

**City Council Work Session**  
**Tuesday, January 21, 2014**  
**6:00 p.m.**  
**Council Chambers – Rouss City Hall**

**AGENDA**

**1.0 Call to Order**

**2.0 Public Comments:** (Each person will be allowed 3 minutes to address Council with a maximum of 10 minutes allowed for everyone)

**3.0 Items for Discussion:**

**3.1 Presentation:** Community Needs Assessment – Mark Merrill, CEO of Valley Health Systems (pages 3-12)

**3.2 Presentation:** Conference Center Feasibility Study – Tony Peterman, Strategic Advisory Group & Jim Deskins, Economic Redevelopment Director (pages 13-66)

**3.3 Presentation:** Comprehensive Annual Financial Report – Billy Robinson, Brown, Edwards & Company, LLP & Mary Blowe, Finance Director

**3.4 Discussion:** Storm Water Utility – Operation and Maintenance Needs – Perry Eisenach, Utilities Director (pages 67-73)

**3.6 O-2013-40:** AN ORDINANCE TO AMEND CHAPTER 9 – “WATER PROTECTION” OF THE WINCHESTER CITY CODE PERTAINING TO REGULATIONS OF THE VIRGINIA STORMWATER MANAGEMENT PROGRAM (*Implementation of applicable provisions of the Virginia Stormwater Management Plan*) – Perry Eisenach, Utilities Director (pages 74-141)

**3.7 O-2014-03:** AN ORDINANCE TO AMEND CHAPTER 8 AND CHAPTER 27 PERTAINING TO THE ESTABLISHMENT OF THE WINCHESTER ENTERPRISE ZONE AND ITS RELATED INCENTIVES – Jim Deskins, Director of Economic Redevelopment (pages 142-159)

**3.8 R-2014-01:** Resolution – Authorizing the execution of the Winchester Enterprise Zone Local Incentives Grants Funding Agreement between the City of Winchester and the Winchester Economic Development Authority – Jim Deskins, Director of Economic Redevelopment (pages 160-182)

**3.9 Presentation:** Update on the Taylor Hotel project – Jim Deskins, Director of Economic Redevelopment Director

**4.0 EXECUTIVE SESSION**

**4.1** MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO §2.2-3711(A)(3) AND (6) FOR THE PURPOSE OF DISCUSSION OR CONSIDERATION OF THE SUBJECT OF THE ACQUISITION OF AN INTEREST IN REAL PROPERTY FOR A PUBLIC PURPOSE AND INVESTMENT OF PUBLIC FUNDS WHERE IF MADE PUBLIC, THE BARGAINING POSITION OR FINANCIAL INTEREST OF THE CITY WOULD BE ADVERSELY AFFECTED.

**5.0 Liaison Reports**

**6.0 Monthly Reports**

**6.1** Fire Department (pages 183-186)

**6.2** Police Department (page 187)

**7.0 Adjourn**



# Winchester Medical Center

## Executive Summary of the 2013 Community Health Needs Assessment

*Serving Our Community by Improving Health*

1014 Amherst St., Winchester, VA 22601  
[www.valleyhealthlink.com/WMC](http://www.valleyhealthlink.com/WMC)

# Getting to Know Valley Health System and Winchester Medical Center

## Our Mission, Vision, and Values

**Our Mission:** *Serving Our Community by Improving Health.*

**Our Vision:** One System - One Purpose: Leading with Innovative Healthcare

Focusing on patients first, Valley Health will provide the communities we serve with quality health care that is easy to access, well-coordinated, and responsive to their needs. As valued leaders and partners, physicians will guide the health care team in achieving superior clinical outcomes. We will provide our employees with an environment that fosters professional growth, innovation, accountability and pride.

**Our Values:**



## Key Stats at a Glance

<b>ED Visits</b>	68,491
<b>Inpatient Admissions</b>	26,346
<b>Total Patients Served</b>	469,756
<b>Financial Assistance &amp; Means-Tested Programs</b>	\$36,006,114
<b>Total Other Community Benefit</b>	\$8,929,755

## About Winchester Medical Center

As a Valley Health facility, Winchester Medical Center (“WMC” or “the hospital”) shares the mission of “Serving Our Community by Improving Health.” Winchester Medical Center is a 445-bed hospital located in Winchester, Virginia. It provides the only Level II Trauma Center in the region and serves as the tertiary services hub for most of the Northern Shenandoah Valley. It opened in 1903 as Winchester Memorial Hospital, and was renamed Winchester Medical Center in 1984.

Winchester Medical Center includes many centers of excellence: heart & vascular services, oncology, orthopedics, neurosciences, stroke care, women & children’s services, bariatric treatment, as well as surgical services, radiology/imaging, rehabilitation services, and an Emergency Department, Intensive Care Unit (ICU), and Newborn ICU. The hospital reported 26,346 inpatient discharges and 68,491 emergency department visits in 2012.

Valley Health is a nonprofit organization serving the healthcare needs of people in and around a thirteen county area in Virginia and West Virginia and the City of Winchester, Virginia. It operates six hospitals: Winchester Medical Center in Winchester, VA; Warren Memorial Hospital in Front Royal, VA; Shenandoah Memorial Hospital in Woodstock, VA; Page Memorial Hospital in Luray, VA; Hampshire Memorial Hospital in Romney, WV; and War Memorial Hospital in Berkeley Springs, WV. Valley Health also operates Valley Regional Enterprises, Inc. (Valley Home Care; Valley Medical Transport; Valley Pharmacy; Urgent Care Centers in Winchester and Front Royal in VA and Martinsburg in WV; and Quick Care in Strasburg, VA) and Surgi-Center of Winchester.

Valley Health has a combined 594 licensed inpatient beds and 166 long-term care beds system-wide, and is supported by more than 5,300 employees and a medical staff of over 500. The system had 30,000 inpatient admissions and more than 140,000 emergency room visits in 2012. Total outpatient encounters numbered approximately 800,000.

## Recognition

Winchester Medical Center has been recognized as a Best Regional Hospital by U.S. News & World Report. In order to be recognized as a Best Regional Hospital, an organization must be rated as “high performing” in at least one of 16 specialties evaluated. WMC was recognized as high performing in nine specialties, including: Cardiology & Heart Surgery, Diabetes & Endocrinology, Ear, Nose & Throat, Geriatrics, Gastroenterology, Nephrology, Neurology & Neurosurgery, Pulmonology, and Urology. WMC was ranked the #5 hospital in Virginia and the #1 hospital in the Shenandoah Valley region.

Winchester Medical Center is also proud to be a Magnet designated hospital. Magnet designated hospitals obtain better outcomes, higher patient satisfaction, and a transformed work environment that helps to create a culture that values excellent employees. The Magnet recognition is inarguably the gold standard in patient care. It provides our patients with the ultimate benchmark to measure the quality of care they can expect to receive. Winchester Medical Center is one of only 15 hospitals in the state of Virginia to receive this prestigious designation by the American Nurses Credentialing Center’s (ANCC) Magnet Recognition Program. Only approximately 15 percent of hospitals across the U.S. can call themselves Magnet.

# Executive Summary of Community Health Needs

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The CHNA identified and prioritized several community health needs using the data sources, analytic methods, and prioritization process and criteria described in the Methodology section. These needs are listed below in priority order and described on the following pages, with examples of the data supporting the determination of each health need as a priority. Further detail regarding supporting data, including sources, can be found in the CHNA Data and Analysis section of this report.

## List of Prioritized Health Needs

1. Access to Primary and Preventive Care
2. Mental and Behavioral Health
3. Substance Abuse and Tobacco Smoking
4. Physical Activity, Nutrition, and Obesity-related Chronic Diseases
5. Oral Health and Dental Care
6. Financial Hardship and Basic Needs Insecurity

To provide insight into trends, a comparison to findings from WMC's July 2010 CHNA is included below the description and key findings of each priority need.

### **1. Access to Primary and Preventive Care**

Access to primary and preventive health care services through a doctor's office, clinic or other appropriate provider is an important element of a community's health care system, and is vital for helping the community's residents to be healthy. The ability to access care is influenced by many factors, including insurance coverage and the ability to afford services, the availability and location of health care providers, and reliable personal or public transportation.

#### **Key Findings**

- The number of primary care physicians per 100,000 population is below the Virginia and West Virginia averages in all areas except Winchester City, according to the Health Resources and Services Administration. Six of WMC's 13 service area counties are Medically Underserved Areas, two are Health Professional Shortage Areas for primary care, and Winchester City has Medically Underserved Populations.
- Five of six Virginia counties and four of seven West Virginia counties in the service area ranked in the bottom half of all counties in their respective states on "access to care" in the County Health Rankings.

- Eight of the nine counties in WMC’s primary service area – plus Winchester City – have higher percentages of uninsured residents than their respective states, according to the U.S. Census. Ten counties overall have higher percentages of uninsured residents than their respective states. Eight of the 13 counties have higher percentages of uninsured residents than the U.S.
- Concerns about access to care were the second most frequently mentioned factor contributing to poor health in key informant interviews.
- Lack of accessible or reliable transportation to health care and a lack of providers who accept new Medicaid and even Medicare patients were the most frequently mentioned specific access to care issues in interviews, especially for low-income individuals and senior citizens.
- Twenty-three percent of survey respondents reported not being able to always get needed primary care.

Comparison to July 2010 CHNA: Access to affordable health care was one of the priority issues identified in WMC’s July 2010 CHNA, for reasons including: a lack of providers relative to the population; affordability and uninsurance; and the challenges of unemployment and low income.

## **2. Mental and Behavioral Health**

Mental and behavioral health includes both mental health conditions (e.g., depression, autism, bipolar) and behavioral problems (e.g., bullying, suicidal behavior). Poor mental and behavioral health causes suffering for both those afflicted and the people around them. It can negatively impact children’s ability to learn in school, and adults’ ability to be productive in the workplace and to provide a stable and nurturing environment for their families. Poor mental or behavioral health frequently contributes to or exacerbates problems with physical health and illness.

### **Key Findings**

- Seven of the 13 counties in WMC’s overall service area are Health Professional Shortage Areas for mental health; five counties in the primary service area are mental health HPSAs.
- The suicide rate in eight of the nine counties in the overall service area for which data were available was worse than their respective states’ rates, according to the state health departments in Virginia and West Virginia.
- Mental and behavioral health was the most frequently mentioned health status issue by key informant interview participants. Interviewees generally reported that the community’s mental health needs have risen, while mental health service capacity has not.
- Interview participants described a wide range of mental health issues, including for example: bullying among youth, autism spectrum symptoms and diagnoses, depression among senior citizens, adult and family stress and coping difficulties associated with unemployment and under-employment, a lack of affordable outpatient mental health

professionals, and a lack of local inpatient treatment facilities. Interviewees also noted frequent dual diagnoses of mental health problems and substance abuse.

- Mental health was among the top ten most frequently mentioned “top health-related issues” in the community by survey respondents, and 35 percent answering a question about mental health care said they rarely or never could get needed care.

Comparison to July 2010 CHNA: Mental health care was one of the priority issues identified in WMC’s July 2010 CHNA, for reasons including: the presence of mental health HPSAs; unfavorable suicide rates compared to the commonwealth’s average; frequent mentions by interview participants of both mental health needs and a lack of treatment options; and focus groups identifying substance abuse and mental health as the second highest health priority.

### **3. Substance Abuse and Tobacco Smoking**

Substance abuse includes the use of: illicit substances (e.g., cocaine, heroin, methamphetamine, and marijuana); misuse of legal over-the-counter and prescription medications; and abuse of alcohol. Substance abuse affects not only the abusing individuals, but also those around them with negative impacts on health, safety and risky behaviors, risks of violence and crime, adults’ productivity, students’ ability to learn, and families’ ability to function. Tobacco smoking is well-documented to be a risk factor for various forms of cancer, heart disease and other ailments, and to pose health risks for those exposed to secondhand smoke.

