas canopies and parking areas located to the side and behind the store. This plan was in keeping with the pedestrian oriented, Main Street style development that was presented as part of the original petition by locating the building up front on the corner to contribute to the "street wall" and shifting parking to the rear side of the property. This layout was an intentional choice made by the petitioner at the suggestion of Planning staff, who noted that the preliminary concept plan — not the final/approved plan, but their initial submittal — had several uses such as the convenience store, restaurants, and grocery building set back from the street, which did not meet the goals of the Cluster Commercial Development and did not promote walkability. The plan was modified to pull the buildings up toward the street and move the canopies and parking to the rear. The petitioner has requested that the canopy be located in front of the store along Graves Mill Road with a parking area fronting Rosedale Boulevard. This orientation is contrary to the walkable, mixed-use development that the area received previous approvals to become. While the placement of the gas station and parking areas may seem trivial, it is design choices like this one that have a direct impact on the overall functionality of the development. The Rosedale development was presented and approved by City Council as a walkable, Main Street style development. Some of the goals of the original layout were met and are listed in the report, relating to the design of the street — how the buildings interact with the street, building orientation and placement being very important to walkability. Understandably, things have evolved, like all projects do. Staff has worked with the developer on the layout over the years, noting that substantial compliance does have some flexibility, but planning staff does not support moving away from the design principles that were meant to serve as this project's foundation; therefore, the Planning Division recommends denial of the petition to amend proffers.

Chair Johnson asked if there was anyone to speak on behalf of the petition.

Daniel Cyrus, representing Rosedale Investments, LLC, was present to represent the petition. Mr. Cyrus stated that the Rosedale mixed-use project had evolved from the original rezoning and original master plan that was set forth and approved in 2014. He reported that the company has delivered a fairly substantial number of residential units and is also in the process of constructing a mixed use building, which will contain restaurants, retail, and office uses, as part of the project. He added that they are now to be in partnership with Wawa convenience store and gas station, and could be one of the first Wawa locations in the Lynchburg area. Mr. Cyrus said that he was not there to discuss the use of the land, given that convenience store use was allowed as part of the original rezoning, and it has not been disputed. The petition, he clarified, pertains to the layout and orientation or positioning as it relates to the project. He referenced the image of the overall plan shown in the staff report and noted that it was the first plan submitted; it showed an enlargement of the convenience store portion, at the lower side on the right corner the enlargement that showed the canopy not fronting on Graves Mill or on Rosedale Boulevard, and the building pulled closer to the street. Mr. Cyrus pulled

up a note on the plan which read, the uses in layout shown are for concept only and subject to change, based on future needs for both residential and commercial uses in the area. The first plan, he explained, was part of the cluster commercial plan approval process — to denote uses and architectural styles, to try and create an overall vision for the property. Mr. Cyrus then used the slides to show a model of the area around the Wawa site. He went on to say that they had worked closely with Wawa to maintain a similar architectural style between all buildings on the site, voluntarily putting in place architectural guidelines, which would require future commercial tenants to be in conformance with the overall look and feel of the development. He said that the Comprehensive Plan dictates the orientation of the canopy to create a visually appealing streetscape for those driving through, whether on Graves Mill or Rosedale Boulevard — another public street that ultimately has plans to connect back to Breezewood, and ultimately connects to 501 and to 221. Whether this canopy faces Graves Mill Road, as it is currently proposed, or Rosedale Boulevard, Graves Mill Road is heavily trafficked today. Rosedale Boulevard is projected as part of the traffic study and has been constructed to have similar traffic counts as Graves Mill at buildout of this project. Both Graves Mill and Rosedale Boulevard are going to be primary arterial streets. The property is currently zoned B-3 (Conditional.) There are no guidelines in B-3 that would necessitate or require the canopy to be installed in a particular location on the property. The only requirements are for setbacks, which in B-3 are zero (0) feet on the front and sides and twenty-five (25) feet in the rear. If this property were zoned as B-3, without the Cluster Commercial Development component, this use would be by-right. It comes down to the visual impact that this change potentially has; they have worked very hard and we greatly respect staff's perspective in trying to be able to maintain a quality visual product at the end of the day, and that's their goal as well. Mr. Cyrus showed another view from the intersection at Rosedale Boulevard of the proposed building and proposed canopy and noted that they had matched a lot of the finishes on the building to the finishes that are on the existing residential buildings, which will eventually match the other commercial uses that are a part of this project. He added that the staff report referenced the Comprehensive Plan, which calls for pedestrian scale and pedestrian walkability; he then cited that it also calls for vehicular accessibility. Mr. Cyrus said that the proposed concept plan and the reason for the canopy orientation is to promote both pedestrian and vehicular accessibility on the site. The majority of the traffic happens at the convenience store occurs around the fuel island; it is beneficial for users to space the entrance away from the fuel island. One goal of this proposed orientation is safety. Another goal of this proposed orientation is visibility of the convenience store, selling fuel and goods. They have tried to balance the goals of the Comprehensive Plan, and the standards with safety and accessibility for users and for citizens, as well as the opportunity to have a new business within the City of Lynchburg and a huge impact to the Rosedale project, and the larger area. When the project was announced several months ago, the developers received positive comments from tenants who live in the area and adjoining businesses. Mr. Cyrus concluded that the project is an opportunity to add another exciting component to Rosedale project. He recognized that Mr. Jeb Bell, real estate representative from Wawa, was present and would be happy to answer any specific questions about Wawa business operations.

Chair Johnson asked if there was anyone present to speak in favor of the petition.

Chair Johnson asked if there was anyone present to speak in opposition to the petition. With there being none, Chair Johnson closed the public hearing.

Commissioner Henderson asked if the traffic on the Rosedale side of the building was going to be as heavy as on the Graves Mill side.

Mr. Cyrus replied yes, it would. They had done a traffic study and at completion of Rosedale, it is projected to have same level of traffic as Graves Mill, since it will connect to Breezewood and route 221.

Commissioner Marion asked Ms. Frischeisen to explain what the objections were for the new plan. She noted that the new plan shows the gas station moving from one side of the street to the other.

Ms. Frischeisen replied that this is not about which side of the road the convenience store is on, as that was part of the flexibility.

Commissioner Marion asked if it was because of the scenic corridor.

Ms. Frischeisen replied that it was not because of the scenic corridor. Ms. Frischeisen showed Commissioners a slide with approved and proposed plans and referenced Mr. Cyrus's comment about there being no requirement such as this if the development were by-right and not part of the Clustered Commercial Development; she explained that this development is not by-right because the Rosedale Development received special permission to create a Clustered Commercial Development and received that approval based on how it was presented. Projects do evolve, though. When the development is proposed to encompass certain important elements, and when those pieces that made it appealing are taken out, we get further away from the vision that was presented when originally approved. The original plan met the principles of the Main Street development and there is no issue with moving the convenience store from one side of the street to the other. The objection was for moving away from the walkability principles and the Main Street-style design that was integral to the Clustered Commercial Development.

Commissioner Rogers asked whether it would change anything if the canopy was moved to the back.

Ms. Frischeisen responded that she would like to see the parking, as well, follow the original plan; however, they have not proposed or offered that layout.

Commissioner Rogers asked, if the layout or footprint for the store was changed, would it have any impact on the objection.

Commissioner Gammon asked if it was an orientation or configuration question.

Commissioner Marion stated that it was about walkability and that there was low likelihood of people walking, given all the roads.

Ms. Frischeisen replied that it was about the walkability design principle for the whole development. That is what Council voted on the approval for the Cluster Commercial Development. It was about the entire conglomeration of uses and the layout. There was initial concern in 2013 about the walkability principles and the plan was revised to try to meet better walkability and Clustered Commercial Design guidelines. It is about how this project ties into the rest of the development; it is the front door of the development.

Mr. Cyrus introduced Jeb Bell to talk more about Wawa specifics. He said that there were sidewalks throughout the development and the reason for the roundabouts was for pedestrian foot traffic.

Mr. Bell, real estate manager for Wawa in Virginia, stated that they had committed to being a part of this project a couple months ago and were not in on the original plan. He said that they like the proposed orientation of the building and the canopy, given that they are a twenty-four-hour operation. The safety and security of the stores is derived from not being appealing to people who have bad intentions. They like the site to be fully visible. The 2014 layout was not functional.

Chair Johnson asked if the pull in had changed, as it is now a turn off, and wanted to know if that changed anything with the traffic.

Ms. Frischeisen replied that the city engineer did not have a comment about revising the layout. Ms. Frischeisen offered her opinion on Mr. Cyrus's comments about walkability, stating that walkability is about more than sidewalks. It is about building form, orientation, and placement of the buildings; and in the 2014 report, noted that the street wall is an essential component of the walkable design. An example being if you are walking in downtown and walk by a vacant lot, it changes how you feel as a pedestrian, because you do not have the street wall. There are sidewalks in the Rosedale plan, but there is more to walkability than just having sidewalks.

Commissioner Henderson asked if it was fair to say that having the canopy on this side of the building

creates more safety.

Mr. Cyrus replied, yes, it takes into account the frantic nature of a gas station parking lot. He added that having the building pulled to the back would be safer for pedestrians and address safety as purported by the Comprehensive Plan.

Commissioner Rogers asked if there were any alternative designs that were offered for this project. He cited an example from Pennsylvania, where three separate designs were presented. He asked whether staff received alternate designs.

Commissioner Marion asked about changing it by ninety degrees.

Mr. Cyrus interjected that they have worked with Wawa throughout Virginia and have found that this design for this site is the best for circulation of vehicles in the parking lot. He stated that Rosedale will be a high-volume road upon its completion.

Commissioner Rogers stated that people go to Wawa for the food and not for the gas. He asked if there were other designs or was this all that they were given.

Mr. Cyrus replied that they have meet with planning staff on multiple occasions and tried to address concerns and comments. He reiterated that from their perspective the circulation around the building is important and addresses the safety of pedestrians. It is predicated on more than just where the canopy or building is orientated, as this site has at least three fronts, and limits where certain items can be and visually make sense.

Ms. Frischeisen stated that she is unaware of have any alternate layout plans for the site. This layout is the only layout she has seen from the petitioner.

Commissioner Marion asked if Ms. Frischeisen would like to see alternate layouts.

Ms. Frischeisen stated that this is the layout that is being proposed and proffered.

Commissioner Gammon asked hypothetically, if they rotated the building, where would the loading area go and the underground storage facility. As it seems like there is no way to reorient the building.

Commissioner Perault responded that it was rare to have the Planning staff recommend a denial and that they the Commission should trust them when they do. The orientation is something that the experts should handle as commissioners are not there to argue over where an entrance should be. The commissioners are not the ones who will figure out the orientation.

Commissioner Gammon replied that he does not see where the building could be changed in orientation and asked about alternate design plans.

Commissioner Perault reiterated that it was not the job of the commission to come up with how to position the building.

Commissioner Rogers said that it could be tabled.

Mr. Cyrus interjected that the way the site is configured is what works for the user. Rotating the building the building ninety degrees puts the loading area in the front and that is not desirable. Changing the layout is not just about moving or rotating the building.

Commissioner Gammon replied that there isn't ability to rotate the buildings.

Mr. Cyrus interjected that there were no comments from the traffic perspective with the current layout, though if you rotate buildings than you put them into conflict in with the entrances. Mr. Cyrus reiterated that this layout is the one that works for the user and that they have gone over and above to make this pleasing architecturally.

Commissioner Perault made the following motion, seconded by Commissioner Bowden and approved by the following vote:

"Based on the preceding Findings of Fact, the Planning Commission recommends to City Council denial of the request of Rosedale Investments, LLC to rezone approximately three and three tenths (3.3) acres located at 1600 Graves Mill Road from B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) subject to the following proffer:

The site shall be developed in general conformance with the submitted concept plan, including both on-site and offsite improvements depicted."

AYES: Bowden, Johnson, Marion, Perault, Rogers	5
NOES: Henderson, Gammon	2
ABSTENTIONS:	0
ABSENT:	0

The Department of Community Development
City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission
From: Planning Division
Date: September 11, 2024
Re: **Rezoning: B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) – 1600 Graves Mill Road**

I. PETITIONER

Rosedale Investments, LLC, 103 West Edge Way Suite H, Lynchburg, Virginia 24502
Representative: Mr. Daniel Cyrus, Rosedale Investments, LLC, 103 West Edge Way Suite H, Lynchburg, Virginia 24502
Property Owner: Same as petitioner.

II. LOCATION

The subject property includes sixty-two and three tenths (62.3) acres located at 1600 Graves Mill Road. Three and three tenths (3.3) acres are proposed for rezoning.

III. PURPOSE

The purpose of the petition is to rezone three and three tenths (3.3) acres from B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) to amend previously approved proffers and allow an adjustment in orientation of a proposed fueling station canopy.

IV. SUMMARY

- The Comprehensive Plan 2013-2030's Future Land Use Map recommends a Mixed Use for the subject property.
- A fueling station layout was proffered as part of the 2014 rezoning and showed an intentional canopy/building/parking orientation. This original layout follows development principles for connectivity, mixed use, and building placement as called for by the *Comprehensive Plan 2013-2030's* Goals and Policies in *Chapter 6: Land Use Development & Community Design*.
- The proposed/revised layout is contrary to the walkable, mixed use development that the area received previous approvals to become.

