



City of Petersburg Virginia

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Special City Council Meeting - March 23, 2021

March 23, 2021
Union Train Station
103 River Street
12:00 PM

City Council

Samuel Parham, Mayor – Ward 3
Annette Smith-Lee, Vice-Mayor – Ward 6
Treska Wilson-Smith, Councilor – Ward 1
Darrin Hill, Councilor – Ward 2
Charlie Cuthbert, Councilor – Ward 4
W. Howard Myers, Councilor – Ward 5
John A. Hart, Sr., Councilor – Ward 7

Interim City Manager
Kenneth Miller

1. Roll Call

2. Discussion and Consideration

- a. A request to authorize the Economic Development Authority to allow South Central Wastewater Authority to conduct due diligence (surveying, boring and archeological investigation) on the Roper Property (119, 130 Pocahontas Street) for a proposed ROW alignment extension.

3. Official Public Hearings

- a. A public hearing for the appropriation for a \$2,000,000 grant from the Virginia Economic Development Partnership Authority for the Project Tube project.
- b. A Public Hearing and consideration of a Petition and Ordinance to rezone the property at 3706 S Crater Road from PUD – M-1c to PUD.
- c. A Public Hearing and consideration of an Ordinance amending the text of the City's Zoning Ordinance regarding restaurants and other uses.
- d. A Public Hearing and consideration of an Ordinance amending the City of Petersburg Municipal Code regarding the Chesapeake Bay Preservation Act.
- e. A Public Hearing and consideration of an Ordinance authorizing the City Manager to approve the reduction of Site Plan Review and Land Disturbance Permit Fees when offset by in-kind Staffing Augmentation, in an amount not to exceed 30 percent of the total fees.
- f. A public hearing and consideration of an ordinance authorizing the City Manager to execute a Lease Agreement with the Appomattox Regional Governor School for City-owned property located at 1555 Flank Road.
- g. A Public Hearing and consideration of an Ordinance amending the text of the City's Code of Ordinance to establish a Technology Zone at the former Southside Regional Medical Center site.

4. Adjournment



City of Petersburg

Ordinance, Resolution, and Agenda Request

DATE: March 23, 2021

TO: The Honorable Mayor and Members of City Council

THROUGH: Kenneth Miller, Interim City Manager
Lionel Lyons, Deputy City Manager of Development and Operations

FROM: Reginald Tabor, Jeremy Tennant

RE: **A request to authorize the Economic Development Authority to allow South Central Wastewater Authority to conduct due diligence (surveying, boring and archeological investigation) on the Roper Property (119, 130 Pocahontas Street) for a proposed ROW alignment extension.**

PURPOSE: To authorize the Economic Development Authority to allow South Central Wastewater Authority to conduct due diligence on the Roper Property for a proposed ROW extension through the property to connect from Pocahontas Street to Magazine Road. SCWWA is requesting access to the site for surveying, boring and archeological investigation. The EDA, by resolution, approved SCWWA’s request contingent upon City Council approval due to a corporative agreement between both parties.

REASON: The EDA and the City have a Corporative Agreement that exists between both entities to communicate (information share) on any proposal requests on the Roper Property.

RECOMMENDATION:

It is recommended that the City Council approves this resolution authorizing the EDA to grant SCWWA to conduct preliminary due diligence on the Roper Property for a proposed ROW extension through the property to connect from Pocahontas Street to Magazine Road.

BACKGROUND:

The SCWWA presented the Pocahontas Street ROW extension to staff for preliminary discussion in December of 2020. Staff worked with SCWWA to provide feedback on the preliminary proposal. Afterward, SCWWA, City Staff and Councilmember Cuthbert held community meetings share SCWWA’s proposal and to gather critical feedback from the residents of Pocahontas Island. Three (3) community discussion meetings were held at the Pocahontas Chapel and via Zoom in February 2021. Thirteen (13) people participated either in person or via Zoom. Upon the conclusion of the Community Discussions, after receiving valuable feedback and recommendations from the Pocahontas Island residents, SCWWA provided an updated revision to the proposed ROW extension.

Staff observed that one crucial voice of the neighborhood was not present during any of the community discussion, so staff reached out to the Pocahontas Island Elder to also receive feedback and recommendations

from him per the updated revision. The Elder informed staff that a similar concept was considered years ago, and that the proposal utilized an existing ROW that exists upon a paper street, Haxall Lane. The submittal was provided for EDA discussion in March a day prior to the EDA presentation.

COST TO CITY: N/A

BUDGETED ITEM: N/A

REVENUE TO CITY: No

CITY COUNCIL HEARING DATE:

CONSIDERATION BY OTHER GOVERNMENT ENTITIES:

AFFECTED AGENCIES: City Manager, Economic Development, Planning and Community Development, Department of Utilities and Capital Projects.

RELATIONSHIP TO EXISTING ORDINANCE OR RESOLUTION: No

REQUIRED CHANGES TO WORK PROGRAMS:

ATTACHMENTS:

1. SCWWA Request to perform Due Diligence on Roper Property
2. SCWWA Truck Reroute EDA Discussion_03042021
3. City_council_presentation_03232021



City of Petersburg

Ordinance, Resolution, and Agenda Request

DATE: March 23, 2021

TO: Kenneth Miller, Interim City Manager

THROUGH: Lionel D. Lyons, Deputy City Manager of Development and Operations

FROM: Reginald Tabor, Director of Planning and Community Development
Jeremy Tennant, Assistant to the City Manager

Re: Request to adopt a resolution authorizing the Economic Development Authority (EDA) to allow South Central Wastewater Authority (SCWWA) to conduct due diligence (surveying, boring and archeological investigation) on the Roper Property for a proposed ROW extension through the property.

PURPOSE: To authorize the Economic Development Authority to allow South Central Wastewater Authority to conduct due diligence on the Roper Property for a proposed ROW extension through the property to connect from Pocahontas Street to Magazine Road. SCWWA is requesting access to the site for surveying, boring and archeological investigation. The EDA, by resolution, approved SCWWA's request contingent upon City Council approval due to an corporative agreement between both parties.

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COST TO CITY: N/A

REVENUE TO CITY: N/A

BUDGETED ITEM: No

CITY COUNCIL HEARING DATE: March 16, 2021

CONSIDERATION BY OTHER GOVERNMENT ENTITIES: N/A

AFFECTED AGENCIES: City Manager, Economic Development, Planning and Community Development, Department of Utilities and Capital Projects.

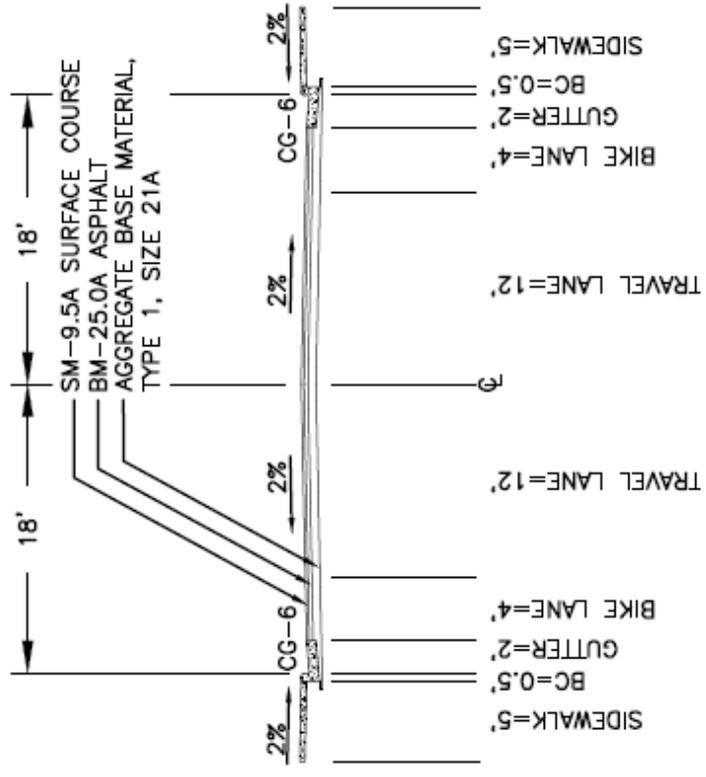
RELATIONSHIP TO EXISTING ORDINANCE OR RESOLUTION: No

REQUIRED CHANGES TO WORK PROGRAMS: No

STAFF: Reginald Tabor, Director of Planning and Community Development. Jeremy Tennant, Assistant to the City Manager.

ATTACHMENTS: SCWWA Concept Plan, SCWWA Revised Concept Plan, FOLA Concept Plan, Road Alignment Exhibit, Pocahontas Island Elder Concept Plan, Roper Brothers Cooperation Agreement

FOLAR Concept Plan



REVISION NUMBER: --	PROJECT: SOUTH CENTRAL WASTEWATER AUTHORITY PETERSBURG, VIRGINIA
DRAWING NUMBER: C-2	TITLE: ROAD ALIGNMENT-EXHIBIT TYPICAL SECTION
SHEET NUMBER: 2 OF 2	DATE: 02/26/21
	SCALE: H: 1"=10' V: N/A
	DISCIPLINE: CIVIL

DESIGNED BY: JOB	FILE NAME:
DRAWN BY: JOB	220045.00
REVISION BY: HW	

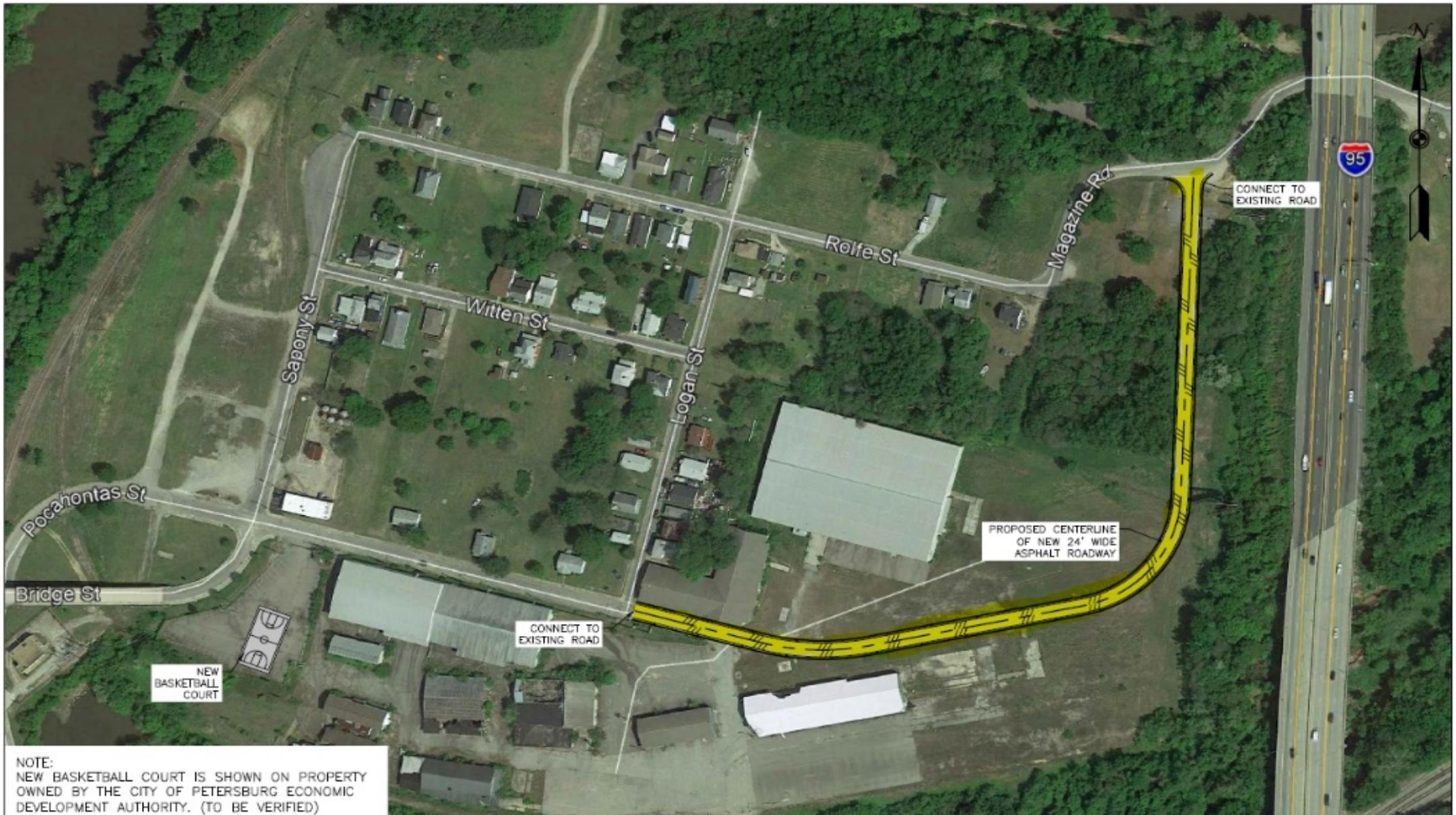


THEREFORE BE IT RESOLVED, that the City Council of Petersburg, Virginia authorizes the Economic Development Authority to allow South Central Wastewater Authority (SCWWA) to conduct due diligence (surveying, boring and archeological investigation) on the Roper Property for a proposed ROW extension through the property.

SCWWA Proposed Truck Reroute on Pocahontas Island

Community Discussion
presented to
City of Petersburg City Council

Original Concept



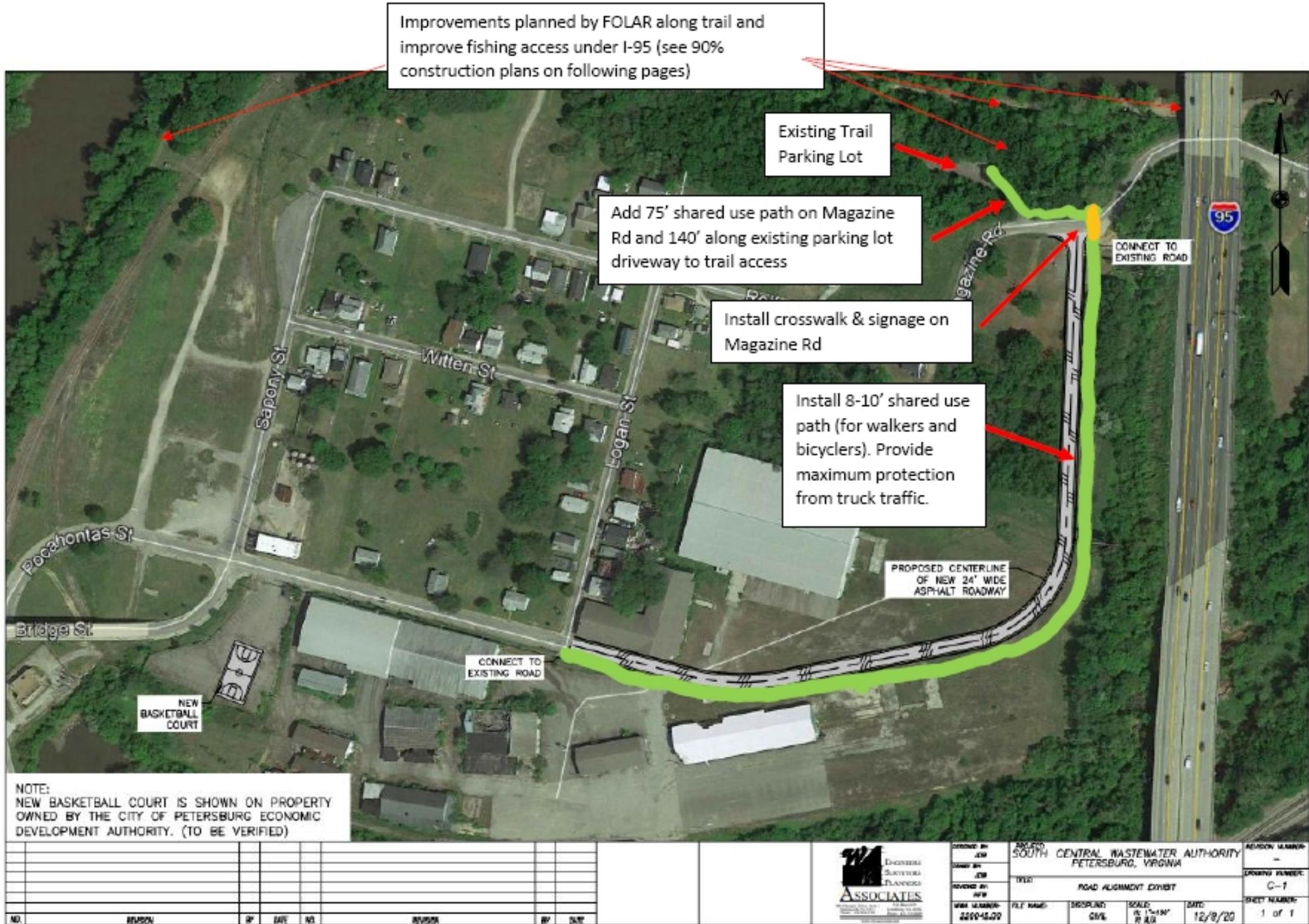
NOTE:
NEW BASKETBALL COURT IS SHOWN ON PROPERTY OWNED BY THE CITY OF PETERSBURG ECONOMIC DEVELOPMENT AUTHORITY. (TO BE VERIFIED)

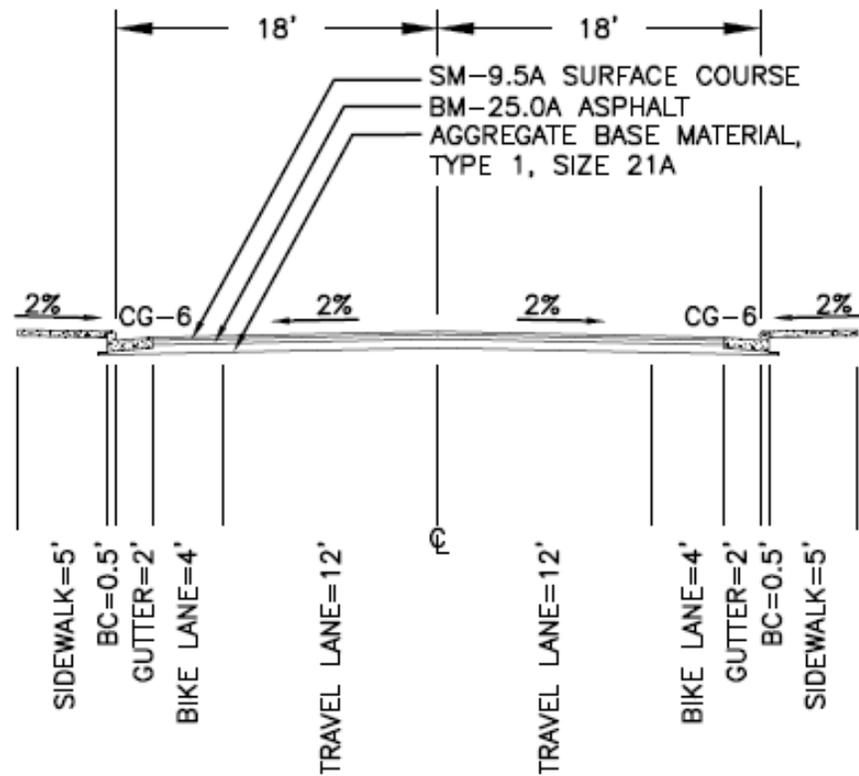
NO.	REVISION	BY	DATE	NO.	REVISION	BY	DATE



DESIGNED BY: JOB DRAWN BY: JOB REVIEWED BY: HW	PROJECT: SOUTH CENTRAL WASTEWATER AUTHORITY PETERSBURG, VIRGINIA TITLE: ROAD ALIGNMENT EXHIBIT	REVISION NUMBER: — DRAWING REVISION: C-1 SHEET NUMBER: 1 of 1
WAA NUMBER: 220045.00	FILE NAME: DISCIPLINE: CIVIL SCALE: H: 1"=150' V: N/A DATE: 12/9/20	

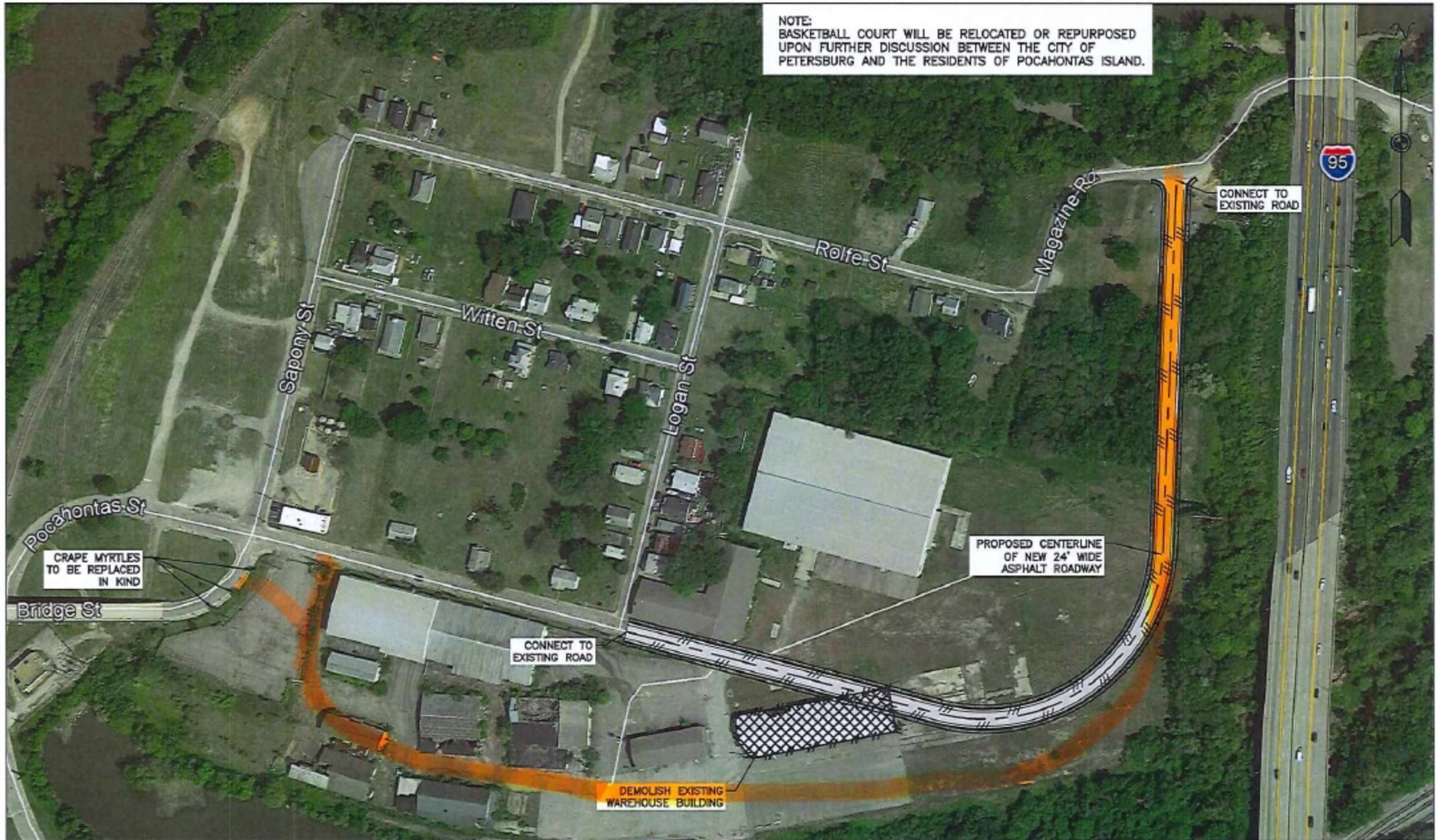
FOLAR Concept Plan





DESIGNED BY: JDB	PROJECT: CENTRAL WASTEWATER AUTHORITY PETERSBURG, VIRGINIA			REVISION NUMBER: --
DRAWN BY: JDB	TITLE: ROAD ALIGNMENT EXHIBIT TYPICAL SECTION			DRAWING NUMBER: C-2
REVIEWED BY: HPW	WMA NUMBER: 220045.00	FILE NAME:	DISCIPLINE: CIVIL	SHEET NUMBER: 2 OF 2
			SCALE: H: 1"=10' V: N/A	DATE: 02/26/21

Stewart Concept Plan



NOTE:
BASKETBALL COURT WILL BE RELOCATED OR REPURPOSED
UPON FURTHER DISCUSSION BETWEEN THE CITY OF
PETERSBURG AND THE RESIDENTS OF POCAHONTAS ISLAND.

NO.	REVISION	BY	DATE	NO.	REVISION	BY	DATE

DESIGNED BY: JOB	PROJECT: SOUTH CENTRAL WASTEWATER AUTHORITY PETERSBURG, VIRGINIA	REVISION NUMBER: -
DRAWN BY: JOB	TITLE: ROAD ALIGNMENT EXHIBIT EDA RECOMMENDATIONS	DRAWING NUMBER: C-1
CHECKED BY: NEW	FILE NAME:	DATE: 02/26/21
WMA NUMBER: 220045.00	DISCIPLINE: CIVIL	SCALE: H: 1"=150' V: N/A
		SHEET NUMBER: 1 of 21

DESIGNED BY: JOB	PROJECT: SOUTH CENTRAL WASTEWATER AUTHORITY PETERSBURG, VIRGINIA	REVISION NUMBER: -
DRAWN BY: JOB	TITLE: ROAD ALIGNMENT EXHIBIT EDA RECOMMENDATIONS	DRAWING NUMBER: C-1
CHECKED BY: NEW	FILE NAME:	DATE: 02/26/21
WMA NUMBER: 220045.00	DISCIPLINE: CIVIL	SCALE: H: 1"=150' V: N/A
		SHEET NUMBER: 1 of 21



Presentation notes for EDA and City Council Meeting (4/6/2021 @ 12:00 pm):

- Thank Mr. Lyons for getting us in touch with the appropriate city representatives.
- Thank Councilman Cuthbert and Mr. Tennant for helping us notify the island residents and attending the public information meetings with me.
- At the October 20, 2020 meeting, I updated council on the nutrient project. The current project schedule is to advertise the project in January 2022 and hopefully begin construction sometime in late Spring/early summer of 2022.
- As part of this project, we are proposing to construct a new entrance road into the plant.
- We held public information meetings on the island at the Pocahontas Chapel on February 11th, 16th and 17th. In addition, each meeting was also broadcast through Zoom.
- At these meetings, we presented the road concept that is shown (Slide 2). The proposed road would extend from the intersection of Pocahontas Street and Logan Street through the City/EDA property towards Route 95 then parallel the limited access right of way for Route 95 north to Magazine Road. We would be tying into Magazine Road at the City owned basketball courts. That is the reason you see the note relocating the basketball courts to the lower left side of the page.
- Through neighborhood discussions and input from the EDA we came up with the second layout (Slide 3). This layout maximizes the concept for two marketable parcels. We also added some additional detail from comments received from the residents. This included the note about the basketball courts – repurposed or relocated – the request was could the residents get playground equipment and a pavilion instead of basketball courts. We will provide whatever the City and island residents determine is the best replacement/use for the island residents with the costs being in the same ballpark. There is also the note to replace the crape myrtles at the intersection of Bridge Street and Pocahontas Street.
- In addition to input from the island residents, we also received comments from FOLAR, Friends of the Lower Appomattox (Slide 4). FOLAR suggested a joint use path, biking and walking, instead of a sidewalk on the eastern side of the proposed road. They also provided some suggestions for tying-in to their master plan for the river trail system in this area.
- Slide 5 is a suggested cross section for the road. This slide does not reflect the comments from FOLAR. Again, our interest is to put in an asset that meets the needs of all parties’ EDA/City/island residents/FOLAR. We are happy to install what the group agrees upon. The section shown is 12’ lanes and bike lanes and sidewalks on both sides. It would be easy to add a joint use path on the east side of the road in lieu of a sidewalk and bike lane.

- Slide 6 is a recent comment we received from another resident on the island. We were advised there is another right of way through this property along the limits highlighted in orange. We do not know what the EDA's/City's vision is for this property, but we would recommend the proposed road to be extended from the end of Pocahontas Street as shown on Slide 3 with the improvements suggested by FOLAR. This would allow the development of the property adjacent to the canal.

This resident also advised there were some historical landmarks on the EDA/City property. We requested his contact information so that we could have him assist Dovetail when they are on site performing the archeological investigation.

- This same presentation was made to the EDA on March 4th. The EDA, by resolution, approved access to the site contingent on presentation to city council and joint approval by city council.
- This item was provided to city council on the March 16th consent agenda and hence, the reason we are here today to make this presentation (*scheduled for Tuesday, April 6th*).
- Our request is to gain access to the property for surveying, borings and archeological investigation. We would like to put some boots on the ground and determine if there is anything that would suggest our proposed alignment would not work. We will use the archeological firm, Dovetail, that we used to address archeological issues on the plant site. This access is for us to perform our due diligence. We understand there is a formal process, and we will continue to work through that process to make a formal presentation in the future for possible right of way acquisition.
- I would be happy to answer any questions. Thank you for your time and consideration.



City of Petersburg

Ordinance, Resolution, and Agenda Request

DATE: March 23, 2021

TO: The Honorable Mayor and Members of City Council

THROUGH: Kenneth Miller, Interim City Manager

FROM: Jeremy Tennant

RE: **A public hearing for the appropriation for a \$2,000,000 grant from the Virginia Economic Development Partnership Authority for the Project Tube project.**

PURPOSE: A public hearing and consideration of the appropriation for a \$2,000,000 grant from the Virginia Economic Development Partnership Authority.

REASON: The Virginia Economic Development Partnership Authority is providing a \$2,000,000 grant to the City of Petersburg for the infrastructure improvements regarding Project Tube.

RECOMMENDATION: A public hearing for March 23, 2021 and for City Council to approve the appropriation of the \$2,000,000 grant from the Virginia Economic Development Partnership Authority for the Project Tube project.

BACKGROUND: Phlow, Civica, and AMPAC are partnering to design and construct a manufacturing facility for pharmaceutical products upon property that is currently owned by AMPAC at 2620 North Normandy Drive, Petersburg, VA. The project will produce more than 400 new jobs in Petersburg and will have a positive economic impact on the City.

The parties anticipate project funding through the Commonwealth Opportunity Fund (COF) which is detailed in the attached offer from the Virginia Economic Development Partnership entitled "Virginia's Financial Offer for Project Tube." Through this program, the City will receive \$2,000,000.00 grant in support of the project with proportionate clawback provisions should the company not achieve their investment and jobs target within the five year performance period.

The City of Petersburg has agreed to facilitate certain improvements to the utility infrastructure in the area of this property which will accommodate the proposed project contingent upon the representations and mutual promises described in this agreement.

COST TO CITY: \$2,000,000

BUDGETED ITEM: No

REVENUE TO CITY: \$2,000,000

CITY COUNCIL HEARING DATE:

CONSIDERATION BY OTHER GOVERNMENT ENTITIES: N/A

AFFECTED AGENCIES: Economic Development

RELATIONSHIP TO EXISTING ORDINANCE OR RESOLUTION: N/A

REQUIRED CHANGES TO WORK PROGRAMS: N/A

ATTACHMENTS:

1. A
2. COF Grant Appropriations ordinance



Old Town Downtown Petersburg



Virginia Commonwealth University



Petersburg National Battlefield



Appomattox River, Petersburg

Virginia's Financial Offer for Project Tube

July 24, 2020

Executive Summary	1
Virginia’s Financial Offer	2
Explanation of Benefits	3
Commonwealth’s Opportunity Fund	3
Port of Virginia Economic & Infrastructure Development Grant	5
Manufacturing Sales and Use Tax Exemption	6
Virginia’s Talent Solutions	7
Virginia Talent Accelerator Program	3
Virginia Jobs Investment Program	11
Say Yes to Virginia	12
Contact	13
Attachments	
City of Petersburg Letter of Support	
Virginia Gateway Region Letter of Support	
The Port of Virginia Letter of Support	
John Tyler Community College Letter of Support	
Sample COF Letter of Support	
Sample COF Performance Agreement	

This proposal is subject to Section 2.2-3705 of the Code of Virginia, which pertains to the exclusion of proprietary records and other working papers related to economic development activities. No portions of this proposal may be reproduced or given in part or in whole to any entity or person other than staff within the local economic development organization or the company/project designated in the proposal.



Rolls-Royce, Prince George County

Executive Summary

Project Tube: Growing Strong in the City of Petersburg

Virginia stands ready to work with new and expanding businesses in the Commonwealth, like Project Tube, who are providing great job and career opportunities for our residents. It is our belief that no better location exists for the long term success of your business venture.

Project Tube can expect to work closely with local, regional, and state partners to find solutions and leverage resources to ensure that your expansion plans are successful. We are committed to creating a new Virginia economy and the following pages will underscore why Project Tube should place this opportunity in the City of Petersburg.

Virginia's businesses recognize the value of our high-quality workforce, robust economy, strong education system, smart regulatory environment, and excellent quality of life. These critical business factors, coupled with a strong partnership with our localities, solidify Virginia's reputation as a leading state for business today and into the future.

We look forward to announcing Project Tube as our latest success story in the Commonwealth of Virginia.

Virginia's Financial Offer

Virginia can only achieve its goals of creating a higher standard of living for Virginians and maintaining vibrant local and state economies capable of providing needed services by partnering with companies like Project Tube.

Incentives are Virginia's investment in its economic future and a business decision for both the Commonwealth and the company. Virginia strives to provide financial inducements that make good fiscal sense for all parties by offering a variety of performance-based incentives designed to target the needs of the company and the development plans of localities and the state. From tax credits and exemptions to infrastructure improvement funds to performance grants, Virginia continues to invest in those who invest and reinvest in the Commonwealth.

Project Assumptions (2021-2024)	Amount
Net, New Employment*	186
Average Salary for New Workers, excludes benefits (\$)	83,978
Capitalized Investment in Building Construction (\$)	62,836,887
Capitalized Investment in Production-Related Machinery and Equipment (\$)	60,725,249
Capitalized Investment in Furniture, Fixtures, and Equipment (\$)	1,000,000
Total Capital Investment (\$)	124,562,136

*Assumes all jobs are new permanent full-time jobs with standard fringe benefits created in the Commonwealth of Virginia by the Company and maintained on the Company's payroll on an ongoing basis.