#### **Key Findings**

- Rates of adult tobacco use in five of WMC’s primary service area counties place them in the bottom (worse) half of counties in their respective states, according to County Health Rankings. An indicator of excessive drinking and motor vehicle crash death rates places six service area counties in the bottom (worse) half of their respective states’ county rankings.
- Substance abuse was the second most frequently mentioned health status issue by key informant interview participants, and was portrayed as both growing and serious. Interviewees reported recent increases in the abuse of prescription pain medications, including “pill parties” among youth and drug-seeking behavior in physicians’ offices and hospital emergency departments. Abuse of over-the-counter medications by youth was mentioned, as well.
- Interviewees cited a lack of local treatment services, particularly inpatient facilities, for people with substance abuse problems. Some interviewees reported that substance abuse and addiction among pregnant women is creating more perinatal and neonatal health problems. As noted above for mental health needs, dual diagnoses of substance abuse and mental health problems are not uncommon.
- Tobacco use was among the five most frequently mentioned “top health-related issues” in the community by survey respondents, and substance abuse was among the top ten. Survey respondents with Medicare coverage (and therefore age 65 and over) were much more likely (22.5%) than the overall respondent group (13.2%) to report drinking alcohol ten or more days in the past month

Comparison to July 2010 CHNA: Substance abuse was one of the priority issues identified in WMC’s July 2010 CHNA, for reasons including: alcohol use as reported by County Health Rankings; frequent mentions as a serious issue by interview participants; and focus groups identifying substance abuse and mental health as the second highest health priority.

#### **4. Physical Activity, Nutrition, and Obesity-related Chronic Diseases**

A lack of physical activity and poor nutrition are contributing factors to overweight and obesity, and to a wide range of health problems and chronic diseases among all age groups, including high cholesterol, hypertension, diabetes, heart disease, stroke, some cancers, and more.

Nationally, the increase in both the prevalence of overweight and obesity and associated chronic diseases is well-documented, and has negative consequences for individuals and society. Low-income and poverty often contributes to poor nutrition and to hunger.

##### **Key Findings**

- Food deserts – low-income areas more than one mile from a supermarket or large grocery store in urban areas and more than 10 miles from a supermarket or large grocery store in rural areas – exist in six of the nine counties plus Winchester city in WMC’s primary service area. In the secondary service area, food deserts exist in two of four counties.
- Ninety-eight schools in the WMC community, located in every county except for Clarke, had 40 percent or more of their students eligible for free and reduced-price lunches, indicating risks of poor nutrition and hunger.
- In key informant interviews, obesity and overweight was the fourth most frequently mentioned health status issue as being important to the community, and diabetes was the sixth most frequent.
- Commenting on the contributing factors to poor health status, interview participants mentioned nutrition and diet, low physical activity and exercise, and food insecurity and hunger all in the top ten. Many commented on both the relative lack of affordable, healthy food choices in some parts of the community, and children at risk of hunger on weekends and during summers when school lunch programs are not available. Obesity was reported to be rising among children and youth.
- In the survey, obesity, diabetes, not enough exercise, and poor dietary choices were four of the six most frequently mentioned “top health-related issues” in the community; heart disease was in the top ten. Among survey respondents who speak Spanish at home, limited access to healthy food, poor dietary choices, and not enough exercise were tied as the second-ranked health issues, behind diabetes and low income (which tied for first).
- In the survey, 28.3 percent of respondents reported not being physically active, 36.2 percent reported eating less than the recommended amount of fruit, and 63.7 percent reported eating less than the recommended amount of vegetables. These figures were higher in all cases among respondents with Medicaid or no health insurance, and among those without a college degree.

Comparison to July 2010 CHNA: Physical activity, nutrition, and obesity-related chronic diseases were not one of the top health priority areas identified in WMC's July 2010 CHNA, but chronic disease and obesity were among the top two health status issues reported in that assessment's survey. The need for health education and outreach programs that focus on healthy habits was a key theme from the 2010 assessment's focus groups. Participants in key informant interviews in 2013 reported obesity prevalence now being as bad as or worse than two to three years ago.

## **5. Oral Health and Dental Care**

Oral health and dental health care is important for overall health, and poor dental health can have negative social, employment and economic consequences for individuals, as well. Income levels and the presence or lack of insurance coverage for dental care are important determinants of the ability to obtain preventive and restorative dental care.

### **Key Findings**

- Six of the counties in WMC's service area are Health Professional Shortage Areas for dental care. These data are affirmed in the County Health Rankings' reported population-to-dentist ratios. Frederick County's dentist ratio was more than 75 percent worse than the U.S. average.
- Virginia eliminated funding for commonwealth-supported dental clinics statewide in FY 2013 and FY 2014.
- Oral health and dental care was the third most frequently mentioned health status issue by key informant interview participants. The issue was discussed in terms of poor dental hygiene, tooth decay in children and youth in addition to adults, and a lack of affordable, preventive dental health services.
- Interview participants stated access to dental care is very difficult for low income and uninsured individuals, particularly in less populated areas. In addition to private practice dentists, some clinics offer dental services, but some are able to perform extractions only.
- Interview and community response session participants noted that Medicaid covers dental care only for children and youth, and that not all dentists accept Medicaid patients. For low income, uninsured adults needing expensive restorative care, tooth extractions are sometimes the only practical option.
- Oral health challenges were reported by interview participants as affecting people across the age spectrum, with some reporting increasing incidence of severe decay among children and others stating that access to dental care – as for access to other care – was particularly difficult for elderly members of the community who may have transportation limitations and be socially isolated.

Comparison to July 2010 CHNA: Oral health and dental care were not one of the top health priority areas identified in WMC's July 2010 CHNA, but five of the six counties that are Health Professional Shortage Areas in 2013 were also shortage areas in the 2010 assessment.

## 6. Financial Hardship and Basic Needs Insecurity

Income levels, employment and degrees of economic self-sufficiency are known to be highly correlated with the prevalence of a range of health problems and factors that contribute to poor health. People with lower income or who are unemployed or underemployed are less likely to have health insurance or to be able to afford health care expenses paid out-of-pocket. Lower income is also associated with increased difficulties securing reliable transportation, including to medical care visits, and with the ability to purchase an adequate quantity of healthy food on a regular basis. For these and other reasons, the assessment identified financial hardship and basic needs insecurity as a priority health need in the community.

### Key Findings

- The community as a whole has experienced a 19 percent increase in the percentage of households with incomes under \$25,000 since 2009.
- Eight of the nine counties in WMC's primary service area – plus Winchester City – have higher percentages of uninsured residents than their respective states, according to the U.S. Census. Ten counties overall have higher percentages of uninsured residents than their respective states. Eight of the 13 counties have higher percentages of uninsured residents than the U.S.
- Governmental budgets at the state and local levels for health and public health-related services were generally flat or declining across the community, although there are differences by county, state and specific service.
- Low income and poverty was the top issue believed to be contributing to poor health status and to access to care difficulties, by participants in key informant interviews. Other income-related factors noted to be contributing to poor health include difficulty with transportation access (third most frequently mentioned), food insecurity and hunger, and homelessness.
- The economic downturn of the past several years was mentioned by interview participants as taking a toll on health in numerous ways, reducing access to health care and the ability to maintain a healthy lifestyle, and increasing stress and social instability.
- In the survey, low income and financial challenges was the second most frequently mentioned “top health-related issue” in the community, ahead of every other factor except for obesity. For survey respondents who reported not being able to always get the care they needed, affordability and a lack of insurance coverage were the most frequently stated reasons.

Comparison to July 2010 CHNA: Financial hardship and basic needs insecurity was not one of the top health priority areas identified in WMC's July 2010 CHNA, but that assessment did note several financial hardship measures relevant to health. The study reported that 21 percent of households in the community had annual incomes below \$25,000, and that poverty and

unemployment was comparatively high in significant parts of the region. Lack of access to affordable health care was considered the third highest priority in the 2010 assessment's focus groups.

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# CITY OF WINCHESTER, VIRGINIA

## PROPOSED CITY COUNCIL AGENDA ITEM

**CITY COUNCIL/COMMITTEE MEETING OF:** January 21, 2014 **CUT OFF DATE:** \_\_\_

**RESOLUTION** \_\_\_ **ORDINANCE** \_\_\_ **PUBLIC HEARING** \_\_\_

**ITEM TITLE:** Presentation of the Conference Center Feasibility Study by Strategic Advisory Group

**STAFF RECOMMENDATION:** Requires no formal approval or acceptance from Council

**PUBLIC NOTICE AND HEARING:** N/A

**ADVISORY BOARD RECOMMENDATION:** N/A

**FUNDING DATA:** N/A

**INSURANCE:** N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>[Signature]</i>	_____	1/14/2014
6. City Manager	<i>[Signature]</i>	_____	1-16-14
7. Clerk of Council	<i>[Signature]</i>	_____	1-16-14

Initiating Department Director's Signature: \_\_\_\_\_

*[Signature]*  
Economic Redevelopment Director

1/14/13  
Date



**APPROVED AS TO FORM:**

*[Signature]* 1/14/2014  
**CITY ATTORNEY**

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Jim Deskins, Economic Redevelopment Director  
**Date:** 1/21/2014  
**Re:** Presentation of the Conference Center Feasibility Study from Strategic Advisory Group

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**THE ISSUE:** The Winchester Common Council has identified the City Staff to study the feasibility of constructing a conference center in Winchester

**RELATIONSHIP TO STRATEGIC PLAN:** Goal One: Grow the Economy

Top Priority 2013-2014. Conference Center Strategy Concept/Market/Study

**BACKGROUND:** Strategic Advisory Group has been contracted by the Economic Development Authority of the City of Winchester to conduct a conference center feasibility study and will be presenting their findings to Council.

**BUDGET IMPACT:** N/A

**OPTIONS:** Presentation requires no formal acceptance from Council

**RECOMMENDATIONS:** Council is asked to provide staff with future direction/expectations regarding the construction of a conference center

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Feasibility Study: Multi-Purpose Conference Center

## SUMMARY PRESENTATION

**Strategic**AdvisoryGroup

January 2014

# Why the Study?

- Lack of large, quality event space causes many to go outside of the community
- Growth exists in the community population; Shenandoah Univ., Medical Center; the success of Old Town; etc.
- Possible to complement and augment that growth with a facility?