The Planning Division recommends denial of the rezoning petition.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The *Comprehensive Plan 2013-2030* recommends Mixed Use for the area to be rezoned on the *Future Land Use Map (FLUM)*. These areas do not fit into any single use category as they are planned for a mix of uses carefully designed so as to mitigate any potential land use conflicts. The mixed use areas generally consist of large undeveloped or greenfield areas that are intended to be developed for a balanced mix of residential, neighborhood commercial, civic uses, parks and open spaces. The mix of uses in these areas is intended to be determined at the time of development review and approval. (p. 76)

The *Comprehensive Plan* contains goals specific to new development and policies to follow to achieve those goals. Some of those applicable goals from the Land Use and Development

section that were cited as reasons for the recommendation of approval for the Rosedale Cluster Commercial Development are:

Goal LU-3: Compatibility, Character and Design. Reinforce Lynchburg’s unique character through public and private strategies that preserve historic elements, enhance transportation options, use existing infrastructure and improve access between land uses. (p 15)

LU-3.2 Coordinate site and building design with the design of streets and public facilities. (p 15)

LU-3.5 Facilitate creative residential, commercial and mixed-use development designs that create vibrant, healthy neighborhoods. (p 15)

LU-3.7 When addressing compatibility and connectivity between adjacent land uses, ensure that building orientation, building location, parking locations, parking design, lighting, walkways and other building and site design factors provide safe and convenient access to sites for drivers, pedestrians, bicyclists and transit riders. [See design discussion in Chapter 6] (p 16)

LU-3.10 Encourage the development of built environments that support the integration of healthy and active living in day-to-day life and foster human interaction. (p 16)

Goal NH-2: Neighborhood Character. Promote well-designed mixed-use residential neighborhoods that incorporate a variety of housing types and densities with pedestrian-oriented streets, small-scale neighborhood oriented services and parks to where residents are able to live, work and play close to home. (p 25)

According to the Planning Commission report from the 2015 petition, “Mixed use developments called for by the goals in the *Comprehensive Plan* should follow “Main Street” design conventions. Buildings following this style are pedestrian oriented with facades and main entrances facing streets, human-scale massing and fenestration and contain a mix of uses within individual buildings where lower floors are used for commercial uses and the upper floors are used for residential. Buildings should have unified design characteristics with similar height and massing to create a “street wall,” an essential component of a walkable design. Parking should be accommodated by on street parking and disguised in the rear of buildings rather than having large open parking lots depleting the character from a development. Rosedale’s [2015 concept plan] plan meets many of the above concepts. The Planning Division sees providing that framework, which involves building a connected street grid with multimodal facilities and creating a context where buildings are human scale and placed close to the streets, as the most crucial goal of site planning.”

2. **Zoning.** The subject property was annexed into the City in 1976. A small portion of the property is zoned R-C, Conservation District. This zoning was established in 1978. The remaining portion of the property, including the area to be rezoned, is zoned B-3C, Community Business District (Conditional), which was established in two (2) phases in 2014 and 2015. Prior to that, the property was zoned R-1, Low-Density Residential District, which was established in 1978.

On April 8, 2014, Council approved a rezoning and Cluster Commercial Development (CCD) petition for forty-two (42) acres located at 1220 and 1600 Graves Mill Road. This petition rezoned a portion of the property from R-1, Low Density Residential District and B-5C, General Business District (Conditional) to B-3C, Community Business District (Conditional).

On March 10, 2015, Council approved a second rezoning and CCD petition for the remaining twenty-six and eight tenths (26.8) acres located at 1600 Graves Mill Road. This petition rezoned the remainder of the property from R-1, Low Density Residential District to B-3C, Community Business District (Conditional).

Both the 2014 and 2015 rezoning and CCD approvals proffered substantial compliance with their associated concept plans. A fueling station was shown on both plans. The orientation of the fueling station canopies were intentionally set back from the street, with the convenience store building on the corner.

3. Proffers. The petitioner has voluntarily submitted the following proffer:

- The site shall be developed in general conformance with the submitted concept plan, including both on-site and offsite improvements depicted.

4. Board of Zoning Appeals (BZA). The Zoning Administrator has determined that no variances are needed for the development of the property as proposed.

5. Surrounding Area. There have been several items requiring City Council approval in the immediate area:

- On April 14, 1981, Council approved the petition of Woodrow Iseman and William Milton to rezone approximately eight (8) acres from R-1, Low Density Residential District, to R-2C, Low-Medium Density Residential District (Conditional) to allow the construction of single-family residential homes on smaller lots around the intersection of Omega Drive and Omega Court.
- On August 12, 1986, Council approved the petition of Dreaming Creek Properties to rezone approximately four and half (4.5) acres from I-1, Restricted Industrial District to B-5C, General Business District (Conditional), and for a CUP for a Cluster Commercial Development (CCD) of office, showroom, and warehouse uses at the southwest corner of the intersection of Old Graves Mill and Graves Mill Roads.
- On December 8, 1987, Council approved the petition of Hutter Associates, Inc to rezone approximately thirty and a half (30.5) acres from R-2, Low-Medium Density Residential District to B-5C, General Business District (Conditional) and approximately thirty-two and a half (32.5) acres from R-1, Low Density Residential District to R-4, Medium-High Density Residential District, to allow speculative development with commercial and multi-family uses at the corner of Graves Mill Road and Creekside Drive.
- On December 11, 1990, Council approved the petition of Frank Davidson to amend a previously approved site plan and proffers by rezoning approximately four and a half (4.5) acres from B-5C, General Business District (Conditional), to B-5C, General Business District (Conditional), to allow office, professional, and commercial uses of the property according to a new site plan at the southwest corner of the intersection of Old Graves Mill and Graves Mill Roads.
- On October 13, 1992, Council rezoned fifty-four (54) acres to the west of this site along Graves Mill Road from R-1, Low Density Residential District, and R-3, Medium Density Residential District to B-1, Limited Business District as part of the Graves Mill Road/US 221 Area Land Use Study, Growth Management Program.

- On January 12, 1999, Council approved the petition of Petrie, Dierman and Kughn to rezone approximately sixty-five (65) acres from R-4, Medium-High Density Residential District, and B-5C, General Business District (Conditional), to B-5C, General Business District (Conditional) and for two (2) Conditional Use Permits (CUP) to fill in a flood plain to allow the construction of a shopping center and parking lot on the properties adjacent to Creekside Drive.
- On July 13, 1999, Council approved the petition of Paul G. Graves to rezone approximately one (1) acre at 1220 Graves Mill Road from R-C, Resource Conservation District, and R-1, Low Density Residential District, to B-5C, General Business District (Conditional) to allow the reconstruction of the historic Graves Mill and its use for various commercial uses, including consignments, antiques, restaurant, gift shop, and the installation of 33 parking spaces.
- On September 12, 2000, Council approved the petition of First Assembly of God for a CUP to allow the construction of a church and parking area in a residential district at 1210 Graves Mill Road.
- On December 12, 2000, Council approved the petition of Lowe's Home Centers for a CUP to allow filling in a flood plain for the construction of a new building and parking lot in a B-5C, General Business District (Conditional), at 1200 Graves Mill Road.
- On August 13, 2002, Council approved the petition of Miller-Motte Technical College for a CUP for a technical college for up to 250 students in a B-5C, General Business District (Conditional), at 1011 Creekside Drive.
- On July 13, 2004, Council approved the CUP petition of Home Depot, Inc. for fill in the floodplain at 1200 Graves Mill Road.
- On January 11, 2005, Council approved the petition of Millside Development LLC for a CUP to allow the construction of a Cluster Commercial Development (CCD) in a B-1, Limited Business District at the corner of Graves Mill Road and Lillian Lane.
- On September 13, 2011, Council approved the petition of the Lynchburg Humane Society to amend the FLUM from Resource Conservation and Medium Density Residential to Regional Commercial and to rezone the property from R-2 Low-Medium Density Single Family Residential District to B-5C, General Business District (Conditional) to allow the construction of a new animal shelter and associated parking at 1211 Old Graves Mill Road.
- On April 8, 2014, Council approved the rezoning petition of Rosedale Farm, LLC and Bella Rose Plantation, LLC to rezone 1600 and 1200 Graves Mill Road from R-1, Low Density Residential District and B-5C, General Business District (Conditional) to B-3C, Community Business District (Conditional) to allow for the construction of a mixed use commercial and residential development and for various uses of existing historic buildings.
- On April 8, 2014, Council approved the CUP petition of Rosedale Farm, LLC and Bella Rose Plantation, LLC for a Cluster Commercial Development in a B-3C, Community Business District (Conditional) at 1600 and 1220 Graves Mill Road.
- On March 10, 2015, Council approved the rezoning petition of Rosedale Farm, LLC to rezone 1600 Graves Mill Road from R-1, Low Density, Single-Family Residential District to B-3C, Community Business District (Conditional) to allow Phase 3 and 4 of the Rosedale Development.
- On March 10, 2015, Council approved the CUP petition of Rosedale Farm, LLC to amend and incorporate phases 3 & 4 into the Rosedale Cluster Commercial Development in a B-3C, Community Business District (Conditional) at 1600 Graves Mill Road.

- On January 12, 2016, Council approved the rezoning petition of the Lynchburg Human Society to rezone 1125 Old Graves Mill Road from R-2, Low-Medium Density Single-Family Residential to B-5C, General Business District (Conditional) to allow for construction of a medical center, indoor training facility, thrift shop, outdoor rehab pool and a low-impact nature park and associate parking ancillary to the animal shelter.
- On October 11, 2016, Council approved the rezoning petition of Maddox & Son Construction, Inc. to amend the FLUM and rezone 1125 Old Graves Mill Road from R-2, Low-Medium Density Residential District to R-4C, Medium-High Density Residential District (Conditional) to allow for the construction of a two hundred forty-six (246) unit apartment complex with accessory commercial space, clubhouse, amenities, and parking.
- On April 11, 2017, Council approved the CUP petition of Bella Rose Plantation, LLC to amend the concept plan associated with the Rosedale Cluster Commercial Development (CCD) to allow the construction of a three (3) story event center located at 1220 and 1600 Graves Mill Road.
- On December 10, 2019, Council approved the CUP petition of Millside Development Center to allow the construction of a memory care and assisted living facility at 1602, 1604, 1606, 1608, 1610, 1612, 1614, & 1620 Graves Mill Road.

- 6. Site Description.** The subject property is one (1) tract of land totaling approximately sixty-two and three tenths (62.3) acres located at 1600 Graves Mill Road. Three and three tenths (3.3) acres are being rezoned.

The property currently contains eight (8) four (4) story wood frame multi-residential structures constructed in 2023; a two (2) story steel frame commercial structure constructed in 2024; and a one (1) story “Fire Resistant” pool house constructed in 2024.

The property is bounded to the north by low density residential and currently underdeveloped land, to the west by the Millside Development Center, to the east by Tomahawk Creek and vacant property, and to the south by Graves Mill Road. Across Graves Mill Road, property is largely undeveloped.

- 7. Proposed Use of Property.** The purpose of this petition is to rezone three and three tenths (3.3) acres from B-3C, Community Business District to B-3C, Community Business District to amend previously approved proffers by allowing an adjustment in orientation of a proposed fueling station canopy. The petitioner has requested that the canopy be located in front of the store, along Graves Mill Road, with a parking area fronting Rosedale Boulevard. The adopted concept plan from 2014 showed the gas station on the corner of the intersection, with gas canopies and parking areas located to the side and behind the store.

8. Traffic, Parking and Public Transit.

Traffic studies were prepared for the overall Rosedale development as part of previous public hearing and site plan processes. The City’s Traffic Engineer did not require additional analysis for this petition to amend proffers.

The site is served by the Greater Lynchburg Transit Company (GLTC) Route 12. The closest bus stop is approximately two tenths (0.2) of a mile away, at 1501 Graves Mill Road.

- 9. Stormwater Management.** An erosion and sediment control plan and a stormwater management plan addressing both quantity and quality of stormwater will be required at the time

of site plan submittal. The concept plan shows a proposed underground storage facility to address stormwater quantity.

10. **Emergency Services.** The City’s Fire Marshal and Police Department had no comments of concern regarding the proposal.
11. **Impact.** The 2014 (Phase 1 & 2) Concept Plan showed the convenience store / gas station on the corner of the intersection of Graves Mill Road and Rosedale Boulevard, with gas canopies and parking areas located to the side and behind the store. This was in keeping with the pedestrian-oriented, Main Street style development that was presented as part of the original petition by locating the building up front on the corner to contribute to the “street wall” and shifting parking to the rear and side of the property. This layout was a conscious choice made by the developer at the suggestion of Planning staff, who noted that the preliminary concept plan submittal had several uses, such as the convenience store, restaurants, and grocery building set back from the street, which did not meet the goals of the Cluster Commercial Development (CCD) ordinance and did not promote walkability.

The petitioner has requested that the canopy be located in front of the store, along Graves Mill Road, with a parking area fronting Rosedale Boulevard. This is contrary to the walkable, mixed use development that the area received previous approvals to become. While the placement of the gas canopy and parking areas may seem trivial, it will have a negative effect on the overall look and feel of the development, especially given its location at the front entrance to Rosedale.

12. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the petition on August 20, 2024. Comments were minor in nature and would be addressed prior to final plan approval.

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council denial of the request of Rosedale Investments, LLC to rezone approximately three and three tenths (3.3) acres located at 1600 Graves Mill Road from B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) subject to the following proffer:

The site shall be developed in general conformance with the submitted concept plan, including both on-site and offsite improvements depicted.

This matter is respectfully offered for your consideration.