Potential Incentives for Project Tube	(\$)
Commonwealth's Opportunity Fund	5,700,000
Port of Virginia Economic & Infrastructure Development Grant	46,000
Sales and Use Tax Exemption (up to)	3,218,438
Virginia Talent Accelerator Program OR Virginia Jobs Investment Program (up to)	TBD
City of Petersburg Local Financial Support (see Attached Letter of Support)	2,900,000+
Total Potential State and Local Financial Support	11,864,438

Important Notice: This summary is intended to assist Project Tube with an evaluation of Virginia's incentives. This summary should be used for evaluative purposes and in no way constitutes a commitment or guarantee. The actual value and/or availability of these incentives are contingent upon final negotiations among the Commonwealth, the City of Petersburg, and Project Tube. Further, on an ongoing basis, incentives are subject to appropriation by the Virginia General Assembly and incentive and tax programs are subject to change or elimination.

Virginia's incentives are performance-based and calculations are based upon the Virginia Economic Development Partnership's interpretation of Virginia law as of July 2020 and upon company projections. The financial offerings in this package are valid until January 22, 2021 unless expressly renewed by the Virginia Economic Development Partnership. Any public disclosure concerning this project must be coordinated and publicly announced first by the Office of the Governor in order to take full advantage of these assistance programs.

Explanation of Benefits

Commonwealth's Opportunity Fund (COF)

The Commonwealth's Opportunity Fund (COF) is Virginia's "deal closing" discretionary grant. The COF is used as a financial incentive for business opportunities resulting in significant job creation and investment once one Virginia locality has been selected by the company.

\$5,700,000

Virginia is proposing a \$5,700,000 COF award for Project Tube's operation in the City of Petersburg. These funds will flow from the Commonwealth through the locality and then to the company.

Performance Metrics:

The performance agreement will document the below milestones and maintenance of the jobs and investment associated with this project.

- \$124,562,136 million in capital investment
- 186 net, new jobs to Virginia
- \$83,978 annual salary (W-2 wages)

The performance criteria must be met and maintained through the 60th month of the project.

Milestones for Release of Grant:

The COF grant will be released according to the schedule on the next page. The COF grant to the company is structured as a combination of an annual performance grant of \$1,650 for each new job the company creates and maintains and a grant of \$20,000 for each \$1 million the company invests. In addition, a \$2 million grant will be paid upfront to the locality to support the project which a proportionate clawback will be sought should the company not achieve their investment and jobs target within the five year performance period.

Program Highlights:

- Grant managed through VEDP
- 51% or more of the facility's revenue is generated outside of the Commonwealth
- Minimum investment, employment, and wage threshold to be met within 36 months from when the performance period starts
- Competitive with another state or country for the project
- Funds flow from the state to the locality to offset qualifying, project-related costs, typically real estate and infrastructure improvements
- Community requests and matches the grant
- Signed performance agreement
- Public announcement by the Governor

Grant Determinations:

- Project location
- 100% local match
- Eligible project expenditures
- Other state incentives offered
- Return-on-investment analysis
- Final approval by the Governor

[Full Details of COF](#)

Explanation of Benefits

Commonwealth’s Opportunity Fund (COF)

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Aggregate Milestones

Calendar Year Performance	Employment (Cumulative)	Capital Investment (Annual) (\$M)	Grant to Company Tied Employment Targets (\$M)	Grant to Company Tied Investment Targets (\$M)	Grant to the Locality for Infrastructure Improvements
2021	46	26.6	0.1	0.5	2.0
2022	135	76.8	0.2	1.6	-
2023	182	16.6	0.3	0.3	-
2024	186	4.5	0.3	0.1	-
2025	186	-	0.3	-	-

Explanation of Potential Programs

Port of Virginia Economic & Infrastructure Development Grant

The Port of Virginia Economic and Infrastructure Development Grant Program (POV Grant) provides a grant to qualified companies to locate new maritime-related employment centers or expand existing centers in order to encourage and facilitate the growth of The Port of Virginia.

\$46,000 (est.)

Based on the net new job creation associated with this project, Project Tube is eligible to receive an award of \$46,000 from the Port of Virginia Economic and Infrastructure Development Grant if the company meets the eligibility requirement below.

Program Eligibility:

A business entity that meets all four criteria listed below is eligible for a cash grant from The Port of Virginia Economic and Infrastructure Development Fund:

1. Locates or expands a facility within the Commonwealth of Virginia;
2. Creates at least 25 new, permanent full-time positions for qualified full-time employees at a facility within the Commonwealth from commencement of the project through the first full year of operation or during the year when the expansion occurs;
3. Is involved in maritime commerce or exports or imports manufactured goods through The Port of Virginia; and
4. Is engaged in one or more of the following: the distribution, freight forwarding, freight handling, goods processing, manufacturing, warehousing, cross docking, trans loading, or wholesaling of goods exported and imported through The Port of Virginia; ship building and ship repair; dredging; marine construction; or offshore energy exploration and extraction.

Program Highlights:

- Company must apply to the Virginia Port Authority no later than March 31 in the year immediately following the first full year of operation or expansion within the Commonwealth
- Company must maintain the jobs and continue to move cargo through The Port of Virginia for each of the three years following the receipt of grant
- Signed Memorandum of Understanding with the Virginia Port Authority
- Maximum grant allowed per qualified company in any given fiscal year is \$500,000
- Grants are subject to availability of funds and appropriations

Grant Determinations:*

Award Calculation

Jobs Created in First Full Year of Operation	Award per job (\$)
25 - 49 new jobs	1,000
50 - 74 new jobs	1,500
75 - 99 new jobs	2,000
100+ new jobs	3,000

*Please note a company may not claim the POV grant, the Major Business Facility Job Tax Credit, or the International Trade Facility Tax Credit for the same jobs.

[Full Details of POV Grant](#)

Explanation of Benefits

Manufacturing Sales and Use Tax Exemption

The combined state and local sales and use tax rate is 5.3 percent in the City of Petersburg. Manufacturing and research and development operations receive some of the broadest sales and use tax exemptions for purchases used directly in production or R&D offered by any state in the U.S. Exemptions begin at the manufacturing line, starting with the handling and storage of raw materials on site, and continue through the last step of production. To claim the exemption, Project Tube will complete tax form ST-11 to give to vendors when purchasing exempt equipment.

\$3,218,438 (up to)

Based upon Project Tube's investment in production-related machinery and equipment of \$60,725,249 the company may realize a savings from the sales and use tax exemption of \$3,218,438.

Major Exemptions Include:

- Production-related machinery and equipment
- Equipment used for production line testing and quality control
- Repair parts
- Materials that become a component part of the finished product
- Supplies used for packaging tangible products for shipment or sale
- Certified pollution control equipment
- Utilities used in manufacturing delivered through pipes, lines, or mains
- Equipment, printing, and supplies used to produce publications issued daily or regularly at intervals not exceeding three months
- Research and development equipment

[Full Details of the Sales and Use Tax Exemption](#)



Virginia Talent Solutions

For eligible new and expanding companies, VEDP's Talent Solutions Division offers recruiting and training assistance in the form of two incentive programs:

- The Virginia Talent Accelerator Program delivers direct recruitment and training services that are fully customized to a company's unique operations, requirements, standards and culture. All program services are provided at no cost to qualified companies as an incentive for job creation.
- The Virginia Jobs Investment Program (VJIP) reduces a company's talent development costs through grant funds, consulting, and coordination with regional partners to streamline company recruitment and training.

Companies have the option to choose the VEDP talent incentive option that best fits their needs.

Explanation of Benefits

Virginia's Talent Accelerator Program

Virginia's Talent Accelerator Program delivers direct recruitment and training services that are fully customized to a company's unique operations, requirements, standards, and culture. All program services are provided at no cost to qualified companies as an incentive for job creation. Companies have the option to choose the VEDP talent incentive option that best fits their needs.

Program Highlights:

Delivered in partnership with the nearest community college, every Virginia Talent Accelerator project begins with a thorough analysis of companies processes, job roles, tasks, and training resources. This is done in close collaboration with company operations and human resource and training leaders along with their designated subject matter experts for each process. The consensus on how to address each need will be documented in a statement of work. For an operation like Project Tube, topics addressed with the customized training may include:

- Company Products & Business Model
- FDA Regulations & Compliance
- Production Process Flow
- Sanitation / Sterilization
- Formulation
- Filling
- Batch Release
- Packaging
- AVI System Operations
- Quality Control
- Shipping
- Troubleshooting
- Changeovers
- Preventive Maintenance Procedures
- Inventory Management
- Roles / Responsibilities
- Key Performance Indicators
- Production / Quality Systems & Data Entry

The training is delivered using methodologies and media determined to be most effective for accelerating learning on a given topic. These can include broadcast-quality videos, hands-on simulations, instructor-led classroom sessions, illustrated work instructions, animations, and e-learning modules. All company-specific materials developed during the project become the property of the client and all proprietary information will be protected by a nondisclosure agreement.

Process and job-specific training is part of a robust package that typically also includes training in:

- OSHA Safety Awareness
- Lift Vehicle Operations
- Clean Room
- Lean Six Sigma
- Statistical Process Control
- 5 S
- Emotional Intelligence
- Team Skills
- Resolving Conflict
- Leadership
- Train-the-Trainer
- Programmable Logic Controllers

Explanation of Benefits

Virginia's Talent Accelerator Program

Components of VEDP's customized training can be delivered prior to an employment offer. Customized pre-hire training develops foundational skills and provides an opportunity for companies to observe job candidates' work habits, technical capabilities, and team skills as they perform representative tasks – prior to final employment decisions. Most of the customized job-specific technical training is typically conducted post-employment to protect the confidentiality of company processes.

We understand how important recruiting the right talent is to the success of a major new operation like this. It often involves both leveraging talent from the local area, and attracting talent from elsewhere. Both require a strategic approach built on messaging that resonates with each key target audience. Most major companies have human resource and communication teams adept at recruiting and crafting messaging for attracting talent. However, they may not have the resource availability required to provide optimal support for a large scale recruiting initiative. That's where VEDP's recruiting team can help. We bring resources and expertise to fill these gaps. For a project like Tube, we can:

- Produce broadcast-quality video and digital advertisements to post on internet job boards, social media, etc. to create awareness and generate interest in Project Tube's new Virginia career opportunities. These ads may include:
 - Short videos outlining the vision for the new Virginia operation; featuring the career and the professional growth opportunities it brings
 - Short clips of current employees in various roles telling the story of their career with the company and why they think it's a great place to work
 - Lifestyle videos featuring the local area's unique and most attractive attributes that tell the aspirational story of the career opportunity while painting an intriguing picture of just how good a job candidate's life could be in the new locality
- Perform extensive research in local and national markets to identify clusters of people with the sought after skills and individual candidates with high relocation potential
- Identify innovative ways to reach target audiences through social media, alumni outreach, etc.
- Place targeted ads to drive candidates to the application site
- Set up campaigns and invitational events in external markets rich in target candidates to promote the Virginia opportunity
- Travel to company locations and meet with existing employees asked to relocate to orient them to the community and lifestyle opportunities
- Provide personalized tours and concierge services for key candidates visiting the area for job interviews.
- Build an interactive website highly customized to the new operation's career and the Virginia location's lifestyle opportunities, which can serve as a landing and screening page for interested candidates
- Provide personalized tours and concierge services for key candidates visiting the area for job interviews.
- Build an interactive website highly customized to the new operation's career and the Virginia location's lifestyle opportunities, which can serve as a landing and screening page for interested candidates

Explanation of Benefits

Virginia's Talent Accelerator Program

Estimating the Value of the Customized Training Service Option

One way to measure the value of Virginia Talent Accelerator services is to estimate the price of comparable training services if purchased in the private sector marketplace. To determine the actual scope of services required to provide optimum support for Project Tube's proposed operation, the in-depth training needs analysis is essential. Without the information gained from this analysis, the scope of services and corresponding value must be based on past experience, assumptions and the limited project information provided so far. Using this and Project Tube's proposed 186 new jobs as a basis, we estimate that VEDP's customized workforce solutions could amount to a **private sector market value of \$759,000**. Virginia Talent Accelerator services are offered based on the company's commitment to create the noted full time permanent jobs. Timely fulfillment of this commitment is required in order for VEDP to deliver the services which will be outlined in the scope of work.

Community College Support

To develop a pipeline of qualified talent and support ongoing workforce needs, the nearest Community College offers programs to both develop a stream of pre-qualified new workers and enhance the skills of existing workers. Credit programs include two-year degrees, one-year diplomas, and fast-track certificates in many relevant fields. The colleges also offer a variety of customized training and workforce support on a contract basis to support Project Tube's ongoing needs.

Explanation of Benefits

Virginia Jobs Investment Program - Small Business New Jobs Program

The Virginia Jobs Investment Program (VJIP) provides services and funding to new or expanding companies to reduce human resource development costs. Funding is offered in the form of cash reimbursements for qualified training and recruitment efforts to support Project Tube.

\$148,800 (up to)

Virginia is proposing a reimbursement grant of \$800 per net, new full-time employee from VJIP's New Jobs Program. Up to \$148,800 may be available to the company based upon the creation of 186 jobs within the first 36 months of the project.

Seasonal, temporary, and contract employees are not included in VJIP support.

VJIP Consulting Services Include:

- Evaluation of specific training needs
- Guidance with recruitment and selection
- Assistance with job descriptions and employment advertisements
- Coordination with other state and local training partners
- Assistance with pre-employment assessment programs

Program Highlights and Eligibility:

- Per cash grant and consulting services
- 51% or more of the facility's revenue generated outside of the Commonwealth
- Considering another state or country for the project
- Create 5 new jobs within 12 months from the date of the first hire
- Capital investment of at least \$100,000 within a 12-month period
- Reimbursements are issued 90 days after an employee has been on the payroll

[Full Details of VJIP](#)

Say Yes to Virginia

Virginia is the Best State for Business

Only a few locations can guarantee the right combination of resources that are crucial to the success of your business. Virginia is such a place. The Commonwealth of Virginia offers a unique combination of assets that have encouraged businesses to prosper within its borders for nearly 400 years.

A multitude of factors contribute to Virginia's pro-business climate. The Commonwealth strives to maintain traditions of sound and enviable fiscal management. Virginia provides recruitment training programs to help new businesses become operational faster, a streamlined permitting process, and programs to help businesses increase international sales – all so that new and growing businesses can experience unparalleled levels of success. The Commonwealth's status as a right-to-work state, as well as low workers' compensation costs, and low unemployment tax rates, support the pro-business environment.

These advantageous attributes, coupled with many other noteworthy characteristics including a strategic location, highly skilled and productive labor force and an excellent quality of life, make the Commonwealth the ideal location for your growing business.

We invite Project Tube to discover all the reasons companies from all over the globe keep saying "Yes" to a Virginia business location.



Why Businesses keep Saying "YES" to Virginia

- ✓ Business-first values
- ✓ Easy access to domestic and global markets
- ✓ Stable and competitive operating costs
- ✓ Talented and educated workforce



Contact

Jordan Snelling

**Business Manager, Business Investment
Virginia Economic Development Partnership**

804.545.5727 (office) | 804.397.0008 (mobile)

JSnelling@vedp.org

Virginia Economic Development Partnership

901 E. Cary Street, Suite 900

Richmond, Virginia 23219

VEDP.org



City of Petersburg

Office of the City Manager
135 North Union Street
Petersburg, Virginia 23803

(804) 733-2301
Fax 732-9212
TDD 733-8003

July 24, 2020

Allan Couckell
Senior Vice President of Public Policy
2912 Executive Parkway, Suite 325
Lehi, UT 84043

Dear Allan,

I am excited on behalf of the City of Petersburg to offer the following incentive grant of approximately \$2.9 million using our Technology Zone & Machinery and Tools Tax Grant Program.

This grant will be spread over a 5-year period based on verification of the Machinery & Tools taxes by our Commissioner of Revenue and on the investment, parameters provided by Civica.

In addition, the City of Petersburg is committed to assist Civica on other yet to be determined infrastructure needs. Please keep in mind that these actions will require approval by the City Council.

This truly is a transformational opportunity for Petersburg and the Commonwealth. We are proud that Civica is considering our City for this facility.

Sincerely,

A handwritten signature in cursive script that reads "Aretha R. Ferrell-Benavides".

Aretha R. Ferrell-Benavides
City Manager

July 24, 2020

Mr. Allan Coukell
Senior Vice President, Public Policy
Civica Rx
2912 Executive Parkway
Lehi, UT 84043

Dear Mr. Coukell,

On behalf of the Virginia's Gateway Region Economic Development Organization (VGR), thank you for considering Petersburg's Technology Zone in Virginia's Gateway Region for Project Tube. As you know, the site Petersburg is an ideal match for your pharmaceutical manufacturing operation due to its incredible logistical advantage and proximity to a dynamic, growing talent pool.

VGR is aware that a revolution in pharmaceutical manufacturing in the United States is imminent. We have no doubt that your company will be part of this groundbreaking work to re-establish the manufacture of critical active pharmaceutical and chemical ingredients to the United States. VGR is confident that Project Tube will help our region be an integral part of this growing innovational cluster.

The Gateway Region offers many attributes that foster measurable growth for companies that choose to locate and continue to expand here. With a population exceeding 1.3 million, our region is adept at training and supplying well-prepared talent for local employers like AMPAC Fine Chemicals, Amsted Rail, Virginia Abrasives, BleachTech, Dupont, Gerdau and AdvanSix.

VGR pledges to work closely with the City of Petersburg and the Commonwealth of Virginia to be sure that Project Tube is informed of the vast array of benefits, resources, and programs available to you. I am confident that our region can provide Project Tube with the workforce, technical expertise, infrastructure, pro-business environment, and community support to help you succeed. Should you choose to make our region your next corporate home, the collective experience and expertise of our community and corporate partners is available to you so that your company can achieve a rapid start.

Thank you for the opportunity to work with you. Please know that our entire region enthusiastically supports your project and is ready to assist you and your team to bring your plans to fruition. Should you need anything from the Gateway Region, please contact me at kboswell@gatewayregion.com or 804-732-8971.

Sincerely,



Keith Boswell
President and CEO

July 23, 2020

Ms. Jordan Snelling
Business Manager, Business Investment
Virginia Economic Development Partnership
901 E. Cary Street
Richmond, VA 23219

Dear Jordan:

The Port of Virginia is pleased that Project Tube is looking to locate a facility in Virginia and we hope to earn the opportunity to handle your cargo through our terminals. The Port of Virginia is a vital component of the Commonwealth's economy, with services to over 45 countries and more than 36 cargo ships from across the world calling weekly on our terminals. In CY19, the port moved a record-setting 2.94 million 20-foot equivalent units (TEUs) of import and export cargo. These record volumes have been achieved while nearing completion of a \$750 million expansion to increase annual capacity by 1 million containers. Matching the Port of Virginia's best in class service, we offer a cash grant and three tax credit incentives that Project Tube may be able to take advantage of.

The Port of Virginia Economic and Infrastructure Development cash grant (POV Grant) is based on job creation resulting from a new location or expansion by a port user. For this grant, the company should apply to the Port of Virginia by March 31 in the year following creation of the jobs. For example, if the proposed facility in Virginia were to create 50 new, permanent, full-time jobs in the first full year of operation, then Project Tube may be eligible for the maximum cash grant of \$75,000. In order to receive the grant, the company must enter into a Memorandum of Understanding with the Virginia Port Authority and agree to keep all the jobs created within that year for each of the three years following receipt of the grant. The company must also continue to move cargo through the Port of Virginia, import and/or export, for each of those three years. If the jobs are not retained as promised or cargo is not moving through the Port of Virginia during any of those three years, the company would be responsible for returning a portion or all of the POV Grant to the Virginia Port Authority.

The scale for determining grant payout under the POV Grant is:

25-49 new jobs: \$1,000 per job
50-74 new jobs: \$1,500 per job
75-99 new jobs: \$2,000 per job
100+ new jobs: \$3,000 per job

Project Tube may also be eligible to take advantage of the POV Tax Credits. Below are descriptions of the three Virginia Port Tax Credits. These tax credits are available to companies that have an individual or corporate income tax liability in the Commonwealth and utilize Virginia port facilities for import and/or export.

Port Volume Increase Tax Credit (Code of Virginia Section 58.1-439.12:10)

- Tax credit for taxpayers engaged in the manufacturing of goods or the distribution of manufactured goods, agricultural entities, or mineral or gas entities that use public or private port facilities located in Virginia and increase port cargo at these facilities by a minimum of 5% in a single calendar year over their base year cargo volume.
- Credit is **\$50 per TEU** in excess of the base year cargo; tonnage conversion rate is 16 tons = 1 TEU
- Apply to the Virginia Port Authority using Form PVI by March 1 of the calendar year following the calendar year during which the credits were earned.

Barge and Rail Usage Tax Credit (Code of Virginia Section 58.1-439.12:09)

- Tax credit for usage of barge or rail to move cargo rather than by truck or other motor vehicle on Virginia's highways.
- Credit is **\$25 per TEU** or 16 tons of noncontainerized cargo in excess of the number of containers shipped by barge or rail by the taxpayer during the immediately preceding taxable year.
- Apply to the Department of Taxation using Form BRU by April 1 of the year following the taxable year during which the credits were earned.

International Trade Facility Tax Credit (Code of Virginia Section 58.1-429.12:06)

- Tax credit for either creating new jobs or capital investment in an international trade facility as a result of moving 5% more cargo through port facility than in the preceding taxable year.
- Credit is either (i) \$3,500 per qualified full-time employee that results from increased qualified trade activities by the taxpayer or (ii) an amount equal to 2% of qualified capital investment expenses made by the taxpayer to facilitate increased qualified trade activities.
- Apply to the Department of Taxation using Form ITF by April 1 of the year following the taxable year during which the credits were earned.

The Port of Virginia looks forward to assisting Project Tube with this opportunity and being a partner in their business success here in the Commonwealth. Please contact me with any questions about the Port of Virginia or the port incentive programs.

Best regards,



Russell Held
Vice President, Economic Development

July 23, 2020

Civica Rx
2912 W Executive Parkway
Suite 325
Lehi, UT 84043



Office of the President

To whom it may concern:

It is with great enthusiasm that we express our support for Civica Rx's first pharmaceutical manufacturing facility in Petersburg, Virginia. We understand that Civica is considering creating 186 jobs in the Gateway Region, and by way of this letter, we are committing the resources of our educational institution to ensure your success in recruiting and training the best available talent pool for your new facility.

Virginia will provide Civica access to an unrivaled talent pool with over 16,000 relevant credential holders entering the market every year. In particular, the educational assets in the Gateway Region are well prepared to train the human resources that are critical to support your growth. We have a significant number of large, medium, and small manufacturers and healthcare providers for whom we have provided customized pre-employment training. We also conduct a number of on-the-job, managerial, quality and apprentice training programs, as well as proven success in customizing training for employers across a wide variety of employment sectors.

In addition, we have maintained a strong partnership with our K-12 school partners across the region. One of our top regional priorities is to maintain a qualified workforce, and we know that starts well before high school graduation.

John Tyler Community College (JTCC) and our workforce development division; Community College Workforce Alliance (CCWA), pledge to work with you to directly support Civica's workforce needs. We look forward to working directly with your leadership and the staff of VEDP's Virginia Talent Accelerator Program, and Virginia Commonwealth University (VCU) on any and all recruitment and training strategies that could include, but not be limited to, the promotion of job and internship opportunities to our alumni with appropriate degrees, the planning and execution of targeted career events on our campuses with current students, and the development of customized degree, credentialing, or on-the-job training programs to address skills gaps throughout Civica's workforce.

We proudly declare our intention to work with our partners to provide Civica a successful operation for years to come. Please contact us at any time we can answer questions or provide assistance.

Sincerely,

Edward "Ted" Raspiller
President

www.jtcc.edu

804-594-1578

800-552-3490

TDD: 804-796-4197

Midlothian Campus

800 Charter Colony Parkway

Midlothian, VA 23114-4383

Chester Campus

13101 Jefferson Davis Highway

Chester, VA 23831-5316

An equal opportunity
and affirmative action
educational institution

SAMPLE INDUSTRY LETTER
FOR COF FUNDS

COMPANY LETTERHEAD

Date:

Inside Address

(Local economic development agency or local government address)

Dear:

(Company name) has been evaluating a number of locations for its (describe type of facility and if it is new or expanded). We have narrowed the location to the (list the specific site location) in (name of Virginia community) and a potential site in (name of another state).

If (name of Virginia community) receives an award from the Commonwealth's Opportunity Fund (COF) in the amount of (amount of COF request) to assist us with (use of funds), we are prepared to select (name of Virginia community) for this project. We understand that any public announcement of this project must be coordinated with the Governor's Office.

We are very optimistic about our company's growth and development in (name of Virginia community). We will begin the project in (month or quarter and year) and create at least (number) of jobs within 36 months. The average annual salary for the new jobs will be (average annual salary). Additionally, we offer a standard fringe benefits package. The project's investment will be a total of (insert investment here, broken down by land, building and machinery & tools) within 36 months (company may instead attach an estimated breakdown). Over 51% of this new operation's revenues will be derived from out of state sources.

In the past 30 months (name of company) has not downsized, closed or consolidated operations that resulted in employment layoffs. (If the company has existing VA operations use: No change in existing operations, including loss of jobs, in any of our other Virginia locations will occur in the next year as a result of this new project. If the company is new to VA use: The company does not currently have operations in other locations in Virginia.) (Name of company) is a (describe organizational structure – corporation, LLP, etc.) headquartered in (name of location of headquarters). The company is not currently involved in any merger or acquisition, which would alter the nature of our corporation for the next 12 months.

Attached is a Form W-9 for the company.

We appreciate your consideration of our request and will be happy to provide additional information as needed.

Sincerely,

Chief Executive Officer

Company

cc: NAME OF VEDP PROJECT MANAGER

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the "Agreement") made and entered this ____ day of _____, 2020, by and among the [CITY/COUNTY OF _____, VIRGINIA] (the "Locality"), a [municipal corporation/political subdivision] of the Commonwealth of Virginia (the "Commonwealth"), _____, a [state of creation] [type of entity] [if a foreign entity: authorized to transact business in the Commonwealth] (the "Company"), the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY** ("VEDP"), a political subdivision of the Commonwealth, and the [INDUSTRIAL/ECONOMIC DEVELOPMENT AUTHORITY OF _____ [, VIRGINIA] (the "Authority"), a political subdivision of the Commonwealth. [THE "COMPANY" IS THE ENTITY OR ENTITIES THAT WILL BE MAKING THE CAPITAL INVESTMENT AND HIRING THE WORKERS.]

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$ _____ (the "COF Grant") from the Commonwealth's Development Opportunity Fund (the "Fund") through VEDP for the purpose of inducing the Company to [acquire land] [and an existing facility] and to [construct, expand, equip], improve, and operate a _____ facility in the Locality (the "Facility"), thereby making a significant Capital Investment, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company meets certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality, the Authority, the Company, and VEDP desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, and the obligations of the Company regarding Capital Investment and New Jobs;

WHEREAS, the [acquisition, construction, expansion, equipping,] improvement, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$ _____, of which approximately \$ _____ will be invested in machinery and tools, approximately \$ _____ will be invested in furniture, fixtures and business personal property, approximately \$ _____ will be invested in the acquisition of land and an existing facility, and approximately \$ _____ will be invested in the construction, expansion and up-fit of the buildings for the Facility;

WHEREAS, the [acquisition, construction, expansion, equipping,] improvement, and operation of the Facility will further entail the creation and Maintenance of ____ New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

“Capital Investment” means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. The purchase or lease of machinery and tools or furniture, fixtures, and business personal property, including under an operating lease, and expected building [construction, expansion, improvement] and up-fit by or on behalf of the Company will qualify as Capital Investment. [MODIFY FOR CAPITAL LEASE BY INSERTING, AS APPROPRIATE: A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of the Company” if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for the Company’s interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as “Capital Investment.”] The Capital Investment must be in addition to the capital improvements at the Facility as of _____, 2020. [GENERALLY, AROUND THE DATE OF THE ANNOUNCEMENT]

“Capital Investment Target” means that the Company has made or caused to be made and retained Capital Investments of at least \$ _____.

“Fund” means the Commonwealth’s Development Opportunity Fund.

“Maintain” means that the New Jobs will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$ _____. Average annual wage means the average annual salary of full-time positions at the Facility determined by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. Each New Job must require a

minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. [IF APPLICABLE: Net new jobs in the Commonwealth for contractors or employees of contractors who provide dedicated full-time service to the Company may count as New Jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied.] [The New Jobs must be in addition to the ___ full-time jobs at the Facility as of _____, 20__.] [GENERALLY, THE SAME DATE AS THE START DATE FOR COUNTING CAPITAL INVESTMENT -- AROUND THE DATE OF THE ANNOUNCEMENT]

“New Job Target” means that the Company has created and Maintained at least ___ New Jobs.

“Performance Date” means _____, 20__. [GENERALLY, THE LAST DAY OF A CALENDAR QUARTER ABOUT 3 YEARS FROM THE DATE OF THE ANNOUNCEMENT] If the Locality, in consultation with VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, on or before the Performance Date the Locality may request an extension of the Performance Date by up to 15 months. Any extension of the Performance Date shall require the prior approval of the Board of Directors of VEDP (the “Board”). If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

“Performance Report” means a report to be filed by the Company in accordance with Section 5. The “Final Performance Report” is to be filed within 90 days after the Performance Date. As noted in Section 5, the Locality, the Authority and VEDP may each request a Performance Report at other dates prior to the Performance Date.

“Targets” means the Capital Investment Target and the New Jobs Target, all to be achieved as of the Performance Date.

“Virginia Code” means the Code of Virginia of 1950, as amended.

Section 2. Targets; Statutory Criteria.

(a) *Targets:* The Company will [acquire, construct, expand, equip,] improve, and operate the Facility, and achieve the Targets.

(b) *Encouragement to Offer New Jobs to Residents of the Commonwealth:* The Locality, the Authority, and VEDP hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in

Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

(c) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least \$_____ is [more/less] than the prevailing average annual wage in the Locality of \$_____ [, but is more than 85% of that prevailing average annual wage (\$_____)]. The Locality is [not] a high-unemployment locality, with an unemployment rate for 20__, which is the last year for which such data is available, of ___% as compared to the 20__ statewide unemployment rate of ___%. The Locality is [not] a high-poverty locality, with a poverty rate for 20__, which is the last year for which such data is available, of _____% as compared to the 20__ statewide poverty rate of _____%.

(d) *Disclosure of Political Contributions:* The Company acknowledges that the name of the Company will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. The Company acknowledges that within 18 months of the date of this Agreement, the Governor, his campaign committee, and his political action committee will submit to the Virginia Conflict of Interest and Ethics Advisory Council a report listing any contribution, gift, or other item with a value greater than \$100 provided by the Company to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of the Company's application for the COF Grant through the one-year period immediately after the date of this Agreement.

(e) *Support for Virginia's and Locality's Economic Development Efforts:* Recognizing that it is in the best interest of all parties for the Commonwealth and the Locality to achieve sustained economic growth, the parties will periodically engage with one another to advise on economic development strategies and initiatives for the Commonwealth and the Locality, such as promoting the attributes of the Commonwealth and the Locality as places to do business, or highlighting important industry trends and/or business development opportunities that the Commonwealth or the Locality may wish to pursue. Such engagement would include the Company's participation in occasional business retention and expansion visits from VEDP personnel, as deemed appropriate based on the project parameters and nature of the incentives provided to the Company.

[IF APPLICABLE. (f) *MEI Project Approval Commission:* Pursuant to Virginia Code Sections 2.2-115 and 30-310, the MEI Project Approval Commission ("MEI Commission") must review economic development incentive packages in which [a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality] [the aggregate amount of incentives to be provided by the Commonwealth in the incentive package is in excess of \$10 million in value]. The MEI Commission has reviewed and approved the state-level incentives offered in conjunction with the Company's Capital Investment and creation and Maintenance of New Jobs at the Facility.]

[IF APPLICABLE: (g) *Relocation:* The Commonwealth's Secretary of Commerce and Trade has delivered to the Co-Chairs of the Senate Finance and Appropriations Committee and the Chair of the House Appropriations Committee a letter indicating that, although the Company is

relocating a portion of its operations from _____ to the Locality, the reasons for the move and the desire to retain the Company's operations in Virginia justify the use of incentives to move such facility from one Virginia locality to another. The Locality and VEDP have informed _____ of the move and of the use of incentives. _____ has indicated to VEDP that it is supportive of these efforts.]

[IF APPLICABLE: (h) *Other Performance Criteria*: IF THE COF GRANT IS ALSO PREDICATED ON OTHER FACTORS, SUCH AS ESTABLISHING AND MAINTAINING THE COMPANY'S CORPORATE HEADQUARTERS IN VIRGINIA, ADD HERE LANGUAGE REQUIRING THE COMPANY TO DO THOSE OTHER THINGS.]

Section 3. Disbursement of COF Grant. The disbursement of the COF Grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets.

The COF Grant is to be allocated as ___% (\$ _____) for the Company's Capital Investment Target, and ___% (\$ _____) for the Company's New Jobs Target. [THE %% WILL DEPEND ON VEDP'S ROI ANALYSIS OF THE REVENUES TO BE DERIVED BY THE COMMONWEALTH FROM THE CAPITAL INVESTMENT AND NEW JOBS.]

The statutory minimum requirements for a COF Grant in the Locality require that the Company (1) make or case to be made and retained a Capital Investment of at least [\$5,000,000/\$2,500,000/\$1,500,000] and (2) create and Maintain at least [50/25/15] New Jobs (the "Statutory Minimum Requirements"). [STATUTORY MINIMUM REQUIREMENTS WILL DEPEND ON THE FACTS PROVIDED IN SECTION 2(c)]

The COF Grant proceeds shall be retained in the Fund until needed for disbursement or the COF Grant is withdrawn in accordance with the terms of this Agreement.