# Research Process

- Stakeholder interviews
- Local market assessment
- Regional & national market observations
- Comparable facility analysis
- Industry trends
- Conclusions & recommendations
- Financial framework

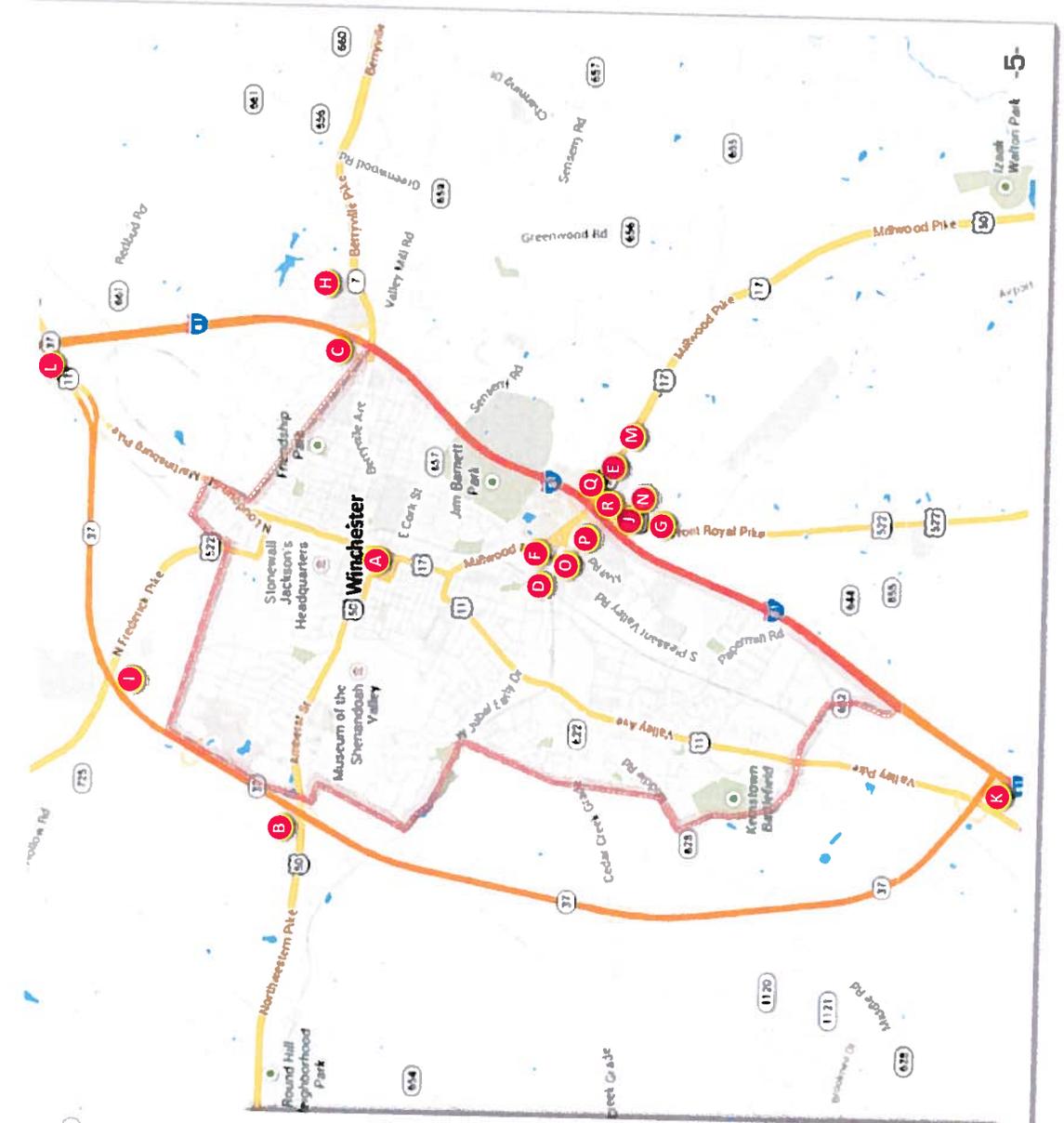
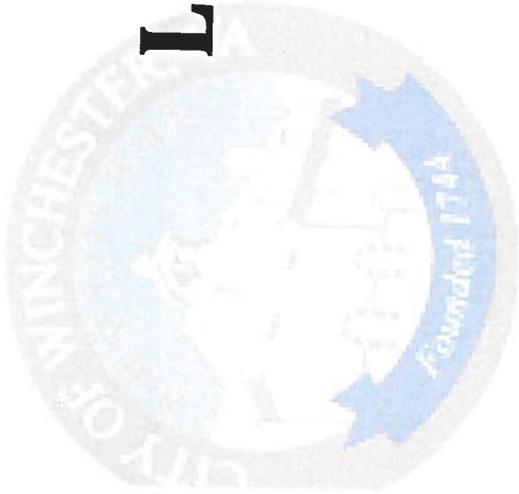
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## **Hotel Market: *Winchester***

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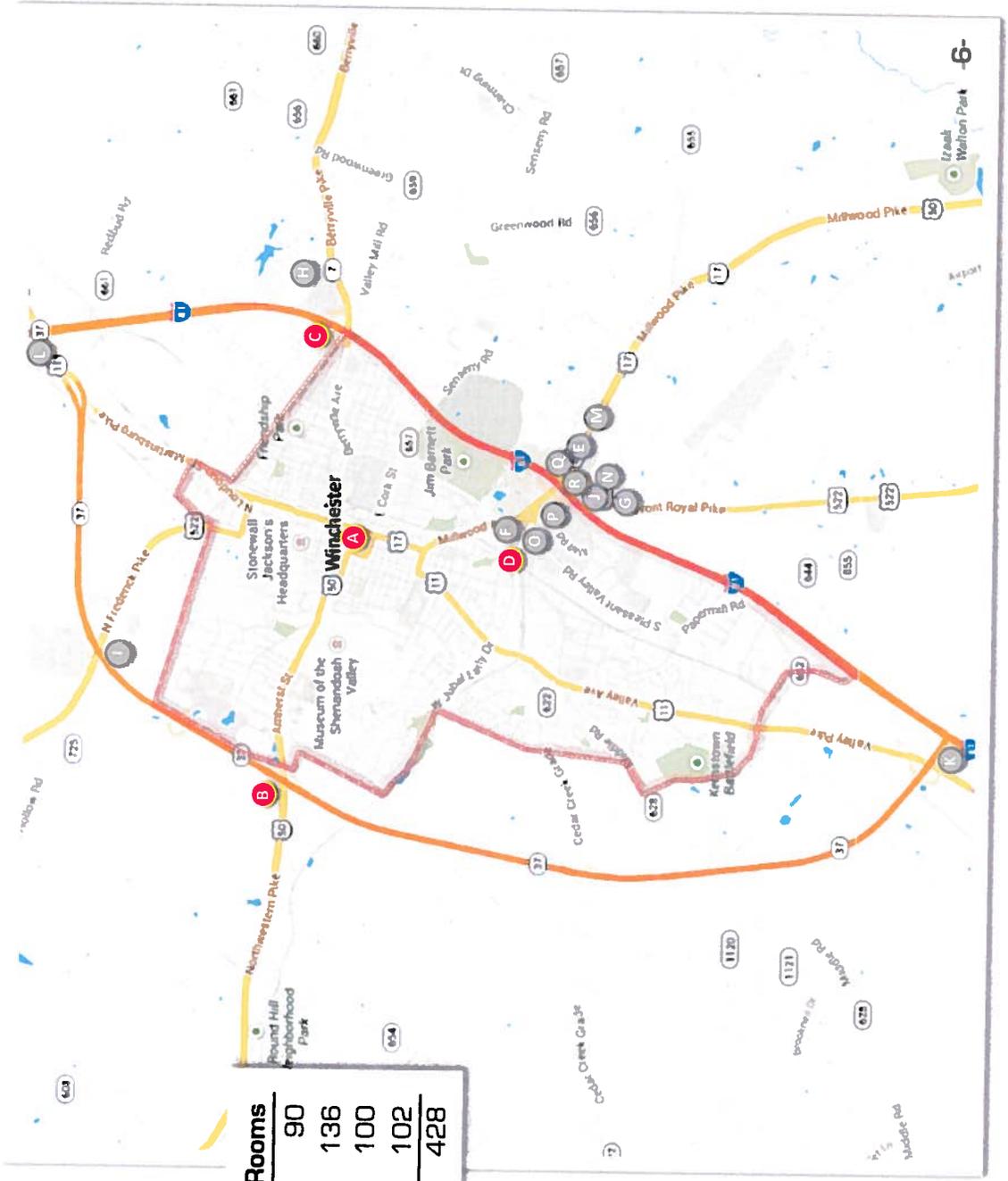
# Local Hotel Supply



Property	Rooms
A Wyndham GW Hotel	90
B Marriott Courtyard	136
C Hampton Inn North	100
D Hilton Garden Inn	102
E aLoft Hotel	99
F Hampton Inn @ Mall	101
G Holiday Inn	130
H Towne Place Suites	109
I Holiday Inn Express	81
J Fairfield Inn	85
K Country Inn & Suites	81
L Comfort Inn	82
M Candlewood Suites	70
N Sleep Inn	72
O Wingate	84
P Best Western	139
Q Red Roof Inn	113
R Travelodge	149
	<b>1,823</b>

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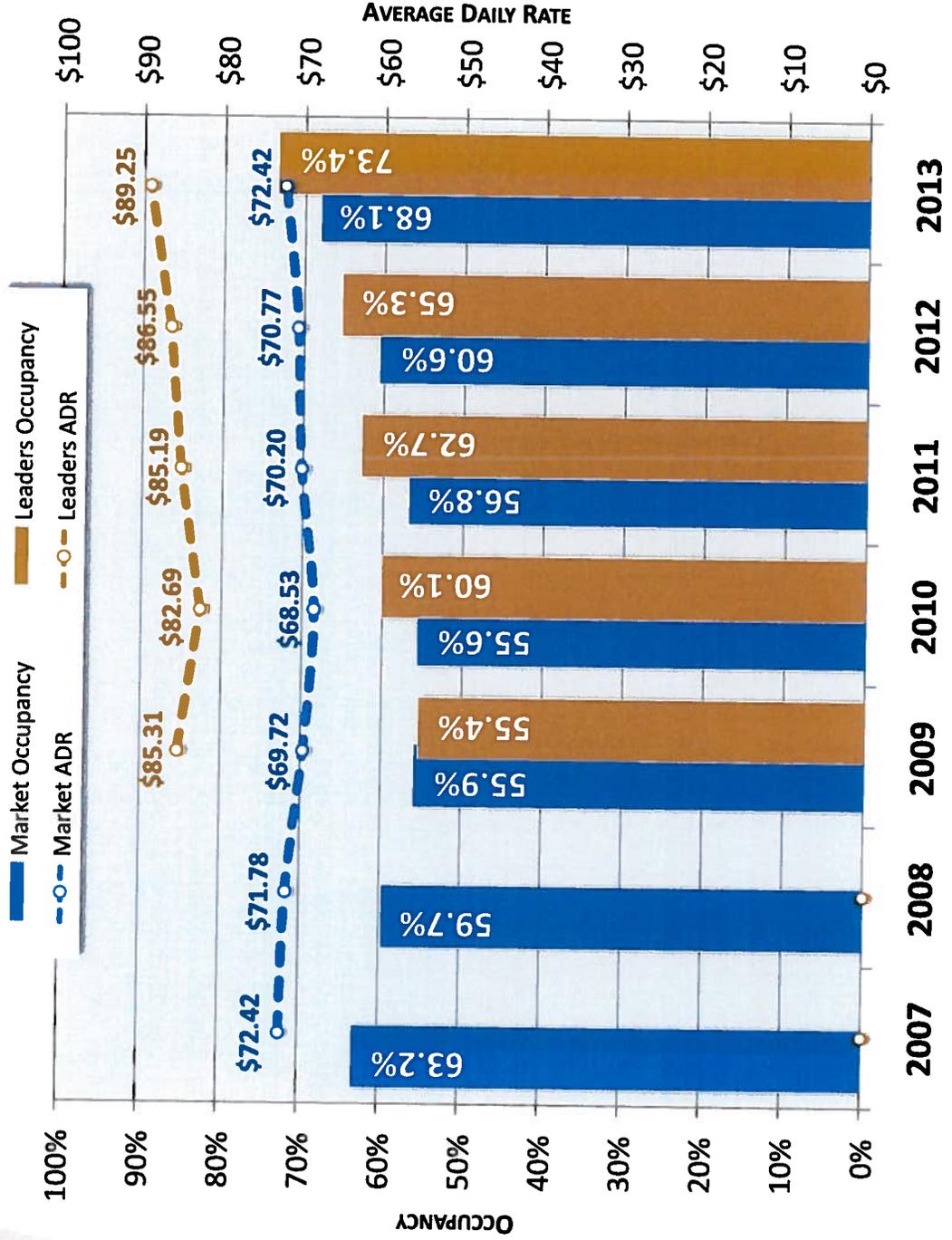
# Market Subset: "Leaders"



Property	Rooms
A Wyndham GW Hotel	90
B Marriott Courtyard	136
C Hampton Inn North	100
D Hilton Garden Inn	102
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	428

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# Hotel Market Performance



Source: STR, SAG.