Rachel Frischeisen
City Planner

pc: Wynter Benda, City Manager
Greg Patrick, Deputy City Manager
Kent White, Assistant City Manager
Tom Martin, Director of Community Development

Matthew Freedman, City Attorney
J. Lee Newland, City Engineer
Cynthia Kozerow, Lynchburg Police Department
Candace Brown, Fire Marshal
Doug Saunders, Building Official
Kevin Henry, Zoning Administrator
Daniel Cyrus, Representative
Rosedale Investments, LLC, Owner

VII. ATTACHMENTS

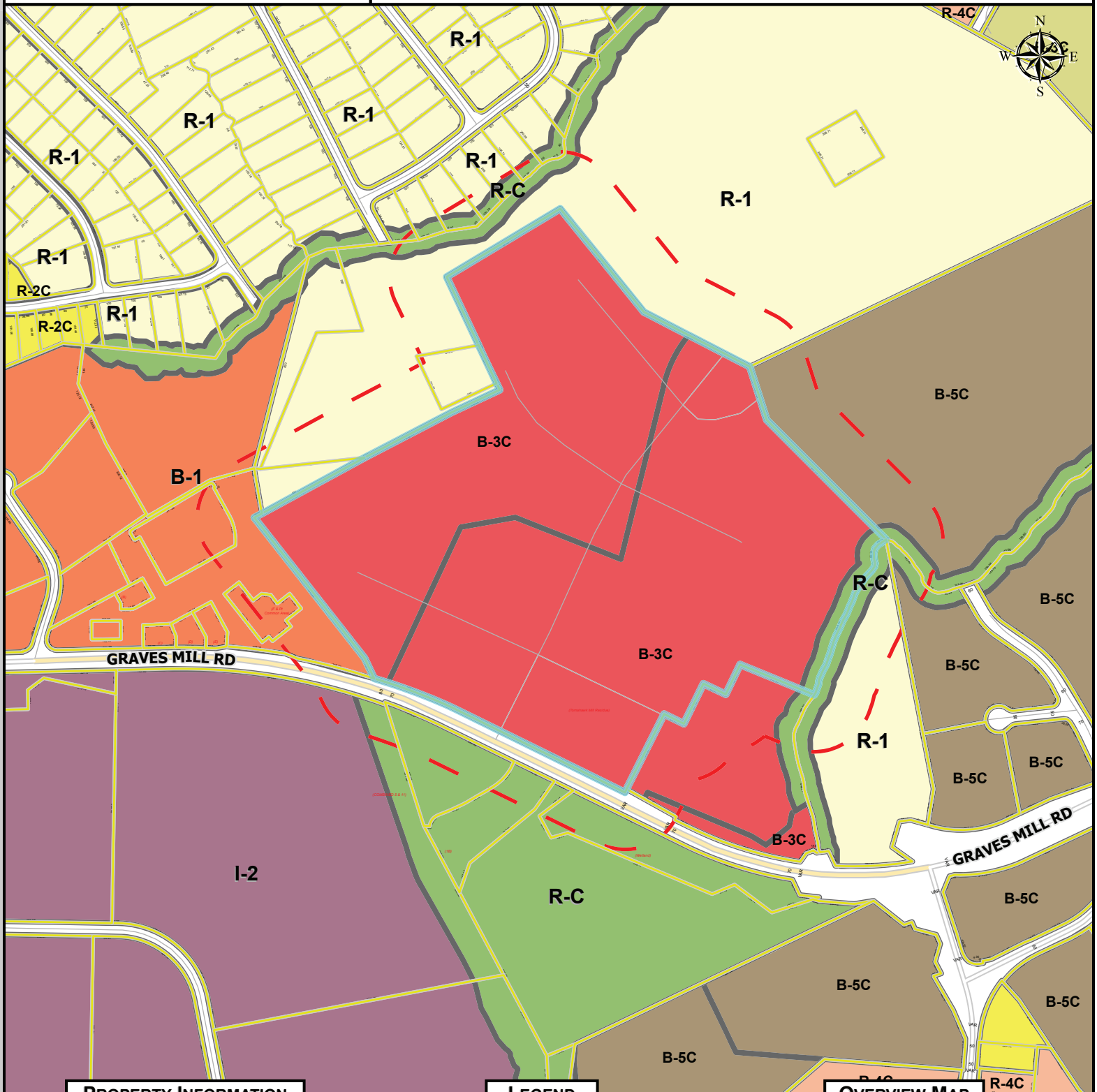
- 1. Zoning Map with Adjoining Property Owners**
- 2. Future Land Use Map**
- 3. Watershed Map**
- 4. Planimetric and Topographic Map**
- 5. 2014 Concept Plan as approved by City Council**
- 6. Concept Plan**
- 7. Narrative**
- 8. Property Photograph**

Zoning

1600 GRAVES MILL RD

TRC

ROSEDALE INVESTMENTS LLC



PROPERTY INFORMATION

PARCEL ID

ADDRESS

23904004

1600 GRAVES MILL RD

LEGEND

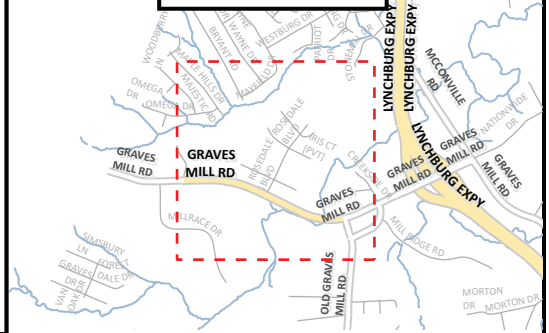
Subject Property

215 Foot Buffer

 B-1	 I-1	 R-1
 B-3	 I-2	 R-2
 B-4	 I-3	 R-3
 B-5	 IN-1	 R-4
 R-C	 IN-2	

MAP SCALE: 1:6,075 DATE PRINTED: 8/8/2024

OVERVIEW MAP



1600 Graves Mill Road

Parcel ID	Address	Owner
23904002	1405 GRAVES MILL RD	CITY OF LYNCHBURG
23904003	1425 GRAVES MILL RD	ROSEDALE FARM LLC
23904005	1210 GRAVES MILL RD	BELLA ROSE PLANTATION LLC
23905001	1628 GRAVES MILL RD	BREWSTER, PHYLLIS ESTATE
24001005	100 MAYFIELD DR	BLANKS, LARRY E & ALYCE C
24001006	102 MAYFIELD DR	GERBRACHT, G ROBERT
24001007	104 MAYFIELD DR	SHERIDAN, DAVID W & AUTUMN L
24001008	106 MAYFIELD DR	NATALE, MICHAEL W
23407001	108 MAYFIELD DR	UNDERWOOD, EDWARD SCOTT
23407002	110 MAYFIELD DR	BRITTON, HAGON; BRITTON, JANE; BRITTON, JENNIFER NOAL
23407003	112 MAYFIELD DR	HAMMITT, BRADLEY & DAVID, CORINN N
24009002	1618 GRAVES MILL RD	STANBERY, FRED W JR
24009001	1616 GRAVES MILL RD	GOFF, DARRIN E
24008001	230 MAPLE HILLS DR	TPB ENTERPRISES LLC
23405002	1624 GRAVES MILL RD	HUTCHINSON, CAROLYN S &
23902005	2000 CREEKSIDE DR	ROSEDALE INVESTMENTS LLC
23902004	1000 CREEKSIDE LN	LYNCHBURG-CREEKSIDE LN SS LLC
23904001	1220 GRAVES MILL RD	BELLA ROSE PLANTATION LLC
23904004	1600 GRAVES MILL RD	ROSEDALE INVESTMENTS LLC
24010004	1501 GRAVES MILL RD	BAUSCH & LOMB INCORPORATED
24016002	1429 GRAVES MILL RD	GRAVES, KATHY S
24016001	1427 GRAVES MILL RD	GRAVES, KATHY S
24010008	1604 GRAVES MILL RD	1604 GRAVES MILL ROAD LLC
24010002	1602 GRAVES MILL RD	MILLSIDE DEVELOPMENT CENTER
24010013	1606 GRAVES MILL RD	LAND 1609 LLC

FLUM

1600 GRAVES MILL RD

TRC

ROSEDALE INVESTMENTS LLC



GRAVES MILL RD

GRAVES MILL RD
OLD GRAVES MILL RD

PROPERTY INFORMATION

PARCEL ID

ADDRESS

23904004

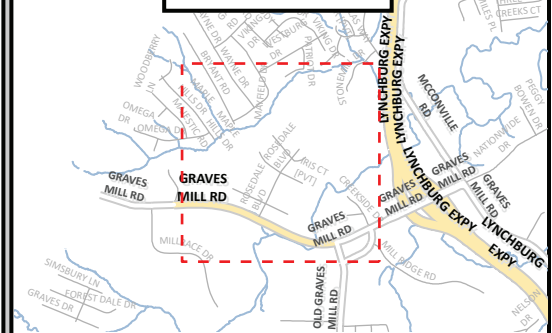
1600 GRAVES MILL RD

LEGEND

- | | |
|----------------------------|-----------------------|
| Local Historic District | Employment 1 |
| Traditional Residential | Employment 2 |
| Low Density Residential | Downtown |
| Medium Density Residential | Institution |
| High Density Residential | Public Use |
| Neighborhood Commercial | Public Parks |
| Community Commercial | Resource Conservation |
| | Mixed Use |

MAP SCALE: 1:6,075 DATE PRINTED: 8/8/2024

OVERVIEW MAP

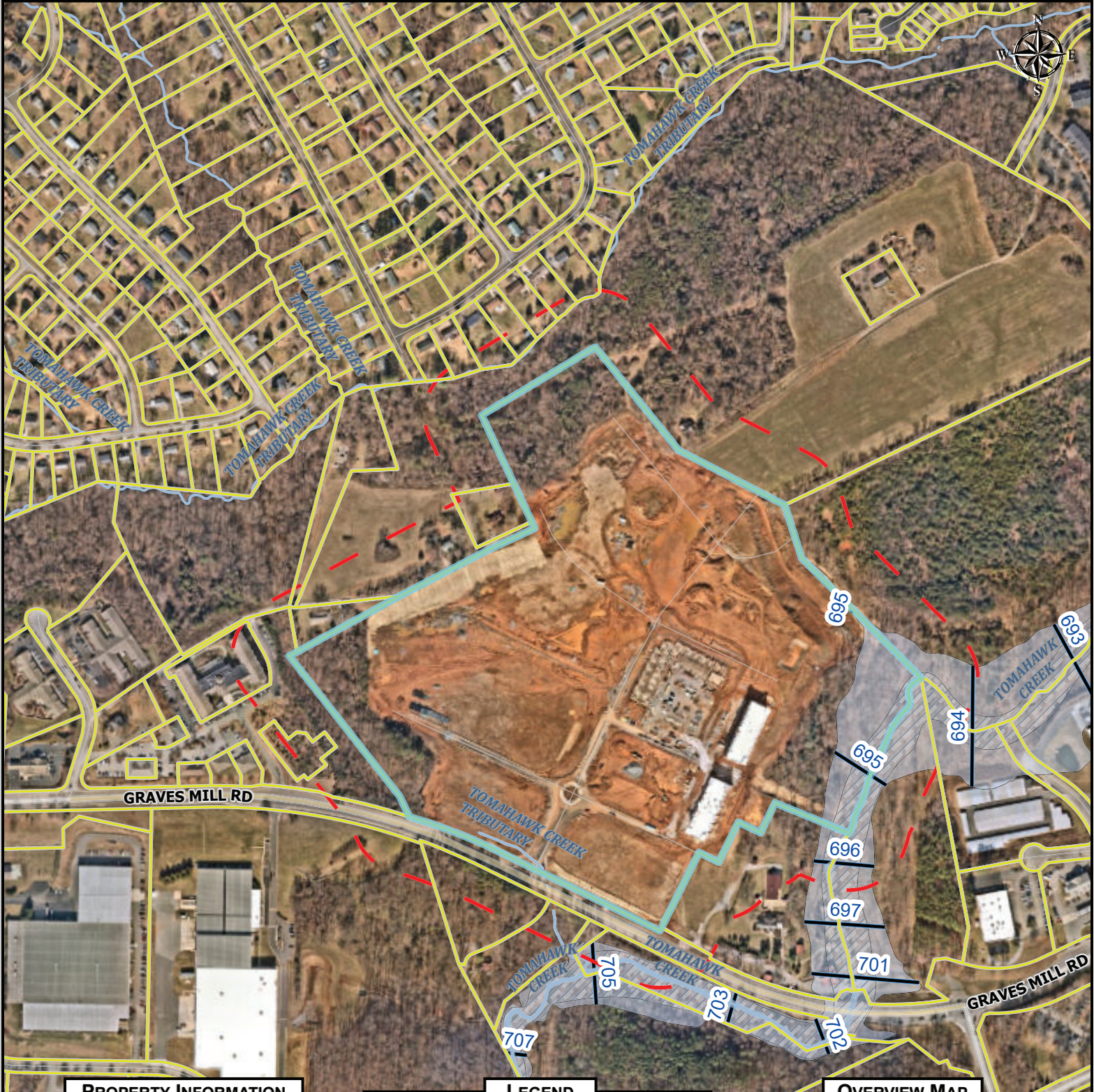


Watershed

1600 GRAVES MILL RD

TRC

ROSEDALE INVESTMENTS LLC



PROPERTY INFORMATION

PARCEL ID	ADDRESS
23904004	1600 GRAVES MILL RD

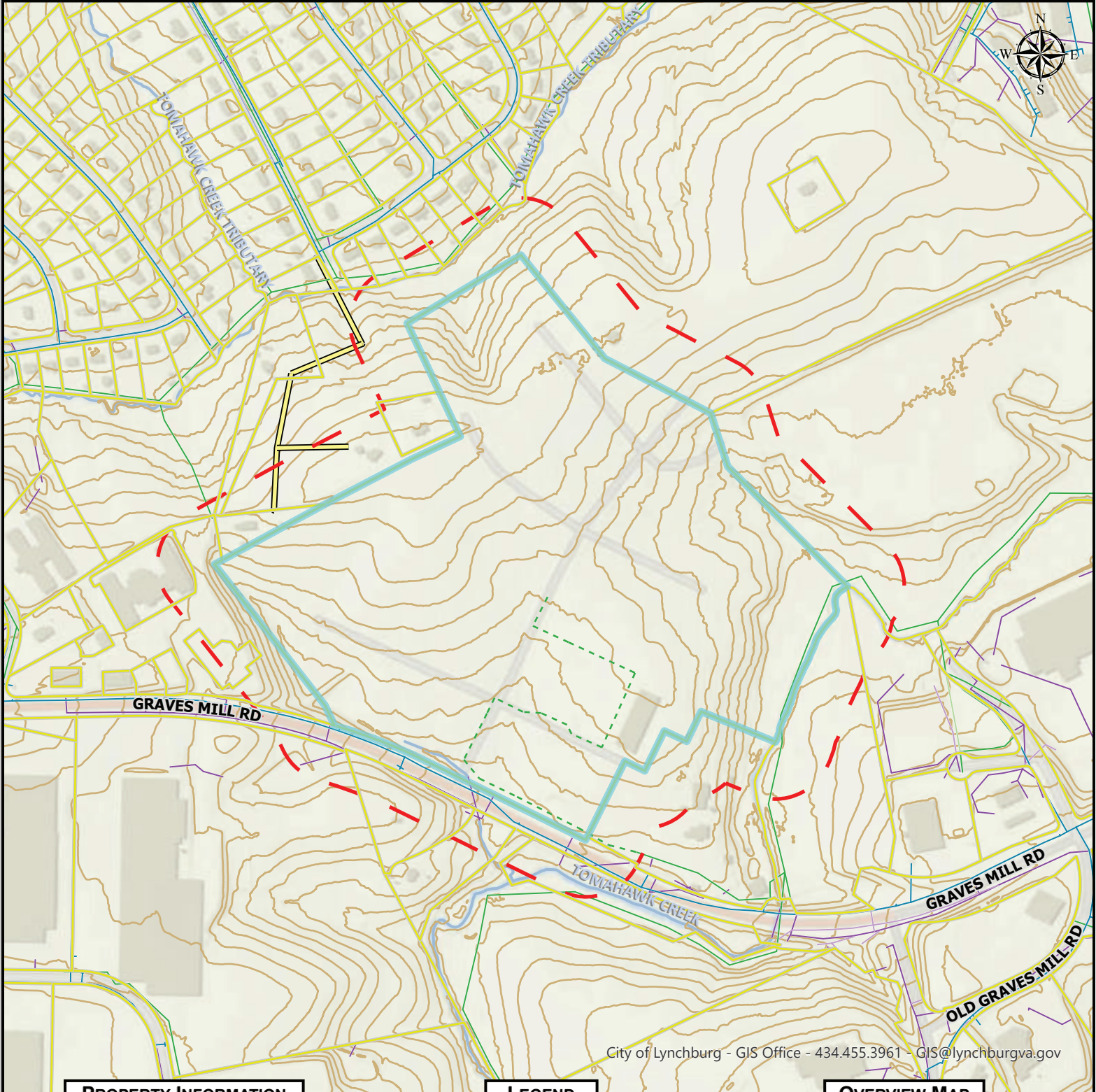
LEGEND

- Subject Property
- Base Flood Elevation
- Floodway
- Floodzone
- River / Lake / Stream