[THIS FOLLOWING VERSION OF SUBSECTION (a) WILL BE USED IN THOSE INSTANCES IN WHICH THE COF GRANT WILL BE PAYABLE IN ONE INSTALLMENT FOLLOWING THE PERFORMANCE DATE. IT IS EXPECTED THAT THIS WILL BE THE MOST COMMON TIMELINE FOR DISTRIBUTION OF COF GRANTS:

(a) *Disbursement of the COF Grant*: Within 90 days after the Performance Date, the Company will deliver the Performance Date Report. Through this report, the Company will provide notice and evidence satisfactory to the Locality, the Authority and VEDP of the amount of Capital Investments made or caused to be made and retained, and the number of New Jobs created and Maintained, by the Company as of the Performance Date. The Performance Date Report will be subject to verification by the Locality and VEDP.

Upon such verification, the amount of the COF Grant proceeds to be disbursed to the Company, if any, shall be determined as follows:

(i) *If Statutory Minimum Requirements Not Met*: If, as of the Performance Date, the Company has not achieved both of the Statutory Minimum

Requirements, the Company will not receive any of the proceeds of the COF Grant.

(ii) *If Targets Met:* If, as of the Performance Date, the Company has achieved the Capital Investment Target and the New Jobs Target, the Company will receive all \$_____ of the proceeds of the COF Grant.

(iii) *If Statutory Minimum Requirements Met, but Targets Not Met:* If, as of the Performance Date, the Company has achieved both of the Statutory Minimum Requirements, but has not achieved the full Capital Investment Target and the full New Jobs Target, the Company will qualify for a reduced disbursement of the COF Grant, reflecting a proportional amount of the Target or Targets for which there is a shortfall. For example, if as of the Performance Date, only \$_____ of the Capital Investment has been retained (reflecting achievement of [90]% of the Capital Investment Target), only ___ New Jobs have been created and Maintained (reflecting achievement of [75]% of the New Jobs Target), the Company will receive \$_____ (reflecting [90]% of the \$_____ of the COF Grant allocated to the Capital Investment Target), *plus* \$_____ (reflecting [75]% of the \$_____ of the COF Grant allocated to the New Jobs Target), for a total of \$_____. These amounts reflect the percentages of the shortfall from the Capital Investment Target and the New Jobs Target, each such shortfall multiplied by the portion of the COF Grant proceeds available to the Company allocated to that Target.

Within 30 days after verification of the Performance Date Report, if any amount of COF Grant proceeds are available for disbursement to the Company, as determined in accordance with the foregoing calculations, VEDP will disburse that amount to the Locality. Within 30 days after receipt of such amount, the Locality will disburse such COF Grant proceeds to the Authority. Within 30 days after receipt of such amount, the Authority will disburse such COF Grant proceeds to the Company.

If any amount of COF Grant proceeds have not been earned by the Company, the amount not disbursed will be retained in the Fund and will be available for other economic development projects.

[THIS FOLLOWING VERSION OF SUBSECTION (a) WILL BE USED IN THOSE INSTANCES IN WHICH THE COF GRANT WILL BE PAYABLE IN MORE THAN ONE INSTALLMENT PRIOR TO THE PERFORMANCE DATE, WITH VARIATIONS TO REFLECT THE NUMBER, TIMING, AND VALUE OF THE PLANNED DISBURSEMENTS. IT IS NOT EXPECTED THAT THIS WILL BE THE MOST COMMON METHODOLOGY FOR DISTRIBUTION OF COF GRANTS:

(a) *First Disbursement:* If a Performance Report indicates that the Company has made or caused to be made and retained Capital Investments of at least \$_____, and has created and Maintained at least ___ New Jobs [OR, INDICATE OTHER MILESTONES, SUCH AS A CERTIFICATE OF OCCUPANCY], the Company will qualify for a disbursement of

\$ _____ of the COF Grant proceeds. Then, within 30 days of the verification of that Performance Report by the Locality and VEDP, VEDP will disburse \$ _____ of the COF Grant proceeds to the Locality (the "First Disbursement"). Within 30 days of its receipt of such COF Grant proceeds, the Locality will disburse such COF Grant proceeds to the Authority. Within 30 days of its receipt of such COF Grant proceeds, the Authority will disburse such COF Grant proceeds to the Company.

Final Disbursement; Final Performance Report: In the Final Performance Report, the Company will provide notice and evidence reasonably satisfactory to the Locality, the Authority and VEDP of the amount of Capital Investments made or caused to be made and retained and the number of New Jobs created and Maintained at the Facility as of the Performance Date. The Final Performance Report will be subject to verification by the Locality and VEDP.

The remaining amount of the COF Grant proceeds to be disbursed shall be calculated as follows:

If Targets Fully Achieved: If, as of the Performance Date, the Company has achieved the Capital Investment Target and the New Jobs Target, the Company will receive all of the remaining proceeds of the COF Grant: \$ _____ less the amount of the First Disbursement, if previously paid.

If Statutory Minimum Requirements have been Achieved, but full Targets have not been Achieved: If, as of the Performance Date, the Company has achieved both of the Statutory Minimum Requirements, but has not achieved the full Capital Investment Target and the full New Jobs Target, the Company will receive additional proceeds of the COF Grant, calculated as follows:

The Company shall be entitled to receive that part of the COF Grant that is proportional to the achievement of each Target. For example, if as of the Performance Date, the Company has made or caused to be made and retained Capital Investments of only \$ _____ (reflecting achievement of [75]% of the Capital Investment Target), and only ___ New Jobs have been created and Maintained (reflecting achievement of [80]% of the New Jobs Target), the Company shall have earned \$ _____ (reflecting [75]% of the \$ _____ of the COF Grant proceeds allocated to the Capital Investment Target, *plus* \$ _____ (reflecting [80]% of the \$ _____ of the COF Grant proceeds allocated to the New Jobs Target) for a total of \$ _____. These amounts represent the percentages of the shortfall from the expected amount of Capital Investment and expected number of New Jobs, each multiplied by the portion of the COF Grant proceeds allocated to that Target. In this example, if the Company had not received any proceeds of the COF Grant from the First Disbursement, the Company would be entitled to receive all \$ _____. If, however, the Company had received \$ _____ of the proceeds of the COF Grant from the First Disbursement, the \$ _____ would be reduced to \$ _____. If the amount earned by the Company under this subparagraph is less than the amount previously paid to the Company from the

First Disbursement, the Company shall owe a repayment to the Authority under Section 7 equal to the amount of overpayment.

Within 30 days after verification of the Performance Date Report, VEDP will disburse to the Locality any earned COF Grant proceeds yet to be paid. Within 30 days after receipt of such amount, the Locality will disburse such COF Grant proceeds to the Authority. Within 30 days after receipt of such amount, the Authority will disburse such COF Grant proceeds to the Company.

If any amount of COF Grant proceeds have not been earned by the Company, the amount not disbursed will be retained in the Fund and will be available for other economic development projects.

(b) *Use of the COF Grant Proceeds:* The [Company / Locality / Authority] will use the COF Grant proceeds to pay or reimburse the cost of [public and private utility extension or capacity development for the Facility, whether on or off site,] [public and private installation, extension, or capacity development of high-speed or broadband Internet access for the Facility, whether on or off site,] [road, rail, or other transportation access costs supporting the Facility beyond the funding capability of existing programs,] [site acquisition,] [grading, drainage, paving, and any other activity required to prepare the Facility site for construction,] [construction or build-out of publicly or privately owned buildings for the Facility, and] [recruitment and training], [all] as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. Break-Even Point; State and Local Incentives.

(a) *State-Level Incentives:* VEDP has estimated that the Commonwealth will reach its “break-even point” by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth’s expenditures on discretionary incentives, including but not limited to the COF Grant. With regard to the Facility, the Commonwealth expects to provide discretionary incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
COF Grant	\$ _____
Virginia Jobs Investment Program (“VJIP”) (Estimated)	
Tobacco Region Opportunity Fund Grant (“TROF”)	
Enterprise Zone Real Property Investment Grant (“EZRPIG”) (Estimated)	
Enterprise Zone Job Creation Grant (“EZJCG”) (Estimated)	
Virginia Investment Performance Grant (“VIP Grant”)	
VEDP Talent Accelerator Program (“VTAP”) (Approximate Value)	
Major Eligible Employers Grant (“MEE Grant”)	
Virginia Economic Development Incentive Grant (“VEDIG”)	
Major Business Facility Job Tax Credit (“MBFJTC”) (Estimated)	

Port of Virginia Economic and Infrastructure Development Grant
("POV Grant")
[Other]

The proceeds of the COF Grant shall be used for the purposes described in Section 3(b). The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. [The proceeds of the TROF Grant [shall][may] be used for _____ [any lawful purpose].] [The proceeds of [the EZRPIG,] [the EZJCG,] [the VIP Grant,] [the MEE Grant,] [the VEDIG,] [and the Port Grant] may be used by the Company for any lawful purpose.] [The MBFJTC will serve as an offset to Virginia corporate income taxes that may be owed by the Company.] The VTAP represents the value to the Company of workforce development services expected to be provided by VEDP to the Company for recruitment and training.

(b) *Local-Level Incentives:* The Locality and the Authority expect to provide the following incentives, as matching grants or otherwise, for the Facility by the Performance Date:

<u>Category of Incentive:</u>	<u>Total Amount</u>
-------------------------------	---------------------

[IF THE LOCAL-LEVEL INCENTIVES ARE NOT BEING PROVIDED UP-FRONT:]
If, by the Performance Date, the total of all Local-Level Incentives disbursed or provided, or committed to be disbursed or provided, by the Locality to the Company is less than the \$ _____ COF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference promptly after Performance Date, so long as the Company has met its Targets.

[The _____ will reflect cost savings to the Company.] [The proceeds of the _____ [may/shall] be used by the Company for [any lawful purpose/ _____].]]

(c) *Other Incentives:* This Agreement relates solely to the COF Grant. The qualification for, and payment of all State-Level Incentives and Local-Level Incentives, except for the COF Grant, will be governed by separate arrangements between the Company and the entities offering the other incentives.

Section 5. Company Reporting.

(a) *Performance Reporting:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit A, detailed Performance Reports satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. The Performance Reports are due by each _____ 1, commencing _____ 1, 20__ [ABOUT 90 DAYS

AFTER THE FIRST ANNIVERSARY OF THE MONTH/DATE OF THE PERFORMANCE DATE], reflecting the Company's progress toward the Targets as of the prior _____ [SAME CALENDAR DATE AS THE MONTH/DATE OF THE PERFORMANCE DATE]. Further, the Company shall provide such Performance Reports at such other times as the Locality, the Authority or VEDP may require.

[IF APPLICABLE: If the Company wishes to count as Capital Investments the capital expenditures made on its behalf by a lessor or a developer of the Facility, the Company is responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on behalf of the Company.]

[IF APPLICABLE: If the Company wishes to count as New Jobs employees of contractors, to the extent permitted in the definition of "New Jobs" in Section 1, the Company is responsible for assembling and distributing the documentation necessary to verify such New Jobs, including whether such jobs are net New Jobs in the Commonwealth.]

(b) *Final Performance Report:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit B, a detailed Final Performance Report satisfactory to the Locality, the Authority and VEDP of the Company's achievement of the Targets as of the Performance Date. This Performance Date Report shall be filed within 90 days after the Performance Date.

Should the Company be unable to file the Final Performance Report within the 90-day timeframe, the Company may request a 60-day delay in filing the Final Performance Report. VEDP will require a \$3,000 fee, payable to VEDP, to process the request for the filing delay. Should the Company not file the Final Performance Report within the 90-day window nor request a filing delay (including payment of the required fee), or if the Company requests a filing delay but does not file the Final Performance Report prior to the new filing deadline, VEDP will withhold any COF Grant payment that might otherwise be due and all rights of the Company under this Agreement will automatically terminate.

(c) *Virginia Corporate Income Tax Information:* With each such Performance Report or Final Performance Date Report, the Company shall report to VEDP the amount paid by the Company (or for a pass-through entity, by its shareholders, members or partners) in the prior calendar year in Virginia corporate (or for a pass-through entity, personal) income tax. VEDP hereby represents to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

Section 6. Verification of Targets.

(a) *Verification of Capital Investment:* The Company hereby authorizes the Locality, including the Locality's Commissioner of the Revenue and Treasurer, to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax

information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If the Locality, the Office of the Commissioner of the Revenue or the Office of the Treasurer should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality or VEDP may request. In accordance with Virginia Code Section 58.1-3122.3, VEDP is entitled to receive the Company's real estate tax, business personal property tax and machinery and tools tax information from the Locality's Commissioner of the Revenue. Attached hereto as Exhibit C is a form to be completed by the Company regarding access to the Company's tax information.

(b) *Verification of New Jobs and Wages:* The Company must submit a copy of its four most recent Employer's Quarterly Tax Reports (Form FC-20) with the Virginia Employment Commission with [each Performance Report] [the Final Performance Report]. The forms shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the New Jobs Target. In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive the Company's employment level and wage information from the Virginia Employment Commission.

The Company agrees that it will report to the Virginia Employment Commission with respect to its employees at a facility-level, rather than at the company-level.

(c) *Additional Documentation:* In addition to the verification data described above, in the sole discretion of the Locality, the Authority or VEDP, the Locality, the Authority or VEDP, may each require such other documentation or audits as may be required to properly verify the Capital Investment or New Jobs.

[USE THIS FOLLOWING VERSION OF SECTION 7 IF THERE IS ONLY ONE DISBURSEMENT OF THE COF GRANT PROCEEDS FOLLOWING THE PERFORMANCE DATE]

Section 7. Possible Termination of this Agreement and Redeployment of COF Grant Proceeds. If the Locality, the Authority or VEDP shall determine at any time prior to the Performance Date that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, this Agreement will be terminated, no further disbursements of the COF Grant proceeds will be made to the Company, and the amount not disbursed will be retained in the Fund and made available for other economic development projects. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the COF Grant.

[USE THIS FOLLOWING VERSION OF SECTION 7 IF ANY OF THE PROCEEDS OF THE COF GRANT MAY BE DISBURSED PRIOR TO THE PERFORMANCE DATE AND, THEREFORE, MAY BE SUBJECT TO REPAYMENT, WITH VARIATIONS TO TAKE INTO

ACCOUNT THE NUMBER, NATURE AND AMOUNT OF DISBURSEMENTS MADE PRIOR TO THE PERFORMANCE DATE:

Section 7. Repayment Obligation.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company achieve both of the Statutory Minimum Requirements in order to be eligible for the COF Grant. If the Company received the First Disbursement, but fails to meet both of the Statutory Minimum Requirements as of the Performance Date, the Company will be considered to have breached this Agreement and the Company must repay to VEDP all of the COF Grant proceeds previously disbursed to the Company.

(b) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (b) shall become applicable only if the Company has met the Statutory Minimum Requirements, and has received the First Disbursement of \$_____ of the proceeds of the COF Grant prior to the Performance Date, in accordance with Section 3(a).

If the Company has not met either or both of its Targets as of the Performance Date, the Company shall repay to VEDP that part of the COF Grant previously disbursed to the Company that is proportional to the Target or Targets for which there is a shortfall. For example, if as of the Performance Date, the Company has received \$_____ of the COF Grant proceeds, but only \$_____ of the Capital Investment has been made and retained (reflecting achievement of [60]% of the Capital Investment Target), and only ___ New Jobs have been created and Maintained (reflecting achievement of [50]% of the New Jobs Target), the Company shall repay to VEDP \$_____, reflecting [40]% of the \$_____ of the COF Grant proceeds that it received allocated to the Capital Investment Target, *plus* \$_____, reflecting [50]% of the \$_____ of the COF Grant proceeds that it received allocated to the New Jobs Target, for a total repayment amount of \$_____. These amounts represent the percentages of the shortfall at the Performance Date from the expected amount of Capital Investment and expected number of New Jobs, each multiplied by the portion of the COF Grant proceeds that the Company received allocated to that Target.

(d) *Determination of Inability to Comply:* If the Locality, the Authority or VEDP shall determine at any time prior to the Performance Date (a “Determination Date”) that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay to VEDP all of the COF Grant proceeds, if any, previously disbursed to the Company. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the COF Grant. If the Determination Date is after the First Disbursement, the Company will repay to VEDP all of the COF Grant proceeds previously disbursed to the Company. If the Determination Date is prior to the Disbursement, this Agreement will be

terminated, and the amount not yet disbursed will be retained in the Fund and will become available for other economic development projects.

(e) *Repayment:* The Company shall be liable for any repayment of all or a portion of the COF Grant, to the extent described in this Section 7. ***Such repayment shall be due from the Company to VEDP within ninety days after the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to VEDP shall be redeposited by VEDP into the Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. In any such matter, the Company shall be liable to pay interest, administrative charges, attorneys' fees and other applicable fees. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums payable by the Company hereunder unless said sums have been received by the Locality or the Authority from the Company.

(f) *Failure to Repay:* If any repayment due from the Company pursuant to this Section 7 is not made by the Company when due, the Board may determine that further collection action is required, and the Board may refer the matter to the Office of the Attorney General (the "OAG") for collection pursuant to Section 2.2-518 of the Virginia Code. In such event, by their signatures below, the Locality and the Authority will be deemed to have assigned to the Commonwealth all of their rights, title and interest in and to this Section 7. In any matter referred to the OAG for collection, the Company shall be liable to pay interest, administrative charges, attorneys' fees and other applicable fees. Interest on any outstanding repayment referred to the OAG shall accrue at the rate set forth in Section 6.2-301 A. of the Virginia Code (currently 6.0% per year) for the period from the Performance Date or the Determination Date, as applicable, until paid.

Section 8. Notices. Formal notices and communications between the parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

with a copy to:

_____, _____
Email: _____

_____, _____
Email: _____

Attention: _____

Attention: _____

if to the Locality, to:

with a copy to:

[City/County/Town] of _____, Virginia

_____, _____

_____, _____

Email: _____

Email: _____

Attention: _____

Attention: _____

if to the Authority, to:

with a copy to:

[Industrial/Economic Development Authority
of _____, [Virginia]

[City/County/Town] of _____, Virginia

c/o [City/County/Town] of _____, Virginia

_____, _____

_____, _____

Email: _____

Email: _____

Attention: _____

Attention: _____

if to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: moret@vedp.org
Attention: President and CEO

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: smcninch@vedp.org
Attention: General Counsel

Section 9. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the COF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

(c) *Counterparts*: This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability*: If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) *Attorney's Fees*: [Except as provided in Section 7,] [a]ttorney's fees shall be paid by the party incurring such fees.

(f) *Force Majeure*: Notwithstanding the foregoing provisions of this Agreement, if the Company does not achieve a Target or take any action required under this Agreement because of an "Event of Force Majeure" (as defined below), the time for achieving the applicable Target or taking such action will be extended day-for-day by the delay in meeting the applicable Target or taking such action caused by the Event of Force Majeure. "Event of Force Majeure" means without limitation, any of the following: acts of God; strikes, lockouts or other industrial disturbances; act of public enemies; orders of any kind of the government of the United States of America or of the Commonwealth or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals not caused by the Company; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

[CITY/COUNTY/TOWN OF ____, VIRGINIA]

By _____
Name: _____
Title: _____
Date: _____

**[INDUSTRIAL/ECONOMIC DEVELOPMENT
AUTHORITY OF _____[, VIRGINIA]**

By _____
Name: _____
Title: _____
Date: _____

[COMPANY]

By _____
Name: _____
Title: _____
Date: _____

**VIRGINIA ECONOMIC
DEVELOPMENT PARTNERSHIP
AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

- Exhibit A: Performance Report Form
- Exhibit B: Final Performance Report Form

**PERFORMANCE REPORT
COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND**

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Reporting Period	
Performance Date	

PROJECT PERFORMANCE⁴:

Performance Measurement	Target	As of _____	% Complete
New Jobs (over _____ baseline) ¹			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Capital Investment (provide breakdown below) ²			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Average Annual Wage			N/A
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Standard Fringe Benefits (check one)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A
Virginia Corporate Income Tax Paid in Prior Calendar Year³	\$		

¹Data will be verified using Virginia Employment Commission records. Attach the company's four most recent Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.

² Data will be verified with locality records.

³This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA.

⁴Final, actual performance will be reported on VEDP's public reporting website.

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	\$
New Construction or Expansion	\$
Renovation or Building Up-fit	\$
Production Machinery and Tools	\$
Furniture, Fixtures and Equipment	\$
Other	\$
Total	\$

COMMENTS:

Discuss project status, including the current level of new jobs and capital investment, progress on targets, changes or likely changes in project's nature that may impact achievement of targets, and other information relevant to project performance. If the project is not on track to meet targets, please provide an explanation.

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Company: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Please return to:

Kim Ellett, Incentives Compliance Manager, Virginia Economic Development Partnership,
804.545.5618, kellett@vedp.org

**FINAL PERFORMANCE REPORT
COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND**

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Date	

PROJECT PERFORMANCE:¹

Performance Measurement	Target	As of _____, 20__	% Complete
New Jobs (over ___ baseline) ²			
Capital Investment (provide breakdown below) ³			
Average Annual Wage			N/A
Standard Fringe Benefits			
Virginia Corporate Income Tax Paid in Prior Calendar Year⁴	\$		

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	\$
New Construction or Expansion	\$
Renovation or Building Up-fit	\$
Production Machinery and Tools	\$
Furniture, Fixtures and Equipment	\$
Other	\$
Total	\$

¹Final, actual performance will be reported on VEDP's public reporting website.

² Attach the company's four most recent Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.

³ Data will be verified using records from the Commissioner of the Revenue and invoices.

⁴This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA

LOCAL MATCH:

Goal	
Actual	

COMMENTS:

Discuss Project status or the importance of the Project to the locality and region.

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Company: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Please return to:

Kim Ellett, Incentives Compliance Manager, Virginia Economic Development Partnership,
804.545.5618, kelllett@vedp.org

**AN ORDINANCE, AS AMENDED, SAID ORDINANCE
MAKING APPROPRIATIONS FOR THE FISCAL YEAR
COMMENCING JULY 1, 2020, AND ENDING JUNE 30, 2021
FOR THE GRANTS FUND.**

BE IT ORDAINED by the City Council of the City of Petersburg, Virginia:

I. That appropriations for the fiscal year commencing July 1, 2020, in the Grants Fund are made for the following resources and revenues of the city, for the fiscal year ending June 30, 2021.

Previously adopted	\$0
ADD:	
3-200-24040-0615-0-314 COF Grant	<u>\$2,000,000.00</u>
Total Revenues	<u>\$2,000,000.00</u>

II. That there shall be appropriated from the resources and revenues of the City of Petersburg for the fiscal year commencing July 1, 2020 and ending June 30, 2021, the following sums for the purposes mentioned:

Previously adopted	\$0
ADD:	
4-200-71330-31090-0-101 COF Grant	<u>\$2,000,000.00</u>
Total Expenses	<u>\$2,000,000.00</u>



City of Petersburg

Ordinance, Resolution, and Agenda Request

DATE: March 23, 2021

TO: The Honorable Mayor and Members of City Council

THROUGH: Kenneth Miller, Interim City Manager
Lionel Lyons, Deputy City Manager of Development and Operations

FROM: Reginald Tabor

RE: **A Public Hearing and consideration of a Petition and Ordinance to rezone the property at 3706 S Crater Road from PUD – M-1c to PUD.**

PURPOSE: To hold a Public Hearing and Consider the rezoning of property in accordance with Code requirements.

REASON: To hold a Public Hearing and consider of an item in compliance with code requirements and in accordance with procedures to rezone property.

RECOMMENDATION: It is recommended that the City Council schedules a public hearing and considers adoption of an ordinance approving the petition to rezone property at 3706 South Crater Road from PUD – M-1c to PUD.

BACKGROUND: The City of Petersburg received a petition from PG Investments, LLC, contractual owners to rezone 1 parcel with a total land area of approximately 82.4 acres from “PUD” Planned Unit Development “M-1c,” Light Industrial District with conditions to “PUD” Planned Unit Development to permit a mixed use development to include Residential Single-Family District (R-2), Residential Townhouse District (RTH) in the Central and Western portion of the parcel, and General Commercial District (B-2) uses along South Crater Road. The property is located across South Crater Road West of Lakewood Drive and Thacker Hardware, North of the South Plains Subdivision, and South of Wal-Mart and the Addison Crater Woods Apartment Development.

The City Council adopted 7-Ord-104A on December 4, 2007, which approved the rezoning of the property from A - Agriculture to PUD for Mixed Use with proffered conditions. The City Council adopted 17-Ord-22 on May 16, 2017, which approved the rezoning of the property to PUD - M-1c. This is a request to rezone the property back to PUD to allow residential and commercial development on the property. Properties in the adjacent neighborhood to the South are zoned R-1. Adjacent properties to the North are zoned PUD.

The Developers are proposing a phased development over multiple years to include residential development and commercial development. The residential development is to include 300 market-rate mostly single-family and some townhouse units to meet existing an anticipated demand for single family homes, especially the Starter-home market. They are also proposing commercial development along South Crater Road.

All development would have to comply with relevant City State and Federal codes. All development would have to be accommodated by City utilities. The Planning Commission will review the proposal prior to the Public Hearing.

COST TO CITY: N/A

BUDGETED ITEM: N/A

REVENUE TO CITY: Revenue associated with the development of vacant property.

CITY COUNCIL HEARING DATE:

CONSIDERATION BY OTHER GOVERNMENT ENTITIES: N/A

AFFECTED AGENCIES: Department of Planning and Community Development, Departments that are part of the Development review process.

RELATIONSHIP TO EXISTING ORDINANCE OR RESOLUTION: 7-Ord-104A, 17-Ord-22

REQUIRED CHANGES TO WORK PROGRAMS: N/A

ATTACHMENTS:

1. 1215_2020Aerial2_3706SCraterRoad
2. 1215_2020AerialPhoto3706SCraterRd
3. 1215_2020MapPhoto3706SCraterRd
4. 1215_2020PropertyRecord3706SCraterRoad
5. 1221_2020ResponsePublicWorksRezoningRequest3706SCraterRd

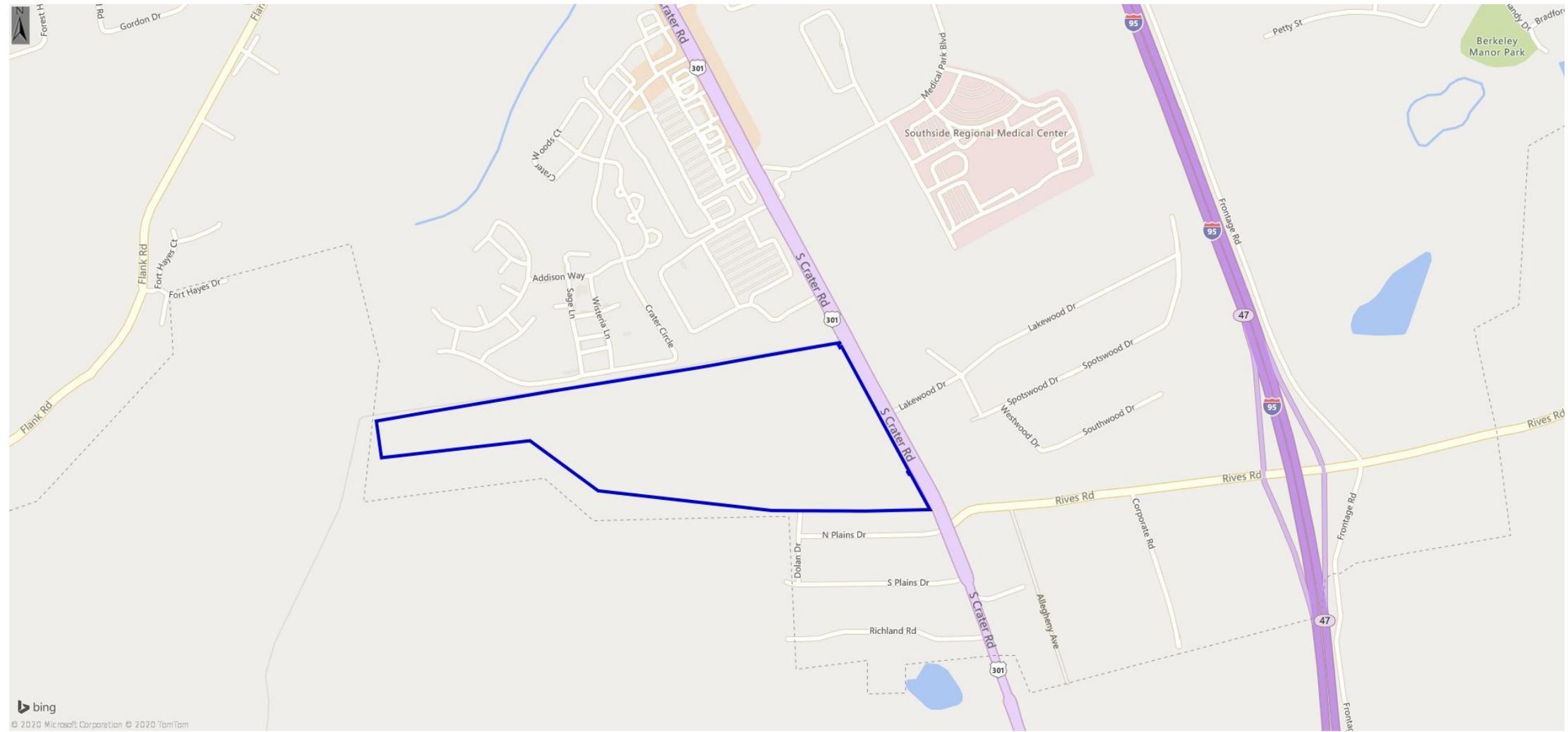


3706 S Crater Road

3706 S Crater Road



Map 3706 S Crater Road



Property Record Card - Petersburg, VA

General Property Data

Parcel ID	101-060001	Account Number	
Prior Parcel ID	--	Property Location	3706 CRATER RD
Property Owner	PG INVESTMENTS LLC	Property Use	Agri Vac
Mailing Address	44345 PREMIER PLAZA #120	Most Recent Sale Date	5/3/2018
City	ASHBURN	Legal Reference	2018-1109
Mailing State	VA	Zip	20147
Parcel Zoning	PUD	Grantor	GARNET STH CRATER REAL EST LLC,
		Sale Price	712,453
		Land Area	acres

Current Property Assessment

Card 1 Value Building Value	0	Xtra Features Value	0	Land Value	2,400,000	Total Value	2,400,000
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Building Description

Building Style	NONE	Foundation Type		Flooring Type	CARPET
# of Living Units	0	Frame Type		Basement Floor	N/A
Year Built	1930	Roof Structure		Heating Type	NONE
Building Grade	EXCELLENT	Roof Cover		Heating Fuel	N/A
Building Condition	N/A	Siding		Air Conditioning	
Finished Area (SF)		Interior Walls	N/A	# of Bsmt Garages	0
Number Rooms	0	# of Bedrooms	0	# of Full Baths	
# of 3/4 Baths		# of 1/2 Baths		# of Other Fixtures	

Legal Description

82.4 ACRES

Narrative Description of Property

This property contains acres of land mainly classified as Agri Vac with a(n) NONE style building, built about 1930 , having exterior and roof cover, with 0 unit(s), 0 room(s), 0 bedroom(s), bath(s), half bath(s).

Property Images



Disclaimer: This information is believed to be correct but is subject to change and is not warranted.

Rezoning Request – 3706 S. Crater Road

Petersburg Department of Public Works and Utilities

Public Utilities - Water/Sewer

Staff Contact: Andrew J. Barnes, P.E.

804-733-2356

abarnes@petersburg-va.org

Background:

The applicant, PG Investments, LLC, is requesting to rezone 1 parcel (PID: 101-06-0001), with total land area of approximately 82.4 Acres (with an additional contiguous 61.47 Acres located in Prince George County), from existing M-1 (Light Industrial), to R1A and RTH (SFD Residential and Townhouse Residential).

The property is located at 3706 S. Crater Road, across from Lakewood Drive and Thacker Hardware, in the southern most portion of the City. The parcel is located between South Plains subdivision to the south and the Walmart and Addison Crater Woods Apartments to the north.

The applicant has submitted a Phase 1 General Development Plan (GDP) which shows 153 single family detached dwelling units and 169 single family attached (townhomes). Subsequent phases will include 19.1 acres of additional residential development in the western portion of the site and 3.9 Acres of commercial development along S. Crater Road. The future residential phase within the City could include between 40 – 45 additional units based on SFD density. The applicant has not identified whether the contiguous land in Prince George County will be similarly developed as part of the overall site, nor have they identified whether a development within Prince George would seek to make use of City utilities.

Based on the proposed GDP (with a net density of 5.79 du/ac), and assuming a similar development potential within the Prince George portion of the site, we calculate the likely demands as follows:

<u>Development</u>	<u>Net Yield (DU, Ac)</u>	<u>GPD (per DU, per Ac)</u>	<u>Average Water Demand (MGD)</u>	<u>Peak Water Demand (MGD)</u>	<u>Average Sewer Demand (MGD)</u>	<u>Peak Sewer Demand (MGD)</u>
Petersburg - Res (DU)	367	350	0.128	0.231	0.128	0.668
Petersburg - Com (AC)	3.9	4500	0.017	0.031	0.017	0.133
Prince George	356	350	0.125	0.224	0.125	0.652
Total	727	-	0.271	0.487	0.271	1.219

If the developer seeks to utilize City utilities for the Prince George portion of the site, peak water demand would be approximately 0.5 MGD and peak sewer conveyance would be 1.22 MGD. This is calculated with a average per unit demand of 350 gallons and a peaking factor of 1.8. Sewer demand is calculated according to $(3.5 \times \text{ADD}^{0.807})$

Existing Infrastructure:

The properties would be served by an existing 12” waterline and 15” sewer in S. Crater Road. Existing water and sewer are available within the adjacent developments; waterlines within adjoining ROW should be looped with any onsite utilities to improve resiliency.

The nearest water storage tanks are Walnut Hill Tank and Jamestown Tank, 9,200’ away and 15,000’ away, respectively. The southernmost portion of the City’s water system is essentially a dead-end. The intersection of Wagner Road and S. Crater Road, 4,200’ to the north, is the nearest water network node with multiple supplies. Additionally, numerous large users are located between the site and the Wagner Road Intersection.

The site is located within the Poor Creek sewer shed, with sewer effluent flowing through the Poor Creek Interceptor to the Poor Creek Pump Station. Sewer within this area of S. Crater Road is likely asbestos cement pipe.