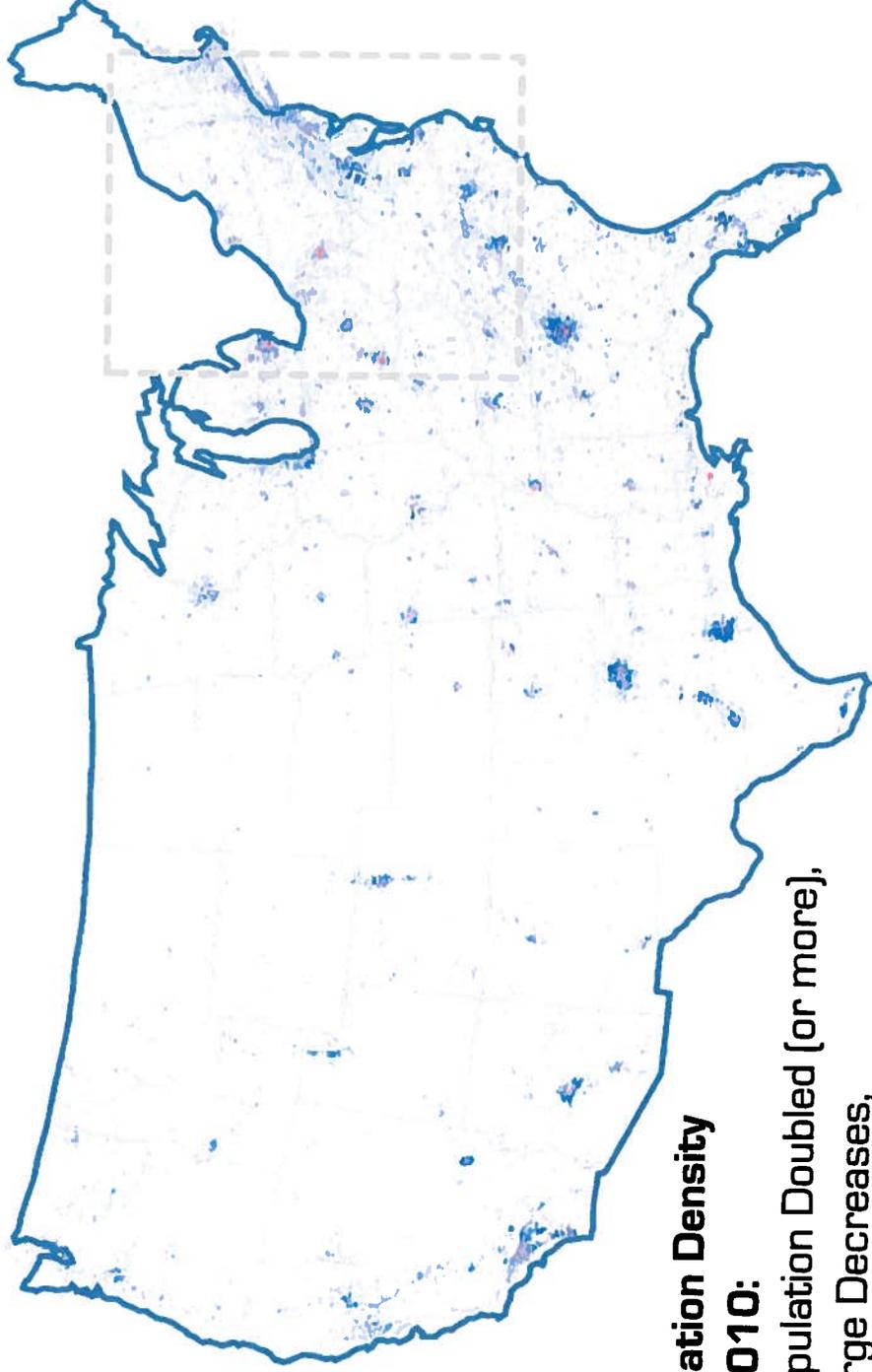
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# Demographics

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# Population Density Shift



**Change in Population Density  
from 2000 to 2010:**

**Blue** = Population Doubled (or more),

**Red** = Large Decreases,

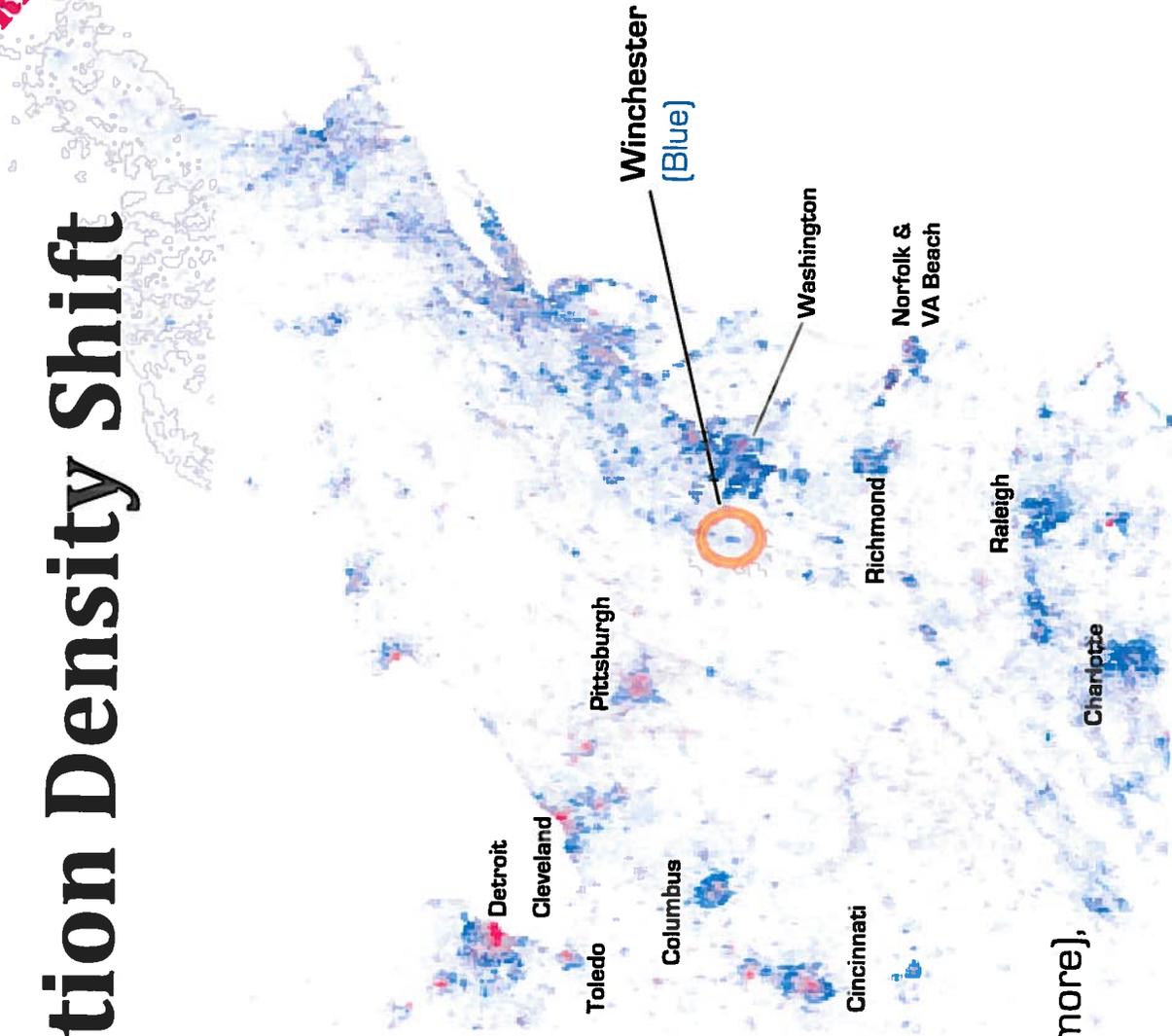
**White** = Little or No Change

Source: Stephen Von Worley 2011



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# Population Density Shift



**Change in Population Density from 2000 to 2010:**

- Blue** = Population Doubled (or more),
- Red** = Large Decreases,
- Grey** = Little or No Change

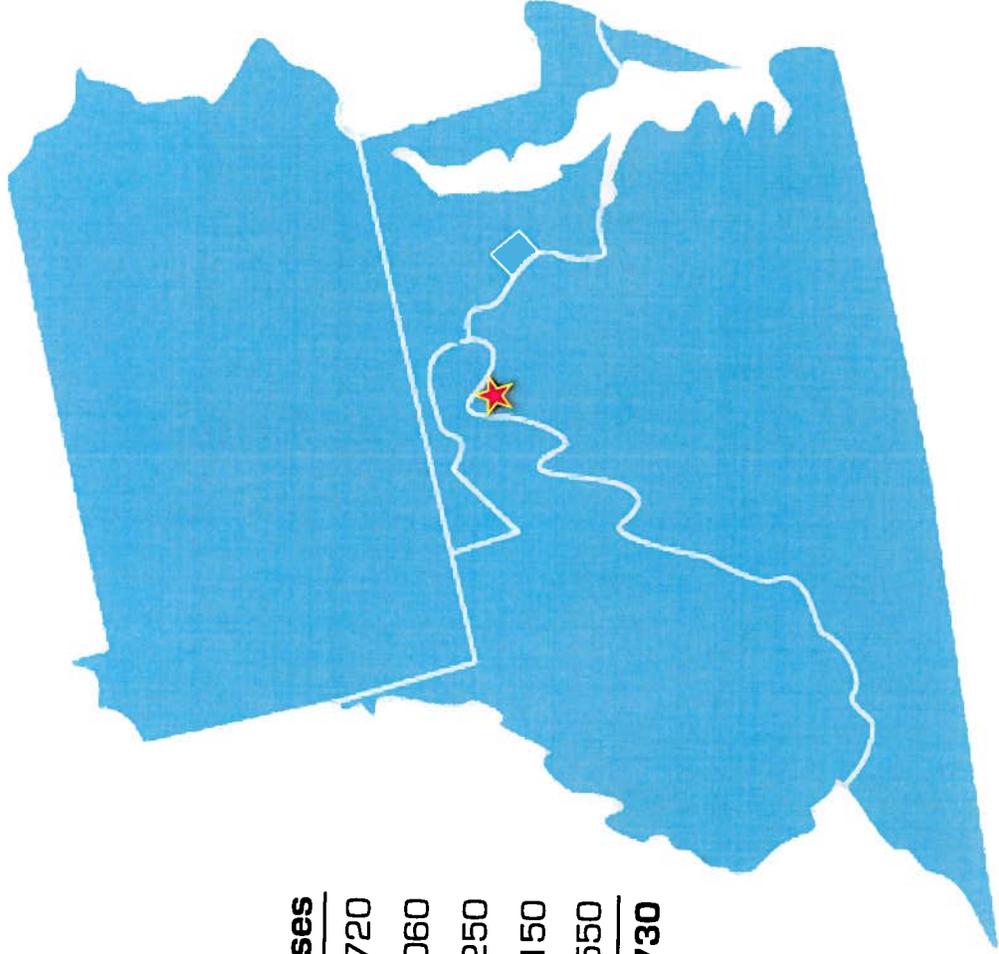
Source: Stephen Von Worley 2011

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# Key Demographics

*What Drives Group Events? People.*

	<u>Population</u>	<u>Businesses</u>
PA:	12,702,000	295,720
VA:	8,001,000	191,060
MD:	5,774,000	133,250
WW:	1,853,000	35,150
DC:	602,000	21,550
<b>TOTAL:</b>	<b><u>28,932,000</u></b>	<b><u>676,730</u></b>



# Types of Group Events

- Association/Conventions 
- Tradeshow 
- Consumer/Public Shows
- Corporate
- SMERF/Affinity
  - Social, Military, Educational, Religious, Fraternal
- Other