OVERVIEW MAP



MAP SCALE: 1:6,075 DATE PRINTED: 8/8/2024



City of Lynchburg - GIS Office - 434.455.3961 - GIS@lynchburgva.gov

PROPERTY INFORMATION

PARCEL ID	ADDRESS
23904004	1600 GRAVES MILL RD

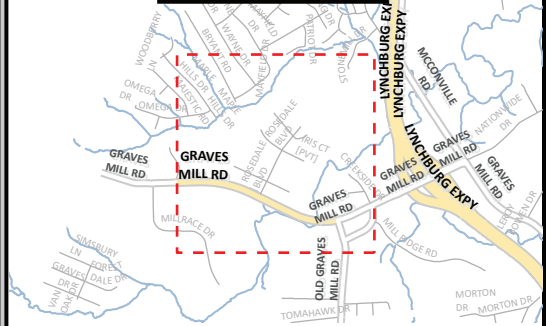
LEGEND

	Active	Proposed	Abandoned
Utilities	Water		
	Sanitary		
	Storm		
Planimetrics	Paved	Unpaved	Other
	Structure		
	Roadway		
	Parking		
	Sidewalk		
Topography	Contour		

MAP SCALE: 1:6,075

DATE PRINTED: 8/8/2024

OVERVIEW MAP



SITE & ZONING SUMMARY:

SITE ADDRESS: 1600 GRAVES MILL RD
LYNCHBURG, VA 24502

OWNER: ROSEDALE INVESTMENTS LLC

OWNER ADDRESS: PO BOX 148
FOREST, VA 24551

TAX MAP NUMBER: 23904004

OVERALL LOT ACREAGE: ±62.305 AC

AREA OF DEVELOPMENT: ±3.30 AC

CURRENT ZONING: B-3(C)

PROPOSED USE: GASOLINE SERVICE

REQUIRED PARKING: ALL OTHERS:
ONE (1) PER EACH FOUR (4)
PERSONS OF THE RATED CAPACITY
OF THE BUILDING

PROVIDED PARKING: 51 PARKING SPACES
INCLUDING 3 H.C. PARKING SPACES

ZONING REQUIREMENTS

GENERAL BUSINESS DISTRICT WITH CONDITIONS B-3(C):

MINIMUM FRONT SETBACK: 30' MIN. (GRAVES MILL RD)
0' MIN. (ROSEDALE BLVD)
0' MIN. (MARIGOLD COURT)

MINIMUM SIDE SETBACK: NONE

MINIMUM REAR SETBACK: NONE

MAXIMUM BUILDING HEIGHT: 40'

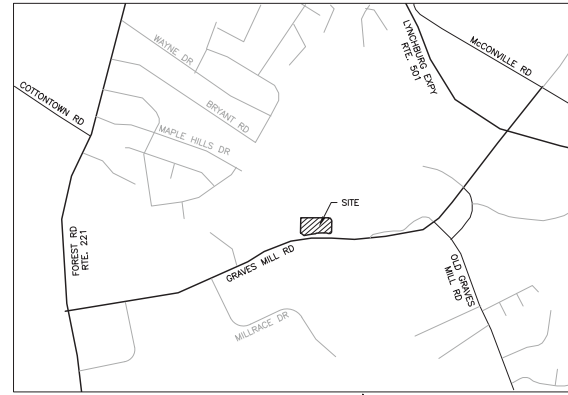
MAXIMUM LOT COVERAGE: NONE

ZONING EXHIBIT NOTES:

1. ANY STORMWATER MANAGEMENT & STORMWATER QUALITY REQUIREMENTS FOR THE SITE SHALL COMPLY WITH ALL LOCAL AND STATE REGULATIONS
2. OUTDOOR LIGHTING SHALL BE PROVIDED ONSITE INCLUDING FREESTANDING AND BUILDING MOUNTED LIGHTING PER THE CITY OF LYNCHBURG ZONING ORDINANCE.
3. ALL SIGNAGE SHALL BE PER CITY OF LYNCHBURG ZONING ORDINANCE.

FLOODPLAIN NOTES:

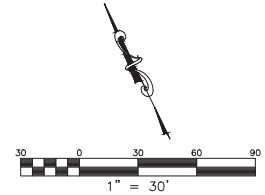
1. GRADING OR FILLING IN THE FLOODPLAIN IS NOT ANTICIPATED AS A PART OF THIS PROJECT.
2. THIS PROJECT DOES NOT INCLUDE ANY AREA LOCATED WITHIN A FEMA DEFINED FLOODPLAIN.
3. IF ANY GRADING OR FILLING IS PROPOSED IN THE FLOODPLAIN, A FLOOD STUDY WILL BE REQUIRED TO DOCUMENT A NO-NET RISE IN THE FLOODPLAIN WATER SURFACE ELEVATION. ANY CHANGES IN THE FLOODPLAIN CAPACITY MAY REQUIRE A CLOMR THROUGH FEMA AND WILL REQUIRE A LOMR TO BE SUBMITTED BEFORE CLOSURE OF THE PROJECT.



VICINITY MAP
N.T.S.

CONCEPT PLAN NOTE:

1. THIS PLAN IS FOR CONCEPTUAL PLANNING PURPOSES AND HAS BEEN PREPARED USING COMPILED INFORMATION.
2. SOURCE OF TOPOGRAPHIC MAPPING IS FIELD SURVEY PERFORMED BY BALZER AND ASSOCIATES, INC. DATED 2023.
3. EXHIBIT INFORMATION FOR GENERAL REFERENCE ONLY
4. AERIAL IMAGERY SOURCED FROM GOOGLE EARTH, 2021





Rezoning Narrative: 1600 Graves Mill Road

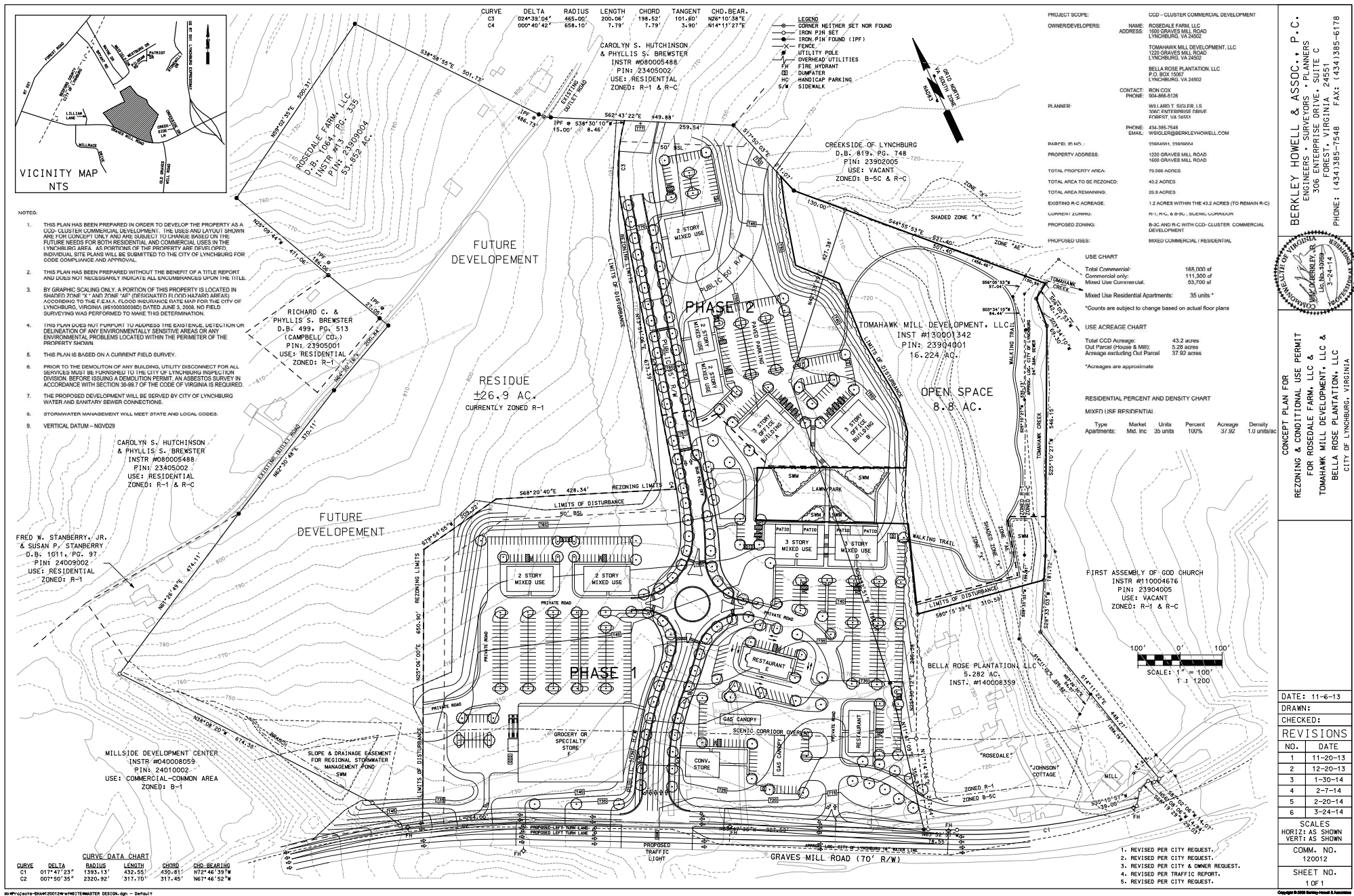
Rosedale Investments, LLC (Owner/Applicant) is requesting a rezoning to facilitate the construction of a commercial development on the property identified as Lynchburg City Parcel ID: 23904004.

The objective of this amendment to the existing master plan is to adjust the orientation of the fueling station canopy so that it faces perpendicular to Graves Mill Road.

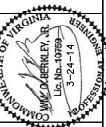
The property has undergone several entitlement processes and revisions to its master plan. While the initial master plan indicated that the fuel and canopies would be aligned parallel to Graves Mill Road, subsequent plans revised this orientation, positioning the fuel and canopies at a 90° to Graves Mill Road to align with another public road now designated as Rosedale Boulevard.

The current rezoning request aims to orient the fueling canopy perpendicular to Graves Mill Road, as was the first approved master plan. Both Graves Mill Road and the proposed Rosedale Boulevard are public rights-of-way. This configuration is intended to optimize space usage and enhance visibility for the fueling station, which is a requirement of the tenant.

In summary, the proposed rezoning is designed to enhance the functionality and visibility of the commercial development at Lynchburg City Parcel ID: 23904004. By adjusting the orientation of the fueling station canopy to face perpendicular to Graves Mill Road, the development will maximize space efficiency and meet the visibility requirements of the tenant. This change aligns with the evolving needs of the project and ensures a strategic use of the property within its urban context. We believe this amendment will significantly benefit the development and the surrounding area, and we respectfully request your approval of this rezoning request.



BERKLEY HOWELL & ASSOC., P.C.
ENGINEERS • SURVEYORS • PLANNERS
306 ENTERPRISE DRIVE, SUITE C
FOREST, VIRGINIA 24551
PHONE: (434) 385-7548 FAX: (434) 385-6178



CONCEPT PLAN FOR
REZONING & CONDITIONAL USE PERMIT
FOR ROSEDALE FARM, LLC &
TOMAHAWK MILL DEVELOPMENT, LLC &
BELLA ROSE PLANTATION, LLC
CITY OF LYNCHBURG, VIRGINIA

DATE: 11-6-13
DRAWN:
CHECKED:
REVISIONS

NO.	DATE
1	11-20-13
2	12-20-13
3	1-30-14
4	2-7-14
5	2-20-14
6	3-24-14

SCALES
HORIZ: AS SHOWN
VERT: AS SHOWN

COMM. NO. 120012

SHEET NO. 1 OF 1



Sun Feb 4 2024

Imagery © 2024 Nearmap, HERE

200 ft

Nearmap

Rezoning: B-3C to B-3C
1600 Graves Mill Road
September 11, 2024

PLEASE PRINT CLEARLY

[illegible]

AGENDA ITEM SUMMARY**MEETING DATE**

October 8, 2024

PRESENTED BY

Rachel Frischeisen, City Planner

AGENDA ITEM # IV.7

1101 & 1107 5th Street - Conditional Use Permit - 5th Street Auto Body Shop

RECOMMENDATION

This item will appear for City Council vote on the October 22, 2024, Public Hearing agenda. Approval of the Conditional Use Permit (CUP) to allow the use of an existing structure as an auto body shop at 1101 5th Street and associated parking at 1107 5th Street.

SUMMARY

Kerr Holdings, LLC, is petitioning for a CUP to allow the use of an existing structure as an auto body shop at 1101 5th Street and associated parking at 1107 5th Street. The properties are included in the area covered by the Fifth Street Corridor Master Plan adopted by City Council on May 23, 2006. The Comprehensive Plan 2013-2030 Future Land Use Map (FLUM) recommends a Neighborhood Commercial land use for the property. These areas are intended to consist primarily of office, retail, personal service, and restaurant uses that are scaled and designed to be compatible with and serve their immediate neighborhood.

A petition to rezone 1101 5th Street from B-4, Urban Commercial District to B-5, General Business District was denied by City Council on July 9, 2024. That rezoning would have allowed a number of more intense uses that are inappropriate in this setting, in addition to the auto body repair use. Approval of the CUP would allow auto body repair without altering the zoning.