Impacts:

Connection fees assessed for the approximately 367 proposed dwelling units would total \$1,042,280 for Water and \$1,886,380 for Sewer.

The property is currently vacant/undeveloped with dense brush and small trees. In its current state of development, the property has no usage of the public water and wastewater utility systems.

If the developer wishes to make use of the City's utilities for any portion of the development outside of the City, it will first require City Council approval, in accordance with City Code 4-3.

Within the Poor Creek sewer shed, an existing development project that is currently underway will capitalize on most of the remaining pump station capacity, as well as the capacity in the downstream force main. The City has not committed effort or funds to studying or improving the capacity or condition of the gravity sewer system upstream of the Poor Creek Interceptor (a gravity line which extends from the Poor Creek Pump Station to the I-95/Rt. 460 Interchange).

The City will be considering a 2nd High Pressure Zone in conjunction with the aforementioned development project. The new pressure zone will be removed from the hydraulic influences of Walnut Hill Tank and Jamestown Tank. Under both existing and future hydraulic regimes, the site is likely to suffer from a lack of storage for use in fire protection as well as emergency storage for potable water. Due to the dead-end nature of the water network in this area, the site's use of the water system may either result in unacceptably low pressure for on-site residents, or adversely affect other customers, including Southside Regional Medical Center.

The development will have impacts on local infrastructure immediately serving the site as well as within the greater context of the City's water and wastewater systems. The developer should closely assess the utility impacts of their proposed development and how those impacts will be addressed.



City of Petersburg

Ordinance, Resolution, and Agenda Request

DATE: March 23, 2021

TO: The Honorable Mayor and Members of City Council

THROUGH: Kenneth Miller, Interim City Manager
Lionel Lyons, Deputy City Manager of Development and Operations

FROM: Reginald Tabor

RE: **A Public Hearing and consideration of an Ordinance amending the text of the City's Zoning Ordinance regarding restaurants and other uses.**

PURPOSE: To hold a Public Hearing and consideration of an Ordinance amending the text of the City's Zoning Ordinance regarding restaurants and other uses.

REASON: To comply with code and procedural requirements for amending the text of the City's Zoning Ordinance.

RECOMMENDATION: It is recommended that the City Council approves the amendments to the text of the City's Zoning Ordinance regarding restaurants and other uses.

BACKGROUND: There are currently more than eighty (80) restaurants located in the City of Petersburg. The City's Zoning Ordinance currently does not contain a definition for or otherwise regulate "restaurants."

Within the current Zoning Ordinance, restaurant is included in the definitions of Adult Entertainment Establishment, Drive-in restaurant, and Nightclub. Restaurant is also included in the use regulations of Article 10. "R-5" Multiple Dwelling, and Article 18.1. "MXD-1" Mixed Use District. Fast Food Restaurants and Restaurants except fast-food restaurants but including those accessory to hotels and motels, are referenced in Art. 19, § 4 Petersburg Code Art. 19, § 6 Section 5. Parking space requirements. Zoning matters related to restaurants have been considered under Zoning Ordinance regulations listed above and in Article 14. "B-1" Shopping Center District Regulations, Section 2. Use Regulations (1) Retail sale of merchandise, services, recreational areas, parking areas and other facilities, as set forth and described in this section and ordinarily accepted as shopping center uses.

There is a need to further define restaurants and related uses to clarify zoning matters related to restaurants.

The Planning Commission adopted a resolution during their meeting on February 17, 2021 recommending approval of the text amendment.

COST TO CITY: N/A

BUDGETED ITEM: N/A

REVENUE TO CITY: N/A

CITY COUNCIL HEARING DATE:

CONSIDERATION BY OTHER GOVERNMENT ENTITIES: N/A

AFFECTED AGENCIES: N/A

RELATIONSHIP TO EXISTING ORDINANCE OR RESOLUTION: City's Zoning Ordinance

REQUIRED CHANGES TO WORK PROGRAMS: N/A

ATTACHMENTS:

1. 0302_2021OrdinanceRestaurants

AN ORDINANCE APPROVING AN AMENDMENT TO THE PETERSBURG ZONING ORDINANCE TO ADDRESS RESTAURANTS AND RELATED USES

WHEREAS, The City’s Zoning Ordinance currently does not contain a definition for or otherwise regulate “restaurants”; and

WHEREAS, Within the Zoning Ordinance, restaurant is included in the definitions of Adult Entertainment Establishment, Drive-in restaurant, and Nightclub; and

WHEREAS, Restaurant is also included in the use regulations of Article 10. "R-5" Multiple Dwelling, and Article 18.1. "MXD-1" Mixed Use District; and

WHEREAS, Fast Food Restaurants and Restaurants except fast-food restaurants but including those accessory to hotels and motels, are referenced in Art. 19, § 4 Petersburg Code Art. 19, § 6 Section 5. Parking space requirements; and

WHEREAS, Zoning matters related to restaurants have been considered under Zoning Ordinance regulations listed above and in Article 14. "B-1" Shopping Center District Regulations, Section 2. Use Regulations (1) Retail sale of merchandise, services, recreational areas, parking areas and other facilities, as set forth and described in this section and ordinarily accepted as shopping center uses; and

WHEREAS, There is a need to further define restaurants and related uses to clarify zoning matters related to restaurants; and

WHEREAS, The item was on the posted February 3, 2021 Planning Commission Meeting Agenda as an information item, and on the February 17, 2021 Planning Commission Meeting Agenda as a public hearing. Public Hearing notices were advertised in compliance with Code requirements.

WHEREAS, During the February 17, 2021 meeting, the Petersburg Planning Commission held a Public Hearing and considered the matter, then approved a resolution recommending approval by the City Council.

NOW THEREFORE BE IT ORDAINED that the City of Petersburg City Council does hereby approve a Zoning Ordinance Text Amendment consistent with the attached (**Exhibit A**).

Exhibit A

ARTICLE 3 SECTION 1 OF THE PETERSBURG ZONING ORDINANCE “DEFINITIONS” IS HEREBY AMENDED AND RE-ADOPTED TO INCLUDE:

Live Entertainment. An accessory use allowing live performances but not limited to, music performances involving amplified music or more than one live instrument, a disc jockey, any form of dancing, karaoke, solo artists and comedians.

Micro-Brewery, Micro-Distillery, Micro-Winery and/or Micro-Cidery. A facility for the production and packaging of alcoholic beverages for distribution, retail or wholesale, on- or off-premises and which meets all Virginia Alcoholic Beverage Control laws and regulations. The facility may include other uses such as retail sales, tasting rooms and restaurants.

Mobile Food Unit. A restaurant that is mounted on wheels and readily movable from place to place by an internal engine or that is towed from place to place by a motor vehicle. Mobile food unit shall not include vending carts or other conveyances which are designed to be moved by either human or animal power.

Nightclub. An establishment where entertainment, live or otherwise, predominates over food service, becoming the principal use for at least during part of the business' operations, with or without dancing, and typically involving a cover or other charge for admission and event advertising. An establishment that serves alcoholic beverages, that provides live entertainment with live music, a disc jockey and a dance floor and that operates late in the evening later than 11:00 p.m.

- 1) A nightclub shall not serve food or beverages to customers between the hours of 2:00 a.m. and 6:00 a.m.
- 2) A menu shall be provided containing an assortment of foods which shall be made available at all times the establishment is open. A food menu and full dining service shall be available at the bar.
- 3) No door to the establishment which opens onto or faces a public right-of-way shall be propped open during any time that entertainment is being provided.
- 4) The establishment shall maintain a current, active business license at all times while in operation.
- 5) The establishment shall remain current on all food beverages taxes and business personal property taxes which may become due while it is in operation.
- 6) The area devoted to dance floor shall not exceed 250 square feet or ten percent of total floor area (exclusive of food preparations and service area), whichever is greater.

Private plaza means a multi-purpose area that allows flexibility of space within its boundaries, to include planned and passive activities such as festivals, art events, outdoor movies, staged musical or theatrical entertainment, which may also include fountains,

benches, temporary installations, including temporary stages, lighting and sound equipment, recreational facilities, outdoor furniture and seating areas and outdoor seating for restaurants and other eating establishments that surround the plaza.

Private Club. An establishment of a private not-for-profit organization, including fraternal organizations, which provides social, physical, recreational, educational or benevolent services. Such establishment shall not be operated for the purpose of carrying on a trade or business, and no part of the net earnings shall inure to the benefit of any member of such organization or any other individuals, although regular employees may be paid reasonable compensation for services rendered.

Restaurant. an establishment where food and beverages are prepared and sold for consumption both on and off the premises, and with customer seating provided on the premises.

Restaurant, Carry Out. An establishment where food and beverages are prepared for consumption off the premises, and with no customer seating on the premises.

Restaurant, Coffee or Ice Cream Shop. A small restaurant, typically no more than 2,000 square feet in area, where the principal business is either the sale of coffee and other hot beverages or the sale of ice cream, frozen yogurt or other related confections. Pastries, baked goods, cold beverages, sandwiches and other light fare may also be sold incidental to the service of coffee, and other confections, but no alcohol is served, no entertainment takes place and no significant cooking, other than the application of heat by microwave, electric burner, espresso machine, the heating of soup or the boiling of water, typically takes place; and



City of Petersburg

Ordinance, Resolution, and Agenda Request

DATE: March 23, 2021

TO: The Honorable Mayor and Members of City Council

THROUGH: Kenneth Miller, Interim City Manager
Lionel Lyons, Deputy City Manager of Development and Operations

FROM: Reginald Tabor

RE: **A Public Hearing and consideration of an Ordinance amending the City of Petersburg Municipal Code regarding the Chesapeake Bay Preservation Act.**

PURPOSE: To hold a Public Hearing and consider an Ordinance amending the City of Petersburg Municipal Code regarding the Chesapeake Bay Preservation Act.

REASON: To comply with Code and Procedural requirements for amending the Municipal Code, and consider amendments regarding the Chesapeake Bay Preservation Act.

RECOMMENDATION: It is recommended that the City Council adopts the Ordinance amending the Municipal Code regarding the Chesapeake Bay Preservation Act.

BACKGROUND: The Chesapeake Bay Preservation Act (Bay Act) was enacted by the Virginia General Assembly in 1988 as a critical element of Virginia's nonpoint pollution source management program. The purpose of the Bay Act program is to protect and improve water quality in the Chesapeake Bay by requiring the implementation of effective land use management practices.

The City of Petersburg Municipal Code currently includes provisions for the Chesapeake Bay Preservation Act. There is a need to amend sections of the City's Municipal Code to address additional Chesapeake Bay Preservation Act considerations and requirements to remain compliant with State and Federal laws.

The proposed Amendments to the Municipal Code are defined in the attached document (Exhibit A).

During the March 10, 2021 meeting, the Petersburg Planning Commission held a Public Hearing and considered the matter, then considered a resolution recommending approval by the City Council.

COST TO CITY: N/A

BUDGETED ITEM: N/A

REVENUE TO CITY: N/A

CITY COUNCIL HEARING DATE:

CONSIDERATION BY OTHER GOVERNMENT ENTITIES: Virginia Department of Environmental Quality.

AFFECTED AGENCIES: Department of Public Works, Department of Planning and Community Development.

RELATIONSHIP TO EXISTING ORDINANCE OR RESOLUTION: Ord. No. 04-51, 6-15-2004

REQUIRED CHANGES TO WORK PROGRAMS: N/A

ATTACHMENTS:

1. 0302_2021PetersburgChesBayPACodeOrdinance-PLZLAP3-7
2. 0302_2021OrdinanceChesBayActExhibitB

**AN ORDINANCE APPROVING AN AMENDMENT TO THE CITY OF
PETERSBURG MUNICIPAL CODE CHESAPEAKE BAY PRESERVATION
AREAS SECTION**

WHEREAS, The Chesapeake Bay Preservation Act (Bay Act) was enacted by the Virginia General Assembly in 1988 as a critical element of Virginia's nonpoint pollution source management program; and

WHEREAS, The purpose of the Bay Act program is to protect and improve water quality in the Chesapeake Bay by requiring the implementation of effective land use management practices; and

WHEREAS, The Bay Act program is the only program administered by the Commonwealth of Virginia that comprehensively addresses the effects of land use planning and development on water quality; and

WHEREAS, The Bay Act recognizes that local governments have the primary responsibility for land use decisions and expands their authority to manage water quality, and establish a direct relationship between water quality protection and local land use decision-making; and

WHEREAS, Under the Bay Act framework, the Chesapeake Bay Preservation Area Designation and Management Regulations were originally adopted in 1989, and amended in 1991, 2001 and in 2012; and

WHEREAS, The Regulations provide the required elements and criteria that local governments must adopt and implement in administering their Bay Act programs.

WHEREAS, The City of Petersburg Municipal Code currently includes provisions for the Chesapeake Bay Preservation Act; and

WHEREAS, There is a need to amend sections of the City's Municipal Code to address additional Chesapeake Bay Preservation Act considerations and requirements; and

WHEREAS, During the March 10, 2021 meeting, the Petersburg Planning Commission held a Public Hearing and considered the matter.

NOW THEREFORE BE IT ORDAINED that the City of Petersburg City Council does hereby approve Amendments to the Municipal Code consistent with the attached (**Exhibits A and B**).

Exhibit A

CHAPTER 122 OF THE PETERSBURG MUNICIPAL CODE IS HEREBY
AMENDED AND RE-ADOPTED TO INCLUDE THE ADDITIONS, DELETIONS
AND MODIFICATIONS BELOW:

ARTICLE II. - CHESAPEAKE BAY PRESERVATION AREAS

DIVISION 1. - GENERALLY

Sec. 122-31. - Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words and terms not defined in this article but defined in the zoning ordinance shall be given the meanings set forth therein.

Agricultural land means that land used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry or livestock.

Best management practice or *BMP* means a practice, or a combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

Buffer area means an area of natural or established vegetation managed to protect other components of a resource protection area and state waters from significant degradation due to land disturbances.

City means the city council.

~~*CBLAD* means the Chesapeake Bay Local Assistance Department.~~

Chesapeake Bay Preservation Area (CBPA) means an area delineated by the city in accordance with criteria established pursuant to Code of Virginia, § 10.1-2107. A "Chesapeake Bay Preservation Area" shall consist of a resource protection area and a resource management area.

Construction footprint means the area of all impervious surface including, but not limited to, buildings, roads and drives, parking areas and sidewalks, and the area necessary for construction of such improvements.

[DEQ means the Virginia Department of Environmental Quality](#)

Development means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

Diameter at breast height or *DBH* means the diameter of a tree measured outside the bark at a point 4.5 feet above ground.

Dripline means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

Highly erodible soils means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility of any soil is defined as the product of the formula $RKLS/T$, as defined by the "Food Security Act (F.S.A.) Manual" of August 1988 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope, length and steepness; and T is the soil loss tolerance.

Highly permeable soils means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soils having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service.

Impervious cover means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

Infill means utilization of vacant land in previously developed areas.

Floodplain Administrator means the entity responsible for implementing the community's local flood plain ordinance and ensuring the community is complying with minimum NFIP standards and enforcing any locally imposed higher standards.

Nonpoint source pollution means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and use.

Nontidal wetlands means those wetlands other than tidal wetlands that are inundated or saturated by surface 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, as defined by the U.S. Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act, in 33 CFR 328.3b, as now or hereafter amended.

Nonvegetated wetlands means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

Noxious weeds means weeds that are difficult to control effectively, such as Johnson grass, kudzu, and multiflora rose.

Plan of development means the process for site plan or subdivision plat review to ensure compliance with Code of Virginia, § 10.1-2109 and this article prior to any clearing or grading of a site or the issuance of a building permit.

Public road means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (Code of Virginia § 10.1-560 et seq.) and (ii) the Virginia Stormwater Management Act (Code of Virginia § 10.1-603.1 et seq.). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

Redevelopment means the process of developing land that is or has been previously developed.

Resource management area or *RMA* means that component of the Chesapeake Bay Preservation Area that is not classified as the resource protection area. RMAs include land types that, if improperly used

or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

Resource protection area or *RPA* means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

Silvicultural activities means forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the state forester pursuant to Code of Virginia § 10.1-1105 and are located on property defined as real estate devoted to forest use under Code of Virginia § 58.1-3230.

Substantial alteration means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the resource management area only.

Tidal shore or *shore* means land contiguous to a tidal body of water between the mean low water level and the mean ~~high-water~~high-water level.

Tidal wetlands means vegetated wetlands and nonvegetated wetlands as defined in Code of Virginia, § 28.2-1300.

Use means an activity on the land other than development including, but not limited to, agriculture, horticulture and silviculture.

Vegetated wetlands means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1½ times the mean tide range at the site of the proposed project in the county, city, or town in question, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrichia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead

Page 6

(*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

Water-dependent facility means a development of land that cannot exist outside of the resource protection area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to:

- (1) Ports.
- (2) The intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers.
- (3) Marinas and other boat docking structures.
- (4) Beaches and other public water-oriented recreation areas.
- (5) Fisheries or other marine resources facilities.

Wetlands means tidal and non-tidal wetlands, and both vegetated and nonvegetated wetlands.

(Code 1981, §§ 9.5-3, 9.5-4, 9.5-12; Ord. No. 04-51, 6-15-2004)

Editor's note— The zoning ordinance is on file in the office of the clerk of the city council.

Cross reference— Definitions generally, § 1-2.

Sec. 122-32. - Findings of fact.

- (a) The Chesapeake Bay and its tributaries represent one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of the city and the commonwealth.
- (b) The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including nonpoint source pollution from land uses and development. Existing ~~high-quality~~ high-quality waters are worthy of protection to guard against further degradation. Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints attributable to flooding, erosion, and soil

limitations. With proper management, these lands offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline erosion control. These lands together, designated by the city council as Chesapeake Bay Preservation Areas, need to be protected from destruction and damage in order to protect the quality of water in the bay and consequently the quality of life in the city and the commonwealth.

(Code 1981, § 9.5-1)

Sec. 122-33. - Purpose and intent.

- (a) This article is enacted to implement the requirements of Code of Virginia, § 10.1-2100 et seq. (the Chesapeake Bay Preservation Act). The intent of the city council is to establish an overlay district, the purpose of which is to:
- (1) Protect existing ~~high-quality~~high-quality state waters.
 - (2) Restore state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them.
 - (3) Safeguard the clean waters of the commonwealth from pollution.
 - (4) Prevent any increase in pollution.
 - (5) Reduce existing pollution.
 - (6) Promote water resource conservation in order to provide for the health, safety, and welfare of the citizens of the city.
- (b) This district shall be in addition to and shall overlay all other zoning districts so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by the zoning ordinance. Unless otherwise stated in the overlay district, the existing review and approval procedures provided in current city ordinances and regulations shall be followed in reviewing and approving development, redevelopment, and uses governed by this article.
- (c) This article is enacted under the authority of Code of Virginia, § 10.1-2100 et seq. (the Chesapeake Bay Preservation Act) and Code of Virginia, § 15.2-2283. Code of Virginia, § 15.2-2283 states that

zoning ordinances may "also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in Code of Virginia, § 62.1-255."

(Code 1981, § 9.5-2)

Editor's note— The zoning ordinance is on file in the office of the clerk of the city council.

Sec. 122-34. - Resource protection area and resource management area.

A Chesapeake Bay Preservation Area shall consist of a resource protection area and a resource management area.

(Code 1981, § 9.5-4)

Secs. 122-35—122-50. - Reserved.

DIVISION 2. - APPLICATION

Subdivision I. - In General

Sec. 122-51. - Areas of applicability.

(a) The Chesapeake Bay Preservation Area Overlay District shall apply to all lands identified as CBPAs as designated by the city council and as shown on the Chesapeake Bay Preservation Area Map. The Chesapeake Bay Preservation Area Map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this article.

(1) The resource protection area is all lands within the city lying within the Chesapeake Bay ~~outfall~~ watershed including:

- a. Tidal shores.
- b. Tidal wetlands.
- c. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow.
- d. A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsections (a)(1)a. through c. of this section, and along both sides of any water bodies with perennial flow.

(2) The resource management area is composed of that area lying 100 feet landward of and contiguous to the resource protection area and, in addition, any area consisting of the 100-year floodplain and hydric soils adjacent to water bodies with perennial flow, included in the RPA, as delineated on the map referenced in this subsection.

- (b) The Chesapeake Bay Preservation Area Map shows the general location of CBPAs and shall be consulted by persons contemplating activities within the city prior to engaging in a regulated activity. Site specific determinations regarding CBPAs shall be accomplished as per the requirements of section 122-56 of this division.
- (c) If the boundaries of an [resource preservation area \(RPA\)](#) or [resource management area \(RMA\)](#) include a portion of a lot or parcel, the entire lot or parcel shall comply with the requirements of the overlay district. The division of property shall not constitute an exemption from this requirement.

(Code 1981, § 9.5-5; Ord. No. 04-51, 6-15-2004)

Sec. 122-52. - Use regulations.

Permitted uses, special permit uses, accessory uses, and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth in this article.

(Code 1981, § 9.5-6)

Sec. 122-53. - Lot size.

Lot size shall be subject to the requirements of the underlying zoning district, provided that any lot shall have sufficient area outside the RPA to accommodate an intended development, in accordance with the performance standards in subdivision II of this division, when such development is not otherwise allowed in the RPA.

(Code 1981, § 9.5-7)

Sec. 122-54. - Required conditions.

~~(a) All development and redevelopment exceeding 2,500 square feet of land disturbance shall be subject to a plan of development process, including the approval of a site plan, in accordance with the provisions of the zoning ordinance, or a subdivision plat, in accordance with the subdivision ordinance.~~

(ba) Development in RPA's may be allowed only if it:

- (1) Is water-dependent:
 - a. A new or expanded water dependent facility may be allowed provided that the following criteria are met:
 - (i) It does not conflict with the Comprehensive Plan.
 - (ii) It complies with the performance criteria set forth in section 122-77 of this article.
- (2) Any nonwater-dependent component is located outside of the RPA; and
 - a. Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.
- (3) Constitutes redevelopment and meets the following criteria:
 - a. Redevelopment shall be permitted in the RPA only if there is no increase in the amount of impervious cover and no further encroachment within the RPA, and it shall conform to applicable erosion and sediment control requirements set forth in subsection 122-77(d) and stormwater management criteria set forth in subsection 122-77(g) of this article.
- (4) Is a new use established pursuant to subsection 122-78(d)(2) and (3) of this article.

- (5) Is a road or driveway crossing not exempt under §section 122-122, and which, therefore, must comply with this section. Such road or driveway crossing may be constructed in or across Resource Protection Areas if each of satisfying the following conditions isare met:
- a. The ~~director~~ Director of ~~planning~~ Planning/Community Development makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the RPA;
 - b. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and minimize adverse impacts on water quality;
 - c. The design and construction of the road or driveway satisfy all applicable criteria of this article, including the submission of a water quality impact assessment;
 - d. The ~~director~~ Director of ~~planning~~ Planning/Community Development reviews the plan for the road or driveway proposed in or across the RPA in coordination with the requirements under city site plan.
- (6) Is a flood control or stormwater management facility that drains or treats water from multiple development projects or from a significant portion of a watershed, satisfying the following conditions Such facilities may be allowed in Resource Protection Areas provided such facilities they are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations, and provided that:
- a. The City of Petersburg Director of Public Works has conclusively established that location of the facility within the resource protection area is the optimum location;
 - b. The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;
 - c. The facility must be consistent with a comprehensive stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board as a Phase 1 modification plan developed and approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program (VSMP) regulations;
 - d. All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission;

- e. Approval must be received from the City of Petersburg prior to construction.
- f. Provisions to require the owner/developer to perform and/or allow routine maintenance on such facility to assure the continued function of the facility as per its design. ~~It is not the intent of this subdivision to~~This subdivision does not allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

~~(eb)~~ A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within RPAs and for any development or redevelopment within RMAs when required by the ~~city director of public works~~City Director of Public Works because of the unique characteristics of the site or intensity of development, in accordance with the provisions of subdivision III of this division.

(Code 1981, § 9.5-8; Ord. No. 05-76, 9-6-2005)

Editor's note— The zoning ordinance is on file in the office of the clerk of the city council.

Sec. 122-55. - Conflict with other regulations.

In any case where the requirements of this article conflict with any other provision of the Code of the city, the requirements of this article shall apply.

(Code 1981, § 9.5-9)

Sec. 122-56. - Site-specific determination of ~~resource protection area~~Chesapeake Bay Preservation Area boundaries.

~~(a)~~ ~~(a)~~The Chesapeake Bay Preservation Area Map shall be used as a guide to the general location of resource protection~~the Chesapeake Bay Preservation A-areas.~~

~~Delineation by the applicant. The site specific boundaries of the resource protection area shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the director of planning and in accordance with subdivision III of this division. The~~

~~Chesapeake Bay Preservation Area Map shall be used as a guide to the general location of resource protection areas.~~

- ~~(1) The determination of water bodies with perennial flow shall be made by use of a scientifically valid system of in-field indicators.~~
- (b) The Director of Planning (or Dept of Public Works?) shall ensure, as part of their plan of development review process pursuant to §XXX-XXsubdivision III of this division or during their review of a water quality impact assessment pursuant to §XXX-XXsection 122-102 of this article - that a reliable, site-specific evaluation is conducted by the applicant to determine whether water bodies on or adjacent to the development site have perennial flow and resource protection areaChesapeake Bay Preservation Area boundaries are adjusted, as necessary on the site based upon this evaluation. The determination of water bodies with perennial flow shall be made by use of a scientifically valid system of in-field indicators.
- (c) ~~Where conflict arises over delineation.~~ When the applicant provides a site-specific delineation of the ~~RPACBPAs~~, the ~~director-Director~~ of ~~planning pPublic wWorks~~ will verify the accuracy of the boundary delineation. In determining the site-specific ~~RPA-CBPA~~ boundary, the ~~director-Director~~ of ~~planning pPublic wWorks~~ may render adjustments to the applicant's boundary delineation, in accordance with section subdivision III of this division. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of section 122-105.

(Code 1981, § 9.5-10; Ord. No. 04-51, 6-15-2004)

Secs. 122-57—122-75. - Reserved.

Subdivision II. - Performance Standards

Sec. 122-76. - Purpose and intent.

- (a) The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration. Natural ground

Page 14

cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

- (b) The purpose and intent of these requirements are also to implement the following objectives:
 - (1) Prevent a net increase in nonpoint source pollution from new development.
 - (2) Achieve a ten percent reduction in nonpoint source pollution from redevelopment.
 - (3) Achieve a 40 percent reduction in nonpoint source pollution from agricultural uses.

(Code 1981, § 9.5-11(a))

Sec. 122-77. - General performance standards for development and redevelopment.

- (a) Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
 - (1) In accordance with an approved site plan, the limits of land disturbance, including clearing or grading, shall be strictly defined by the construction footprint. These limits shall be clearly shown on submitted plans and physically marked on the development site.
 - (2) Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the ~~city director of public works~~City Director of Public Works.
- (b) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed and in accordance with the Virginia Erosion and Sediment Control Handbook.
 - (1) Existing trees six inches in diameter or greater at breast height shall be preserved outside the construction footprint. ~~However, trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.~~ Diseased trees or trees weakened by age, storm, fire, or other injury may be removed, as approved by the ~~city director of public works~~City Director of Public Works.

- (2) Clearing shall be allowed only to provide necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the ~~city director of public works~~ City Director of Public Works.
- (3) Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected five feet outside the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barriers.
- (c) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development permitted.
 - (1) Pervious surfaces, such as grid and modular pavements, shall be used for any required parking area, alley, or other low traffic driveway, unless otherwise approved by the ~~city director of public works~~ City Director of Public Works.
 - (2) Parking space size, with the exception of disabled spaces, shall be 162 square feet. Parking space width shall be nine feet; parking space length shall be 18 feet.
- (d) ~~Sec. 122-96. -- Required.~~

~~Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit, to assure compliance with all applicable requirements of this article. All development and redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process, including the approval of a site plan, in accordance with the provisions of the zoning ordinance, or a subdivision plat, in accordance with the subdivision ordinance prior to any clearing or grading of the site or the issuance of a building permit, to assure compliance with all applicable requirements of this article.~~

- (e) Notwithstanding any other provisions of this article or exceptions thereto, any land disturbing activity exceeding ~~1,000~~ 2,500 square feet, including construction of all single-family houses, septic tanks, and drainfields, shall comply with the requirements of chapter 50, article V of this Code, the erosion and sediment control ordinance.

- (f) Any Chesapeake Bay Preservation Act land-disturbing activity as defined in §62.1-4.15:24 of the Code of Virginia shall comply with the requirements of 9VAC25-870-51 and 9VAC25-870-103.
- (eg) All onsite sewage disposal systems not requiring a Virginia Pollution Discharge Elimination System permit shall be pumped out at least once every five years. However, the following alternatives to mandatory pump-out are available:
- (1) Subject to conditions established by the local health department, local government through the director-Director of public-Public works-Works may ~~permit(??)~~allow the owners of such systems the option of having installation of a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from effluent while sustaining adequate flow to the drain field to permit normal use of the septic system. Any such filter must meet or exceed standards established in the Sewage Handling and Disposal Regulations (12 VAC 5-610) as administered by the Virginia Department of Health; or
 - (2) ~~In lieu of requiring proof of septic tank pump-out every five years, T~~the director-Director of public Public works-Works and the Director of the Crater Health District may allow the owner(s) of on-site sewage treatment systems to submit documentation every five years, certified by an operator or onsite soil evaluator licensed or certified under Chapter 23 (§54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design onsite sewage systems, sewage handler permitted by the Virginia Department of Health that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it at that time.
- (fh) ~~Where~~For new construction, where an area is not served by public sewer system, a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an onsite sewage treatment system which operates under a permit issued by the state water control board until the structure is served by public sewer.
- ~~(g) For any development or redevelopment, stormwater runoff shall be controlled by best management practices. Stormwater management criteria consistent with the water quality protection provisions of the Stormwater Management Regulations of the Commonwealth of Virginia shall be the standard. Stormwater BMPs shall be consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations as set forth at 4 VAC 50-60-40 through 50-60-90.~~

- (hi) Prior to ~~initiating authorizing~~⁽²⁾ grading or other onsite activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the ~~city director of public works~~City Director of Public Works, in accordance with subdivision III of this division ~~and prior to authorizing grading or other onsite activities to begin.~~
- (ij) ~~Land upon which agricultural activities are being conducted shall have a soil and water quality conservation assessment, that where necessary, results in a conservation plan. Such assessment and resulting necessary plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with this article. Such assessment and resulting necessary plan shall be approved by the local soil and water conservation district. Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act and this chapter.~~
- (1) Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost share programs must be designed, consistent with cost share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:
- a. For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.

- b. For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC50-85).
 - c. For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.
- (2) A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.
- (3) The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board, which will be the plan-approving authority.

(Code 1981, § 9.5-11(b); Ord. No. 04-51, 6-15-2004; Ord. No. 05-76, 9-6-2005; Ord. No. 08-103, § 2, 11-18-2008)

Sec. 122-78. - Buffer area.

- (a) To minimize the adverse effects of human activities on the other components of resource protection areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist ~~if erosion problems are evident.~~
- (b) The buffer area shall be located adjacent to and landward of other RPA component and along both sides of any water bodies with perennial flow. The full buffer area shall be designated as the landward component of the RPA, in accordance with section 122-51 and subdivision III of this division. Notwithstanding permitted uses, encroachments and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width.

- (c) The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.
- (d) The buffer area shall be maintained to meet the following additional performance standards:
 - (1) In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to local approval by the director of public works, only to provide for reasonable sight lines, access paths, general woodlot management, and BMPs, including those that prevent upland erosion and concentrated flows of stormwater, as follows:
 - a. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
 - ~~b~~ab. Any path shall be constructed and surfaced so as to effectively control erosion.
 - ~~e~~bc. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed, pursuant to sound horticultural practice incorporated into locally adopted standards;
 - ~~d~~ed. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.
 - (2) When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the ~~director-Director~~ of planningPlanning/Community Development, after consulting with the ~~city-City director-Director~~ of public-Public worksWorks, may grant an encroachment into the buffer area through an administrative process in accordance with the following criteria:
 - a. Encroachment into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
 - b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel.
 - c. In no case shall the encroachment extend into the seaward 50 feet of the buffer area.

- (3) When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, the ~~director~~Director of ~~planning~~Planning/Community Development, after consulting with the ~~city~~City ~~director~~Director of ~~public~~Public worksWorks, may allow encroachments into the buffer area in accordance with subdivision III of this division and the following criteria:
 - a. The lot or parcel was created as a result of a legal process conducted in conformity with the Subdivision Ordinance of the City of Petersburg;
 - b. Any specific conditions, mitigation measures or other such legally binding conditions or covenants imposed through a previously approved exception shall be binding and shall be met;
 - c. If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated by a certified engineer (retained by the applicant) to determine if it continues to function effectively, and if deemed necessary, the ~~BPM~~BMP shall be reestablished or repaired and maintained, as required; and
 - d. The criteria in subsection (2) (immediately above) of this section (section 122-78, buffer area) shall be met.
- (4) ~~Buffer area requirements for Intensely Developed Areas designated by the City of Petersburg. In Intensely Developed Areas, the City of Petersburg may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, the City may give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. For purposes of this section, intensely developed areas may be designated redevelopment areas in which development is concentrated as of the initial effective date of this section. IDAs may be exempt from the buffer area, in accordance with subdivision III of this division.~~
- (5) On agricultural lands, the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and noxious weeds from invading the buffer area. The agricultural activities may encroach into the buffer area as follows:
 - a. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality

issue on the adjacent land - erosion control or nutrient management - is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Training and Certification Regulations (4 VAC 5-15) administered by the Virginia Department of Conservation and Recreation.

- b. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.
- c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land - either erosion control or nutrient management - is being implemented on the adjacent land.
- d. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions as set forth in this section.

(Code 1981, § 9.5-11(c); Ord. No. 04-51, 6-15-2004)

Secs. 122-79—122-95. - Reserved.

Subdivision III. - Plan of Development Process²¹

Footnotes:

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Cross reference— Administration, [Ch. 2](#).

~~Sec. 122-96. Required.~~

~~Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit, to assure compliance with all applicable requirements of this article.~~

(Code 1981, § 9.5-12)

Sec. 122-97. - Information submitted.