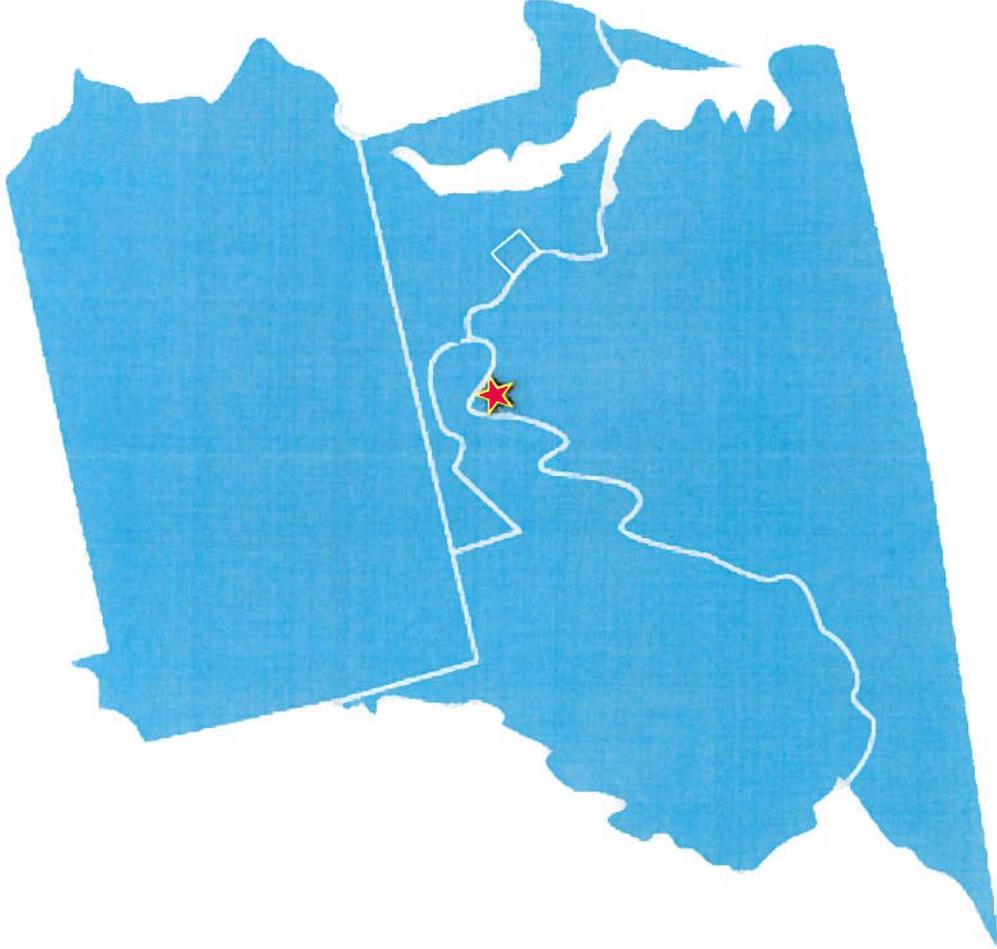
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# Regional A/C/TS Business

*Collected from Largest Industry Database*



<u>Held in:</u>	<u>No. of Events</u>
PA:	22
VA:	285
MD:	203
WV:	3
DC:	267
Other:	553
<b>TOTAL:</b>	<b><u>1,333</u></b>

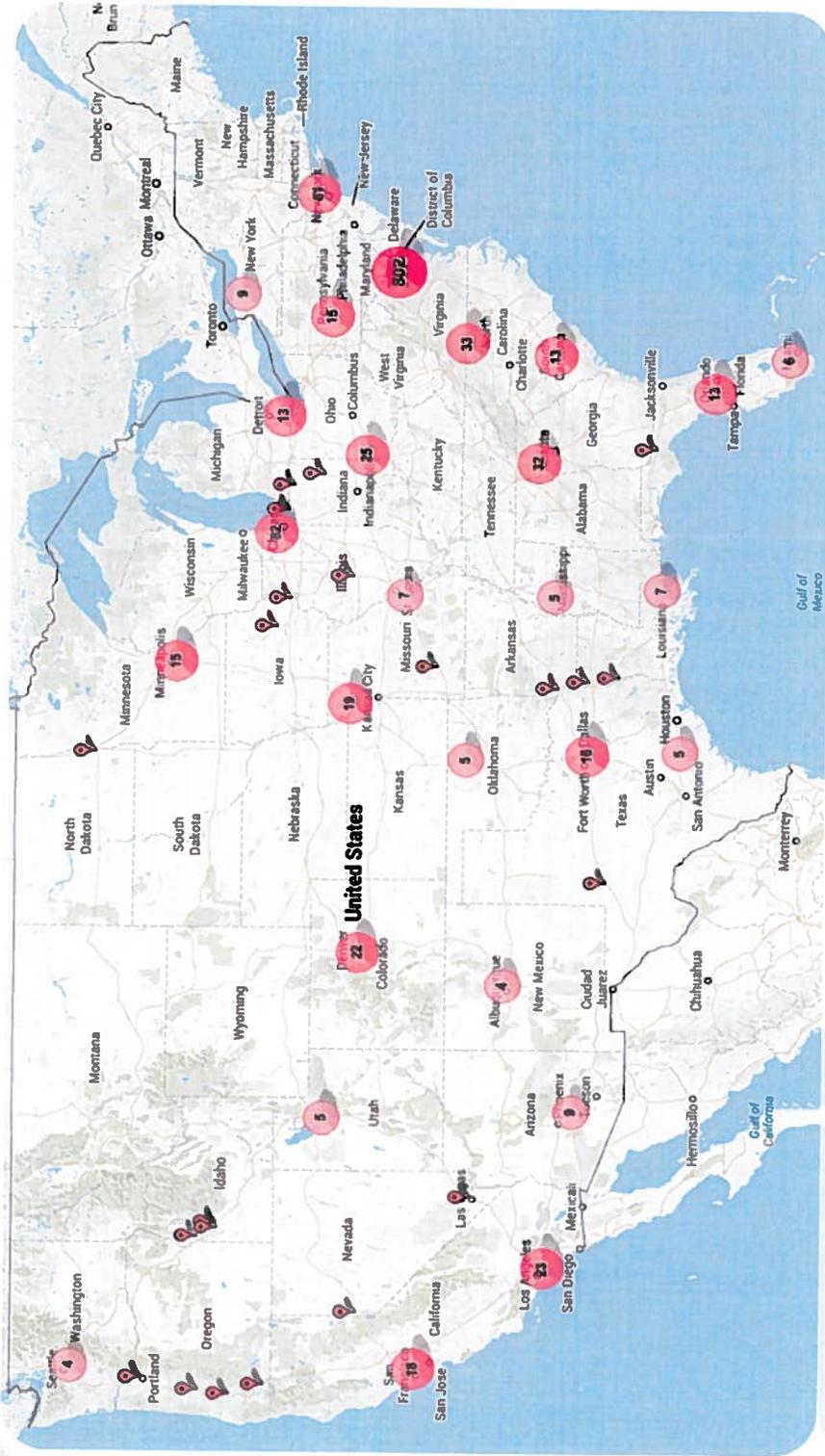


Source: MINT Database; SAG

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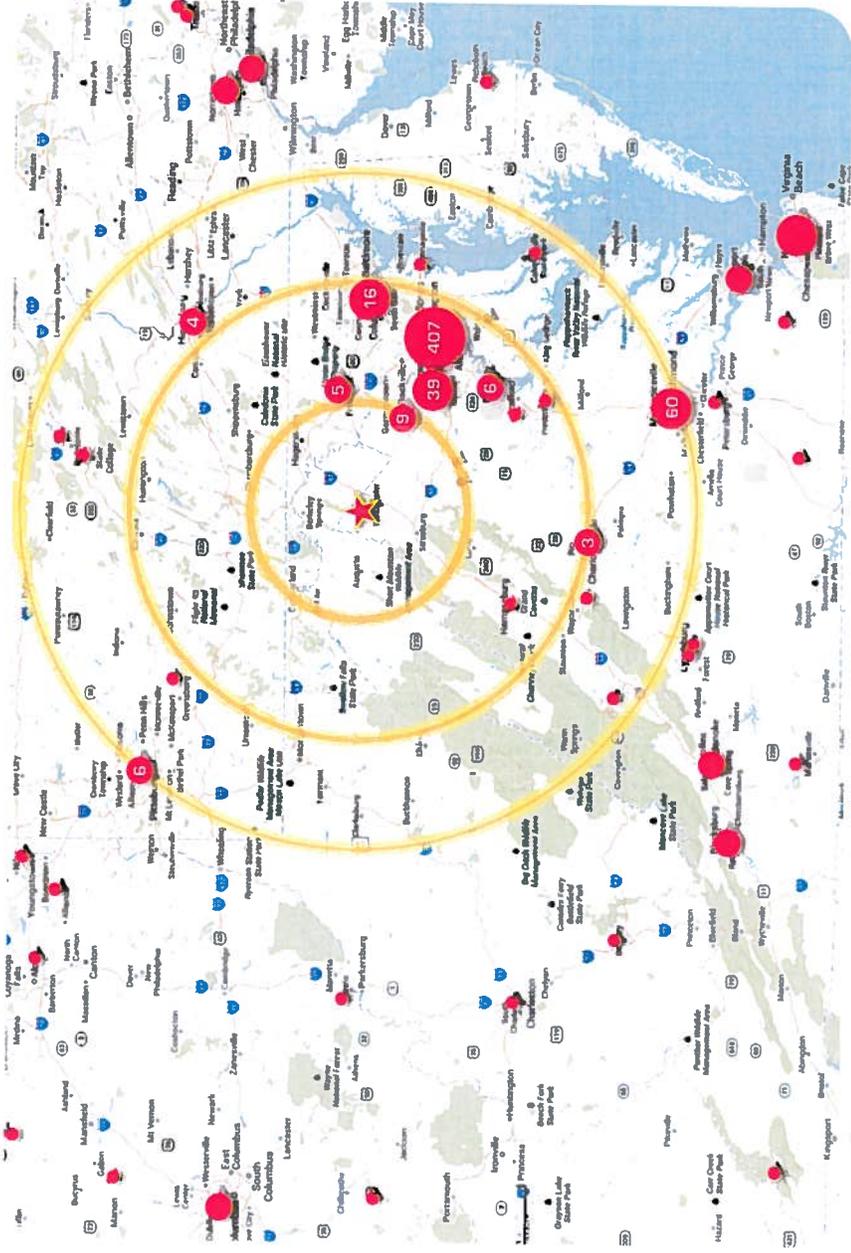
# Event Headquarters

Where the 1,333 Events that met in VA-MD-PA-DC-WV are based:



# Event Headquarters

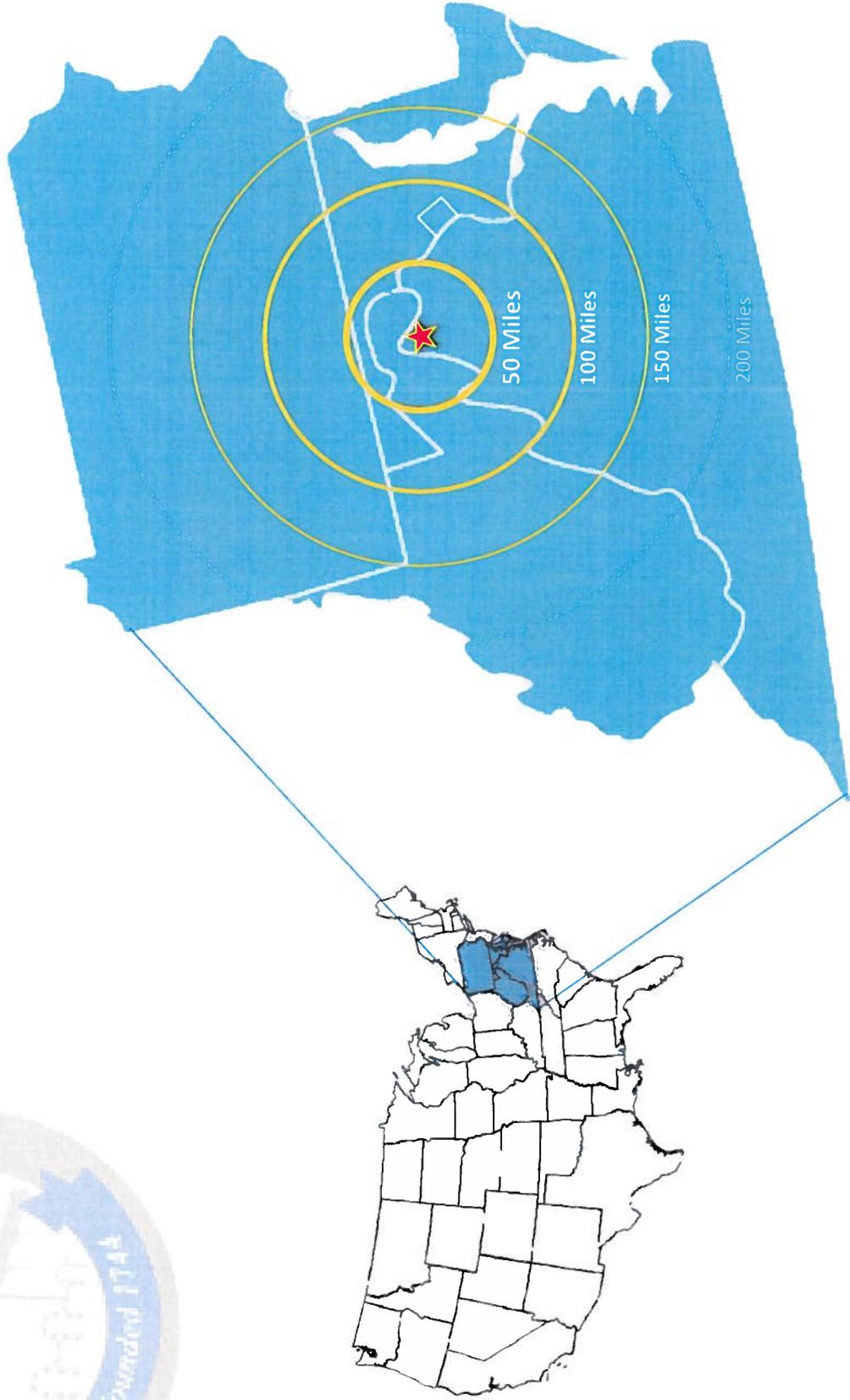
Where the 1,130 Events that met in VA-PA-DC-WV are based:  
[Location data for 203 MD events not available.]



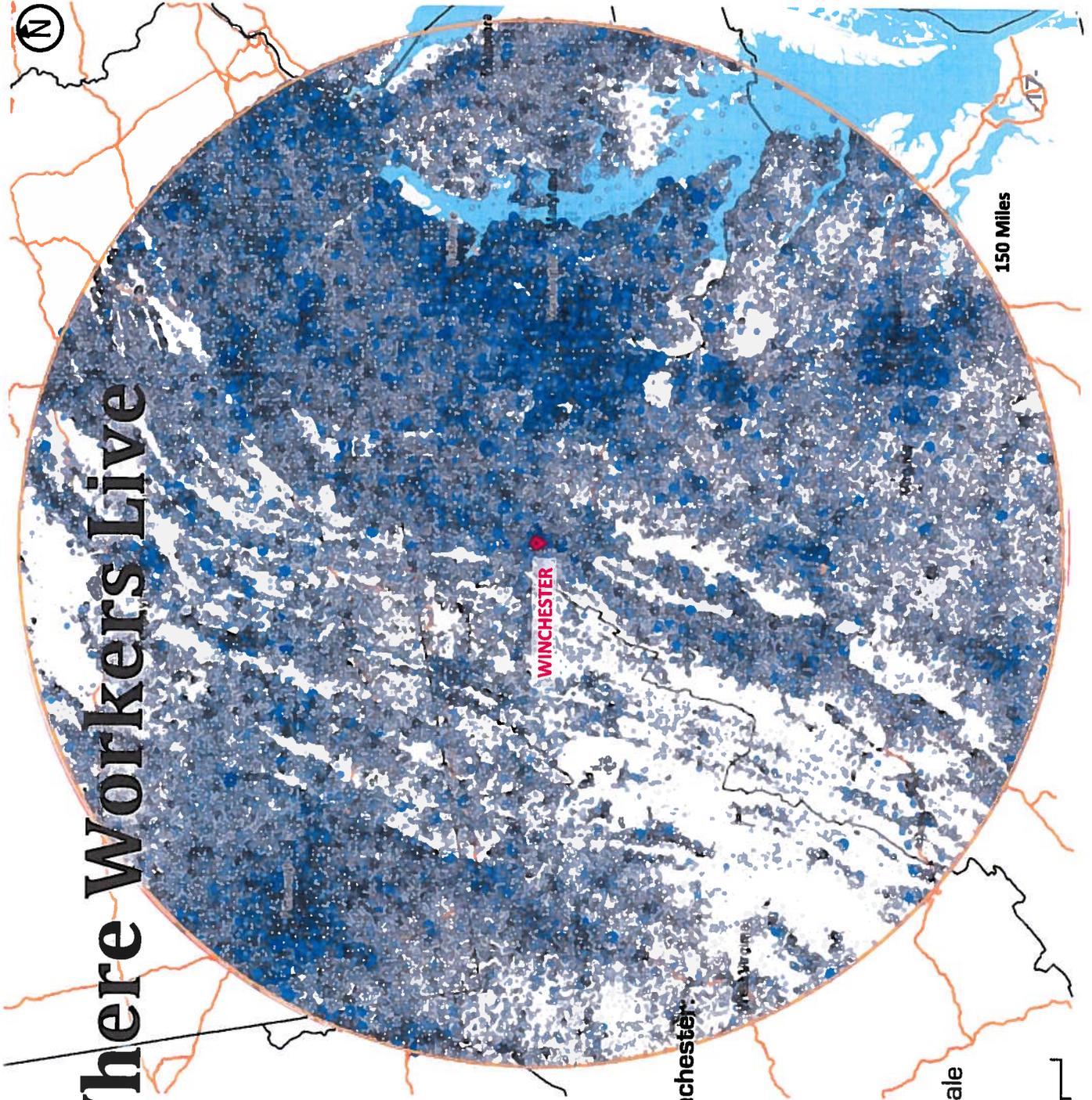
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# Primary Target Market



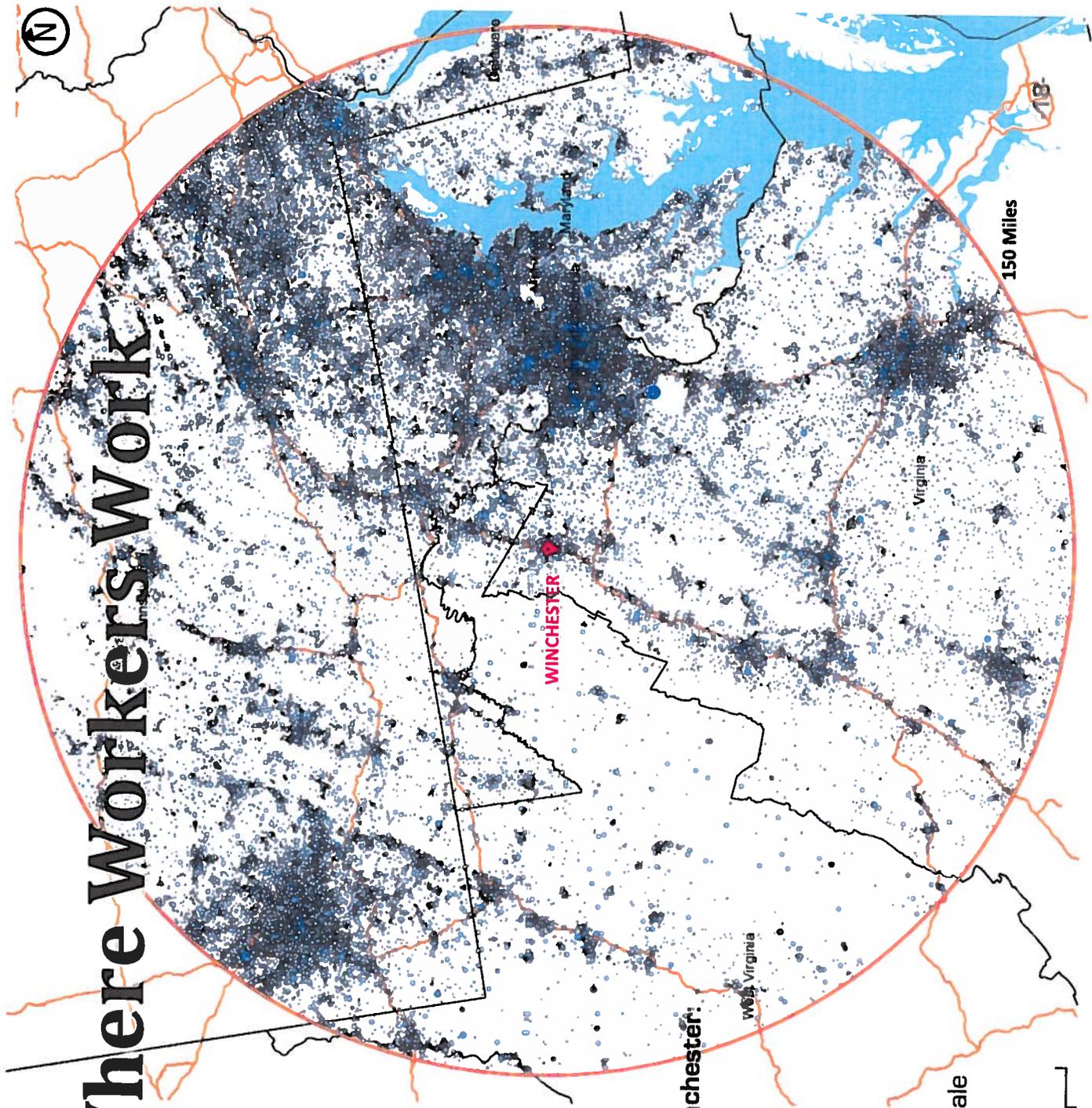
# Where Workers Live



## Within 150 Miles of Winchester:

- 8.2M Primary Jobs
- 14% Healthcare
- 10% Science/Tech/Prof
- 10% Education
- 56% Aged 30 to 54
- 49%+ College Educated
- 49.9% Male/50.1% Female