PRIOR ACTION(S)

September 11, 2024: The Planning Commission recommended approval (5-2, Henderson and Perault) of the CUP petition.

September 11, 2024: The Planning Division recommended approval of the CUP petition.

FISCAL IMPACT

N/A

CONTACT(S)

Rachel Frischeisen, City Planner

ATTACHMENT(S)

1. Planning Commission Minutes, Report, and Attachments

REVIEWED BY



William Martin, Community Development Director

Date: September 26, 2024



Kent White, Assistant City Manager

Date: October 01, 2024



Alicia Finney, Clerk of Council

Date: October 03, 2024

MINUTES OF THE SEPTEMBER 11, 2024 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED):

Petition of Nadine Durbin, on behalf of Kerr Holdings, LLC, for a Conditional Use Permit in a B-4, Urban Commercial District to allow the use of an existing structure as an auto body shop at 1101 5th Street and associated parking at 1107 5th Street.

Ms. Frischeisen, City Planner, provided the following summary to the Commission. The subject property is located at 1101 and 1107 Fifth Street. The structure was built in 1949 and was previously used as an auto repair and body shop. This project will look familiar to the Planning Commission, as the 1101 Fifth Street parcel was previously proposed for rezoning to B-5, General Business District earlier this year. The Commission recommended denial of that rezoning petition, and City Council denied it as well. The purpose of the CUP petition today is to allow the use of the structure as an auto body shop and associated parking. The properties are still zoned B-4, Urban Commercial District. Heavy auto repair, including auto body shops, are permitted in this district upon approval of a Conditional Use Permit (CUP) by City Council. The properties are recommended for Neighborhood Commercial uses on the Future Land Use Map (FLUM). These areas are intended to consist primarily of office, retail, personal service, and restaurant-type uses that are scaled and designed to be compatible with the immediate neighborhood. Patrons can walk, bike, or take a short drive to reach their everyday goods and services. A number of auto uses were in existence when city council adopted the Fifth Street Master Plan. The plan recommended against the expansion of auto-oriented uses, and it also noted that parking lots and vacant lots can create visually dead spaces. The properties are included in the master plan area, and the purpose of that plan was to provide a vision and blueprint for the revitalization of the Fifth Street corridor. With the adoption of that plan and the subsequent rezoning of the properties, City Council made a conscious decision to move away from the auto-dominated uses that had previously contributed to a negative decline in the area. There have been significant public and private investments in the area that follow the vision of the adopted Master Plan, and land use decisions should support that vision just as the public investment has. The Master Plan explicitly recommends against the expansion of auto-oriented uses, and the rezoning of the property, which was denied by Council in July, would have allowed the expansion of those auto-oriented uses and permitted many other intense and inappropriate uses in the setting. In contrast, the CUP petition allows a specific use of auto body repair within the existing building without changing the zoning. While the use of the property as an auto body shop ultimately does not align with the long-term goals of the plan, the use should not be detrimental to the surrounding area as long as it is limited to the existing structure and the recommended conditions are followed. Redevelopment or adaptive reuse of the property, as recommended in the plan, could still be pursued in the future. While allowing the use of this particular existing building should have limited impact on this corridor and surrounding neighborhoods, it is worth mentioning that staff have some concerns that this could be viewed as precedent to allow an influx of additional auto-oriented uses, either through the CUP or rezoning process. This would be contrary to the vision of the Master Plan and should be weighed carefully both in this instance and in future land use decisions for the area. Planning staff recommends approval of the petition with the conditions outlined in the report.

Chair Johnson asked if there was anyone to speak on behalf of the petition.

Mr. Dave Durbin, representing Kerr Holdings, LLC, was present to represent the petition. He acknowledged that this was the second petition. Ultimately, this request is to allow them to use the facility as an auto body shop. They have been working with staff on how to fit this business into the Master Plan and the community. They believe this use will create jobs, a tax base, and is a turn key operation. They will continue to work with the City to make this use a good fit.

Chair Johnson asked if there was anyone to speak in favor of the petition.

Ms. Sheila Irvin stated that she has lived in the area for fifty-nine (59) years and has seen the auto body shop there for years. The body shop is already equipped and ready to use, yet it is just sitting there. It would take a lot of money to change the structure of the building to do something different. She has no problem

with the body shop being there.

Mr. Marvin Marcia stated that he would be the tenant on the property and would be running it as an auto body shop. He and his family have lived and worked in the City for fifteen (15) years. They love the City and this location. His experience is working with cars and that is the way that he makes a living and supports his family. He is a hard worker and is currently unable to fully work without the auto body shop.

Mr. Rodney Hubbard noted the passing of Mr. Kerr, who had owned the property for a number of years and did a lot for the neighborhood and its residents. He noted that the new tenant, Mr. Marcia, is similar to him, given that they both own small businesses. They went through the street being torn up for the 5th Street roundabout with no assistance and Mr. Marcia was forced to vacate his previous building because of its new owner. Mr. Hubbard was interested in buying the building from Mr. Kerr but ultimately did not for a number of reasons. When he took over his current building, there was a misunderstanding regarding permitted uses for the property since the tenant before him had sold cars. Mr. Marcia went into this building on the assumption that the auto body shop was grandfathered in. Mr. Hubbard was under that assumption as well. Having the auto body shop use continue in this location would help his business, as he can transfer body shop customers to Mr. Marcia and won't have to send them to elsewhere.

Mr. Terrence Spencer, owner of Touch of Class Car Care, does business with Mr. Marcia. He sends customers to the auto body shop. He thought the building was grandfathered in and noted that the shop does honest work. Mr. Marcia should be allowed to continue with his work.

Chair Johnson asked if there was anyone present to speak in opposition to the petition. With there being none, Chair Johnson closed the public hearing.

Commissioner Gammon asked how they would go about updating the building.

Mr. Durbin responded that there are aesthetic things to be updated. When Mr. Kerr left, there was a lot of vandalism that occurred. Mr. Marcia has started to clean the space up.

Commissioner Gammon asked what is specifically proposed.

Mr. Durbin replied that they are looking at painting the building, repairing the windows, and putting up fencing for cars parked in the lot. The only cars that will be seen are finished products. The dumpster will be hidden away and no one will see any scrap body parts. The goal is to make the space aesthetically pleasing and to make it fit in with the Master Plan.

Commissioner Gammon stated that the Commission should hear what the community wants and not just adhere to an arbitrary vision. He said that he would be inclined to vote for it, but the condition that he would attach is that there must be an aesthetic rehab plan be put together with and approved by the City.

Mr. Durbin said that they would be open to that and are already in the process of making improvements.

Ms. Frischeisen stated that if there are specific conditions that the Commission has, they can include them. Keeping parts and scraps from being seen is reasonable and there is already one condition regarding the dumpster being screened, but if the Commission wants to clarify that "all discarded or junk parts shall be disposed of properly, secured and not visible from the street," that condition could also be included at the discretion of the Commission..

Commissioner Gammon stated that details on rehabilitation wouldn't hurt. If possible, an artistic rendition should be submitted.

Mr. Durbin responded that they were going in that direction, but then decided not to as they didn't want to spend more money on the property if the use wasn't approved in the rezoning petition.

Commissioner Gammon replied that if its approved then the building is there and the zoning will not change. He said that this could set a precedent, so it has to be a very good one that's set.

Commissioner Perault stated that the Future Land Use Map (FLUM) and the Fifth Street Corridor Master Plan are far from arbitrary. The precedent is the most important part of this. The report notes that staff has serious concerns and that should be taken into account. He was surprised that Planning changed their recommendation.

Commissioner Gammon replied that he was trying to keep what he was asking narrowed down to his desk and that perhaps some other comments might be in order.

Ms. Frischeisen summarized the potential conditions that had been discussed — instead of saying “the blight would be remedied”, as it is a bit vague, conditions could be the junk parts will be disposed of properly, will be secured, and will be screened from the street, and that the boarded and broken windows would be repaired.

Commissioner Gammon added other aesthetic items: signage, appearance, roof, sidewalk, parking area, and fencing.

Chair Johnson questioned the scope and potential expenses for a plan to address the blight. She then sought clarification about the grandfathered usage of the building.

Ms. Frischeisen clarified that there are two (2) uses occurring in one (1) building and when one of the uses stopped that use lost its non-conforming status.

Commissioner Perault added that the car wash and body shop are not the same use.

Chair Johnson replied that they are within the same B-5 usage.

Commissioner Gammon clarified that when the body shop shut down for a period of time, it no longer qualified to be used for those purposes.

Commissioner Rogers asked about the age of the ventilation system in the body shop. He added that DEQ has a high standard for ventilation and said that his biggest concern for this use was the impact on the community, as body shops are not great for living around due to the air quality.

Mr. Durbin replied that the DEQ and EPA are very specific about the type of ventilation system and filters required for a body shop. He said that their system is in place and that he doubted there would be a question of odor. Mr. Durbin said that they have a high-volume body shop near one of their other business and the air quality was fine.

Commissioner Rogers asked how old the system was.

Mr. Durbin explained that the ventilation system has to be good for both air quality and quality control.

Commissioner Henderson asked if any updates need to be completed for the use of the building as a repair shop.

Mr. Durbin stated that everything was updated years ago, no modifications are required, and the operation is turn key.

Commissioner Bowden inquired about the status of inspections.

Mr. Durbin stated that state and federal agents conduct inspections, due to the environmental impact of the use.

Commissioner Gammon questioned whether or not there were a way to make this project fit with the Comprehensive Plan's direction, which seeks to change the character of the area. By allowing the use to remain, it goes against the will of the current Comprehensive Plan.

Commissioner Perault stated that Planning Commission and Council were both guilty of using the Comprehensive Plan when it supports what they want to do and ignoring it when it does not; they need to be consistent.

Commissioner Rogers asked if Kerr Holdings owned other buildings surrounding the auto body shop.

Mr. Durbin stated that they do not.

Commissioner Rogers stated that the concern here was whether or not the commission would have more CUPs of a similar nature to this one.

Commissioner Bowden stated that this business was part of a neighborhood network of small businesses, and residents spoke in favor of the petition. He remarked that the issue for this CUP is the precedent that it may set and that while the Commission does not want to see everything on Fifth Street convert back to what it was, he wants to support small businesses, who give back to the neighborhood, coming back to the corridor.

Commissioner Henderson remarked that while he found the petitioner's story and presentation compelling, the automotive use does not fit with the community's vision as expressed in the Fifth Street Corridor Plan. To approve the petition would be slipping backwards from that vision.

Mr. Durbin stated that he understood the Commission's concerns, encouraged them to make incremental changes, and stated that the proposed use would be better for the community than a vacant building. He added that the building and business have been there since 1949.

Ms. Frischeisen stated that the discussions of the Planning Commission have been similar to staff discussions about this petition. The Fifth Street Corridor Plan talks about not expanding auto-orientated uses. The rezoning that previously came before Planning Commission would have expanded auto-oriented uses. The CUP would not expand the use, it would reinstate a previously non-conforming auto body shop. If approved, the Commission would be reinstating the previous use, not expanding the footprint and not opening it up to other uses.

Commissioner Marion asked if the conditions are enforceable.

Ms. Frischeisen stated that conditions need to be detailed enough for the Zoning Administrator to enforce, while at the same time not be overly rigid. Our code does have the provisions in it for revocation of a CUP and if the owner or occupant fails to comply with the conditions or it is determined to create a nuisance in the community, City Council has the ability to revoke the CUP in a public hearing. Staff would first attempt to achieve compliance through the Zoning Administrator.

Commissioner Gammon asked when the use became nonconforming.

Ms. Frischeisen replied that the nonconforming use began in 2007.

Chair Johnson stated that the property's nonconforming status as a car wash, differentiates it from other petitions which may come before the Commission.

Commissioner Rogers asked why 1111 Fifth Street was not in the petition since it is part of the use and

part of the parking lot.

Ms. Frischeisen stated that staff had discussed the matter with the petitioner who did not feel 1111 Fifth Street was necessary to include. Staff advised them that 1107 Fifth Street would need to be included if it would be used to store cars.

Commissioner Rogers replied that one of his concerns is that the petitioner will not be operating the business; the petitioner owns the land and the tenant manages the operations, inspections, and use of parking areas. He said that his biggest concern is that the same landowner has multiple buildings in that area and the possibility of more CUPs coming forward is a concern.

Mr. Durbin stated that they no longer own 1018 Fifth Street.

Ms. Frischeisen confirmed that 1018 Fifth Street is under separate ownership.

Commissioner Rogers said that he was more open to consider the petition, given the fact that it is conditional, and based on a rigid reading of the conditions.

Ms. Frischeisen asked whether the motion included any additional conditions, as discussed earlier in the meeting.

Commissioner Gammon stated that there should be a consensus on specifically how this project will conform with the Fifth Street vision.

Commissioner Marion stated that if they are voting on the petition today, they need to know those conditions before the vote. She suggested that they add a condition which says the building must be maintained in good condition.

Commissioners discussed language for the condition.

Ms. Frischeisen offered that there are design suggestions, including materials, in the Fifth Street Corridor Plan.

Chair Johnson inquired about a condition regarding the disposal of parts.

Ms. Frischeisen asked for consensus on the matter and suggested language to the effect of, "parts properly disposed of, secured, not visible from the street."

Chair Johnson affirmed that it was a reasonable condition and followed-up about the discussion over adding a condition to address maintaining the building in good condition.

Commissioner Gammon asked if the City had applicable maintenance or aesthetic guidelines.

Ms. Frischeisen replied that there are building code requirements against peeling paint, for example. She suggested adding a condition such as "the building will be maintained in proper condition."

Commissioners continued to discuss the condition.

Ms. Frischeisen stated that staff could attempt to create a condition to suggest to Council based on the input of the Planning Commission. It will be noted in these minutes that the building's condition was a point of concern for the Commission. Council could opt to add a condition if they see fit.

Commissioner Rogers reiterated that a condition about car parts should be added.

Chair Johnson said that they could also include the condition for maintaining good condition of the property; and Council could revise the condition, if needed.

Commissioner Gammon suggested wording for the condition such as, "consistent with the new construction and consistent with the Comprehensive Plan."

Chair Johnson asked for clarification about the language of new construction.

Commissioner Gammon replied that there is new construction in the area and that the auto body shop should be compatible with the new construction, the Fifth Street Corridor Plan, and the Comprehensive Plan.

Commissioner Rogers replied that he did not see where that was necessary.