In addition to the requirements of the zoning ordinance or the requirements of the subdivision ordinance, chapter 102 of this Code, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined, as deemed appropriate by the ~~city~~ [City director](#) ~~Director of public~~ [Public works](#) ~~Works~~. The ~~city~~ [City director](#) ~~Director of public~~ [Public works](#) ~~Works~~ may determine that some of the following information is unnecessary due to the scope and nature of the proposed development, with the exception that the environmental site assessment and the water quality impact assessment cannot be waived for projects located on parcels with in designated Chesapeake Bay Preservation Areas. The following plans or studies shall be submitted, unless otherwise directed:

- (1) A site plan or a subdivision plat, in accordance with the provisions of the subdivision ordinance, chapter 102 of this Code.

- (2) An environmental site assessment.
- (3) A landscaping plan.
- (4) A stormwater management plan, [in accordance with the provisions of Chapter 50, Article IV of this Code.](#)
- (5) An erosion and sediment control plan, in accordance with the provisions of chapter 50, article V of this Code.
- (6) A water quality impact assessment as necessary under the requirements of section 122-102.

(Code 1980, § 9.5-12(1); Ord. No. 08-103, § 2, 11-18-2008)

Editor's note— The zoning ordinance is on file in the office of the clerk of the city council.

Sec. 122-98. - Environmental site assessment.

An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.

- (1) The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
 - a. Tidal shores.
 - b. Tidal wetlands.
 - c. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow.
 - d. A 100-foot buffer area located adjacent to and landward of the components listed in subsections (1)a. through c. of this section, and along both sides of any water bodies with perennial flow.
 - e. Other sensitive environmental features as determined by the ~~city~~ City director ~~Director~~ of ~~public~~ Public works ~~Works~~.

- (2) Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987, as now or hereafter amended.
- (3) The environmental site assessment shall delineate the site-specific geographic extent of the RPA.
- (4) The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat, and shall be certified as complete and accurate by a professional engineer or a certified land surveyor. The requirement that the environmental site assessment be developed by a professional engineer or certified land surveyor may be waived by the ~~city~~City director ~~Director of public~~Public works ~~Works~~ when the proposed use or development would result in less than 5,000 square feet of disturbed area.

(Code 1981, § 9.5-12(2); Ord. No. 04-51, 6-15-2004)

Cross reference— Environment, ~~ch~~Ch. 50.

Sec. 122-99. - Landscaping plan.

- (a) A landscaping plan shall be submitted in conjunction with site plan approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscaping plan.
- (b) Landscaping plans shall be prepared and certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia.
 - (1) *Contents of the plan.*
 - a. The landscaping plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees on the site six inches or greater DBH shall be shown on the landscaping plan. Where there are groups of five or more trees, stands may be outlined instead. The specific number of trees six inches or greater DBH to be preserved outside of the construction footprint shall be indicated on the plan. Trees to be removed shall be clearly delineated on the landscaping plan.

- b. Any required buffer area shall be clearly delineated, and any plant material to be added to establish or supplement the buffer area, as required by this article, shall be shown on the landscaping plan.
- c. Within the buffer area, trees to be removed for sight lines, vistas, access paths, and BMPs, as provided for in this article, shall be shown on the plan. Vegetation required by this article to replace any existing trees within the buffer area shall also be shown on the landscaping plan.
- d. Trees to be removed for shoreline stabilization projects and any replacement vegetation required by this article shall be shown on the landscaping plan.
- e. The landscaping plan shall depict grade changes or other work adjacent to trees which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.
- f. The landscaping plan will include specifications for the protection of existing trees during clearing, grading, and all phases of construction.

(2) *Plant specifications.*

- a. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.
- b. All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
- c. Where areas to be preserved, as designated on an approved landscaping plan, are encroached, replacement of existing trees and other vegetation will be achieved at a ratio of three planted trees to one removed. Replacement trees shall be a minimum of 3½ inches DBH at the time of planting.

(3) *Maintenance.*

- a. The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provisions of this article.
- b. In buffer areas and areas outside the construction footprint, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy,

dying, or dead plant materials shall be replaced during the next planting season, as required by the provisions of this article.

(Code 1981, § 9.5-12(3))

~~Sec. 122-100. Stormwater management plan.~~

~~A stormwater management plan shall be submitted as part of the plan of development process required by this article and in conjunction with site plan or subdivision plan approval. Such plan shall clearly indicate how the stormwater management criteria consistent with the water quality protection provisions of (4 VAC 3-20-71 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3-20) shall be satisfied.~~

- ~~(1) *Contents of the plan.* The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this article. At a minimum, the stormwater management plan must contain the following:
 - ~~a. Location and design of all planned stormwater control devices.~~
 - ~~b. Procedures for implementing nonstructural stormwater control practices and techniques.~~
 - ~~c. Pre and post development nonpoint source pollutant loadings with supporting documentation of all utilized coefficients and calculations.~~
 - ~~d. For facilities, verification of structural soundness, including a professional engineer or class III-B surveyor certification.~~~~
- ~~(2) Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.~~
- ~~(3) All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Virginia Stormwater Management Handbook.~~
- ~~(4) The plan shall establish a long term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than~~

~~the city, then a maintenance agreement shall be executed between the responsible party and the city.~~

~~(Code 1981, § 9.5-12(4); Ord. No. 04-51, 6-15-2004; Ord. No. 05-76, 9-6-2005)~~

~~**Cross reference**—Utilities, ch. 114.~~

~~Sec. 122-101. Erosion and sediment control plan.~~

~~An erosion and sediment control plan shall be submitted that satisfies the requirements of this article and in accordance with chapter 50, article V of this Code, in conjunction with site plan or subdivision plan approval.~~

~~(Code 1981, § 9.5-12(5); Ord. No. 08-103, § 2, 11-18-2008)~~

~~**Cross reference**—Erosion and sediment control, § 50-91 et seq.~~

Sec. 122-102. - Water quality impact assessment.

(a) *Purpose and intent.* The purpose of the water quality impact assessment is to:

- (1) Identify the impacts of proposed land disturbance, development, or redevelopment on water quality and lands within RPAs and other environmentally-sensitive lands and to determine specific measures for mitigation of those impacts.
- (2) Ensure that, where development activities do take place within RPAs and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands.
- (3) Protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood and storm damage.
- ~~(4) Provide for administrative relief from the terms of this article when warranted and in accordance with the requirements contained in this article.~~

~~(5) Specify mitigation which will address water quality protection.~~

(b) *Water quality impact assessment required.* A water quality impact assessment is required for:

- (1) Any proposed land disturbance, development, or redevelopment within an RPA, including any buffer area encroachment as provided for in subdivision II of this division.
- (2) Any development in an RMA as deemed necessary by the ~~city~~ City director ~~Director~~ of ~~public~~ Public works ~~Works~~ due to the unique characteristics of the site or intensity of the proposed development.

There shall be two levels of water quality impact assessment: a minor assessment and a major assessment.

(c) *Minor water quality impact assessment.* A minor water quality impact assessment pertains only to development within CBPAs which causes no more than 5,000 square feet of land disturbance and requires any encroachment into the landward 50 feet of the 100-foot buffer area. Submission of a plan of development that demonstrates, through the use of calculations and information provided for by subsection 122-100(1), that the remaining buffer area and necessary BMPs will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater runoff shall be deemed to have satisfied the requirement for a minor water quality impact assessment. A revegetation plan shall be required. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits, as well as run-off and pollutant removal equivalent to the full 100-foot undisturbed buffer area.

(d) *Major water quality impact assessment.* A major water quality impact assessment shall be required for any development which: (i) exceeds 5,000 square feet of land disturbance within CBPAs and requires any encroachment into the landward 50 feet of the 100-foot buffer area; (ii) disturbs any portion of the seaward 50 feet of the 100-foot buffer area or any other component of an RPA; or (iii) is located in an RMA and is deemed necessary by the ~~city~~ City director ~~Director~~ of ~~public~~ Public works ~~Works~~. The information required in this section shall be considered a minimum, unless the ~~city director of public works~~ City Director of Public Works determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land. The following elements shall be included in the preparation and submission of a major water quality assessment:

- (1) All of the information required in a minor water quality impact assessment, as specified in subsection (c) of this section.
- (2) A hydrogeological element that:

- a. Describes the existing topography, soils, hydrology, and geology of the site and adjacent lands.
- b. Describes the impacts of the proposed development on topography, soils, hydrology, and geology of the site and adjacent lands.
- c. Indicates the disturbance or destruction of wetlands and justification for such action.
- d. Indicates the disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers or other water bodies.
- e. Indicates the disruptions to existing hydrology including wetland and stream circulation patterns.
- f. Indicates the source, location, and description of proposed fill material.
- g. Indicates the location of dredge material and location of dumping area for such material.
- h. Indicates the location of and impacts on shellfish beds, submerged aquatic vegetation, and fish spawning areas.
- i. Estimates percent increase in impervious surface on site and type(s) of surfacing materials used.
- j. Indicates percent of site to be cleared for project.
- k. Indicates duration and phasing schedule of construction project.
- l. Lists requisite permits from all applicable agencies necessary to develop project.
- m. Describes the proposed mitigation measures for the potential hydrogeological impacts which may include:
 - 1. Proposed erosion and sediment control concepts; concepts may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection.
 - 2. Proposed stormwater management system.
 - 3. Creation of wetlands to replace those lost.
 - 4. Minimizing cut and fill.

- (3) A landscape element that describes the potential measures for mitigation of the water quality and land impacts within the CBPAs. Possible mitigation measures include:
 - a. Replanting schedule for trees and other significant vegetation removed for construction, in accordance with a plan approved by the ~~city director of public works~~City Director of Public Works.
 - b. Demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation.
 - c. Demonstration that ~~indigenous native~~ plants are to be used to the greatest extent possible.
 - (4) As part of any major water quality impact assessment submittal, the ~~city director of public works~~City Director of Public Works may require review by the ~~Chesapeake Bay Local Assistance Virginia Department of Environmental Quality (DEQ)~~DEQ. Upon receipt of a major water quality impact assessment, the ~~city director of public works~~City Director of Public Works will determine if such review is warranted and may request ~~CBLAD-DEQ~~ to review the assessment and respond with written comments. Any comments by ~~CBLAD-DEQ~~ will be incorporated into the final review by the ~~city director of public works~~City Director of Public Works, provided that such comments are provided by ~~CBLAD-DEQ~~ within 90 days of the request.
- (e) *Evaluation procedure.*
- (1) Upon the completed review of a minor water quality impact assessment, the ~~city director of public works~~City Director of Public Works will determine if any proposed encroachment into the buffer area is consistent with the provisions of this article and that the following criteria have been satisfied:
 - a. The proposed encroachment is necessary due to the inability to place improvements elsewhere on the site to avoid disturbance of the buffer area.
 - b. Impervious surface is minimized.
 - c. Proposed BMPs, where required, achieve the requisite in pollutant loadings.
 - d. The development, as proposed, meets the purpose and intent of this article.
 - e. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

- (2) Upon the completed review of a major water quality impact assessment, the ~~city director of public works~~City Director of Public Works will determine if the proposed development is consistent with the purpose and intent of this article and that the following criteria have been satisfied:
 - a. Within any RPA, the proposed development is water-dependent or redevelopment.
 - b. The disturbance of any wetlands will be minimized.
 - c. The development will not result in significant disruption of the hydrology of the site.
 - d. The development will not result in significant degradation to aquatic vegetation or life.
 - e. The development will not result in unnecessary destruction of plant materials on site.
 - f. Proposed erosion and sediment control concepts are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control.
 - g. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control.
 - h. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits.
 - i. The development, as proposed, is consistent with the purpose and intent of the overlay district.
 - j. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
- (3) The ~~city director of public works~~City Director of Public Works shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the ~~city director of public works~~City Director of Public Works based on the criteria listed in subsections (a) and (b) of this section.
- (4) The ~~city director of public works~~City Director of Public Works shall conclude that the proposal is inconsistent with the purpose and intent of this article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the ~~city director of public works~~City Director of Public Works based on the criteria listed in subsections (c) and (d) of this section.

(Code 1981, § 9.5-12(6); Ord. No. 04-51, 6-15-2004)

Sec. 122-103. - Final plan.

Final plans for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided.

- (1) *Final plans for all lands within CBPAs.* Final plans for all lands within CBPAs shall include the following:
 - a. The delineation of the RPA boundary, including all water bodies with perennial flow.
 - b. The delineation of required RPA buffer areas.
 - c. All wetlands permits required by law.
 - d. A maintenance agreement as deemed necessary and appropriate by the ~~city director of public works~~City Director of Public Works to ensure proper maintenance for BMPs in order to continue their functions.
- (2) *Installation and bonding requirements*
 - a. Where buffer areas, landscaping, stormwater management facilities, or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed, in accordance with the approved site plan.
 - b. When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the city a form of surety satisfactory to the city attorney in amount equal to the remaining plant materials, and installation costs of the required landscaping or other specifications or maintenance costs for any required stormwater management facilities.
 - c. All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the city.
 - d. All required stormwater management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete, or maintain appropriate actions required by the approved plan, the surety may be forfeited to the city. The city may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.

- e. After all required actions of the approved site plan have been completed, the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the ~~city director of public works~~City Director of Public Works, such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following the receipt of the applicant's request for final inspection. The ~~city director of public works~~City Director of Public Works may require a certificate of substantial completion from a professional engineer or class III B surveyor before making a final inspection.

(Code 1981, § 9.5-12(7); Ord. No. 05-76, 9-6-2005)

Sec. 122-104. - Administrative responsibility.

Administration of the plan of development process shall be in accordance with the site plan procedure described in this subdivision or the subdivision regulations in chapter 102 of this Code.

(Code 1981, § 9.5-12(8))

Sec. 122-105. - Denial of plan, appeal of conditions or modifications.

If the final plan or any component of the plan of development process is disapproved, and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decisions to the ~~planning commission~~Board of Zoning Appeals (BZA). In granting or denying an appeal, the ~~planning commission~~BZA must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of the performance standards in this article. If the ~~planning commission~~BZA finds that the applicant's plan does not meet the above stated criteria, it shall deny approval of the plan.

(Code 1981, § 9.5-12(9))

~~Subdivision IV. -- Discharges to the Stormwater Sewer System~~

~~Sec. 122-106. Definitions.~~

~~When used in this article, the following terms shall have the following meanings:~~

~~*Administrator.* The water quality administrator or the water quality administrator's designee.~~

~~*Discharge.* To dispose, deposit, spill, pour, inject, dump, leak or place by any means; and any substance which is disposed, deposited, spilled, poured, injected, dumped, leaked or placed by any means.~~

~~*Illicit discharge.* Any discharge to the storm sewer system that is not composed entirely of storm water except (i) discharges pursuant to a VPDES or NPDES permit, (ii) discharges resulting from fire fighting activities and (iii) discharges listed in section 122-107(b) unless such discharges are identified by the City of Petersburg as sources of pollutants of waters of the United States pursuant to section 122-107(c).~~

~~*Industrial wastes.* Wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.~~

~~*National Pollutant Discharge Elimination System (NPDES) Permit.* The permit issued by the federal government for imposing and enforcing pretreatment requirements pursuant to the Federal Clean Water Act.~~

~~*Other wastes.* Wastes that can adversely affect waters of the United States when discharged into those waters, including, but not limited to, garbage, refuse, lime, fertilizer, ashes, offal, tar, paint, solvents, petroleum products, antifreeze and chemicals.~~

~~*Person.* An individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee of any such person.~~

~~*Sanitary sewer line.* An underground conduit that collects and delivers sanitary wastewater to a wastewater treatment plant.~~

~~*Storm sewer system.* The conveyance or system of conveyances located within the City of Petersburg which are designed or used for collecting, storing or conveying storm water or through which storm water is collected, stored or conveyed, including but not limited to roads, municipal streets, catch basins, drop inlets, curbs, gutters, ditches, pipes, lakes, ponds, man-made channels, storm drains, outfalls, retention, detention and infiltration basins and other facilities.~~

~~*Stormwater.* Stormwater runoff, snow melt runoff, surface runoff and drainage.~~

~~Surface waters. All waters that run across the surface of land, including but not limited to natural or man-made ponds, lakes, impoundments, rivers, streams (including intermittent and ephemeral streams), natural or man-made water courses and tidal and non-tidal wetlands, except that waste treatment systems, treatment ponds and lagoons designed to meet the requirements of the Federal Clean Water Act shall not be surface waters.~~

~~Virginia Pollutant Discharge Elimination System (VPDES). The permit issued by the State of Virginia for imposing and enforcing pretreatment requirements pursuant to the Federal Clean Water Act.~~

~~Waters of the City of Petersburg. All waters, whether on the surface or under the ground, that are wholly or partially within or bordering the City.~~

~~Waters of the United States. All waters, whether on the surface or under the ground, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including but not limited to intrastate lakes, rivers, streams (including intermittent and ephemeral streams), mudflats, sandflats, wetlands, sloughs, prairie pot holes, wet meadows, playa lakes and natural ponds, except that waste treatment systems, treatment ponds and lagoons designed to meet the requirements of the Federal Clean Water Act shall not be waters of the United States.~~

~~Wetlands. Land that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, generally including but not limited to swamps, marshes, bogs and similar areas.~~

~~(Ord. No. 10-14, § 1, 4-6-2010)~~

~~Sec. 122-107. -- Prohibited discharge to the stormwater sewer system.~~

~~(a) It shall be unlawful to:~~

- ~~(1) Cause or allow illicit discharges to the storm sewer system or to waters of the City of Petersburg;~~
- ~~(2) Cause or allow the discharge of industrial waste or other waste to the storm sewer system or to waters of the City of Petersburg without a VPDES or NPDES permit;~~
- ~~(3) Violate any condition or provision of this article; and~~

- ~~(4) Connect, or cause or allow to be connected to the storm sewer system or waters of the City of Petersburg, without a VPDES or NPDES permit, any structure that conveys any liquid other than stormwater or discharges listed in paragraph (b) of this section, including but not limited to pipes, drains, sanitary sewer lines, washing machine drains or floor drains.~~
- ~~(b) Subject to the provisions of paragraph (c) of this section, the following activities shall not be unlawful illicit discharges:~~
- ~~(1) Water line flushing;~~
 - ~~(2) Landscape irrigation;~~
 - ~~(3) Diverted stream flows or rising groundwaters;~~
 - ~~(4) Infiltration of uncontaminated groundwater;~~
 - ~~(5) Pumping of uncontaminated groundwater;~~
 - ~~(6) Discharges from potable water sources, foundation drains, irrigation water, springs, water from crawl spaces or footing drains;~~
 - ~~(7) Air conditioning condensation;~~
 - ~~(8) Lawn watering;~~
 - ~~(9) Residential car washing;~~
 - ~~(10) Dechlorinated swimming pool discharges; and~~
 - ~~(11) Public street washing.~~
- ~~(c) If any activity listed in paragraph (b) of this section is found by the administrator to be a source of pollutants to waters of the United States, the administrator shall serve a written notice on the party responsible for the activity which orders that the activity be ceased or conducted in a manner that will avoid the discharge of pollutants to the storm sewer system or waters of the City of Petersburg. The notice shall state the date by which the activity shall cease or be conducted without pollution. Failure to comply with any such order within the time stated in the notice shall constitute a violation of paragraph (a)(3) of this section.~~

~~(Ord. No. 10-14, § 1, 4-6-2010)~~

~~Sec. 122-108.— Inspecting and monitoring stormwater discharge.~~

~~The administrator shall have the authority to inspect and monitor discharges and sources of potential discharge to the storm sewer system to ensure compliance with this article, including the authority to enter upon private property to inspect or monitor such discharges or sources of potential discharge, the administrator shall also have the authority to initiate enforcement actions in accordance with section 122-109.~~

~~(Ord. No. 10-14, § 1, 4-6-2010)~~

~~Sec. 122-109.— Penalties for violations of this article.~~

- ~~(a) Any person who knowingly violates any provision of this article shall be guilty of a class 1 misdemeanor. Each day that such violation is committed, and each day that such violation is permitted to remain uncorrected shall constitute a separate offense.~~
- ~~(b) Any person who otherwise violates any provision of this article shall be subject to a civil penalty between \$250.00 and \$1,000.00 for each day that the violation continues. The court assessing such civil penalty may order the penalty to be paid into the treasury of the City of Petersburg and designated for the purpose of minimizing, preventing, managing or mitigating pollution of the waters of the city.~~
- ~~(c) Any person who violates any provision of this article shall be responsible for testing, containing, cleaning up, abating, removing and disposing of any substance unlawfully discharged into the storm sewer system or into waters of the City of Petersburg, or, if the administrator determines that correction of the violation can best be accomplished by the city, shall be liable to the city for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the storm sewer system or into waters of the city.~~

~~(Ord. No. 10-14, § 1, 4-6-2010)~~

Secs. 122-110—122-120. - Reserved.

DIVISION 3. - NONCONFORMING USE, DEVELOPMENT WAIVERS; EXEMPTIONS; EXCEPTIONS

Sec. 122-121. - Nonconforming use and development waivers.

- (a) ~~The Notwithstanding the expansion requirements in subsection (b) of this section, the~~ lawful use, ~~but not necessarily the expansion,~~ of a building or structure which existed at the time of passage of the ordinance from which this article is derived, ~~or which exists at the time of any amendment to such ordinance or this article,~~ and which is not in conformity with the provisions of the overlay district may be continued in accordance with the nonconforming use provisions of the city's zoning ordinance, provided that:
- ~~(b) No change or expansion of use shall be allowed with the exception that:~~
- ~~(1) The zoning administrator may grant a nonconforming use and development waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming structures provided that:~~
- ~~(1)a.~~ There will be no net increase in nonpoint source pollution load, as certified by the ~~city director of public works~~ City Director of Public Works.
- ~~b(2):~~ Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this article.
- ~~e(3)-(3) This section shall not be construed to prevent the reconstruction of pre-existing structures within CBPAs from occurring as a result of casualty loss unless otherwise restricted by this ordinance~~
- ~~(b) Additions and modifications to existing legal principal structures may be processed as a nonconforming use and development waiver, subject to the following findings:~~
- ~~e(1)~~ The requested exception to the criteria is the minimum necessary to afford relief.
- ~~e(2):~~ Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated.
- ~~e(3):~~ The exception request is in harmony with the purpose and intent of this ordinance and is not of substantial detriment to water quality.

~~f(4)~~. The exception request is not based upon conditions or circumstances that are self-created or self-imposed.

~~g(5)~~. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality.

~~(2c)~~ An application for a nonconforming use and development waiver shall be made ~~to and~~ upon forms furnished by the zoning administrator and shall include, for the purpose of proper enforcement of this article, the following information:

~~(1)a~~. Name and address of applicant and property owner.

~~b(2)~~ Legal description of the property and type of proposed use and development.

~~c(3)~~ A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines and boundary of the RPA.

~~d(4)~~ Location and description of any existing private water supply or sewerage system.

~~(5)~~ RPA and RMA boundaries.

~~(6)~~ Existing and proposed topography.

~~(7)~~ Existing and proposed vegetation.

~~(8)~~ Existing impervious surfaces.

~~(3d)~~ A nonconforming use and development waiver shall become null and void 12 months from the date issued if no substantial work has commenced.

~~(e)~~ These provisions shall not apply to accessory structures.

~~(4)~~ Notwithstanding the provisions of subsections (a) and (b) of this section, additions and modifications to the existing legal principal structures may be processed through this nonconforming use and development waiver review process subject to the findings required by subsection (b)(1) of this section. This provision shall not apply to accessory structures.

(Code 1981, § 9.5-13; Ord. No. 04-51, 6-15-2004; Ord. No. 05-76, 9-6-2005)

Editor's note— The zoning ordinance is on file in the office of the clerk of the city council.

Sec. 122-122. - Exemptions.

(a) Exemptions for public utilities, railroads, public roads and facilities.

- (1) Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with the city's erosion and sediment control ordinance, ~~at chapter Chapter 50, article Article V of this Code, and the stormwater management ordinance, XXXXXX at eChapter 50, aArticle IV of this Code, and an erosion and sediment control plan and a stormwater management plan,~~ will be deemed to constitute compliance with this article. Exempted public roads shall be designed and aligned to prevent or otherwise minimize ~~to the extent practical~~ encroachment into the RPA and adverse effects on water quality.
- (2) Construction, installation, and maintenance of water, sewer, underground telecommunications lines, underground cable television lines and local natural gas lines owned, permitted or both by the City or regional service authority shall be exempt from the overlay district provided that:
 - a. To the degree possible, the location of such utilities and facilities shall be outside RPAs.
 - b. No more land shall be disturbed than is necessary to provide for the proposed utility installation.
 - c. All construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality.
 - d. Any land disturbance exceeding an area of 1,0002,500 square feet complies with all city erosion and sediment control requirements, contained in the erosion and sediment control ordinance at ~~chapter Chapter 50, article Article~~ V of this Code.
 - e. All such exempt public utilities or facilities shall be either owned by the City of Petersburg or permitted by the City of Petersburg.

(b) Exemptions for silvicultural activities. Silvicultural activities are exempt from the requirements of this article provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the 1997–2011 edition of "Virginia's Forestry Best Management Practices for Water Quality in Virginia Technical GuideManual, 5th edition."

- (c) Exemptions in resource protection areas. The following land disturbances in resource protection areas may be exempted from the overlay district:
- (1) Water wells.
 - (2) Passive recreation facilities such as boardwalks, trails, and pathways.
 - (3) Historic preservation and archaeological activities.
 - (4) The immediately above listed land disturbances in resource protection areas may be exempted from the overlay district, provided that it is demonstrated to the satisfaction of the ~~director~~ Director of Planning/Community Development that:
 - a. Any required permits, except those to which this exemption specifically applies, shall have been issued.
 - b. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality.
 - c. The intended use does not conflict with nearby planned or approved uses.
 - d. Any land disturbance exceeding an area of ~~4000~~ 2,500 square feet shall comply with all city erosion and sediment control requirements, contained in the erosion and sediment control ordinance at ~~chapter~~ Chapter 50, ~~article~~ Article V of this Code.

(Code 1981, § 9.5-14; Ord. No. 04-51, 6-15-2004; Ord. No. 05-76, 9-6-2005; Ord. No. 08-103, § 2, 11-18-2008)

Sec. 122-123. ~~—~~ Exceptions.

- (a) A request for an exception to the requirements of sections 122-54, 122-77, and 122-78 of this article shall be made in writing to the ~~d~~Director of ~~P~~planning/Community Development~~BZA~~. The ~~D~~irector of ~~p~~Planning/Community Development ~~BZA~~ shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment, as required, which complies with the provisions of section 122-102. The Director of Planning/Community Development shall forward the request to the Exceptions Review Committee for review, and consideration and recommendation.

- (b) The ~~Exceptions review~~ Review committee ~~Committee~~, consisting of the ~~director~~ Director of ~~planning~~ Planning/Community Development, ~~director~~ Director of ~~public~~ Public Wworks, building official, zoning administrator, ~~chairman of the planning commission~~, and ~~two citizens of the city appointed by city council~~ the Floodplain Administrator, shall review the request, including the water quality impact assessment when required, and provide a recommendation ~~for an exception and the water quality impact assessment prior to going before the BZA approval~~ on the request to the Director of Planning/Community Development or the Board of Zoning Appeals. ~~The exceptions review committee~~ BZA may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this article if the committee finds:
- (1) Granting the exception will not confer upon the applicant any special privileges that are denied by this article to other property owners in the overlay district.
 - (2) The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming that are related to adjacent parcels.
 - (3) The exception request is the minimum necessary to afford relief.
 - (4) The exception request will be in harmony with the purpose and intent of the overlay district and not injurious to the neighborhood, detrimental to the public welfare, and not of substantial detriment to water quality.
 - (5) Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
- (~~c~~) Following a recommendation on the request by the Exception Review Committee, exceptions to Section 122-77 must be approved by the Director of Planning/Community Development based upon the recommendation and findings of the Exception Review Committee.
- (~~d~~) The provisions of this section not withstanding, no ~~Following a recommendation for approval by the Exception Review Committee, exceptions to sections 122-54 and 122-78 must be approved by the Board of Zoning Appeals following~~ shall notice and a public hearing ~~not be authorized except~~ except after notice and a public hearing, conducted by the ~~exceptions review committee~~ Board of Zoning Appeals, as required by Code of Virginia § 15.2-2204, except that only one hearing shall be required. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the notice may be given by first-class mail rather than by registered or certified mail.

~~(c) Appeals of the decisions of the exceptions review committee shall be made to the board of zoning appeals. The board of zoning appeals shall apply the criteria listed in this section when considering the request for an exception upon appeal. (ed)~~ Exceptions to sections of this article other than 122-54, 122-77, and 122-78 may be granted by the Director of Planning/Community Development, provided that:

(1) exceptions to the criteria shall be the minimum to afford relief; and

(2) reasonable and appropriate conditions upon any exception granted shall be imposed as necessary, so that the purpose and intent of the Act is preserved.

(fe) Notwithstanding the provisions of subdivision (de) of this section, additions and modifications to existing legal principal structures may be processed through an administrative review process, as allowed by subdivision (b) of this section and without a requirement for a public hearing. This provision shall not apply to accessory structures.

(gfe) Appeals of the decisions of the ~~E~~Exceptions ~~r~~Review ~~C~~committee Director of Planning/Community Development shall be made to the ~~b~~Board of ~~z~~Zoning ~~a~~Appeals. The ~~B~~board of ~~Z~~zoning ~~A~~appeals shall apply the criteria listed in this section when considering the request for an exception upon appeal.

~~(h) Appeals of the decisions of the Board of Zoning Appeals shall be made to the Circuit Court.~~

(Code 1981, § 9.5-15; Ord. No. 04-51, 6-15-2004)

Exhibit B

CHAPTER 50 OF THE PETERSBURG MUNICIPAL CODE IS HEREBY AMENDED AND RE-ADOPTED TO INCLUDE THE ADDITIONS, DELETIONS AND MODIFICATIONS BELOW:

Chapter 50 - ENVIRONMENT^[1]

Footnotes:

--- (1) ---

Cross reference— Animals, ch. 18; dangerous or vicious dogs, § 18-146 et seq.; rabies control, § 18-231 et seq.; buildings and building regulations, ch. 22; community development, ch. 38; floods, ch. 58; health and sanitation, ch. 62; parks and recreation, ch. 78; planning, ch. 82; solid waste, ch. 94; streets, sidewalks and other public places, ch. 98; deposit of hazardous or injurious material on street or sidewalk removal, § 98-21; subdivisions, ch. 102; utilities, ch. 114; radioactive wastes, § 114-268; hazardous waste, § 114-282; waterways, ch. 122; environmental site assessment for Chesapeake Bay preservation areas, § 122-98.

State Law reference— Erosion and sediment control, Code of Virginia, § 10.1-560 et seq.; local control programs, Code of Virginia, § 10.1-562; stormwater management, Code of Virginia, § 10.1-603.3; local air pollution ordinances, Code of Virginia, § 10.1-1321; abatement or removal of nuisances, Code of Virginia, §§ 15.2-900, 15.2-1115.

ARTICLE I. - IN GENERAL

Secs. 50-1—50-30. - Reserved.

ARTICLE II. - NOISE^[2]

Footnotes:

--- (2) ---

Cross reference— Noise in parks, § 78-63.

Sec. 50-31. - Declaration of policy.

It is hereby declared to be the public policy of the city to protect its citizens against excessive noise which is detrimental to life, health and enjoyment of property. In order to promote the public health, safety, welfare and the peace and quiet of the inhabitants of the city, the standards in this article relating to noise are hereby adopted.

(Code 1981, § 19-1; Ord. No. 14-100, 10-21-2014)

Sec. 50-32. - Definitions.

For purposes of this chapter, the following words shall have the meanings respectively ascribed to them by this section:

A-weighted decibel means the sound level, in decibels, measured with a sound level meter using the A-weighting network or scale as specified in the ANSI S1.4-1983 (specifications for sound level meters). The level so read shall be postscripted dB(A) or dBA.

ANSI means The American National Standards Institute, Inc., New York, New York.

Daytime means the local time of day between the hours of 7:00 a.m. and 10:00 p.m. weekdays and from 9:00 a.m. to 10:00 p.m. on Saturdays, Sundays and legal holidays observed by city government unless otherwise specified.

Decibel means a unit that describes the sound pressure level or intensity of sound. The sound pressure level in decibels is 20 times the logarithm to the base ten of the ratio of the pressure of the sound in microbars to a reference pressure of 0.0002 microbar; abbreviated dB.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Industrial is given the same meaning as defined by the zoning ordinance.

Motor vehicle means every vehicle defined as a motor vehicle by § 46.2-100 of the Code of Virginia, 1950, as amended.

Multi-family dwelling means a building designed for, or occupied exclusively, by three or more families living independently of each other.

Nighttime means those times excluded from the definition of daytime

Noise means any steady-rate or impulsive sound occurring on either a continuous or intermittent basis that disturbs persons or that causes or tends to cause an adverse effect on humans.

Person means any individual, corporation, cooperative, partnership, firm, association, trust, estate, private institution, group, agency, or any legal successors, representative, agent or agency thereof.

Residential area is given the same meaning as defined by the zoning ordinance.

Residential dwelling means a building or portion thereof designed or intended to be occupied as living quarters by one or more persons and including permanent provisions for living, sleeping, eating, cooking and sanitation.

Residential property line means an imaginary line along the ground surface and its vertical extension, which separates the real property owned, leased or otherwise controlled by one person from that owned, leased or otherwise controlled by another person, but not including intra-building real property divisions.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Urban mixed use means a district that includes commercial, industrial, institutional and residential uses, such as B-2, B-3, RB, MXD-1 and MXD-2, as defined by the zoning ordinance.

Zoning district classification means the designation of land use classification contained in the zoning ordinance.

(Code 1981, § 19-3; Ord. No. 14-100, 10-21-2014)

Editor's note— The zoning ordinance is on file in the office of the clerk of the council.

Cross reference— Definitions generally, § 1-2.

Sec. 50-33. - Specific prohibitions.