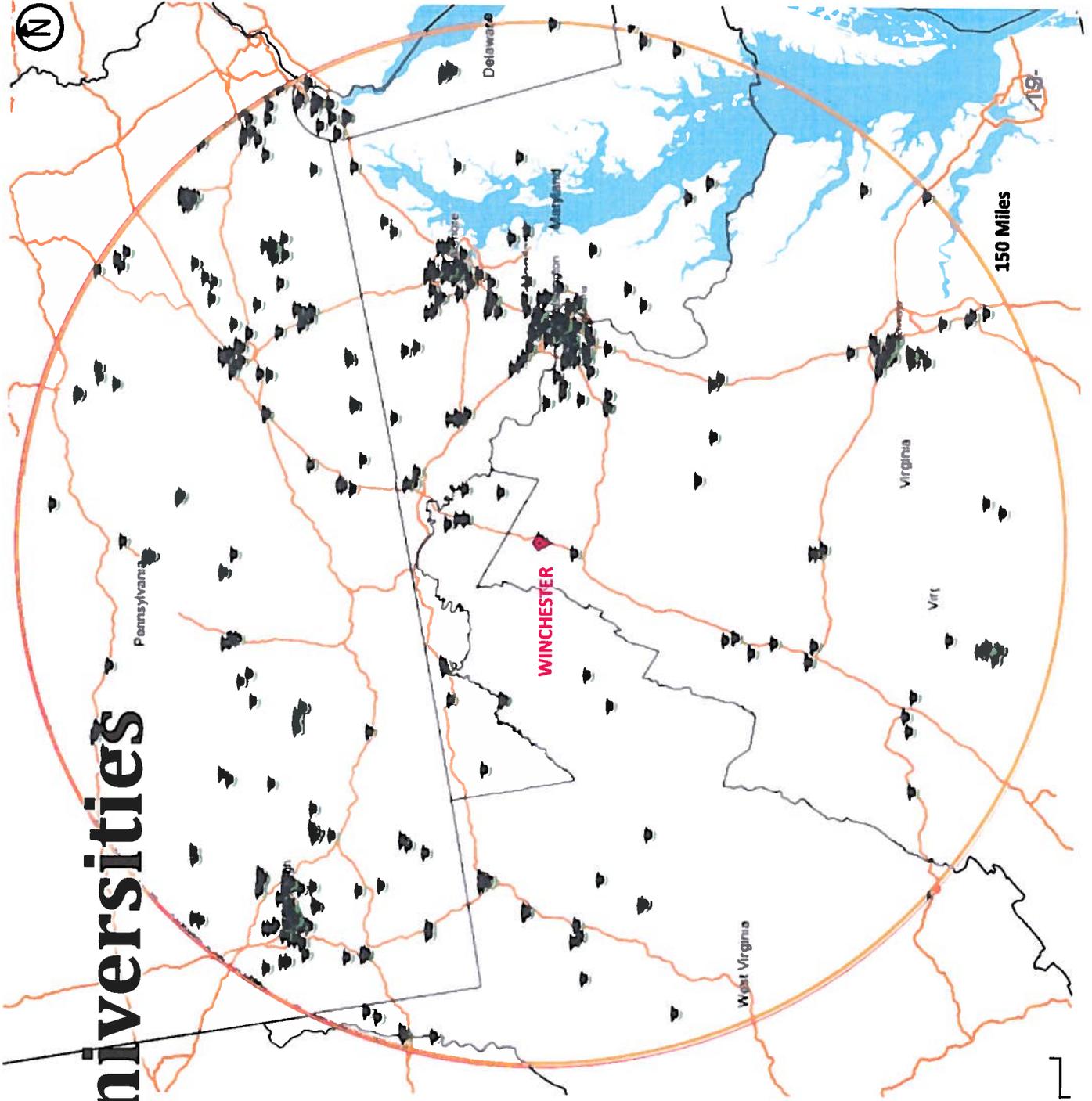
# Where Workers Work



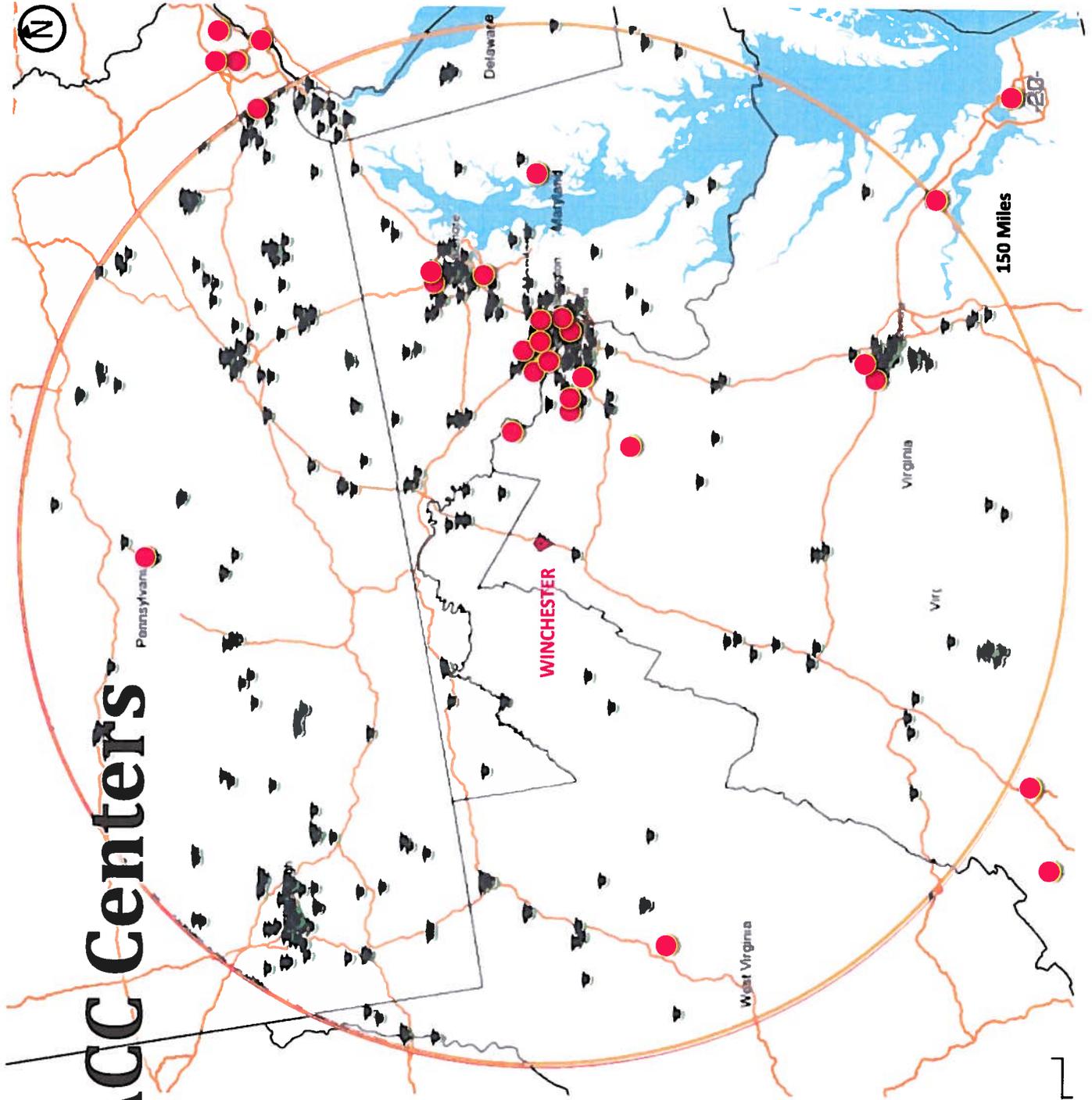
## Within 150 Miles of Winchester:

- 8.2M Primary Jobs
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- 10% Education
- 56% Aged 30 to 54
- 49%+ College Educated
- 49.9% Male/50.1% Female

# Universities



# IACC Centers



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# IACC Centers in Region

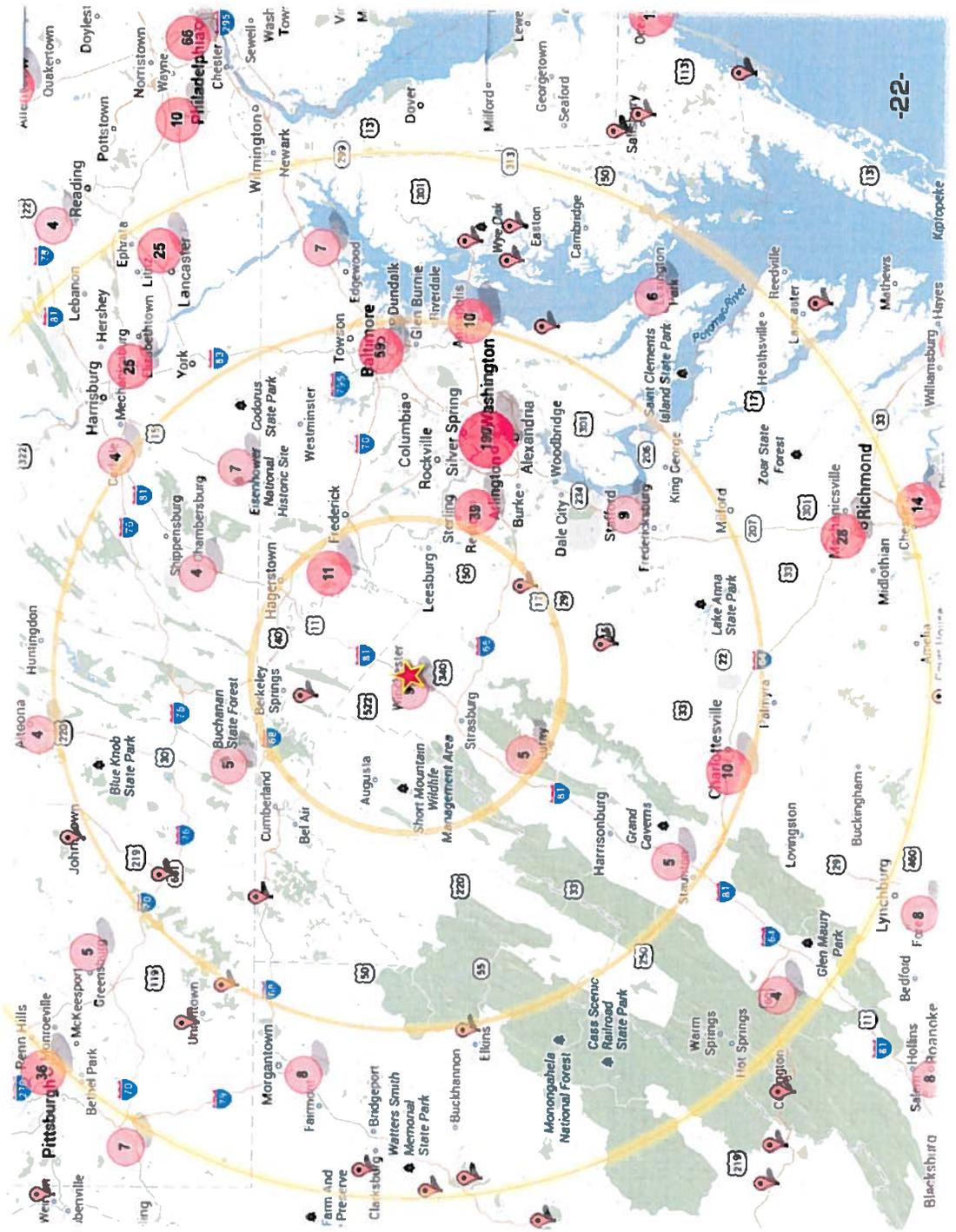
Name	City	State	Guest Rooms	Hotel Brand	Hotel Published Rates		Function Space		Ratio per Guestroom		Facility Type	Facility Mgmt		
					Gov't	Low	High	No. Rooms	Total SF	Ballroom SF			Total SF	Ballroom
1. Maritime Institute Conference Center	Linthicum Heights	MD	232	Indep	-	n/a	n/a	45	100,000	8,000	431	34	Airport	-
2. ACE Conference Center	Lafayette Hill	PA	120	Indep	-	n/a	\$189	38	50,000	4,600	417	38	Resort	-
3. National Conference Center	Leesburg	VA	917	Indep	-	\$108	108	250	250,000	16,500	273	18	Rural/Airport	Aramark
4. Villanova Conference Center	Radnor	PA	58	Indep	\$95	143	159	24	14,000	5,500	241	95	College	Aramark
5. Kellogg Conference Center	Washington	DC	87	Indep	-	215	239	20	17,000	5,000	195	57	College	FLJK
6. Penn State Conference Center Hotel	State College	PA	300	Indep	-	94	194	41	58,000	15,000	193	50	College	-
7. Hotel Roanoke Conference Center	Roanoke	VA	331	Doubletree	97	132	286	36	63,000	16,000	190	48	Urban	-
8. Mt. Washington Conference Center	Baltimore	MD	56	Indep	-	n/a	n/a	13	10,500	1,700	188	30	College	Aramark
9. Lansdowne Resort	Lansdowne	VA	296	Indep	-	n/a	199	33	50,000	9,500	169	32	Resort	Destination
10. Marriott Conference Center	Hyattsville	MD	237	Marriott	-	n/a	n/a	39	39,000	11,000	165	46	College	-
11. Normandy Farm Conference Center Hotel	Blue Bell	PA	141	Indep	-	151	199	17	23,000	6,100	163	43	Suburban	-
12. Boliger Center	Potomac	MD	432	Dolce	-	85	99	75	70,000	7,100	162	16	Suburban	Dolce
13. Skelton Conference Center	Blacksburg	VA	147	Indep	107	129	139	11	21,000	8,800	143	60	College	Benchmark
14. Virginia Crossings Conference Center	Glen Allen	VA	183	Wyndham	83	109	129	24	23,000	4,700	126	26	Suburban	-
15. Airle Center	Warrenton	VA	150	Indep	-	149	209	17	18,000	2,800	120	19	Suburban	-
16. Founders Inn & Spa	Virginia Beach	VA	240	Indep	118	98	109	20	25,000	12,800	104	53	Resort	Benchmark
17. Aspen Wye River Conference Center	Queenstown	MD	86	Marriott	-	n/a	n/a	11	8,600	1,500	100	17	Resort	-
18. Mason Inn Conference Center Hotel	Fairfax	VA	148	Indep	103	143	169	11	13,000	4,900	88	33	College	-
19. Great Valley Conference Center	Malvern	PA	194	Indep	-	189	209	15	14,700	4,000	76	21	Suburban	-
20. Liberty Conference Center	King of Prussia	PA	225	Crowne Plaza	-	197	215	17	17,000	8,400	76	37	Suburban	-
21. Stonewall Resort	Roanoke	WV	208	Indep	83	143	159	14	15,000	4,200	72	20	Resort	Benchmark
22. Assembly of Five Meeting Center	Philadelphia	PA	432	Doubletree	-	229	349	6	27,000	5,500	63	13	Urban	-
23. Executive Meeting Center	Rockville	MD	315	Hilton	184	184	189	14	19,500	5,000	62	16	Suburban	-
24. Marriott Conference Center	Towson	MD	191	Marriott	-	n/a	n/a	19	11,000	2,800	58	15	College	-
25. Executive Meeting Center	Hernndon	VA	316	Hyatt	-	135	169	6	18,000	8,800	57	28	Airport	-
26. Executive Meeting Center	Bethesda	MD	270	Doubletree	184	198	219	14	13,200	5,900	49	22	Suburban	-
27. Kingsmill Resort	Williamsburg	VA	425	Indep	-	152	169	16	20,000	6,000	47	14	Resort	-
28. Executive Meeting Center	Richmond	VA	224	Embassy Suites	169	179	189	10	10,000	2,400	45	11	Suburban	-
29. Executive Conference & Training Center	McLean	VA	545	Crowne Plaza	-	209	222	5	5,000	1,700	9	3	Suburban	-