Commissioner Gammon responded that the character of the property needs to conform to the vision for Fifth Street and not look like an exception.

Commissioner Rogers asked if the CUP is transferrable if the business itself stopped.

Ms. Frischeisen stated that it was her understanding that there is no automatic termination for a CUP if the business stopped. She said that staff had been working with the Durbins and it was their understanding that the owners intend to improve the appearance of the building. If the Commission felt strongly about the appearance of the building, they could include a condition that the building will be maintained in good condition and work to come up with language to that effect.

Commissioner Rogers asked for clarification regarding renewing a conditional use. He asked if it is a permanent rezoning.

Ms. Frischeisen replied that it was a Conditional Use Permit for the specific use of the body shop and that it does not rezone the property.

Commissioner Marion responded that they cannot do anything else there that is out of the zoning.

Commissioner Bowden stated that the Conditional Use Permit is conditional and asked if they could be withdrawn.

Ms. Frischeisen responded that CUPs can be revoked.

Chair Johnson asked whether or not the CUP would expire if not used for two (2) years, in a similar fashion to the non-conforming use.

Ms. Frischeisen responded that it would not expire if the use ceased. She stated that if the Commission was not comfortable voting until additional information was presented, it was in their purview to table the item.

Commissioner Gammon asked what the conditions are for the CUP.

Ms. Frischeisen replied that it was the use as described in the petition, with the added conditions.

Commissioner Bowden made the following motion, seconded by Commissioner Marion and approved by the following vote:

"Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of the petition of Kerr Holdings, LLC to allow the use of an existing structure at 1101 5th Street and existing parking at 1107 5th Street as an auto body shop and associated parking,

subject to the following condition(s):

- 1. Parking of vehicles shall be off-street, behind the front face of the building, shall not impede the use of sidewalks, and shall be limited to 1101 & 1107 5th Street.**
- 2. The parking area behind the existing building be screened with a fence made of wood, vinyl, masonry, etc. and landscaping subject to approval of the City Planner. The fence shall not be chain link.**
- 3. The auto body repair operations shall take place within the footprint of the existing building and shall not be expanded.**
- 4. The dumpster shall be located behind the building. If it is visible from the street, it shall be screened.**
- 5. All discarded or junk parts shall be disposed of properly, secured, and not visible from the street.**
- 6. The building will be maintained in good condition.”**

AYES: Bowden, Gammon, Johnson, Marion, Rogers

5

NOES:

0

ABSTENTIONS: Henderson, Perault

2

ABSENT:

0

The Department of Community Development

City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission
From: Planning Division
Date: September 11, 2024
Re: **Conditional Use Permit (CUP) – 5th Street Auto Body Shop – 1101 & 1107 5th Street**

I. PETITIONER

Kerr Holdings, LLC, 142 Sailview Drive, Forest, Virginia 24551

Representative: Mrs. Nadine K. Durbin, 142 Sailview Drive, Forest, Virginia 24551

Property Owner: Same as petitioner

II. LOCATION

The subject property is located at 1101 & 1107 5th Street and contains approximately four hundred eighty-five thousandths (0.485) of an acre.

III. PURPOSE

The purpose of the CUP petition is to allow the use of an existing structure as an auto body shop and associated parking.

IV. SUMMARY

- The properties are included in the area covered by the Fifth Street Corridor Master Plan adopted by City Council on May 23, 2006.
- The properties are recommended for Neighborhood Commercial land uses on the Future Land Use Map.
- The properties are zoned B-4, Urban Commercial District. Heavy auto repair, including auto body shops, are allowed in this district upon approval of a CUP by City Council.
- Impact to the surrounding area should be limited if the recommended conditions are followed.

The Planning Division recommends approval of the CUP petition.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The *Comprehensive Plan 2013-2030* recommends a Neighborhood Commercial land use for this property. These areas are intended to consist primarily of office, retail, personal service, and restaurant uses that are scaled and designed to be compatible with and serve their immediate neighborhood. Patrons can walk, bike or take a short drive to reach them. They are comprised of individual businesses, clusters of businesses, or small shopping centers. Neighborhood shopping centers meet the day-to-day needs of a limited residential trade area of 2,500 to 10,000 people and average about 50,000 square feet of space. A small grocery store or drug store is often the anchor for a neighborhood shopping center. Office uses should be relatively small-scale with building floor areas not exceeding 20,000 square feet and heights not exceeding four stories. Residential uses may be established on the upper floors of commercial structures or as transitional structures between residential and commercial buildings. (p.75)

The Fifth Street Corridor Master Plan was adopted by City Council on May 23, 2006. The purpose of the plan is to provide a vision and a blueprint for the revitalization of the Fifth Street Corridor between Main Street and the Martin Luther King, Jr. Memorial Bridge. The primary focus is the area two blocks on either side of Fifth Street, though the surrounding neighborhoods, including College Hill, Garland Hill and Tinbridge Hill are also very important to the corridor's revitalization. Fifth Street links the Downtown/Riverfront and Midtown areas of the City, both of which are the focus of revitalization efforts as well. In order for the corridor to succeed, it must serve the needs of the residents and be an attractive gateway to both Downtown and Midtown. (p. 1)

A number of auto uses were in existence when the Fifth Street Corridor Master Plan was adopted. The plan does not recommend expansion of auto-oriented uses. (p. 13) It also notes that, parking lots and vacant lots create visually “dead” spaces. (p.30)

2. **Zoning.** The subject properties were annexed into the City in 1870. They were rezoned to B-6, Riverfront Downtown District (now B-4, Urban Commercial District) on December 11, 2007 as recommended by the Fifth Street Corridor Master Plan.
3. **Board of Zoning Appeals (BZA).** The Zoning Administrator has determined that no variances are needed for the development of the property as proposed.
4. **Surrounding Area.** There have been several items requiring City Council approval in the immediate area:
 - On April 10, 2001, City Council approved the Conditional Use Permit request of Greater Lynchburg Habitat for Humanity to allow the construction of single-family residences at 406, 410, 412, and 414 Wise Street.
 - On May 23, 2006, City Council adopted the Fifth Street Corridor Master Plan.
 - On February 13, 2007, City Council approved the Conditional Use Permit request of Greater Lynchburg Habitat for Humanity to allow the construction of a single-family residence at 407 Wise Street.
 - On June 12, 2007, City Council approved the Conditional Use Permit request of Greater Lynchburg Habitat for Humanity to allow the construction of a single-family residence at 411 Wise Street.
 - On December 11, 2007, City Council rezoned the properties fronting Fifth Street to B-6, Riverfront Business District (now B-4, Urban Commercial District) as recommended in the Fifth Street Master Plan. Other adjoining properties were rezoned to R-2, Low-Medium Density, Single-Family Residential District; R-3, Medium Density, Two-Family Residential District; and R-4, Medium-High Density, Multi-Family Residential District.
 - On February 23, 2016, City Council approved the rewrite of the City's Zoning Ordinance. In the new Ordinance the B-6, Riverfront Business District became the B-4, Urban Commercial District.
 - On June 14, 2016, City Council approved the petition of Elks Lodge #181 to rezone 515, 517, 519, 523 Polk Street and 1007, 1011 6th Street from R-3, Medium Density Residential District to B-4, Urban Commercial District to allow the construction of a new lodge and parking area.
 - On December 12, 2023, City Council approved the petition of Hunter Dawson to rezone 602 Taylor Street and 1212 Park Avenue from B-4, Urban Commercial District to B-5, General Business District to allow the use of the properties for used automobile sales.

- On July 9, 2024, City Council denied the petition of Kerr Holdings, LLC, to rezone 1101 5th Street from B-4, Urban Commercial District to B-5, General Business District to allow the use of the existing structure as an auto body shop.
5. **Site Description.** The property at 1101 5th Street consists of approximately three hundred fifty-eight thousandths (0.358) of an acre and contains a one (1) story “fire resistant” structure constructed in 1949. The structure is approximately eight thousand, sixty (8,060) square feet in size.
- The property at 1107 5th Street consists of approximately one hundred twenty-seven thousandths (0.127) of an acre and contains a paved parking area.
- The properties are situated in a highly visible location at the corner of 5th Street, Park Avenue, and Monroe Street. They are surrounded by a mix of residential uses, commercial uses, parking areas, and an institution (Legacy Museum of African American History).
6. **Proposed Use of Property.** If the petition is approved, the existing building would be used as an auto body shop and associated parking.
7. **Traffic, Parking and Public Transit.** The petitioner was not required to conduct a traffic analysis as part of the petition.
- The submitted narrative indicates that the existing building would be used as an auto body shop and no new buildings or additions are proposed. The City’s Transportation Engineer noted during the Technical Review Committee (TRC) meeting that the existing entrances do not meet City Access Management Standards.
- The properties are served by the Greater Lynchburg Transit Company (GLTC) Route 1A, 5, and 9, with bus stops located adjacent to the property along 5th Street.
8. **Stormwater Management.** An Erosion & Sediment Control Plan / Stormwater Management Plan will not be required since there are no external improvements or modifications proposed at this time. An Erosion & Sediment Control Plan would be required if disturbed areas exceed one thousand (1,000) square feet. A stormwater management plan would be required if disturbed areas exceed five thousand (5,000) square feet.
9. **Emergency Services:** The City’s Fire Marshal and Police Department had no comments of concern regarding the proposed use.
10. **Impact.** The subject property is included in the area covered by the Fifth Street Corridor Master Plan. With the adoption of the Master Plan and subsequent rezoning of properties in the area, City Council made a conscious decision to move away from auto-dominated uses that ultimately aided in the decline of the area. The Master Plan provides a vision of a revitalized Fifth Street Corridor that is walkable and meets the needs of the surrounding neighborhood.

There has been significant public and private investments in the area that follow the vision in the adopted Master Plan. Land use decisions should support that vision, just as public investment has. The Master Plan explicitly recommends against the expansion of auto-oriented uses. The rezoning petition for this property, denied by City Council on July 9, 2024, would have allowed the expansion of auto-oriented uses, and permitted many other intense and inappropriate uses. In contrast, the CUP petition allows a specific use (auto body repair) within the existing building without altering the zoning. While the use of the property as an auto body shop ultimately does not align with the long-term goals of the plan, the auto body repair use should not be detrimental to the surrounding area, as long as it is limited to occur within the

existing structure and the recommended conditions are followed. Redevelopment or adaptive reuse of the property as recommended in the plan could still be pursued in the future.

Additionally, the properties are recommended for Neighborhood Commercial land uses, which are intended to consist primarily of office, retail, personal service, and restaurant uses that are scaled and designed to be compatible with and serve their immediate neighborhood while also allowing patrons to walk, bike, or take a short drive to reach them. If the use of the property as an auto body shop and parking is approved, conditions should be put in place to ensure that the use is more closely aligned with the Master Plan and limits impact to the surrounding neighborhoods.

While allowing the use of this particular existing building as an auto body repair shop should have limited impact on the corridor and surrounding neighborhoods, Planning staff has serious concerns that approval may be viewed as precedence to allow an influx of additional auto-oriented uses, either through Conditional Use Permit or rezoning petitions. This would be contrary to the vision of the Fifth Street Corridor Master Plan and should be weighed carefully, both for this petition and for future land use decisions for the area.

12. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the CUP petition on August 6, 2024.

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of the petition of Kerr Holdings, LLC to allow the use of an existing structure at 1101 5th Street and existing parking at 1107 5th Street as an auto body shop and associated parking, subject to the following condition(s):

- 1. Parking of vehicles shall be off-street, behind the front face of the building, shall not impede the use of sidewalks, and shall be limited to 1101 & 1107 5th Street.**
- 2. The parking area behind the existing building be screened with a fence made of wood, vinyl, masonry, etc. and landscaping subject to approval of the City Planner. The fence shall not be chain link.**
- 3. The auto body repair operations shall take place within the footprint of the existing building and shall not be expanded.**
- 4. The dumpster shall be located behind the building. If it is visible from the street, it shall be screened.**
- 5. All discarded or junk parts shall be disposed of properly, secured and not visible from the street.**
- 6. The building will be maintained in good condition.”**

This matter is respectfully offered for your consideration.



Rachel Frischeisen
City Planner

pc: Wynter Benda, City Manager
Greg Patrick, Deputy City Manager
Kent White, Assistant City Manager
Tom Martin, Director of Community Development
Matthew Freedman, City Attorney
J. Lee Newland, City Engineer
Cynthia Kozerow, Lynchburg Police Department
Candace Brown, Fire Marshal
Doug Saunders, Building Official
Kevin Henry, Zoning Administrator
Kerr Holdings, LLC, Property Owner & Petitioner
Mrs. Nadine K. Durbin, Representative

VII. ATTACHMENTS

- 1. Zoning Map with Adjoining Property Owners**
- 2. Future Land Use Map**
- 3. Watershed Map**
- 4. Planimetric and Topographic Map**
- 5. Narrative and Maps**
- 6. Property Photograph**

Zoning

1107 5TH ST

1101 5TH ST

TRC

KERR HOLDINGS LLC



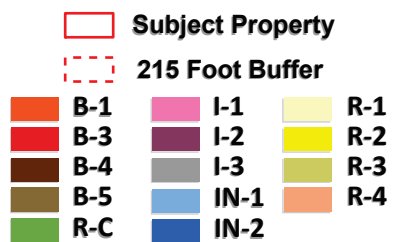
PROPERTY INFORMATION

PARCEL ID

ADDRESS

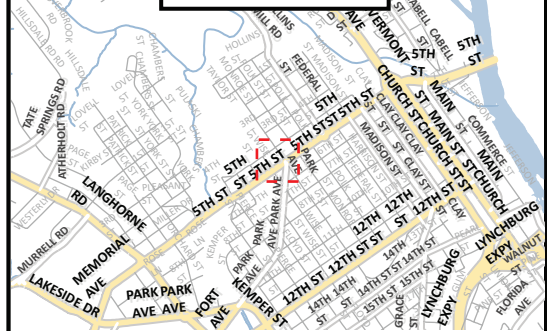
00922009	1107 5TH ST	00922007	1101 5TH ST
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LEGEND