It shall be unlawful for any person:

- (a) To use, operate or play any radio, phonograph, television, record, compact disc or tape player, musical instrument, loudspeaker, sound amplifier or other machine or device capable of producing or reproducing sound in such a manner or with such volume or duration that it is heard between 11:00 p.m. and 7:00 a.m.:
 - (1) Inside the confines of the residential dwelling, house or multi-family dwelling of another person; or
 - (2) At 50 or more feet from the device, except for devices permitted to be used at public parks or recreation fields, sporting events, school-sponsored activities on school grounds, or duly authorized parades, public functions or commemorative events.
- (b) To allow noise between the hours of 10:00 p.m. and 7:00 a.m. that is heard either inside the confines of the residential dwelling, house or multi-family dwelling of another person or at 50 or more feet when the noise is made by one or more persons.
- (c) To operate, install, have, or permit on the outside of any store, shop, business establishment, warehouse or commercial building, any loudspeaker or other sound-producing or reproducing device capable of emitting music, noise, sounds, tapes or voice in such manner that it is heard on any public sidewalk or street unless it is used only intermittently for announcing or paging an individual or unless it signals the ringing of a telephone, danger from smoke, a fire or a burglary or the beginning or stopping of work or school, or unless it is operated in accordance with conditions of zoning.
- (d) Using any instrument, whistle, drum or bell or making any other unnecessary noise for the purpose of advertising, announcing, or otherwise calling attention to any goods, wares, merchandise, or to any show, entertainment, or event. The provisions of this section shall not be construed to prohibit the selling by verbally announcing the sale of merchandise, food, or beverage at licensed sporting events, parades, fairs, circuses or other similarly licensed public entertainment events.
- (e) To play or permit the playing of any radio, stereo, tape player, compact disc player, loud speaker or other electronic device or mechanical equipment used for the amplification of sound, which is located within a motor vehicle and which is heard from outside the motor vehicle at a distance of 50 feet or more from the vehicle. This provision shall not apply to sirens, loud speakers and emergency communications radios in public safety vehicles, nor shall it apply to motor vehicle alarms or other security devices.
- (f) To create noise heard in residential areas in connection with the loading or unloading of refuse, waste or recycling collection vehicles between the hours of 10:00 p.m. and 7:00 a.m., except those areas zoned for urban mixed use, when the sound or noise is produced in connection with the loading or unloading of refuse, waste or recycling collection vehicles.
- (g) To create a noise disturbance across a residential property line between 10:00 p.m. and 7:00 a.m. in connection with lawn care, leaf removal, gardening, tree maintenance or removal, other landscaping, lawn or timbering activities; the operation of any mechanically powered saw, drill, grinder, sander or similar device; or the construction, demolition, repair, paving, excavation or alteration of a building or street.
- (h) Operating or causing to be operated between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and between the hours of 10:00 p.m. and 9:00 a.m. on Saturdays, Sundays and legal holidays observed by city government equipment used in the construction, repair, alteration or demolition work on buildings, structures, alleys or appurtenances thereto in the outdoors in any residential district within 100 yards of a lawfully occupied dwelling. This section shall not apply to construction

of public projects, the repair or maintenance work performed on such projects or work performed by private or public utility companies for the repair of facilities or restoration of services.

Provided however, that the prohibitions of this section shall not apply to emergency work to provide public facilities or utilities, or to remove debris, when necessary to protect the public health or safety.

(Ord. No. 14-100, 10-21-2014)

Editor's note— Ord. No. 14-100, adopted Oct. 21, 2014, repealed § 50-33 and enacted a new section as set out herein. The former § 50-33 pertained to violations of article and derived from § 19-2 of the 1981 Code.

Sec. 50-34. - Exemptions.

This provision shall not apply to:

- (a) Noise generated in connection with the business being performed in an industrial area;
- (b) Locomotives and other railroad equipment, and aircraft;
- (c) Sound emanating from any area permitted by the Virginia Department of Mines, Minerals and Energy or any division thereof;
- (d) Police, fire, ambulance or emergency vehicle sirens;
- (e) Sounds created when responding to emergencies, including emergency utility repairs;
- (f) Motor vehicles and trucks traveling on roads;
- (g) Heat pumps and/or air conditioners on residential properties;
- (h) Backup generators running during power outages;
- (i) Public transportation facilities;
- (j) Burglar, fire or other alarms tests between 7:00 a.m. and 9:00 p.m.;
- (k) Band performances or practices, athletic matches or practices and other such activities on school or recreational grounds between 7:00 a.m. to 11:00 p.m.;
- (l) Religious services, religious events or religious activities, including, but not limited to music, bells, chimes and organs which are a part of such religious activity between the hours of 7:00 a.m. to 11:00 p.m.;
- (m) Sound amplifying equipment used at public parks or recreation fields provided the operation of such equipment has been approved by the department of parks and leisure services;
- (n) Activities for which the regulation of noise has been preempted by federal law;
- (o) Parades, fireworks or other special events or activities for which a permit has been issued by the city, within such hours as may be imposed as a condition for the issuance of the permit.

(Code 1981, § 19-7; Ord. No. 14-100, 10-21-2014)

State Law reference— Similar provisions, Code of Virginia, § 15.2-980.

Sec. 50-35. - Animals.

It shall be unlawful for any person to [allow an] animal or bird except farm animals in agricultural districts to create noise or intense barking that is plainly audible at least once a minute for ten consecutive minutes:

- (1) Inside the confines of the residential dwelling, house or multi-family dwelling of another; or
- (2) At 50 or more feet from the animal or bird.

For purposes of this chapter, the animal or bird noise shall not be deemed a noise disturbance if a person is trespassing or threatening to trespass upon private party in or upon which the animal or bird is situated, or is using any other means to tease or provide the animal or bird. This provision shall not apply to public zoos, licensed animals parks or licensed veterinarian facilities.

(Ord. No. 14-100, 10-21-2014)

Editor's note— Ord. No. 14-100, adopted Oct. 21, 2014, repealed § 50-35 and enacted a new section as set out herein. The former § 50-35 pertained to measurement procedures and derived from § 19-6 of the 1981 Code.

Sec. 50-36. - Maximum permissible sound levels generally.

- (a) In addition to, and not in limitation of the specific prohibitions of sections 50-33, 50-34, and 50-35, any noise which emanates from any operation, activity or source and which exceeds the maximum permissible sound levels established in this section is hereby prohibited. When noise emanates from private property, such levels shall be measured at the property boundary of the sound source, at any point on public property, or at any point within any other property affected by the noise. When noise emanates from public property including street rights-of-way, such levels shall be measured at any point on public property or at any point within any other property affected by the noise. When a noise source can be identified and its noise measured in more than one zoning district classification, the limits of the most restrictive classification shall apply.

**MAXIMUM PERMISSIBLE
SOUND PRESSURE LEVELS**

Zoning District	Maximum dBA	
	Daytime	Nighttime
Classification		
Agricultural	65	55
Residential	65	55
R/B	70	60
Planned unit development	70	60
Mixed use district	75	65
Business	75	65
Industrial	79	72

- (b) Measurements in multi-family dwellings. In a structure used as a multi-family dwelling, the measurements to determine such sound levels shall be taken from common areas within or outside the structure or from other dwelling units within the structure, when requested to do so by the owner or tenant in possession and control thereof. Such measurement shall be taken at a point at least four feet from the wall, ceiling or floor nearest the noise source, with doors to the receiving area closed and windows in the normal position for the season.
- (c) Any person, with lawfully obtained permits, who during the daytime operates or causes to be operated any equipment used in the construction, repair, alteration, or demolition work on buildings, structures, alleys or appurtenances thereto in the outdoors shall not be subject to the levels enumerated in subsection (a) of this section.
- (d) Persons performing construction of public projects, repair or maintenance work for such projects or persons performing work for private or public utilities for the repair of facilities or restoration of services shall not be subject to the levels enumerated in subsection (a) of this section.

(Code 1981, § 19-4; Ord. No. 14-100, 10-21-2014)

Sec. 50-37. - Penalty and enforcement.

- (a) If it is determined that a noise in violation of this chapter exists at a fixed location, the following procedures shall be followed:
 - (1) A written or verbal warning shall be issued by the chief of police, or his or her designee to the person(s), corporation, firm or association, responsible for the event causing the noise disturbance.
 - (2) If the noise disturbance persists for more than five minutes following the issuance of a written or verbal warning, the chief of police, or his or her designee, shall proceed to charge the person responsible for the event causing the noise disturbance.
- (b) No person shall be charged with a violation of the provisions of this section unless a violation is committed in the presence of the chief of police, or his or her designee.
- (c) The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that cannot be determined, any owner, tenant or resident physically present on the property where the violation is occurring is rebuttably presumed to be responsible for the noise violation.
- (d) Any person who violates any provision of this article shall be deemed to be guilty of a class 4 misdemeanor for a first offense and a class 3 misdemeanor for each subsequent offense.

(Ord. No. 14-100, 10-21-2014)

Editor's note— Ord. No. 14-100, adopted Oct. 21, 2014, repealed § 50-37 and enacted a new section as set out herein. The former § 50-37 pertained to prohibitions generally and derived from § 19-5 of the 1981 Code.

Sec. 50-38. - Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this article.

(Ord. No. 14-100, 10-21-2014)

Editor's note— Ord. No. 14-100, adopted Oct. 21, 2014, repealed § 50-38 and enacted a new section as set out herein. The former § 50-38 pertained to animals and derived from § 19-5.1 of the 1981 Code.

Secs. 50-39—50-60. - Reserved.

ARTICLE III. - NUISANCES^[3]

Footnotes:

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Cross reference— Removal of nuisances in Blandford Cemetery, § 30-50.

Sec. 50-61. - Nuisances generally.

- (a) No person shall cause a nuisance, as described in this section or in Code of Virginia, § 15.2-900 or 15.2-1115, in any place whatever within the corporate limits of the city, nor suffer any nuisance to remain in any house or lot occupied or owned by him. Everything shall be deemed a nuisance, within the meaning of this section, which is offensive or prejudicial to the health of any citizen and which is not specifically proscribed by the provisions of this Code.
- (b) A violation of this section shall constitute a class 3 misdemeanor.

(Code 1981, § 21-54)

State Law reference— Authority of city to abate nuisances, Code of Virginia, §§ 15.2-900, 15.2-1115; nuisances generally, Code of Virginia, tit. 48.

Sec. 50-62. - Certain offensive, unwholesome, etc., uses of land declared a nuisance.

- (a) Any condition or use of any land or premises in the city which is offensive, unwholesome, unsanitary, unhealthy, is detrimental to the property of others, or which causes or tends to cause substantial diminution in value of the property in the neighborhood in which such land or premises is located is hereby declared a nuisance. This includes but is not limited to the keeping or the depositing on, or the scattering over the land or premises of any of the following:
 - (1) Lumber, junk, trash, or debris;
 - (2) Abandoned, discarded or unused objects or equipment such as motor vehicle parts, furniture, stoves, refrigerators, freezers, cans, containers or plumbing fixtures.

Whenever it shall come to the knowledge of a designated enforcement official that such a nuisance exists, it shall be his duty to give notice to the occupant of the premises or, if unoccupied, to the owner of the premises to cause such nuisance to be abated within 48 hours from the date of receipt of such notice.

- (b) Any occupant or owner who shall fail to abate such nuisance within the time specified in a notice given pursuant to this section shall be guilty of a class 4 misdemeanor, and each day that such nuisance is permitted to remain upon such land or premises after the expiration of the time specified in such notice shall be deemed to constitute a separate offense under this section.
- (c) If such nuisance is permitted to remain on any such land or premises after the expiration of the time specified in a notice given pursuant to this section, the designated enforcement official may cause

such nuisance to be removed therefrom, and the city may collect the expense of so doing from the owner or occupant of the land or premises by distress and sale in the same manner in which taxes levied upon real estate for the benefit of the city are authorized to be collected. Every charge authorized by this section with which the owner of the property has been assessed and which remains unpaid shall constitute a lien against such property.

- (d) All sworn police officers, health inspectors, building and housing inspectors, and the zoning administrator are hereby designated as enforcement officers for the purposes of this section.

(Code 1981, § 21-54.1; Ord. No. 14-47, 5-20-2014)

State Law reference— Similar provisions, Code of Virginia, § 15.2-901.

Sec. 50-63. - Detrimental or excessively high growths of weeds or other vegetable matter.

- (a)
 - (1) The existence of any weeds, bushes, grass or other vegetable matter upon any land or premises in the city which is detrimental to the health, comfort or general welfare of any of the inhabitants of the city or which exceeds a height of 12 inches is hereby declared a nuisance.
 - (2) No owner of any lot or parcel of land shall permit to grow or remain thereon any hedge, shrub, tree or other vegetation, the limbs, branches or other parts of which overhang, extend or protrude into any street, sidewalk or public alley in a manner which obstructs or impedes the safe and orderly movement of persons or vehicles, or in the case of trees, when the dead limbs, trunks, or branches are likely to fall into or across such street or sidewalk, thereby endangering such persons and vehicles.
- (b) Whenever it shall come to the knowledge of the city manager, or his or her designee, that such a nuisance exists, it shall be his or her duty to give notice to the occupant of the premises or, if unoccupied, to the owner of the premises to cause such weeds, bushes, grass or other vegetable matter to be cut and removed from such premises within 48 hours from the date of receipt of such notice or in the time limit set forth in the notice.

If weeds, bushes, grass or other vegetable matter are permitted to remain on any such land or premises after the expiration of the time specified in a notice given pursuant to this section, the city manager, or his or her designee, may cause such nuisance to be removed therefrom, and the city may collect the expense of so doing from the owner or occupant of the premises by distress and sale in the same manner in which taxes levied upon real estate for the benefit of the city are authorized to be collected.

- (c) Any owner who violates paragraphs (a)(1) or (a)(2) of this section shall be subject to a civil penalty of \$50.00 for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall be \$200.00. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of \$3,000.00 in a 12-month period.
- (d) Violations of paragraphs (a)(1) or (a)(2) shall be a class 3 misdemeanor in the event three civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a 24-month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.
- (e) Every charge authorized by this section with which the owner of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Code of Virginia, §§ 58.1-3940 et seq. and 58.1-3965 et seq. The city may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage

to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

(Code 1981, § 21-56; Ord. No. 11-97, 9-20-2011; Ord. No. 14-47, 5-20-2014)

State Law reference— Authority for above section, Code of Virginia, §§ 15.2-901, 15.2-1115.

Sec. 50-64. - Standing water on private property.

- (a) The existence of any standing water upon any land or premises in the city which is, in the opinion of the health director, detrimental to the health, comfort or general welfare of any of the inhabitants of the city is hereby declared a nuisance. Whenever it shall come to the knowledge of the health director that such a nuisance exists, it shall be his duty to give notice to the occupant of the premises, or if unoccupied, to the owner, to cause the standing water to be drained within ten days. Any such occupant or owner who shall fail to cause such standing water to be drained within the time specified in such notice shall be guilty of a class 3 misdemeanor and each day that such nuisance is permitted to remain upon such land or premises after the expiration of the time specified in such notice shall be deemed to constitute a separate offense under this section.
- (b) If any standing water is permitted to remain on any land or premises after the expiration of the time specified in a notice given pursuant to this section, the health director may cause such nuisance to be removed therefrom and the city may collect the expense of so doing from the owner and occupant of the property by distress and sale in the same manner in which taxes levied upon real estate for the benefit of the city are authorized to be collected.

(Code 1981, § 21-59)

State Law reference— Grounds subject to be covered by standing water, Code of Virginia, § 15.2-1115.

Secs. 50-65—50-100. - Reserved.

ARTICLE IV. - STORMWATER MANAGEMENT⁴

Footnotes:

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Editor's note— Prior to the reenactment of Art. IV by Ord. No. 14-67, said article was repealed by Ord. No. 08-103, § 3, adopted Nov. 18, 2008. The former Art. VI, §§ 50-91—50-99, 50-116—50-123, pertained to erosion and sediment control and derived from §§ 12-2—12-11 and §§ 12-23—12-30 of the 1981 Code.

Sec. 50-101. - Purpose and authority. (Section 9VAC25-870-20, 9VAC25-870-40)

- (a) The purpose of this article is to ensure the general health, safety, and welfare of the citizens of Petersburg and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, 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.

(b) This article is adopted pursuant to Article 2.3 (§ 62.1-44.15:27 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-102. - Definitions. (9VAC25-870-10)

In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this article have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

Administrator means the VSMP authority including the stormwater program manager or the department of public works.

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.

Applicant means any person submitting an application for a permit or requesting issuance of a permit under this article.

Best management practice or *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.

Chesapeake Bay Preservation Act land-disturbing activity means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, Code of Virginia, § 62.1-44.15:67 et seq.

Clean Water Act or *CWA* means the federal Clean Water Act (33 U.S.C. § 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.

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

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

Department means the Department of Environmental Quality (DEQ).

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.

General permit means the state permit titled General Permit for Discharges of Stormwater From Construction Activities found in Part XIV (9VAC25-880-1 et seq.) of the Regulations authorizing a category of discharges under the CWA and the Virginia Stormwater Management Act.

Land disturbance or *land-disturbing activity* means a man-made 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 50-103(c) of this article.

Layout means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

Minor modification means an amendment to an existing general permit before its expiration 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 general permit modification or amendment does not substantially alter general 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.

Operator means the owner or operator of any facility or activity subject to regulation under this article.

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 article, and which may only be issued after evidence of general permit coverage has been provided by the department.

Permittee means the person to whom the VSMP authority permit is issued.

Person means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

Regulations means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 9VAC25-870, as amended.

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.

State means the Commonwealth of Virginia.

State board means the state water control board.

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 an 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.

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.

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, and surface runoff and drainage.

Stormwater management plan means a document(s) containing material describing methods for complying with the requirements of section 50-106 of this article.

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 article. 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.

Subdivision means the same as defined in section 33-1 of article I of the Petersburg Subdivision Ordinance.

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.

Virginia Stormwater Management Act or 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.

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.

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.

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.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-103. - Stormwater permit requirement; exemptions.

- (a) A person shall not conduct any land-disturbing activity until a permit application has been submitted to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required. A registration statement is not required for detached single-family home construction within or outside of common plan of development or sale; however, such projects must adhere to the requirements of the general permit.
- (b) Chesapeake Bay Preservation Act land-disturbing shall not require completion of a registration statement or require coverage under the general permit for discharges of stormwater from construction activities. A Chesapeake Bay Preservation Act land-disturbing activity shall be subject to an erosion and sediment control plan consistent with the requirements of the erosion and sediment control ordinance, a stormwater management plan as outlined under section 50-106, the technical criteria and administrative requirements for land disturbing activities outlined in section 50-109, and the requirements for control measures for long-term maintenance outlined under section 50-110. Exceptions to these technical criteria and administrative requirements may be requested.
- (c) Notwithstanding any other provisions of this article, the following activities are exempt, unless otherwise required by federal law:
 - (1) 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;
 - (2) 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;

- (3) 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;
- (4) Land-disturbing activities that disturb less than one acre of land area; except for land disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC 25-830) adopted pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) or except for activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance.
- (5) Discharges to a sanitary sewer or a 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.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-104. - Stormwater management program established; submission and approval of plans; prohibitions.

- (a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, the City of Petersburg 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 50-101 of this article. The city council hereby designates the stormwater program manager 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 Petersburg Erosion and Sediment Control Ordinance (Chapter 50, Article V of this Code); and
 - (3) A stormwater management plan that meets the requirements of section 50-106 of this article, or an executed agreement in lieu of a stormwater management plan.
- (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 50-115, are received, and a reasonable performance bond required pursuant to section 50-116 of this article 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.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-105. - Stormwater pollution prevention plan; contents of plans.

- (a) The stormwater pollution prevention plan (SWPPP) shall include the content specified by Section 9VAC25-870-54 and must also comply with the requirements and general information set forth in Section 9VAC25-880-70, Section II (stormwater pollution prevention plan) 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.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-106. - Stormwater management plan; contents of plan.

- (a) The stormwater management plan, required in section 50-104 of this article, must apply the stormwater management technical criteria set forth in section 50-109 of this article to the entire land-disturbing activity. A stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities. The stormwater management plan must consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:
 - (1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the pre-development and post-development drainage areas;
 - (2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
 - (3) A narrative that includes a description of current site conditions and final site conditions;
 - (4) 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;
 - (5) Information on the proposed stormwater management facilities, including:
 - (i) The type of facilities;
 - (ii) Location, including geographic coordinates;
 - (iii) Acres treated; and
 - (iv) The surface waters or karst features, if present, into which the facility will discharge;
 - (6) Hydrologic and hydraulic computations, including runoff characteristics;
 - (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of section 50-109 of this article;
 - (8) A map or maps of the site that depicts the topography of the site and includes:

- (i) All contributing drainage areas;
 - (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - (iv) Current land use including existing structures, roads, and locations of known utilities and easements;
 - (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
 - (vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
 - (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- (b) If an operator intends to meet the water quality and/or quantity requirements set forth in section 50-109 of this article through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35 of the Code of Virginia.
- (c) Elements of the stormwater management plans that include activities regulated under Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- (d) A construction record drawing for permanent stormwater management facilities shall be submitted to the administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-107. - Pollution prevention plan; contents of plans.

- (a) 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.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-108. - Review of stormwater management plan.

- (a) The administrator or any duly authorized agent of the administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:
- (1) The administrator shall determine the completeness of a plan in accordance with section 50-106 of this article, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.
 - (2) The administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subsection (1), then plan shall be deemed complete and the administrator shall have 60 calendar days from the date of submission to review the plan.
 - (3) The administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.
 - (4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this article.
 - (5) If a plan meeting all requirements of this article is submitted and no action is taken within the time provided above in subsection (2) for review, the plan shall be deemed approved.
- (b) Approved stormwater plans may be modified as follows:
- (1) 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.
 - (2) The administrator may require that an approved stormwater management plan be amended, within a time prescribed by the administrator, to address any deficiencies noted during inspection.
- (c) The administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to section 50-110(b).

(Ord. No. 14-67, 7-1-2014)

Sec. 50-109. - Technical criteria for regulated land disturbing activities.

- (a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the locality hereby adopts the technical criteria for

regulated land-disturbing activities set forth in Part II B of the regulations, as amended, expressly to include 9VAC25-870-62 (applicability); 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); 9VAC25-870-60-74 (stormwater harvesting); 9VAC25-870-76 (linear development project); 9VAC25-870-85 (stormwater management impoundment structures or facilities); 9VAC25-870-92 (comprehensive stormwater management plans); 9VAC25-870-93 (definitions); 9VAC25-870-94 (applicability); 9VAC25-870-95 (general); 9VAC25-870-96 (water quality); 9VAC25-870-97 (stream channel erosion); 9VAC25-870-98 (flooding); and 9VAC25-870-99 (regional stormwater management plans), which shall apply to all land-disturbing activities regulated pursuant to this article, except as expressly set forth in subsection (b) of this section.

- (b) Any land disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:
 - (1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical criteria of the VSMP regulation, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;
 - (2) A state permit has not been issued prior to July 1, 2014; and
 - (3) Land disturbance did not commence prior to July 1, 2014.
- (c) Locality, state and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of the VSMP regulation provided:
 - (1) There has been an obligation of locality, state or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;
 - (2) A state permit has not been issued prior to July 1, 2014; and
 - (3) Land disturbance did not commence prior to July 1, 2014.
- (d) Land disturbing activities grandfathered under subsections (b) and (c) of this section shall remain subject to the Part II C technical criteria of the VSMP regulation for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.
- (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.
- (f) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.
- (g) The administrator may grant exceptions to the technical requirements of Part II B or Part II C of the regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the regulations, and this article are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this article.
 - (1) Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the administrator, nor shall the administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse website, or any other control measure duly approved by the director.
 - (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-110. - Long-term maintenance of permanent stormwater facilities.

- (a) The administrator shall require the provision of 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 administrator and shall at a minimum:
 - (1) Be submitted to the administrator for review and approval prior to the approval of the stormwater management plan;
 - (2) Be stated to run with the land;
 - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
 - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the administrator; and
 - (5) Be enforceable by all appropriate governmental parties.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-111. - Monitoring and inspections.

- (a) The administrator or any duly authorized agent of the administrator (engineering technician/project inspector) 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 administrator or any duly authorized agent of the administrator (engineering technician/project inspector) 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 article.
- (c) 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.
- (d) Pursuant to § 62.1-44.15:40 of the Code of Virginia, the administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this article, 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 article.
- (e) Post-construction inspections of stormwater management facilities required by the provisions of this article shall be conducted by the administrator or any duly authorized agent of the administrator (engineering technician/project inspector) pursuant to the locality's adopted and state board approved

inspection program, and shall occur, at minimum, at least once every five years except as may otherwise be provided for in section 50-110.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-112. - Hearings.

The state board shall hold hearings in a manner consistent with Code of Virginia, § 62.1-44.26. If the City of Petersburg holds hearings under this article it shall do so in a manner consistent with applicable city hearing procedures.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-113. - Appeals.

Appeals shall be considered in accordance with section 50-134(f) and section 50-137 of this Code, and shall be consistent with the limitations within § 62.1-44.15:46 of Chapter 3.1 of Title 62.1 of the Code of Virginia.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-114. - 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 carrying out the permit conditions 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 permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.
- (1) 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. Upon failure to comply within the time specified, a stop work order may be issued in accordance with subsection (b) or the permit may be revoked by the administrator.
 - (2) If a permittee fails to comply with a notice issued in accordance with this section within the time specified, the administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall be issued in accordance with section 50-134 of this Code. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the administrator. However, if the administrator 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 administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with subsection 50-114(c).

- (b) In addition to any other remedy provided by this article, if the administrator or his designee determines that there is a failure to comply with the provisions of this article, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with Chapter 50, Article V of this Code.
- (c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the administrator may be compelled in a proceeding instituted in Petersburg Circuit Court by the city to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (d) Any person who violates any provision of this article or who fails, neglects, or refuses to comply with any order of the administrator, shall be subject to a civil penalty not to exceed \$32,500.00 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
 - (1) 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; and
 - (xi) Discharges not in compliance with the requirements of Section 9VAC25-870-70 of the general permit.
 - (2) The administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
 - (3) In 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.
 - (4) Any civil penalties assessed by a court as a result of a summons issued by Petersburg shall be paid into the treasury of the City of Petersburg to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.
- (e) Notwithstanding any other civil or equitable remedy provided by this section or by law, any person who willfully or negligently violates any provision of this article, any order of the administrator, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500.00 nor more than \$32,500.00, or both.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-115. - Fees.

- (a) Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and VSMP authority permits shall be imposed in accordance

with Table 1. 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. VSMP authority portion of the statewide permit fee for coverage under the general permit for discharges of stormwater for construction activities for small construction activity involving a single family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale.

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*)
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)	\$290.00	\$0.00
General/stormwater management - Small construction activity/land clearing (areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$290.00	\$81.00
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)	\$2,700.00	\$756.00
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)	\$3,400.00	\$952.00
General/stormwater management - Large construction activity/land clearing (sites or areas within common plans of development or sale with	\$4,500.00	\$1,260.00

land disturbance acreage equal to or greater than 10 acres and less than 50 acres)		
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)	\$6,100.00	\$1,708.00
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)	\$9,600.00	\$2,688.00

* 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 Petersburg, 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)	\$20.00
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 and less than 5 acres)	\$200.00

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)	\$250.00
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)	\$300.00
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)	\$450.00
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)	\$700.00

- (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
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)	\$50.00
General/stormwater management - Small construction activity/land clearing (areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$50.00
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)	\$400.00
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)	\$500.00

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)	\$650.00
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)	\$900.00
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)	\$1,400.00

General permit coverage maintenance fees shall be paid annually to the City of Petersburg, 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.

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- (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 under section 50-115(c) 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 section 50-102 of this article. 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 § 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 Petersburg shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

(Ord. No. 14-67, 7-1-2014)

Sec. 50-116. - Performance bond. (9VAC25-870-104.D and Code § 62.1-44.15:34(A))

Prior to issuance of any permit, 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, to ensure that measures could be taken by the City of Petersburg 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 permit conditions as a result of his land disturbing activity. If the City of Petersburg 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 60 days of the completion of the requirements of the permit 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.

(Ord. No. 14-67, 7-1-2014)

Secs. 50-117—50-123. - Reserved.

ARTICLE V. - EROSION AND SEDIMENT CONTROL ORDINANCE

Sec. 50-124. - Title, purpose, and authority.

This article shall be known as the "Erosion and Sediment Control Ordinance of the City of Petersburg." The purpose of this article is to conserve the land, water, air and other natural resources of the city by establishing requirements for the control of erosion and sedimentation and procedures for administering and enforcing those requirements.

This article is authorized by Title 10.1, Chapter 5, Article 4 (§§ 10.1-560 et seq.) of the Code of Virginia.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-125. - Definitions.

As used in this article, unless the context requires a different meaning:

Administrator means the official designated by the city manager to administer the city's erosion and sediment control program established pursuant to this article.

Agreement in lieu of a plan means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence, and that may be executed by the plan-approving authority in lieu of a formal plan.

Applicant means any person submitting an erosion and sediment control plan for approval or requesting the issuance of any permit necessary to authorize initiation of land-disturbing activities.

Board means the Virginia Soil and Water Conservation Board.

Certificate of competence means a certificate issued by the board pursuant to Code of Virginia § 10.1-561 F.

Certified inspector means an employee or agent of the 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.

Certified plan reviewer means an employee or agent of the 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 land surveyor pursuant to Article 1 (Code of Virginia §§ 54.1-400 et seq.) of Code of Virginia tit. 54.1, ch. 4.

Certified program administrator means an employee or agent of the 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.

Chesapeake Bay Preservation Area means an area delineated by the city in accordance with criteria established pursuant to Code of Virginia, § 10.1-2107.

Clearing means any activity which removes the vegetative ground cover, including, but not limited to, root mat removal or top soil removal.

Conservation plan, erosion and sediment control plan, or plan means a document, prepared in accordance with the requirements of this article that details mechanisms and techniques for the conservation of soil and water in the course of implementation of land-disturbing activities.

District or soil and water conservation district means a political subdivision of the commonwealth organized in accordance with the provisions of Article 3 (Code of Virginia, § 10.1-506 et seq.) of Title 10.1.

Erosion impact area means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion that results in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to (i) any lot or parcel of land of 5,000 square feet or less used for residential purposes or (ii) to shorelines where the erosion results from wave action or other coastal processes.

Excavating means any digging, scooping or other methods of removing earth materials.

Filling means any depositing or stockpiling of earth materials.

Grading means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

Land development project means a tract of land developed or to be developed as a single unit under single ownership or unified control, for use for a business or industrial purpose or that contains two or more residential dwelling units, which development involves construction activity necessitating a land-disturbing permit.

Land-disturbing activity means any land change that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include those activities made exempt from this article pursuant to section 50-126.

Land-disturbing permit means a permit issued by the administrator pursuant to this article.

Local erosion and sediment control program or local control program means the law, policy, and procedures the city uses to regulate land-disturbing activities in accordance with state law, and includes this article, and such regulations, policies, guidelines, and technical materials as the administrator may identify or create.

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.

Owner means 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.

Peak flow rate means the maximum instantaneous flow from a given storm condition at a particular location.

Permittee means the person to whom the permit authorizing land-disturbing activities is issued, the person who certifies that the approved erosion and sediment control plan will be followed, or the person responsible for carrying out the plan, who may be the same person.

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, any interstate body, or any other legal entity.

Plan-approving authority means the program authority, or a department of a program authority, responsible for evaluating, and approving or disapproving, conservation plans.

Program authority means the City of Petersburg in the context of its operation of a duly-adopted soil erosion and sediment control program that has been approved by the board.

Responsible land disturber means an individual from the project or development team, who will be responsible for carrying out the land-disturbing activity covered by an approved plan or agreement in lieu of a plan, in accordance with that plan or agreement, who (i) holds a responsible land disturber certificate of competence, (ii) holds 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 or sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article I (Code of Virginia § 54.1-400 et seq.) of Code of Virginia tit. 54.1, ch. 4.

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

Single-family residence means a noncommercial dwelling that is occupied exclusively by one family.

State erosion and sediment control program or *state program* means the program administered by the board pursuant to Code of Virginia § 10.1-561, including regulations designed to minimize erosion and sedimentation.

State waters means all waters on the surface and under the ground wholly or partially within or bordering the commonwealth, or within its jurisdiction.

Transporting means any moving of earth materials from one place to another, other than such movement incidental to grading, to the extent that erosion and sediment will result from the soil or earth materials over which such transporting occurs.

Virginia Erosion and Sediment Control Handbook or Handbook, whether the 3rd Edition (1992) or a later edition, means the handbook prepared by the Virginia Department of Conservation that describes the specifications and requirements governing appropriate land-disturbing activities in the commonwealth, including criteria, formulas, calculations, and techniques of control of sediment and erosion.

Virginia Minimum Standards means the criteria, techniques, and methods established under § 40 of the Virginia Erosion and Sediment Control regulations at 4 VAC 50-30.

Virginia Stormwater Management Program or *VSMP* means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the federal Clean Water Act and article 1.1 (Code of Virginia §§ 10.1-603.1 et seq.), of the Code of Virginia tit. 10.1, ch. 6.

Water quality volume means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-126. - Local erosion and sediment control program.

(a) *Program authority*. The City of Petersburg shall act as program authority to implement an erosion and sediment control program for the area of land encompassed by the city boundaries. The city shall

administer the program in accordance with the requirements of this article, and pursuant to any regulations, references, guidelines, standards, and specifications it develops in accordance with, and for use in conjunction with, this article. The program shall be implemented by a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

(b) *Activities not subject to article.* The following activities do not constitute "land-disturbing activities" as defined in this article, and are not subject to the requirements of this article, except as otherwise provided by article II (section 122-31 et seq.), chapter 22, of the Code of the City of Petersburg, and any other applicable law.

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs 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 the land-disturbing activity is confined to the area of the road, street or sidewalk that 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 activities authorized under a permit issued by the department of mines, minerals and energy.
- (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, 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 Code of Virginia tit. 10.1, ch. 11 §§ 10.1-1100 et seq.; of this title, or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, pursuant to § 10.1-1163(B).

The removal or clearing of trees from property zoned for commercial, industrial, or residential use, although such clearing may be a bona fide silvicultural activity, shall not be exempted from the requirements of this section and, except for selective removal of dead or diseased trees, such clearing shall require approval of a land disturbance permit.