MAP SCALE: 1:1,279 DATE PRINTED: 8/21/2024

OVERVIEW MAP



1101 & 1107 5th Street

Parcel ID	Address	Owner
01029003	525 TAYLOR ST	CITY OF LYNCHBURG
00923010	1201 5TH ST	CITY OF LYNCHBURG
00923009	419 TAYLOR ST	DAVIS, TAMIKA LETTRICE
01016001	1140 PARK AVE	KERR HOLDINGS LLC
00923008	417 TAYLOR ST	TAYLOR STREET ENTERPRISE
00923007	415 TAYLOR ST	REID, REBECCA KATHLEEN JOHNSON
00923005	409 TAYLOR ST	RUSH LIFETIME HOMES
00923004	407 TAYLOR ST	CASTELLO, STEPHEN J
00923003	403 TAYLOR ST	IRVING, SHEILA L
00921011	420 MONROE ST	WARREN C SIMMONS PROPERTIES LLC
00921012	416 MONROE ST	FIFTH STREET BAPTIST CHURCH TRS
00921013	414 MONROE ST	FIFTH STREET BAPTIST CHURCH TR
00921010	1013 5TH ST	FIFTH STREET BAPTIST CHURCH OF
00921009	1007 5TH ST	FIFTH STREET BAPTIST CHURCH
00921014	410 MONROE ST	FIFTH STREET BAPTIST CHURCH TR
00921015	408 MONROE ST	FIFTH STREET BAPTIST CHURCH TR
00921016	404 MONROE ST	FIFTH STREET BAPTIST CHURCH TR
00921017	411 POLK ST	BARBOUR, ANEKA D
00921001	1010 4TH ST	APPALACHIAN MANAGEMENT LLC
00921002	1008 4TH ST	LOFTON, LATANYA D
00921006	409 POLK ST	FIFTH STREET BAPTIST CHURCH TRS
00921003	1006 4TH ST	LEE, ROSE MARY
00927001	380 TAYLOR ST	CITY OF LYNCHBURG
00922019	1119 5TH ST	SMITH, FRANKLIN & DOREEN A
00922011	1115 5TH ST	KERR HOLDINGS LLC
00922012	420 TAYLOR ST	KERR HOLDINGS LLC
00922013	416 TAYLOR ST	KERR HOLDINGS LLC
00922010	1111 5TH ST	KERR HOLDINGS LLC
00922009	1107 5TH ST	KERR HOLDINGS LLC
00922014	414 TAYLOR ST	FITZGERALD, EDWARD L & ERA MAE
00922015	410 TAYLOR ST	IRVING, SHEILA L
00922007	1101 5TH ST	KERR HOLDINGS LLC
00922006	415 MONROE ST	LEGACY PROJECT INC
00922016	404 TAYLOR ST	JIRON RIVERA, LUIS A
00922001	400 TAYLOR ST	ELDRIDGE, JESSIE
00922004	409 MONROE ST	LEGACY PROJECT INC
00922002	403 MONROE ST	LEGACY PROJECT INC
01014014	508 MONROE ST	LYNCHBURG PROPERTIES VA LLC
01014015	1018 5TH ST	LYNCHBURG PROPERTIES VA LLC
01014016	1014 5TH ST	OLD DOMINION LODGE ELKS TRS
01015009	508 TAYLOR ST	CITY OF LYNCHBURG
01015010	506 TAYLOR ST	CITY OF LYNCHBURG
01015011	504 TAYLOR ST	CITY OF LYNCHBURG
01015004	1135 PARK AVE	LAKAY CAPITAL LLC
01015003	1127 PARK AVE	LAKAY CAPITAL LLC
01015012	1118 5TH ST	MILLER-DIXON, JASMINE
01015013	1112 5TH ST	CITY OF LYNCHBURG
01015002	1119 PARK AVE	SCRUGGS FAMILY TRUST
01015001	1100 5TH ST	SCRUGGS FAMILY TRUST
00919013	322 MONROE ST	KENNY, GENEVIEVE JOHNSON

FLUM	1107 5TH ST 1101 5TH ST
TRC	KERR HOLDINGS LLC

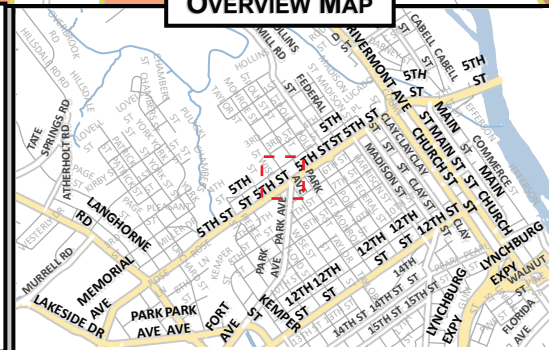


PROPERTY INFORMATION			
PARCEL ID		ADDRESS	
00922009	1107 5TH ST	00922007	1101 5TH ST

LEGEND

	Local Historic District		Employment 1
	Traditional Residential		Employment 2
	Low Density Residential		Downtown
	Medium Density Residential		Institution
	High Density Residential		Public Use
	Neighborhood Commercial		Public Parks
	Community Commercial		Resource Conservation
			Mixed Use

MAP SCALE: 1:1,279 DATE PRINTED: 8/21/2024



Watershed

TRC

1107 5TH ST

1101 5TH ST

KERR HOLDINGS LLC



PROPERTY INFORMATION

PARCEL ID	ADDRESS
00922009 1107 5TH ST	00922007 1101 5TH ST

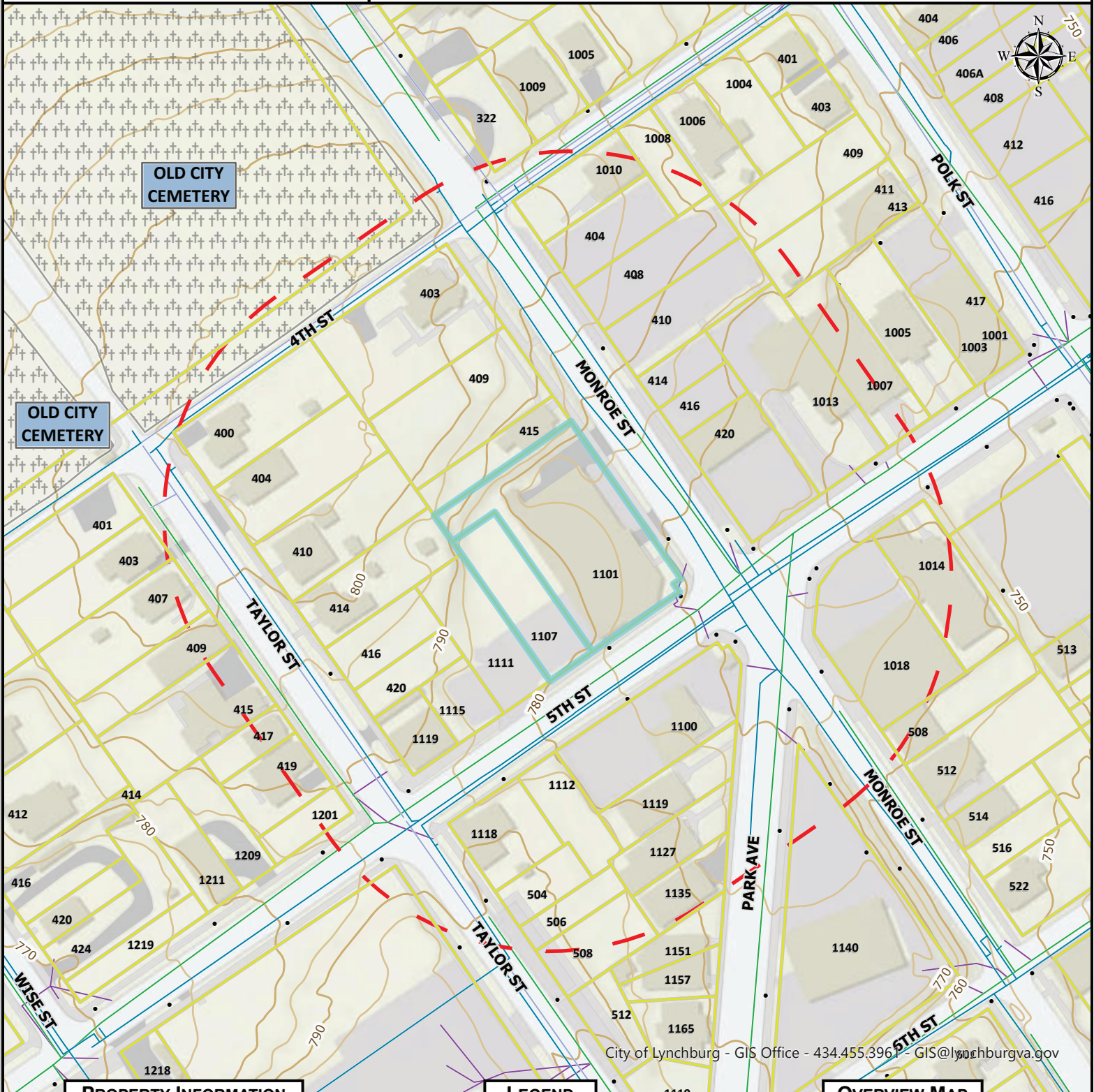
LEGEND

- Subject Property
- Base Flood Elevation
- Floodway
- Floodzone
- River / Lake / Stream

MAP SCALE: 1:1,279 DATE PRINTED: 8/21/2024

OVERVIEW MAP





City of Lynchburg - GIS Office - 434.455.3961 - GIS@lynchburgva.gov

PROPERTY INFORMATION

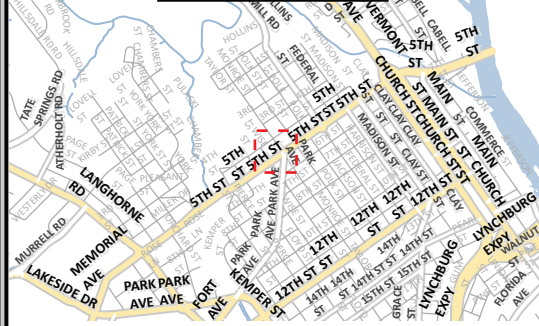
PARCEL ID	ADDRESS
00922009 1107 5TH ST	00922007 1101 5TH ST

LEGEND

	Active	Proposed	Abandoned
Utilities			
Water			
Sanitary			
Storm			
Planimetrics			
Structure			
Roadway			
Parking			
Sidewalk			
Driveway			
Topography			
Contour			

MAP SCALE: 1:1,279 DATE PRINTED: 8/21/2024

OVERVIEW MAP



M&M Auto Body Work Flow

40% of all work is customer/foot traffic, balance is from dealers.

Six vehicles will be in building at any given time during repair/paint process. Monroe St. side of building is for completed vehicles (4) and vehicles next in line to be repaired (4).

The back of the shop that faces Taylor St. is for overflow and employee parking. Overflow is a max of 8 vehicles. The parts dumpster will be located at the back (Taylor St. side), out of view from the street. It will be emptied as needed.

The plan is to have any given vehicle on the lot a max of 15 days.



Purpose of proposed change

To allow it to once again operate as an automotive body shop.

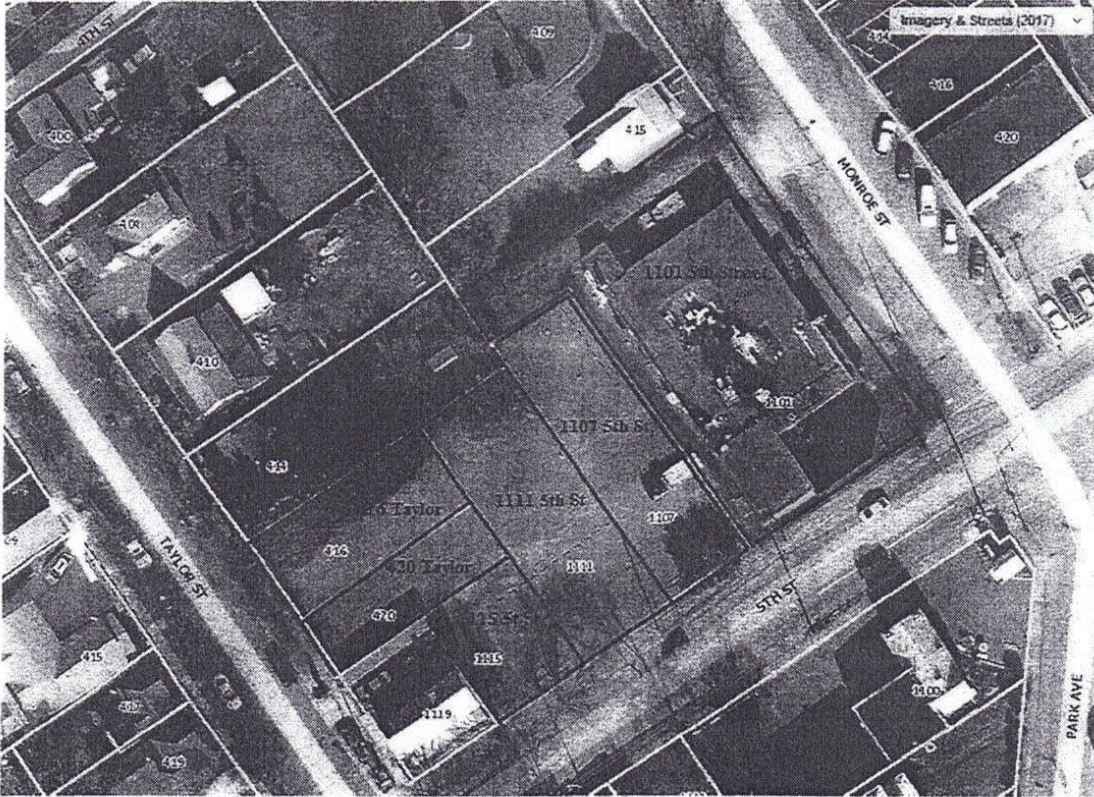
Detailed description of the request

We the petitioners/Owners request a Conditional Use Permit of the property and building located at 1101 5th street Lynchburg Va. 24504.

No structural, or physical changes to the building are planned or needed. Prior to zoning change in 2016, the building was used as a body shop and automotive repair facility. Associated equipment needed for this facility have been in the building since the 1970's for example Paint spray booth, Mixing station, etc.