The clearing of trees within the "A" agricultural district, as set forth in the zoning ordinance of the City of Petersburg, shall require approval of a Forestry Harvest Plan by the Virginia Department of Forestry. A copy of such plan shall be filed by the owner of any affected property with the City of Petersburg Erosion and Sediment Control Program administrator. Such plan shall provide for Forestry Best Management Practices. All applicable federal, state, and local regulations pertaining to working in or crossing live watercourses shall be met.

- (8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company, performed by the railroad company.
- (9) 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 provisions of the Dam Safety Act, Article 2, (Code of Virginia §§ 10.1-604 et seq.) of Chapter 6, Title 10.1 of the Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.
- (10) Disturbed land areas of less than 10,000 square feet in size, except that where a series of projects, not otherwise exempt, on any one parcel disturbs an aggregate of more than 10,000 square feet of area within a one-year period, a plan shall be required; however, [the square footage](#)

requirement is reduced to 2,500 square feet within the City's designated Chesapeake Bay Preservation Areas. ~~the~~ The city council may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply.

- (11) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles.
 - (12) 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 this article and the regulations adopted pursuant thereto.
 - (13) Emergency work to protect life, limb or property, and emergency repairs; however, 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 the plan-approving authority.
 - (14) State agency projects, except as provided for in Code of Virginia § 10.1-564.
 - (15) Construction, installation and maintenance of electric transmission, natural gas, and telephone utility lines and pipelines, performed by the regulated utility supplying the associated services.
- (c) *Stream restoration and relocation projects.* In accordance with Va. Code Ann. § 10.1-561, stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to Va. Code Ann. § 10.1-561, § 10.1-562, or § 10.1-570.
- (d) *Natural or manmade channels.* In accordance with Va. Code Ann. § 10.1-561, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or man-made channels shall be deemed to satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in good forested condition divided by the runoff volume from the site in its proposed condition. Those practices that are designed to accomplish (i), (ii) and (iii) of this subsection shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to Va. Code Ann. § 10.1-562 or § 10.1-570.
- (e) *Public hearing.* Before adopting or revising regulations to implement this article, the city shall give due notice and conduct a public hearing on the proposed new or revised regulations, except that a public hearing shall not be required when the city is amending its program to conform to revisions in the state program.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-127. - Requirement for plan.

- (a) *Erosion and sediment control plan required.* No person may obtain a permit authorizing him to engage in any land-disturbing activity subject to the requirements of this article and lying within the territorial limits of the City of Petersburg, until he has submitted to the administrator an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan-approving authority. The requirement for such plan may be modified as follows:

- (1) *Multiple jurisdictions.* Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the board for review and approval rather than to each jurisdiction concerned, however, a copy of such plan must be submitted to the administrator for review.
 - (2) *Agreement in lieu of plan.* Where the land-disturbing activity results from the construction of a single-family residence and affects fewer than 5,000 square feet of land, a properly executed agreement in lieu of plan may be substituted for an erosion and sediment control plan. Where such agreement is substituted, the administrator may permit the applicant to identify in that agreement someone other than a person who qualifies as a responsible land disturber as defined in section 50-124 of this article. If a violation occurs during the land-disturbing activity, the person responsible for carrying out the agreement in lieu of plan shall correct the violation and provide to the administrator the name of an individual holding a certificate of competence. Failure to provide the name of such person shall be a violation of this article and may result in revocation of plan approval and imposition of penalties pursuant to sections 50-134 and 50-135 of this article.
- (b) *Responsibility for submission of plan or agreement in lieu of plan.* The owner of the property included within the land development project shall be responsible for ensuing the preparation, submission and approval of any plan or agreement in lieu of plan required by this article. This responsibility shall not be altered or eliminated where the identity of the person performing the land-disturbing activity is different from that of the owner.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-128. - Contents of plan; submission; fees.

- (a) *Generally.* Plans shall be prepared, submitted, and approved in accordance with the standards contained within the Virginia Erosion and Sediment Control Regulations at 4 VAC 50-30-10 et seq., the Virginia Erosion and Sediment Control Handbook, the Zoning ordinance of the City of Petersburg, and such other guides and publications as the administrator may identify, all of which are available for review in the office of the administrator. When the standards vary between the publications, the state regulations shall take precedence.
- (b) *Contents of plan.* The plan shall contain:
 - (1) A statement that it was prepared by a professional engineer or land surveyor registered in the state, except that the administrator may waive this requirement for projects of less than one acre that do not involve the construction of a building or structure and are not within a Resource Protection Area (RPA) established pursuant to article II (section 122-31 et seq.) of chapter 122 of the Code of the City of Petersburg.
 - (2) A site plan or map which conforms to any plan of development or subdivision plat.
 - (3) The location of resource protection area and resource management area boundaries, including RPA buffers.
 - (34) Identification of the location of all other buffers required by the Code of the City of Petersburg, including buffers associated with the resource protection area buffers, the resource management area, or conditions for zoning, development or use under which land-disturbing activities will occur. The plan also shall contain a certification that prior to any land-disturbing activity (i) all buffer areas and wetlands shall be conspicuously flagged or otherwise identified and not disturbed unless authorized by law; and (ii) the applicant shall notify the administrator upon completion of flagging.
 - (45) Measures to control erosion and sediment.
 - (56) A comprehensive drainage plan.
 - (67) Evidence on the site plan that no more land than is necessary to provide for the proposed use or development shall be disturbed.

- (78) A statement by the permittee that all erosion and sediment control measures shall be maintained and that the permittee will inspect the erosion and sediment control measures at least once in every two-week period and within 48 hours following rainstorm events during construction to ensure continued compliance with the approved plan. Records of self-inspection shall be maintained on the site and available for review by city inspectors.
- (89) A statement by the permittee acknowledging that the U.S. Army Corps of Engineers may have additional jurisdiction over wetlands not regulated by the city.
- (910) A statement by the permittee acknowledging that a VSMP permit application, if required, has been made for land disturbing activities affecting an acre or more of land.
- (4011) A statement incorporating by reference the Virginia Minimum Standards.
- (4412) Environmental site assessment information consisting of:
 - i. Base flood hazard areas (100-year floodplain).
 - ii. Location of all tidal and nontidal wetlands.
 - iii. Location of all tidal shores.
 - iv. Location of all tributary and nontributary streams.
 - v. Location of all resource protection and resource management areas as defined in Petersburg City Code section 122-31.
- (4213) A stormwater management section that includes all components of this subdivision, except that any maintenance, alteration, use or improvement to an existing structure which the administrator determines does not degrade the quality of surface water discharges shall be exempt from the stormwater management requirements of this subdivision:
 - i. Specifies the applicable watershed management area designation and all watershed management practices that will be implemented, including construction of best management practices.
 - ii. Includes calculations and other evidence necessary to show that nonpoint source pollution loads of phosphorous and sediments to receiving surface waters during and after development will be controlled in accordance with regulations implementing the Chesapeake Bay Preservation Act and the VSMP.
 - iii. Shows the location of all planned stormwater control devices.
 - iv. Includes the design of all planned stormwater control devices.
 - v. Includes a verification of structural soundness, including a professional engineer or class IIIB surveyor certification, for all stormwater facilities.
 - vi. Establishes a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for maintenance.
 - vii. Contains procedures for implementing nonstructural stormwater control practices and technologies.

Any plan establishing a permanent stormwater detention facility shall include, in addition to the components of this subdivision, a guaranty as to the permanent maintenance of the facility in accordance with VSMP law and regulations. The guaranty may be an agreement requiring maintenance of the facility by the owner or his successor and granting the city an easement to perform such maintenance, at the expense of the owner or his successor, in the event of the failure of the owner or his successor to do so. Permanent maintenance responsibility, however, shall remain with the owner and his successors, absent city council acceptance of the facility into the public stormwater drainage system. Such agreement shall be approved by the

administrator as to compliance with this article and by the city attorney as to form and may be accepted by the city manager on behalf of the city.

- (4314) Clear delineation of the preliminary areas of land disturbance necessary for installation of the initial erosion and sediment control measures. The preliminary areas of land disturbance shall be the minimum necessary for installation of the initial erosion and sediment control measures and the delineation shall include all areas necessary for such installation, including stockpiles, borrow areas, and staging areas.
 - (4415) Clear delineation of the ultimate areas of land disturbance.
 - (4516) Information identifying the responsible land disturber.
 - (4617) Mechanisms that will be used to protect any affected erosion impact area consistent with the requirements of Va. Code Ann. § 10.1-563 F.
- (c) *Chesapeake Bay Preservation Areas; additional requirements.* All plans for development on a lot containing a Chesapeake Bay Preservation Area shall, in addition to the requirements contained in subsection (b):
- (1) Identify the location of all Chesapeake Bay Preservation Areas, including all land disturbing activities contemplated therein.
 - (2) Contain a statement that, prior to any land-disturbing activity, all wetlands shall be conspicuously flagged or otherwise identified, and that the applicant shall notify the administrator upon completion of flagging.
 - (3) Contain evidence that:
 - i. All applicable U.S. Army Corps of Engineers and state permits necessary for activities in state waters and wetlands or appropriate waivers of jurisdiction have been obtained.
 - ii. A water quality impact assessment, in the form specified by subsection (c)(4) or (5), has been performed for any proposed development within an RPA, including any buffer area modification or reduction, and for any development in a resource management area which, due to the unique characteristics of the site or intensity of the proposed development, is considered by the administrator to be environmentally sensitive land.
 - (4) A minor water quality impact assessment shall be prepared for land-disturbing activity affecting no more than 2,5005,000 square feet of land within Chesapeake Bay Preservation Areas. A minor water quality impact assessment must demonstrate that the remaining buffer area and additional vegetated area equal to the area of encroachment into the buffer will maximize water quality protection and mitigate the effects of the buffer encroachment.
 - (5) A major water quality impact assessment shall be prepared for land-disturbing activity affecting more than 2,5005,000 square feet of land within Chesapeake Bay Preservation Areas. A major water quality impact assessment must demonstrate that the remaining buffer area and additional vegetated area equal to the area of encroachment into the buffer will maximize water quality protection and will mitigate the effects of the buffer encroachment. In addition, the major water quality impact assessment shall, except by waiver of the administrator:
 - i. Describe the existing topography, soils, hydrology and geology of the site and adjacent lands.
 - ii. Describe the impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands.
 - iii. Describe the:
 - a. Disturbance or destruction of wetlands and justification for such action.
 - b. Disruptions or reduction in the supply of water to wetlands, streams, lakes, rivers or other water bodies.
 - c. Disruptions to existing hydrology, including wetlands and stream circulation patterns.

- d. Source location and description of proposed fill material.
 - e. Location of dredge material and location of dumping area for such material.
 - f. Location of and impacts on shellfish beds, submerged aquatic vegetation and fish spawning areas.
 - g. Estimated pre-development and post-development pollutant loads in runoff.
 - h. Estimated percent increase in impervious surface on the site and types of surfacing materials used.
 - i. Percent of site to be cleared for the project.
 - j. Anticipated duration and phasing schedule of the construction project.
 - k. List of required permits from all applicable agencies necessary to develop the project.
- iv. Describe the proposed mitigation measures for the potential hydrological impacts. Potential mitigation measures include:
- a. Proposed erosion and sediment control steps. Steps may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, and the schedule and personnel for site inspection.
 - b. Proposed stormwater management system.
 - c. Creation of wetlands to replace those lost.
 - d. Minimizing cut and fill.
- (d) *Fees.* An administrative fee of \$250.00, plus \$50.00 for every acre or part thereof in excess of one acre, subject to any limit imposed by state law, shall be paid to the city at the time of submission of the erosion and sediment control plan. No fee shall be required for the execution of an agreement in lieu of a plan.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-129. - Approval of plans.

- (a) *Review period.* The plan-approving authority shall, within 45 days of receipt thereof, provide written approval or disapproval of a plan. An erosion control plan shall not be approved until it is reviewed by a certified plan reviewer, except that if no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.
- (b) *Plan inadequate.* When the plan is determined to be inadequate, the plan-approving authority shall explain the reasons for disapproval and shall specify such modifications, terms, and conditions that will permit approval of the plan.
- (c) *Changes to approved plan.* An approved plan may be changed by the plan-approving authority when:
 - (1) Monitoring or inspection pursuant to section 50-132 of this article 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 other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the plan-approving authority and the permittee.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-130. - Permits.

- (a) *Permit required.* No person shall engage in any land-disturbing activity subject to the provisions of this article until (i) he has acquired a land-disturbing permit, in such form, and in accordance with such applicable requirements as the administrator may establish, (ii) has paid the fees, and (iii) has posted the required surety or bond.
- (b) *Requirements for issuance of permit.* Agencies authorized to issue grading, building, or other permits for activities involving land-disturbing activities shall not issue any such permit unless the applicant submits with his application (i) four copies of an approved erosion and sediment control plan, and (ii) a certification by the proposed permittee that he will perform properly the erosion and sediment control measures included in the plan and will conform to the provisions of this article.
- (c) *Applicant a permittee.* Any applicant who receives a permit to conduct land-disturbing activity shall be deemed a permittee and as such shall be the person responsible for carrying out the plan.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-131. - Bond.

- (a) *Bond required.* All applicants for permits pursuant to section 50-130 of this article shall, at the time of permit application, provide to the city a performance bond, cash escrow, or an irrevocable letter of credit in a form acceptable to the city attorney, to support the cost of measures necessarily undertaken by the city as a result of the applicant's failure to initiate or maintain appropriate conservation measures required of him as a result of his land-disturbing activity. No land-disturbing permit shall be valid until an approved bond has been provided in accordance with this section.
- (b) *Bond amount.* The amount of the bond or other security for performance shall not exceed the total of (i) the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality, and (ii) a reasonable allowance for estimated administrative costs and inflation, which shall not exceed 25 percent of the cost of the conservation action. 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.
- (c) *Refund or termination of bond.* Within 60 days of adequate stabilization in any project or section of a project, as determined by the administrator, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. The owner or permittee shall provide written notice to the administrator of completion of any project.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-132. - Monitoring, reports, and inspections.

- (a) *Monitoring by city.* All erosion and sediment control measures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of their intended function. The permittee shall grant access to the administrator or his designated agent during the construction period and, where maintenance of systems and measures is required thereafter, shall provide for periodic access to the property by the administrator or his agent, for the purpose of inspection of permanent measures and systems.
- (b) *Monitoring by permittee.* The city may require the permittee to monitor the land-disturbing activity. The permittee shall maintain records of inspections and maintenance to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- (c) *Inspections by certified inspector.* Inspections of land-disturbing activities shall be conducted by a certified inspector. The administrator or his agent shall periodically inspect the land-disturbing activity as required under the state program to ensure compliance with the approved plan and to determine

whether measures required in the plan are effective in controlling erosion and sedimentation. The owner or permittee shall be given notice of the inspection.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-133. - Failure to comply with this article; notice.

- (a) *Notice to comply.* If the administrator determines that there is (i) a failure to comply with the plan, (ii) a failure to prepare a plan or obtain approval of a plan, or (iii) a failure to obtain a permit, notice shall be served upon the owner or the permittee 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. Notice shall also be provided to the issuer of any permit. Such notice shall set forth specifically the measures needed to correct the failures and shall specify the time within which such corrective measures shall be completed.
- (b) *Effect of noncompliance.* If the permit holder fails to comply within the time specified, he may be subject to a stop-work order imposed in accordance with section 50-134 or revocation of the permit, and shall be subject to the penalties or other applicable action imposed in accordance with section 50-135 of this article.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-134. - Failure to comply with plan, obtain plan, or obtain permit; stop work order.

- (a) *Stop work order.* Upon the documented failure to take the specified corrective measures identified pursuant to subsection (a) of section 50-133, the administrator may issue an order requiring that all or part of the land-disturbing activity permitted on the site be stopped until the specified corrective measures have been installed, established, taken or otherwise accomplished.
- (b) *Emergency issuance.* Where the noncompliance is causing or is in imminent danger of causing harmful erosion or sediment disposition in waters within the watersheds of the commonwealth, the administrator may issue a stop work order without issuing a notice to comply in accordance with section 50-133.
- (c) *Service.* The administrator shall cause the stop work order to be served in the same manner as the notice to comply issued pursuant to section 50-133. The order shall remain in effect for a period of seven days from the date of service pending application by the city or permit holder for appropriate relief to the Circuit Court of the City of Petersburg.
- (d) *Disposition of order.* The stop work order shall be disposed of as follows:
 - (1) Upon completion and approval of corrective measures, including obtaining an approved plan or any required permits, the order, with concurrence of the city attorney, shall be rescinded immediately.
 - (2) If, within seven days from the date of service of the order, the alleged violator has not (i) taken the corrective measures to remedy a failure to comply with an approved plan or any approved permits, or (ii) obtained an approved plan or any required permits, the administrator may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until the owner implements corrective measures to remedy the failure of compliance or obtains an approved plan and any required permits. Such an order shall be served upon the owner in accordance with subsection (a) of section 50-133.
- (e) *Enforcement of order.* Any person violating or failing, neglecting or refusing to obey a stop work order issued by the administrator may be compelled in a proceeding instituted in the Circuit Court of the City of Petersburg to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

- (f) *Appeal of order.* The owner may appeal the issuance of an order to the Circuit Court of the City of Petersburg.
- (g) *Other action.* In conjunction with the issuance of a stopwork order pursuant to this section, the administrator may take or seek the authorization of the city attorney to take any other appropriate action specified in section 50-135.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-135. - Failure to comply with this article; penalties, injunctions, civil action.

- (a) *City attorney to enforce.* The city attorney shall, upon request of the administrator, take legal action to enforce the provisions of this article.
- (b) *Civil penalties.* Any person who violates any provision of this article shall, upon finding of the General District Court of the City of Petersburg, be assessed a civil penalty in accordance with the schedule of civil penalties in section 50-138. The civil penalty for any one violation shall be \$100.00, except that the civil penalty for commencement of land-disturbing activities without an approved plan 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 \$3,000.00, except that 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.

The assessment of civil penalties for an offense shall preclude prosecution of the offense as a criminal offense.

- (c) *Injunctions.* The administrator, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of the City of Petersburg, to enjoin a violation or a threatened violation of this article, without the necessity of showing that an adequate remedy at law does not exist.

However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

- (d) *Civil action for damages.* In addition to any civil or criminal penalties provided under this article, any person who violates any provision of this article may be liable to the City of Petersburg in a civil action for damages.
- (e) *Civil penalty for disregard of remedy.* In addition to the remedies which may be obtained pursuant to this section, any person (i) violating, or (ii) 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. A civil action for such failure may be brought by the city.
- (f) *Stipulated charges.* 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 may provide for the payment of civil charges for violations in specific sums, not to exceed \$2,000.00. Such civil charges shall be instead of any appropriate civil penalty, however, payment of any such charges shall not nullify or otherwise affect the requirement for compliance with this article.

- (g) *Payment.* Any civil penalties assessed by the court shall be paid into the treasury of the city, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.
- (h) *Effect of compliance.* Compliance with the provisions of this article 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.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-136. - Failure of plan compliance measures; invocation of bond.

If the erosion and sedimentation control measures required by the plan or agreement in lieu of a plan are not completely constructed, or, if constructed, fail through overload or inadequate maintenance, the city may, if the owner or permittee does not, install ground cover, plants, stabilizing devices or other material to the minimum extent necessary to achieve erosion and sediment control and protect water quality equal to that which would have been furnished by the approved plans or agreement in lieu of a plan. The cost of any such temporary measures taken by the city shall be borne by the owner or permittee, and shall be a charge against the security required by section 50-131. The city may collect any amounts expended which exceed the security provided. Within 30 days of the achievement of adequate stabilization of the land disturbing activity, the security, or the unexpended portion thereof, shall be refunded to the applicant or terminated.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-137. - Appeals and judicial review.

- (a) *Appeal of plan disapproval to city council.* Any applicant under the provision of this article who is aggrieved by any action of the city or its agent in disapproving plans submitted pursuant to this article shall have the right to apply for and receive a review of such action by the city council provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the city council shall be heard at the next regularly scheduled city council public hearing provided that the city council or other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the city council shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the city council may affirm, reverse or modify the action. The city council's decision shall be final, subject only to review by the Circuit Court of the City of Petersburg.
- (b) *Appeal of city council decision.* Final decisions of the city under this article shall be subject to review by the Circuit Court of the City of Petersburg, provided an appeal is filed within 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 land-disturbing activities.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-138. - Uniform schedule of civil penalties, and enforcement procedure.

- (a) *Uniform schedule of civil penalties.* A civil penalty in the amount listed on the schedule below shall be assessed for each violation of the respective offenses:
 - (1) Commencement of land disturbing activity without an approved erosion and sediment control plan shall be \$1,000.00 per day.

- (2) Vegetative measures—Failure to comply with items 1, 2 or 3 of the Virginia Minimum Standards shall be \$100.00 per violation/per day.
 - (3) Structural measures—Failure to comply with items 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 or 19 of the Virginia Minimum Standards shall be \$100.00 per violation/per day.
 - (4) Underground utility measures—Failure to comply with item 16 of Virginia Minimum Standards shall be \$100.00 per violation/per day.
 - (5) Tracking dirt onto a paved or public road—Failure to comply with item 17 of the Virginia Minimum Standards shall be \$100.00 per violation/per day.
 - (6) Failure to obey a stop work order shall be \$100.00 per day.
 - (7) Failure to stop work when permit is revoked shall be \$100.00 per day.
 - (8) Failure to maintain a required permanent erosion and sediment control structure, system, or measure, in accordance with 4 VAC 50-30-60, Maintenance and Inspections, this article and the Subdivision Ordinance of the City of Petersburg, shall be \$100.00 per violation/per day.
 - (9) Failure to remove any temporary erosion and sediment control measure in accordance with requirements of an approved plan, or in violation of Virginia Minimum Standard 18, shall be \$100.00 per day.
- (b) *Issuance of summonses for civil offenses.* The administrator may issue a Virginia Uniform Summons or a summons bearing the title "City of Petersburg Erosion and Sediment Control Violation Summons," charging a violation of this article. Service of a civil summons under this article shall be made in the manner established under the Code of Virginia.

(Ord. No. 08-103, § 1, 11-18-2008)

Sec. 50-139. - Article is in addition to other permit requirements.

- (a) *Requirements cumulative.* The requirements of this article are in addition to all other provisions of the Code of the City of Petersburg (2001) (as amended), which relate to the issuance of permits for work involving land disturbing activities, and shall not be construed to otherwise affect the requirements for such permits.
- (b) *Wetland mitigation banks.* In accordance with the procedure set forth by Code of Virginia § 10.1-563(E), any person engaging in the creation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks, pursuant to a permit issued by the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the board for review and approval consistent with guidelines established by the board.

(Ord. No. 08-103, § 1, 11-18-2008)



City of Petersburg

Ordinance, Resolution, and Agenda Request

DATE: March 23, 2021

TO: The Honorable Mayor and Members of City Council

THROUGH: Kenneth Miller, Interim City Manager
Lionel Lyons, Deputy City Manager of Development and Operations

FROM: Reginald Tabor

RE: **A Public Hearing and consideration of an Ordinance authorizing the City Manager to approve the reduction of Site Plan Review and Land Disturbance Permit Fees when offset by in-kind Staffing Augmentation, in an amount not to exceed 30 percent of the total fees.**

PURPOSE: For the City Council to hold a Public Hearing and consider an Ordinance authorizing the City Manager to approve the reduction of site plan review and land disturbance permit fees when offset by in-kind staffing augmentation, in an amount not to exceed 30 percent of the total fees.

REASON: To comply with code and procedural requirements for authorizing fee reductions.

RECOMMENDATION: It is recommended that the City Council adopts an Ordinance authorizing the City Manager to approve the reduction of site plan review and land disturbance permit fees when offset by in-kind staffing augmentation, in an amount not to exceed 30 percent of the total fees.

BACKGROUND: The City Council referred a proposal to the Planning Commission for a recommendation regarding an ordinance authorizing the City Manager to approve the reduction of site plan review and land disturbance permit fees when offset by in-kind staffing augmentation in an amount not to exceed 30 percent of the total fees.

The City of Petersburg receives Site Plan applications and Land Disturbance Permits for development projects in the City of Petersburg.

The City has received offers to augment City staffing to expedite the review and approval processes. Expedited review and approval processes can benefit the City by reducing staff time required for the processes, and the expedited processes can serve as incentives for additional development.

The augmented staffing would be provided by the property developer at their expense. The augmented staffing would be provided in lieu of additional staffing that would be reflected in a reduction in fees and would reflect the reduction in City Staff resources necessary for the review and approval processes. The reduction in fees would not exceed 30 percent of the total permit fees.

The current fee for a site plan submittal and approval is \$800 per submittal and \$50 for each additional acre. A 30% reduction of the site plan fee for a 1-acre site is \$560.00.

The current fee for a land disturbance permit is \$250.00, plus \$50.00 for every acre or part thereof in excess of one acre. A 30% reduction of the land disturbance permit fee is \$175.00.

The Planning Commission considered the item during the February 17, 2021 meeting and voted to recommend approval.

COST TO CITY: Reduction in Fees received.

BUDGETED ITEM: Anticipated Fee Revenues

REVENUE TO CITY: Fee for Site Plans and Land Disturbance Permits.

CITY COUNCIL HEARING DATE:

CONSIDERATION BY OTHER GOVERNMENT ENTITIES: N/A

AFFECTED AGENCIES: Department of Planning and Community Development, Department of Public Works, Department of Budget and Procurement, Department of Finance

RELATIONSHIP TO EXISTING ORDINANCE OR RESOLUTION: N/A

REQUIRED CHANGES TO WORK PROGRAMS: N/A

ATTACHMENTS:

1. 0217_2021ResolutionFeeReduction

AN RESOLUTION RECOMMENDING APPROVAL OF AN ORDINANCE AUTHORIZING THE CITY MANAGER TO APPROVE THE REDUCTION OF SITE PLAN REVIEW AND LAND DISTURBANCE PERMIT FEES WHEN OFFSET BY IN-KIND STAFFING AUGMENTATION, IN AN AMOUNT NOT TO EXCEED 30 PERCENT OF THE TOTAL FEES.

WHEREAS, The City Council referred a proposal to the Planning Commission for a recommendation regarding an ordinance authorizing the City Manager to approve the reduction of site plan review and land disturbance permit fees when offset by in-kind staffing augmentation in an amount not to exceed 30 percent of the total fees; and

WHEREAS, The City of Petersburg receives Site Plan applications and Land Disturbance Permits for development projects in the City of Petersburg; and

WHEREAS, The City has received offers to augment City staffing to expedite the review and approval processes. Expedited review and approval processes can benefit the City by reducing staff time required for the processes, and the expedited processes can serve as incentives for additional development; and

WHEREAS, The augmented staffing would be provided by the property developer at their expense. The augmented staffing would be provided in lieu of additional staffing that would be reflected in a reduction in fees and would reflect the reduction in City Staff resources necessary for the review and approval processes. The reduction in fees would not exceed 30 percent of the total permit fees.

WHEREAS, The current fee for a site plan submittal and approval is \$800 per submittal and \$50 for each additional acre and a 30% reduction of the site plan fee for a 1-acre site is \$560.00; and

WHEREAS, The current fee for a land disturbance permit is \$250.00, plus \$50.00 for every acre or part thereof in excess of one acre. A 30% reduction of the land disturbance permit fee is \$175.00; and

WHEREAS, The item was on the posted February 3, 2021 Planning Commission Meeting Agenda, and on the February 17, 2021 Planning Commission Meeting Agenda.

NOW THEREFORE BE IT RESOLVED that Planning Commission does hereby recommend approval of an Ordinance authorizing the City Manager to approve the reduction of Site Plan review and Land Disturbance Permit fees when offset by in-kind staffing augmentation, in an amount not to exceed 30 percent of the total fees.



City of Petersburg

Ordinance, Resolution, and Agenda Request

DATE: March 23, 2021

TO: The Honorable Mayor and Members of City Council

THROUGH: Kenneth Miller, Interim City Manager
Lionel Lyons, Deputy City Manager of Development and Operations

FROM: Reginald Tabor, Cynthia Boone

RE: A public hearing and consideration of an ordinance authorizing the City Manager to execute a Lease Agreement with the Appomattox Regional Governor School for City-owned property located at 1555 Flank Road.

PURPOSE:

For City Council to hold a public hearing and consideration of an ordinance authorizing the City Manager to execute a Lease Agreement with the Appomattox Regional Governor School for City-owned property located at 1555 Flank Road.

REASON:

For City Council to hold a public hearing and consideration of an ordinance authorizing the City Manager to execute a Lease Agreement with the Appomattox Regional Governor School for City-owned property located at 1555 Flank Road.

RECOMMENDATION:

The Department of Economic Development recommends approval of the proposed lease of City Owned property located at 1555 Flank Road to the Appomattox Regional Governor’s School to expand athletic and recreational activities for its students.

BACKGROUND: The Department of Economic Development received a proposal from the Appomattox Regional Governor’s School (ARGS) requesting the use of City-Owned property located at 1555 Flank Road to further expand its athletic and other recreational activities for its student; including for soccer, flag football, cross country, and other athletic and recreational activities and other school-related programs, and to make gradual upgrades to the Property over time.

COST TO CITY: NA

BUDGETED ITEM: NA

REVENUE TO CITY: NA

CITY COUNCIL HEARING DATE:

CONSIDERATION BY OTHER GOVERNMENT ENTITIES:

AFFECTED AGENCIES:

RELATIONSHIP TO EXISTING ORDINANCE OR RESOLUTION:

REQUIRED CHANGES TO WORK PROGRAMS:

ATTACHMENTS:

1. ARGs MOU Presentation
2. 1555 Flank Road Ordinance (1)
3. 0102_2021DraftMemorandumofUnderstanding (Agenda Clean Version)

Appomattox Regional Governor School Lease Agreement

Presented by:

Department of Economic Development

Introduction

In the following presentation:

- Background on 1555 Flank Road
- Action Items
- Outline of Proposed Athletic Field

Background Information

The City of Petersburg received a proposal from the Appomattox Regional Governor School to lease City owned property.

Location: 1555 Flank Rd

Current Use: Private Little League recreational programs

Prospective Purchaser: The Appomattox Regional Governor's School (ARGS)

Proposed Use: Athletic Field

The proposed Lease would allow continued use of the field by the private little league.

Action Items

March 2, 2021 - Presentation to the City Council of the lease between the City and the ARGs

March 5, 2021 - Completion of the proposed Lease Agreement

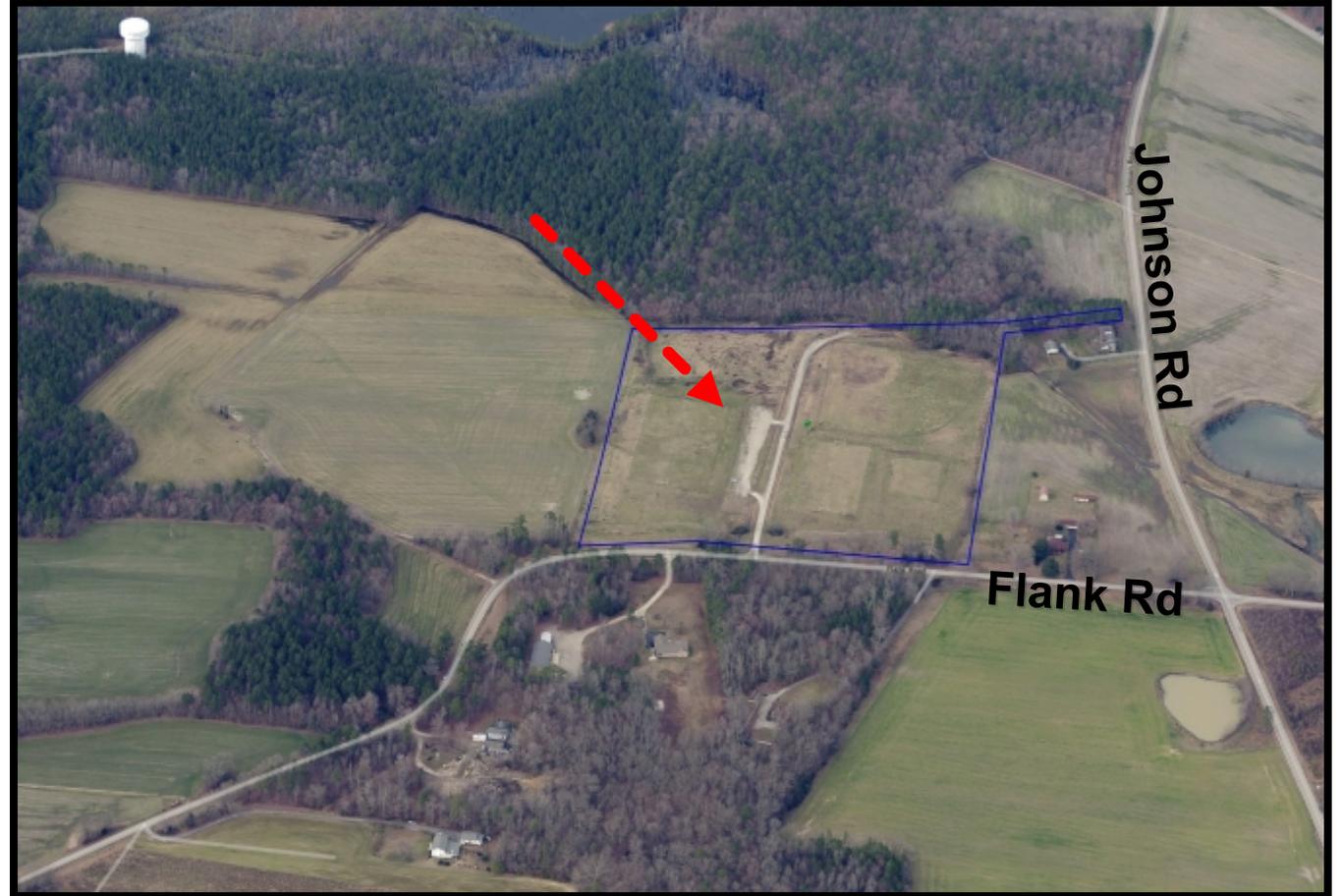
March 16, 2021 – Public hearing and City Council consideration of an ordinance to lease the parcel located at 1555 Flank Road from the City to the ARGs

1555 Flank Rd

Parcel ID: 097010004

Size: 20 acres

Zoning: A - Agriculture



Proposed Athletic Field



Questions & Comments?