See attached plan map page labeled EX2

Aerial Sketch from City GIS
Garage/Service Facility on 0.358 acre – outlined in [redacted]
Rear Parking/Excess Land Area of 0.440 Acre – outlined in Blue



0.358 ACRE SITE – DEVELOPED WITH GARAGE/SERVICE FACILITY

Description of Site:

Size: 0.358 acre, or 15,600 square feet (approximately)
Shape: Slightly L-shaped - see above sketch
Frontage: 83.7 feet, more or less, on north side of 5th Street -
153 feet, more or less, on west side of Monroe Street.
Access: Non-controlled from frontage roads.
Two entrance drives extend from Monroe Street, one entering at the northeast margin of the site and extending partially along the north property line, providing access to the overhead door entrance into the shop area at the north margin of the building. This entrance also extends parallel to Monroe Street, providing minimal parking, and exiting about 40 feet north of the 5th Street intersection. No entrance drive is available from 5th Street, as the existing building extends proximate to the property line.
Topography: Site is generally level to lightly rolling, following generally the grade of Monroe Street, which rises gradually upward from its 5th

Milton-May Appraisal Company

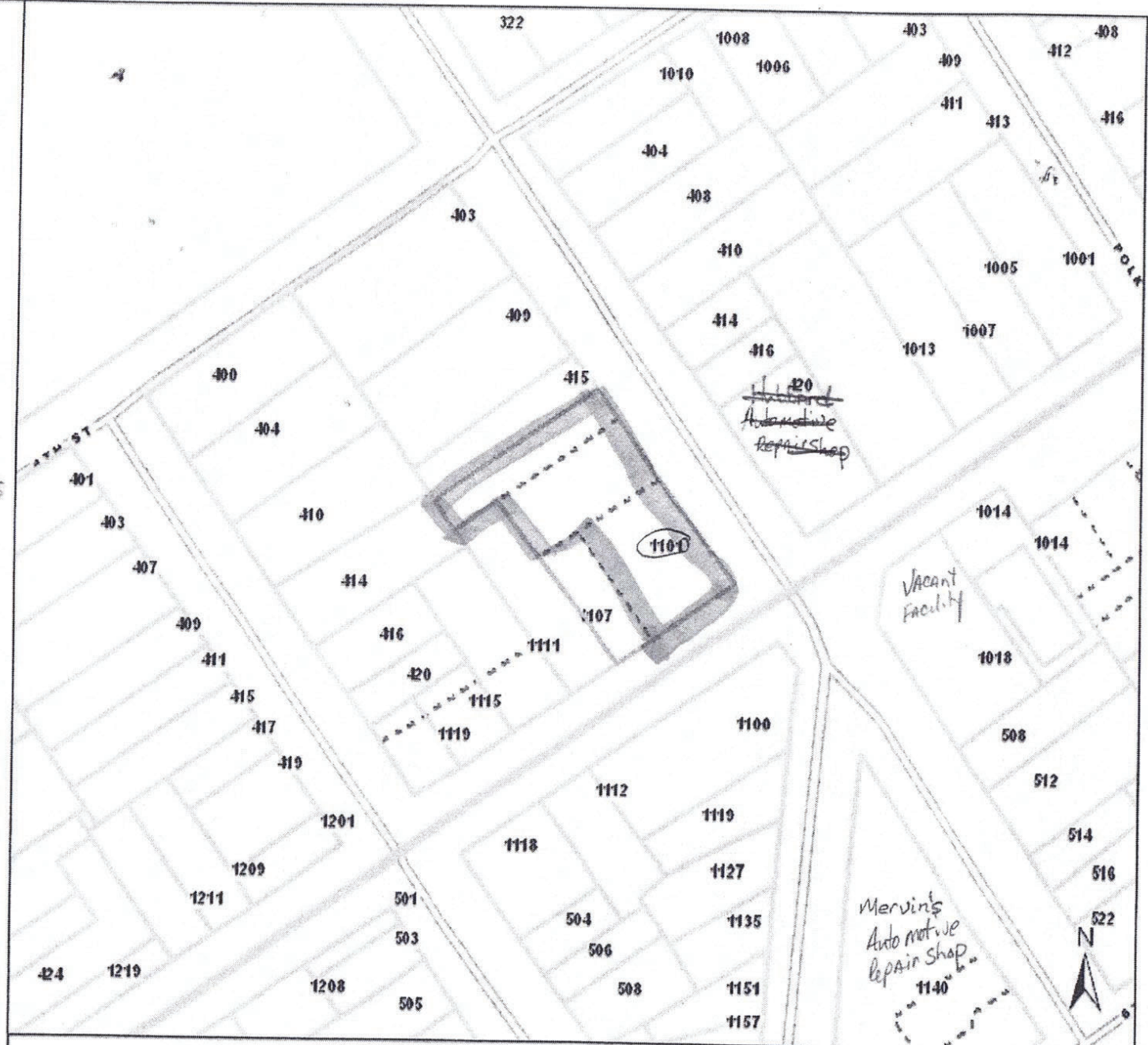
Ex 2

The City of Lynchburg, VA

Legend

-  Corporate Limit
-  Addresses
-  Vacation
-  Parcels
-  Legal Lot Line
-  Legal Lot Line
-  Vacated Right of Way

Consistent With
Adjacent Buildings/Businesses
Currently In operation



Feet
0 10 20 30 40

Date: 6/30/2009

DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and the city of Lynchburg is not responsible for its accuracy or how current it may be.



Sun Feb 4 2024
Imagery © 2024 Nearmap, HERE

Nearmap

Conditional Use Permit
1101 5th Street
September 11, 2024

PLEASE PRINT CLEARLY

[illegible]



AGENDA ITEM SUMMARY

MEETING DATE

October 8, 2024

PRESENTED BY

Mercedes Braun, Assistant to the City Manager

AGENDA ITEM # IV.8

2025 Legislative Agenda Draft

RECOMMENDATION

The 2025 Legislative Agenda Draft will be presented in a Business Item Briefing to Council on October 8, 2024. After City Council deliberation, edits will be made and the draft will be brought back for approval in General Business on October 22, 2024.

SUMMARY

The 2025 Legislative Agenda Draft outlines Lynchburg's key priorities for the upcoming 2025 General Assembly Session. These include Public Safety, Economic Development and Lifelong Learning as well as other key priorities.

PRIOR ACTION(S)

N/A

FISCAL IMPACT

N/A

CONTACT(S)

Mercedes Braun, Assistant to the City Manager

ATTACHMENT(S)

1. 2025 Legislative Agenda - DRAFT - mmb for packet - 10-3-2024

REVIEWED BY

Alicia Finney, Clerk of Council

Date: October 03, 2024

The City of Lynchburg's (The "City" or "City") 2025 Legislative Agenda is designed to highlight those areas of importance to The City. The Lynchburg City Council has prioritized Life-Long Learning, Public Safety and Economic Development. The City Council asks that the legislators keep the following principles in mind as they evaluate and vote on future Virginia legislation.

LIFE-LONG LEARNING

Early Childhood Education/Pre-K Initiatives: The City supports legislation that would improve access to and quality of early childhood education. This should be accomplished through incentives or other direct support for the development of early educational opportunities.

Educational Funding: The City supports legislation to modernize the Standards of Quality funding formula to more accurately reflect the staffing levels required to operate an effective school division. This includes providing funding for critical teacher support positions and ensuring that the teacher salaries included in the formula are nationally competitive.

Funding for Infrastructure: The City requests legislation that would provide significant increases in funding and support for capital investment in K-12 facilities, in accordance with Article 8, Section 3 of the Constitution of Virginia.

***Literacy Program:** The City requests support to introduce a pilot literacy program aimed at ensuring all students entering secondary education have achieved a strong primary reading level. Students that do not meet the required reading benchmark will be provided with elective reading courses in secondary education to strengthen their literacy skills.

Support an Elected School Board: The City supports legislation to make it easier for localities to transition from an appointed to an elected school board.

PUBLIC SAFETY

911-Operators: The City requests that 911-Operators (Emergency Communications Officers) be considered as Emergency Services Personnel at the same level with others included within the Line of Duty Act and entitled to the same benefits. Technology and software are emerging that allows 9-11 operators to communicate during an emergency with suspects, victims and police officers via real-time video to their consoles.

***Authorizing the emergency suspension of alcoholic beverage licenses by the VA ABC Authority.** The City requests the Virginia Alcoholic Beverage Control (ABC) Authority be granted the authority to immediately temporarily suspend an establishment's license to serve alcoholic beverages if a guest or patron of such establishment engages in an act of violence involving a firearm inside or immediately adjacent to such establishment unless such act is done in self-defense or the defense of another. For purposes of this section, whether such act was done in self-defense or the defense of another shall be left to the sole discretion of the locality's primary law-enforcement agency and Commonwealth's Attorney. Such suspension could be for a period not to exceed fourteen (14) days. Within such time the Virginia ABC Authority's law-enforcement bureau would investigate the incident and request an emergency hearing within the Virginia ABC Authority to determine whether such temporary suspension should be vacated or extended until a more formal hearing pertaining to the establishment's license to serve alcoholic beverages may be held.

Blighted Properties: The City requests that the General Assembly amend the Code of Virginia (§ 15.2-907.1.3) to remove the civil penalties exemption for derelict commercial or industrial buildings and allow cities to impose a civil penalty of \$500 per month for all derelict buildings, whether designated for a residential, commercial, or industrial use.

Derelict Housing: The City asks that the state provide funding to the existing account "Virginia Removal or Rehabilitation of Derelict Housing Fund" to support the rehabilitation, renovation and demolition costs.

***Driving/Operating a Motor Vehicle, etc. Under the Influence of Marijuana:** The City requests that the General Assembly amend the Virginia Code Sections 18.2-266(v), 18.2-266.1(A), 18.2-269(A)(4) and 46.2-341.24(A)(v) by including an equal to or greater than amount/level of

marijuana per liter of blood that would be presumptive that a person is driving or operating a motor vehicle, commercial motor vehicle, engine, or train under the influence of drugs.

Emergency Custody Orders (ECOs) and Temporary Detention Orders (TDOs): The City supports legislation to remove the mandates that law enforcement must stay with ECO patients at the hospital and that law enforcement no longer must transport TDO patients.

Expand 599 Funding to Local Government: The City requests that the General Assembly enact legislation to expand 599 funding for local governments to better support critical public safety services. Increased funding is essential to address growing demands on law enforcement and emergency response.

Law-enforcement officers; protected personal information: The City supports legislation to authorize any law-enforcement officer the right to refuse to disclose their personal residential address, personal telephone numbers, or any other personal information concerning themselves or their family in a criminal investigation or a criminal prosecution. Such right will apply throughout a criminal investigation or a criminal prosecution unless ordered otherwise by a court of competent jurisdiction.

Line of Duty Act: The City requests that any Police Officer, emergency service personnel and any subdivision that are responsible for the prevention and detection of crime and the enforcement of the penal laws and exposed to the same risks of injury or death are covered under the Virginia Line of Duty Act in the same manner as those already covered under the LODA.

Modernize Fire Programs Funding: The City supports legislation that would replace the current Fire-Rescue programs funding including the Four for Life program and the Aid to Localities program with a modernized formula driven program similar to the HB 599 funding that Virginia Police Departments receive. The current programs restrict funding for very specific uses which can lead to less effective spending. An updated formula driven program with fewer restrictions would ensure the funding goes to the highest priority uses.

***Pharmacy Changes:** The City is seeking financial support to meet the requirements of new legislation mandating fire and emergency departments to maintain their own pharmaceutical stock for patient care. This mandate necessitates substantial upgrades to technology, software, security, infrastructure and additional personnel.

Primary (Versus Secondary) Offense Enforcement: The City requests that the General Assembly allow law-enforcement officers the ability to stop (as primary offenses versus secondary offenses) vehicles and persons for violations of defective/unsafe equipment, dark window tint, expired registration and/or inspection (upon immediate expiration versus delayed expiration), smoking in a vehicle with a minor, jaywalking, and the other applicable traffic offenses described under HB 5058 of the 2020 Special Session I.

***Previous Department of Criminal Justice System Certified Police Officers:** The City requests support from the General Assembly to extend the DCJS exemption from completing the academy by former law enforcement officers from 24 month to 48 months. As written now, the agency has to request exemptions over 24 months. This would automatically allow those with 48 months or less to avoid the academy and return to work as a law enforcement officer.

***Street Takeover:** The City requests legislation to be created to make an offense of “street takeover” as a Class 1 misdemeanor (Class 6 felony for second offense within 24 months) that also authorizes seizure of vehicles. “Street takeover” definition would include various stunts such as wheelies, doughnuts and drifting. Participation by coordination or facilitation of street takeover is Class 1 misdemeanor as well.

***Use of unmanned Aircraft Systems by Public Bodies; Search Warrant Required:** The City requests an update to Section C.(v) and section C.(ix) of the Code of Virginia § 19.2-60.1 to replace “by a law enforcement officer” with “by an employee of the Department of State Police of a department of law enforcement as defined in §15.2-836.”

***Willfully Discharging Firearms in Public Places:** The City supports legislation to update §18.2-280 to expand the felony charge to say willfully and wantonly discharge a firearm in a public place that would tend to endanger others.

ECONOMIC DEVELOPMENT

***Aviation Parts and Supplies Tax Credit:** The City supports legislation that would continue the Aviation Parts and Supplies Tax Credits beyond June 30 and make it permanent.

Business License Tax: The City opposes legislation that would reduce or eliminate a locality's authority to impose a business license tax. The loss of \$10,900,000 in revenue from the Business License Tax would equate to a 14-cent increase in The City's Real Property Tax rate.

Communications Sales and Use Tax: The City supports legislation to extend the Communications Sales and Use Tax to include audio and video streaming services and prepaid calling services.

Economic Strength: The City requests support from the General Assembly for strengthening enterprise zones, promoting long-term economic strategies and expanding international trade to drive local growth and job creation.

Workforce Development: The City asks that the General Assembly support Workforce Development Programs through programs such as the Virginia Jobs Investment Program, Virginia's Custom Workforce Training Program and the Virginia Talent Accelerator Program.

OTHER PRIORITIES

***General Statute of Limitations for Ordinances/Resolutions.** The City requests legislation which creates a general statute of limitations period for challenging ordinances and/or resolutions of governing bodies.

State Supported Local Employees: The City requests that all locally supported state employees receive competitive pay for their positions. This includes, but is not limited to the offices and its employees: Commissioner of Revenue, Sheriff's Office, Commonwealth's Attorney, Treasurer, Judges and Employees of the Circuit Court, General District Court, Juvenile and Domestic Court, Magistrate(s), Registrar and employees and other state appointed required staff.

Unfunded Mandates: The City request that any new legislation that requires localities to perform certain actions provides the local funding needed to carry out the requirements.

**Indicates new proposals suggested for 2025*