ORDINANCE

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF PETERSBURG AND THE APPOMATTOX REGIONAL GOVERNOR'S' SCHOOL FOR CITY-OWNED PROPERTY LOCATED AT 1555 FLANK ROAD

WHEREAS, the City of Petersburg has received a proposal from the Appomattox Regional Governor's School (ARGS) to lease the City-owned property located at 1555 Flank Road (097010004) for an athletic field; and

WHEREAS, the Appomattox Regional Governor's School does not possess any athletic facilities, apart from the gymnasium at the school building; and

WHEREAS, the Appomattox Regional Governor's School wishes to use the Property to further expand its athletic and other recreational activities for its students, including for soccer, flag football, cross country, and other athletic and recreational activities and other school-related programs, and to make gradual upgrades to the Property over time; and

WHEREAS, it is the continuing commitment of the Appomattox Regional Governor's School and the City to support the public education for the good of the community, and to foster collaboration and a positive learning environment for the Appomattox Regional Governor's School students.

NOW THEREFORE BE IT ORDAINED, that the City Council of the City of Petersburg hereby authorizes the City Manager to execute a Lease Agreement with the Appomattox Regional Governor's School for City-owned property at 1555 Flank Road.

LEASE AGREEMENT
*Between the City of Petersburg and
the Appomattox Regional Governor's School
for 1355 Flank Road, Petersburg, VA*

This Lease Agreement, entered into this ____ day of March, 2021, by and between the Appomattox Regional Governor's School for the Arts and Technology and the Regional Board of the Appomattox Regional Governor's School for the Arts & Technology (collectively "Tenant") and the City of Petersburg ("City");

WHEREAS, the City is the current owner of Flank Road Field, located at 155 Flank Road, Petersburg, Virginia 23805 ("Property"); and

WHEREAS, the Regional Board is the regional governing body for the Appomattox Regional Governor's School for the Arts & Technology ("ARGS"); and

WHEREAS, ARGS provides gifted and talented students, including those students who reside within the City, a differentiated and rigorous education, cultivates a supportive environment that inspires unique artistic and technological visions, promotes cultural tolerance, nurtures community partnerships, and produces active, engaged citizens; and

WHEREAS, the Regional Board does not possess any athletic facilities, apart from the gymnasium at the school building; and

WHEREAS, the Regional Board wishes to use the Property to further expand its athletic and other recreational activities for its students, including for soccer, flag football, cross country, and other athletic and recreational activities and other school-related programs, and to make gradual upgrades to the Property over time; and

WHEREAS, the Regional Board, by letter dated November 9, 2020 from Dr. Brandon Albôn, the current Executive Director of ARGS, has requested that the City allow the use of the Property by the Regional Board, so that their objectives can be achieved; and

WHEREAS, the City believes that the objectives and planned uses for the Property are appropriate and will benefit the City of Petersburg and add to the educational benefits and development of ARGS students; and

WHEREAS, it is the continuing commitment of the Regional Board and the City to support the public education system through ARGS for the good of the community and the citizens of the City, and to foster collaboratively a positive learning and growing environment for ARGS students; and

WHEREAS, the City wishes to enter into a lease with the Tenant for nominal rent and for the mutual consideration and promises described herein do agree to be bound by the following terms:

1. **Lease Term:** This lease shall commence upon the date identified in the first paragraph of this Lease hereinafter referred to as the “Commencement Date” and shall renew annually, automatically for a term of five (5) years unless terminated in accordance with this Lease Agreement. Prior to the conclusion of the fifth year, the parties may extend this lease for an additional five-year term not to exceed two extensions from the conclusion of the original lease term.
2. **Rent:** Tenant shall pay the City one dollar (\$1) annually for the lease of the Property.
3. **Representations/Title:** The City makes no representations concerning the condition of or title to the subject property. The property is accepted by the tenant “as is” at the tenant’s sole risk. Upon the discovery of any title issue or concern in relation to the subject property, either party may exercise their right to terminate this Agreement for cause with no further recourse except as expressly stated herein.
4. **Use/Improvements:** Tenant shall use the property only for athletic and other recreational and school-related activities and purposes to the benefits of ARGs students unless otherwise agreed to in advance by written and signed addendum to this Lease. Any improvements made to the Property by the Tenant shall be approved by the City at its sole discretion prior to installation/construction. At the conclusion of the lease, all improvements made to the subject property shall automatically become the property of the City and deemed as part of the consideration provided to the City by Tenant for the lease of this property.
5. The Regional Board agrees to work collaboratively with the City following the execution of this MOU to reasonably maintain existing recreational programs currently being offered on the Property after the lease the Property to the Regional Board. Any such continuing use of the Property shall be subject to all facilities use policies and other applicable policies and procedures of the Regional Board existing at the time of the conveyance of the Property and which from time-to-time may be revised or updated. The parties shall develop a mutually agreeable schedule for use of the property by the public for recreational activities that will not interfere with the use by Tenant pursuant to this Lease Agreement.
6. **Maintenance/Utilities/Services:** Tenant shall be responsible for maintaining the Property in accordance with all applicable laws and regulations. Tenant shall maintain the property in all respects, and shall be solely responsible for any costs associated with maintenance and utilities.
7. **Condition:** The property shall be returned in substantially the same condition that it was in when it was received by Tenant with the exception of authorized improvements in accordance with this Lease Agreement and any subsequent addendum thereto. Tenant shall be responsible for damages to the property

occurring during the lease term including extensions, and shall promptly make repairs at their sole expense.

- 8. Insurance:** The Tenant shall obtain at its sole expense and maintain for the entire lease term including extensions a policy of general liability insurance naming the City as an additional insured in an amount and issued by an insurer to the satisfaction of the City's Risk Manager at his sole discretion.

- 9. Termination:** Either party may terminate this lease for cause immediately upon written Notice to the other party. Upon termination for cause, the City shall have no further liability under this Agreement. Either party may terminate this Agreement without cause by providing written Notice of thirty (30) days to the other party effective upon receipt. Upon termination with or without cause, the other party shall have no further recourse except as expressly stated in this Agreement.

- 10. Notice:** All Notices required pursuant to this Agreement shall be provided to the parties as follows:

To the City:

Kenneth Miller, Interim City Manager (or successor in office)
35 N. Union Street
Petersburg, VA 23803

With copy to:

Anthony C. Williams, City Attorney (or successor in office)
35 N. Union Street
Petersburg, VA 23803

To Tenant:

With copy to:

11. Jurisdiction and Venue: This Lease Agreement shall be construed under the laws of the Commonwealth of Virginia. Any dispute arising from the performance or non-performance of any term contained herein shall be litigated exclusively in the Circuit Court for the City of Petersburg, Virginia or the federal court in Richmond, Virginia.

12. Modification: This document represents the entire agreement between the parties concerning the matters described herein. Any prior or subsequent agreement concerning these matters that is not memorialized in a written addendum to this Agreement and signed by all parties is hereby declared to be null and void.

The undersigned represent that they have the power to bind their respective entities to the terms of this Agreement and by executing this document do hereby bind said entities to all terms contained herein.

**Appomattox Regional Governor’s School for
the Arts and Technology and The Regional Board of the
Appomattox Regional Governor’s School for the Arts & Technology**

By: _____
Chairman

and

By: _____
Executive Director

The City of Petersburg, Virginia

By: _____
Kenneth Miller, Interim City Manager

Approved as to Form

By: _____



City of Petersburg

Ordinance, Resolution, and Agenda Request

DATE: March 23, 2021

TO: The Honorable Mayor and Members of City Council

THROUGH: Kenneth Miller, Interim City Manager
Lionel Lyons, Deputy City Manager of Development and Operations
Reginald Tabor, Interim Director of Planning & Zoning

FROM: Jeremy Tennant

RE: **A Public Hearing and consideration of an Ordinance amending the text of the City's Code of Ordinance to establish a Technology Zone at the former Southside Regional Medical Center site.**

PURPOSE: To expand the existing Technology Zone to another site within the City

REASON: To expand the Technology Zone to another site within the City.

RECOMMENDATION: Staff recommends not expanding the existing Technology Zone at this time as the potential uses allowed within the Technology Zone would not be compatible under the current RB Office-Apartment District Regulations. If the City Council were so inclined to move forward on expanding the Technology Zone to the former Southside Regional Medical Center site, then staff would recommend a study be conducted on the site, through the City Planning Commission, to ensure that a PUD that allows manufacturing can be placed on the site to allow a compliant use that will fit within the character of the neighborhood.

BACKGROUND:

During the December 8, 2020 City Council Public Hearing, Councilmember Cuthbert raised a question after the City Council and Public were briefed on the proposed amendments to the definitions, incentives, procedures, compliance and confidentiality sections of the I-95 Technology Zone. Councilmember Cuthbert made the following inquiry, *"If we were to extend the Technology Zone to the former Southside Regional Medical Center (SRMC) site what are the benefits and is it feasible?"* As a follow up to that inquiry, on January 19, 2021 Councilmember Cuthbert requested through the City Manager that staff address the potential addition of another Technology Zone at the former SRMC site or potentially anywhere else in the City of Petersburg and if applicable, the next steps to be taken to do so and a timeline to complete those steps.

COST TO CITY: N/A

BUDGETED ITEM: N/A

REVENUE TO CITY: TBD

CITY COUNCIL HEARING DATE:

CONSIDERATION BY OTHER GOVERNMENT ENTITIES: Department of Economic Development
Department of Planning and Community Development
Department of Finance
Department of Budget and Procurement
Commissioner of Revenue

AFFECTED AGENCIES:

RELATIONSHIP TO EXISTING ORDINANCE OR RESOLUTION:

REQUIRED CHANGES TO WORK PROGRAMS:

ATTACHMENTS:

1. Technology Zone 2nd Reading CC



City of Petersburg
Department of Economic Development
135 N Union St, Room 304
Petersburg, VA 23803
(804) 733-2308

MEMORANDUM

DATE: March 16, 2021
TO: Kenneth Miller, Interim City Manager
THROUGH: Lionel D. Lyons, Deputy City Manager - Development
THROUGH: Reginald Tabor, Director of Planning and Community Development
FROM: Jeremy Tennant, Assistant to the City Manager
RE: Technology Zone Expansion

SUMMARY: The property is located at 801 South Adams Street (Parcel 031300002). The zoning is RB Office-Apartment District Regulations. The 2014 Comprehensive Plan indicates that the area is designated for Public Use.

In order for the Technology Zone (within its current language and constraints) to be utilized at the former Southside Regional Medical Center site, the parcel will have to undergo the PUD Planned Unit Development zoning change process as it is surrounded by residential land uses to the north, east and west (PUD, Two-Family Residence District, and High-Rise District Regulations). The current Technology Zone rests within a M-1 Light Industrial District which allows manufacturing. Any proposed PUD would have to incorporate requirements to allow for the any potential use to be compatible to the adjacent residential uses.

BACKGROUND: During the December 8, 2020 City Council Public Hearing, Councilmember Cuthbert raised a question after the City Council and Public were briefed on the proposed amendments to the definitions, incentives, procedures, compliance and confidentiality sections of the I-95 Technology Zone. Councilmember Cuthbert made the following inquiry, *“If we were to extend the Technology Zone to the former Southside Regional Medical Center (SRMC) site what are the benefits and is it feasible?”* As a follow up to that inquiry, on January 19, 2021 Councilmember Cuthbert requested through the City Manager that staff address the potential

addition of another Technology Zone at the former SRMC site or potentially anywhere else in the City of Petersburg and if applicable, the next steps to be taken to do so and a timeline to complete those steps.

The Code of Virginia provides that:

- A. Any city, county or town may establish, by ordinance, one or more technology zones. Each locality may grant tax incentives and provide certain regulatory flexibility in a technology zone.
- B. The tax incentives may be provided for up to ten years and may include, but not be limited to: (i) reduction of permit fees; (ii) reduction of user fees; and (iii) reduction of any type of gross receipts tax. The extent and duration of such incentive proposals shall conform to the requirements of the Constitutions of Virginia and of the United States.
- C. The governing body may also provide for regulatory flexibility in such zone which may include, but not be limited to: (i) special zoning for the district; (ii) permit process reform; (iii) exemption from ordinances; and (iv) any other incentive adopted by ordinance, which shall be binding upon the locality for a period of up to ten years.
- D. Each locality establishing a technology zone pursuant to this section may also adopt a local enterprise zone development taxation program for the technology zone as provided in § 58.1-3245.12.
- E. The establishment of a technology zone shall not preclude the area from also being designated as an enterprise zone.

The City of Petersburg City Council adopted Ord. No. 03-52, July 15, 2003, finding that certain classes of high technology business activities have special economic significance to the city due to the nature of the technology and their potential for high growth in employment and capital investment. The City Council further found that the most appropriate method of encouraging the location of new businesses and the expansion of certain existing classes of technology businesses is to create a technology zone with particular boundaries and located on the east side of Interstate 95, and as authorized by the 1950 Code of Virginia, § 58.1-3850, as amended. The City Council determined that the establishment of this technology zone will improve economic conditions, hasten redevelopment, and benefit the welfare of its citizens.

To incentivize high technology business development, capital investment grants were established to be provided to qualified technology businesses. The grant is based on the new or qualifying existing equipment within the technology zone. Each annual installment of the capital investment grant is calculated based on the machinery and tools taxes paid by a qualified technology business on such new equipment in that calendar year. The grant is equal to 100 percent of the machinery and tools taxes paid in years one through five attributable to such new or qualifying existing equipment.

The former Southside Regional Hospital site is located at 801 South Adams Street (Parcel 031300002). The 2014 Comprehensive Plan indicates that the area is designated for Public Use.

The current zoning of the parcel is RB Office-Apartment District Regulations. Uses by businesses locating in the zone would have to conform to the zoning requirements.

Permitted uses within the RB Zoning District include:

1. Any use permitted in the "R-5" Multiple Dwelling District;
 - (1) Any use permitted in the "R-1" Two-Family Residence District and the "R-3" Two-Family Residence District;
 - (2) Multiple-family dwellings;
 - (3) Private clubs, fraternities, sororities, and lodges excepting those the chief activity of which is a service customarily carried on as a business;
 - (4) Parking areas (Ground level);
 - (5) Accessory buildings and uses not otherwise prohibited in this section;
 - (6) Nonprofit religious, educational and philanthropic institutions.
2. Business and professional offices, and office buildings and research laboratories; provided however, that there shall be no advertising sign or device on the lot, on the building, or in or on any of the exterior doors or windows of the building, except for each business or professional office occupying the building, there may by one advertising sign not exceeding two (2) square feet in area attached to the exterior of the building; that no building may be constructed with, or altered to produce a store front, show window or display window; there shall be no display from windows or doors and no storage of merchandise in the building or on the premises; there shall be no machinery or equipment, other than machinery or equipment customarily found in professional or business offices, used or stored in the building or on the lot; that required off-street parking shall be provided in the rear of such buildings or in the portion of the side yards, except adjacent to a street, if a comer lot, lying to the rear of extensions of the front line of such building.

The site is surrounded by residential land uses to the North, East and West. The property within the current Technology Zone is zoned M-2 Heavy Industrial District which allows manufacturing.

To achieve the Technology Zone purpose of promoting high growth in employment and capital investment by encouraging the location of new businesses and the expansion of certain existing classes of technology businesses, businesses would have to comply with the RB zoning or the property at the former Southside Regional Hospital site would have to be rezoned.

The new zoning could be PUD Planned Unit Development District to allow for any potential use to be compatible with the adjacent residential uses. If the property is rezoned to M-1, Light

Industrial District or M-2, Heavy Industrial District, it would not be compatible with adjacent residential uses.

The existing I-95 Technology Zone provides the machinery and tools (M&T) tax credit as an incentive for businesses within the “overlay district.” Rulings by the Virginia Supreme Court has opined that the phrase ‘machinery and tools’ means machinery used in the actual process of manufacturing. The State of Virginia has created a separate classification of tangible personal property for machinery and tools used in manufacturing. Per the State’s definition, machinery and tools is used in manufacturing. Two court cases, *City of Winchester v. American Woodmark* (1995) and *The Daily Press, Inc., v. County of Newport News* (2003), illustrated the precedent personal property that may be essential to overall operations of a manufacturing business is not ‘machinery and tools’ subject to local taxation unless the property is actually and directly used in the manufacturing process where new materials are transformed into a substantially different product or the property is connected with the operation of machinery actually and directly used in the manufacturing process. In essence, the existing incentive that the City currently utilizes in the current Technology Zone is not compatible with the current land use of the SRMC site. An alternative incentive package will be required to provide a credit incentive.

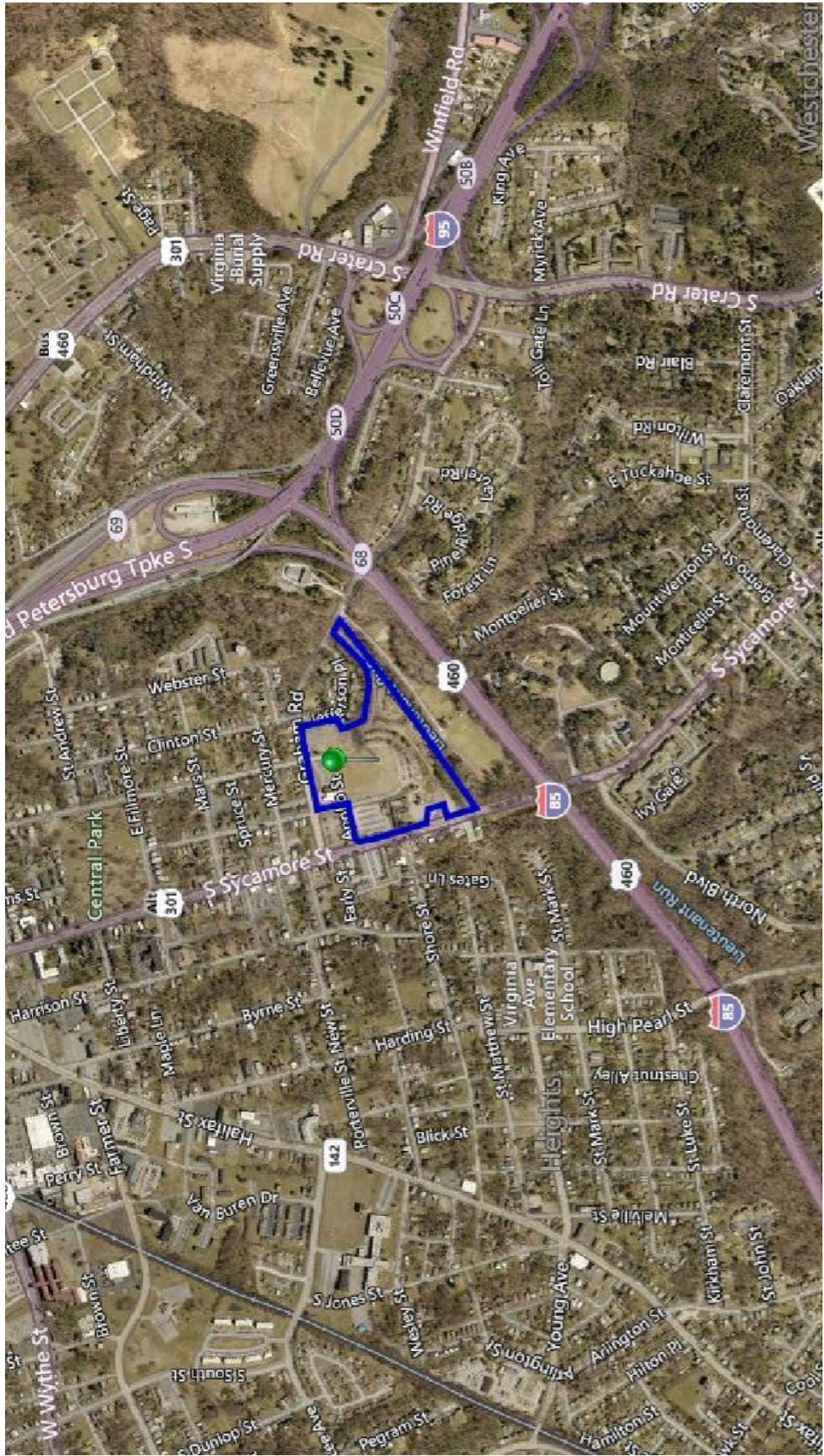
RECOMMENDATION: Staff recommends not expanding the existing Technology Zone at this time as the potential uses allowed within the Technology Zone would not be compatible under the current RB Office-Apartment District Regulations. If the City Council were so inclined to move forward on expanding the Technology Zone to the former Southside Regional Medical Center site, then staff would recommend a study be conducted on the site, through the City Planning Commission, to ensure that a PUD that allows manufacturing can be placed on the site to allow a compliant use that will fit within the character of the neighborhood.

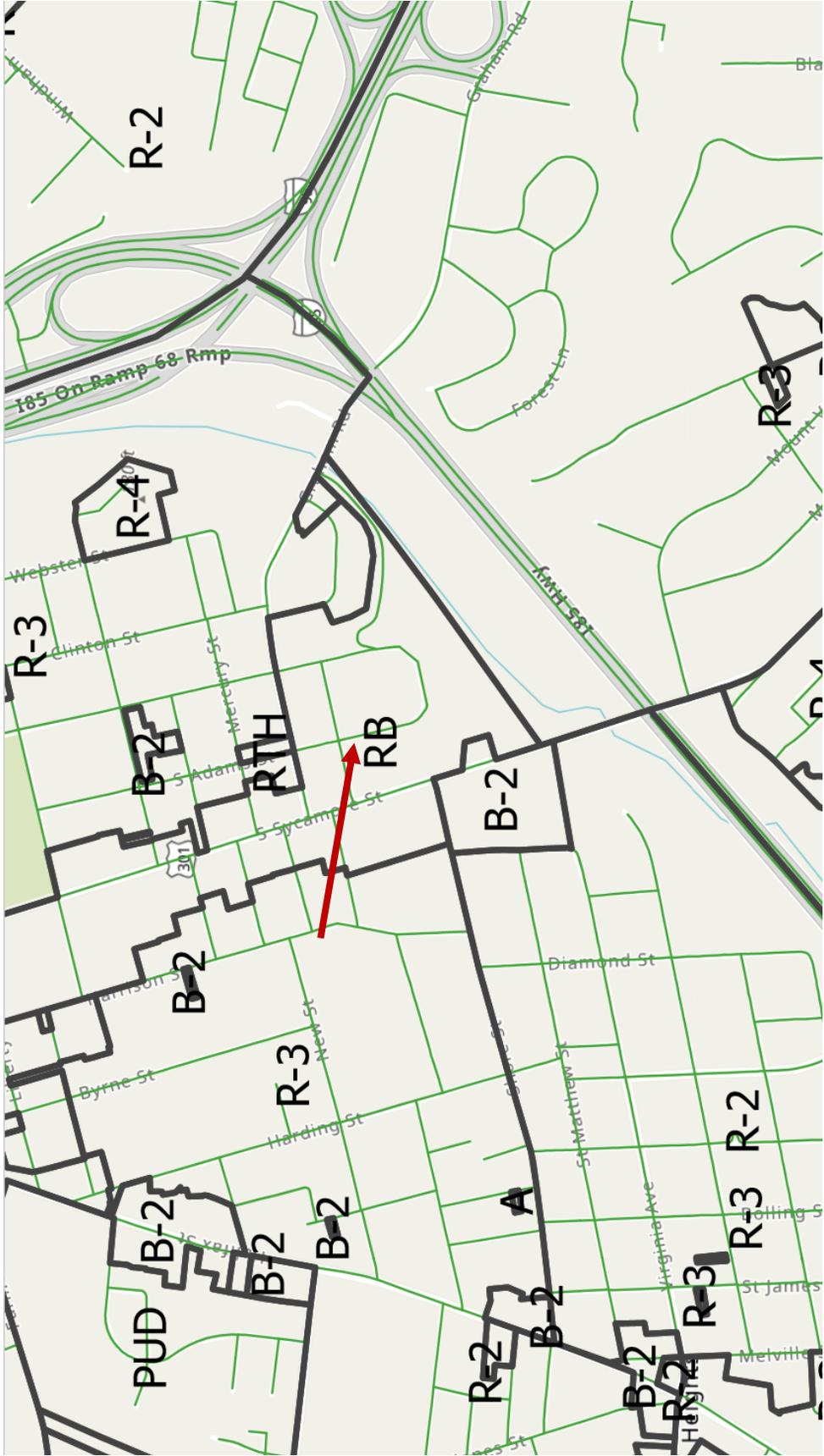
ATTACHMENTS: SRMC Maps

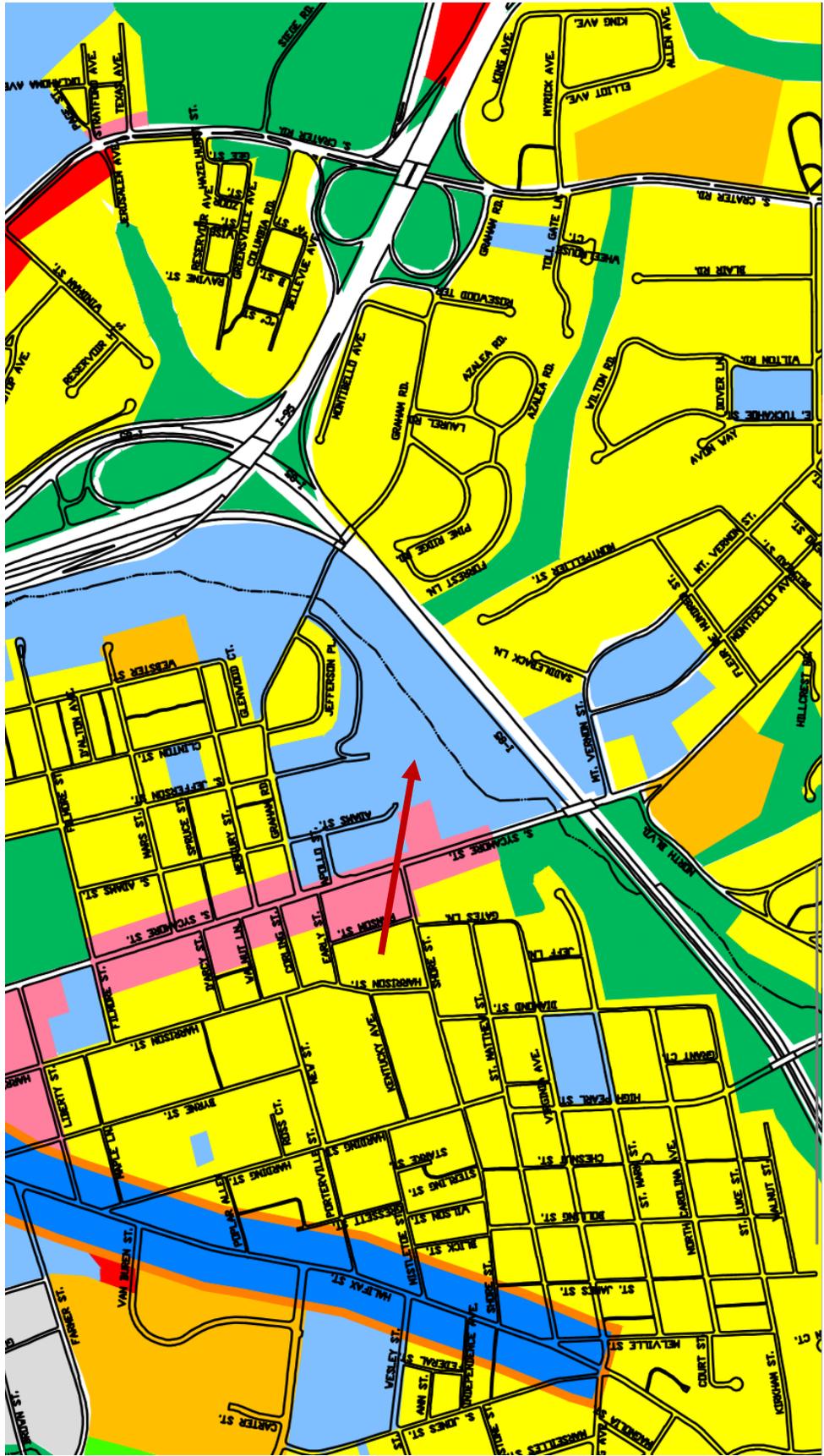
Ordinance for 2nd Reading

Exhibit A

STAFF: Jeremy Tennant, Assistant to the City Manager







ORDINANCE

AN ORDINANCE ADDING THE CITY OF PETERSBURG CODE, ARTICLE VI, SRMC TECHNOLOGY ZONE

WHEREAS, the City Council adopted Ord. No. 03-52, July 15, 2003, finding that certain classes of high technology business activities have special economic significance to the city due to the nature of the technology and their potential for high growth in employment and capital investment; and

WHEREAS, the City Council further found that the most appropriate method of encouraging location of new businesses and the expansion of certain existing classes of technology businesses is to create a technology zone with particular boundaries as designated herein and located on the former Southside Regional Medical Center Site on the east side of South Sycamore Street, bounded by the following streets: Apollo Street, South Adams Street and South Jefferson Street and as authorized by the 1950 Code of Virginia, § 58.1-3850, as amended; and

WHEREAS, the City Council determined that the establishment of this technology zone will improve economic conditions, hasten redevelopment, and benefit the welfare of its citizens; and

WHEREAS, to incentivize high technology business development, capital investment grants were established to be provided to qualified technology businesses, with grants being based on the new or qualifying existing equipment within the technology zone; and

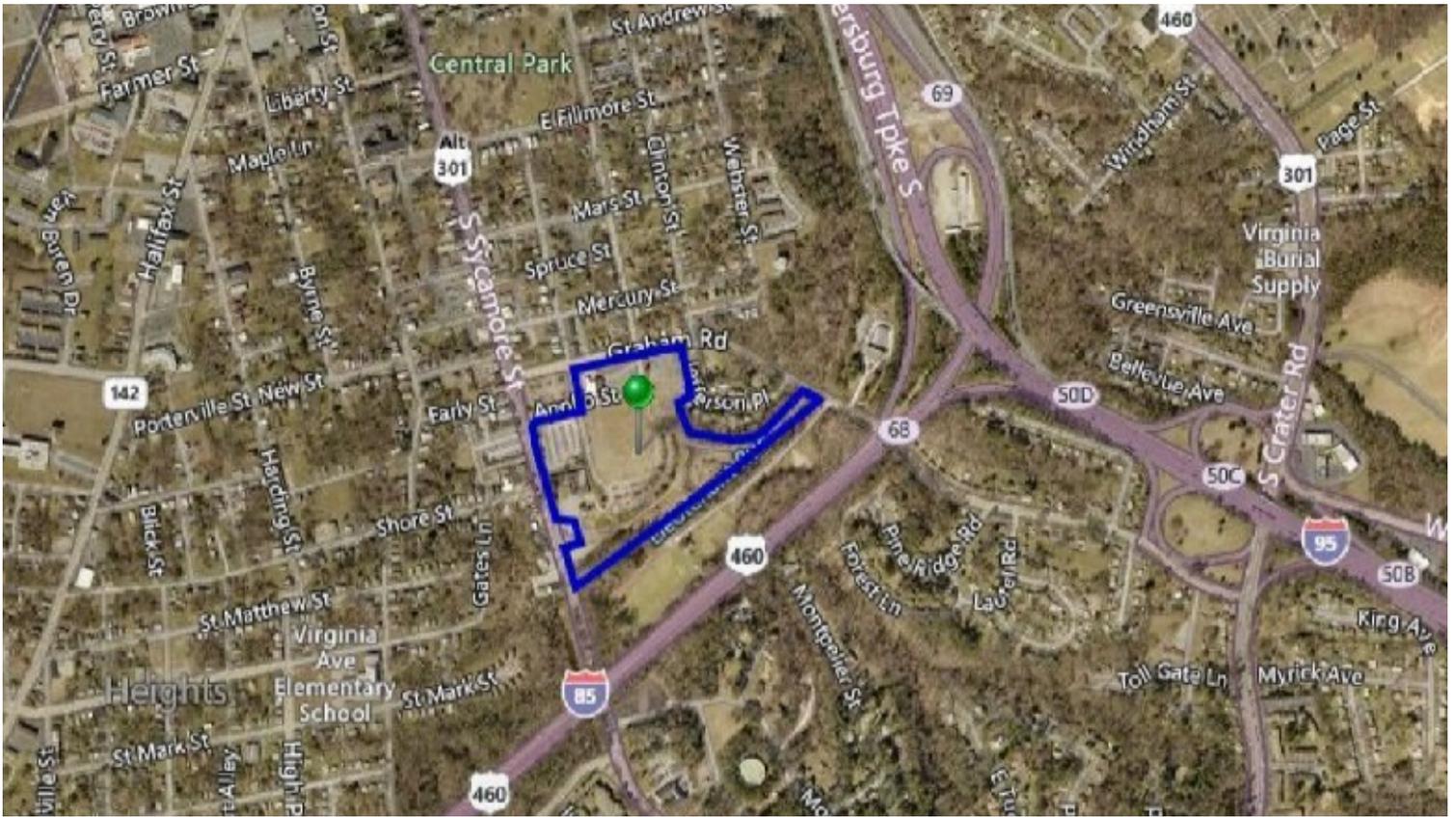
WHEREAS, each annual installment of the capital investment grant is calculated based on the machinery and tools taxes paid by a qualified technology business on such new equipment in that calendar year, and the grant is equal to 100 percent of the machinery and tools taxes paid in years one through five attributable to such new or qualifying existing equipment; and

WHEREAS, there is a need to add the Code Article regarding the Technology Zone to expand the existing Technology Zone benefits to the former Southside Regional Medical Center Site (SRMC) to the SRMC Technology Zone site.

WHEREAS, additions to the City Code require approval through an adopted ordinance approved by the City Council, and the Technology Zone is defined in the City Code and requires such approval.

NOW THEREFORE BE IT ORDAINED, that the City Council of the City of Petersburg hereby approve the addition to the City Code regarding the addition of the SRMC Technology Zone section by including the existing language and benefits of the I-95 Technology Zone to the SRMC Technology Zone.

Exhibit A



Address: 801 South Adams Street

Parcel ID: 032080001