Minimum	56	\$83	\$85	\$99	5	5,000	1,500	9	3
MEDIAN	225	\$105	\$146	\$189	17	19,500	5,500	120	28
AVERAGE	259	\$122	\$153	\$188	30	35,293	6,766	141	32
Maximum	917	\$184	\$229	\$349	250	250,000	16,500	431	95

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# Full Service Hotels

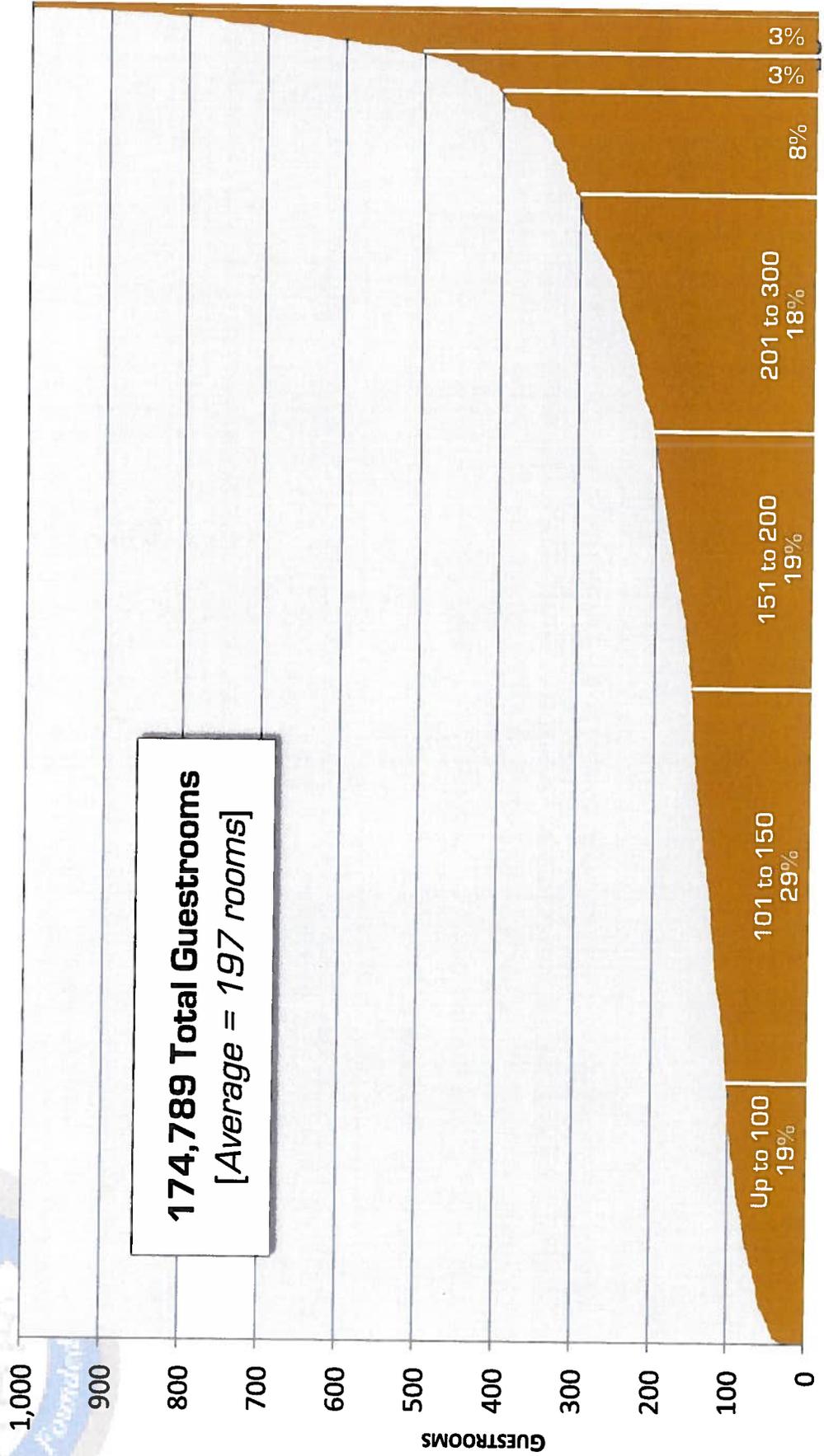
886 Full-Service Hotels in VA-DC-MD-PA-WV



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# Full Service Hotels

886 Full-Service Hotels in VA-DC-MD-PA-WV



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## **Case Study: Lancaster PA**

# Comparison: Lancaster

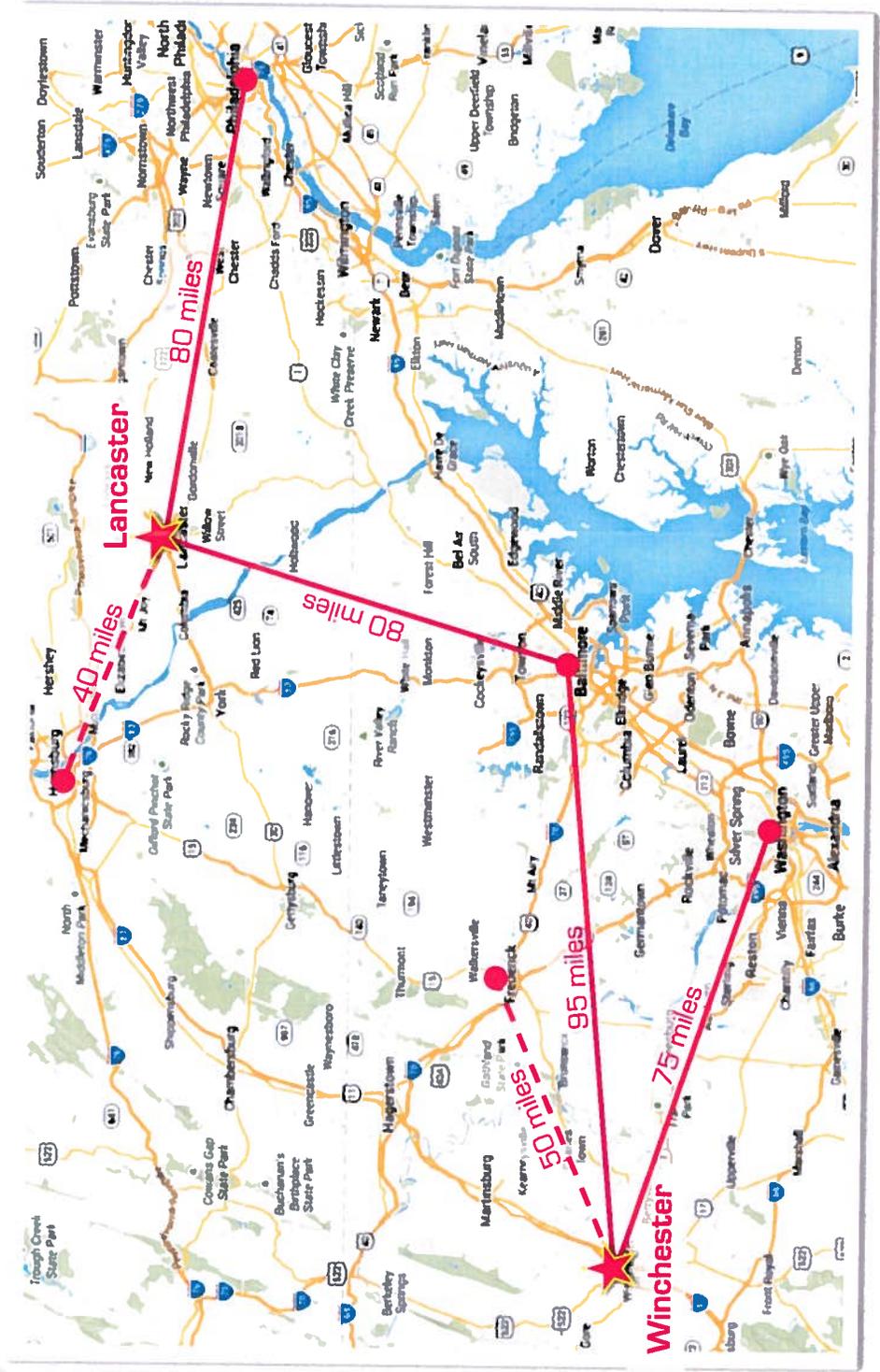


	Winchester VA	Lancaster PA
<b>People</b>		
2012 Population	26,881	59,360
Pct Change 2010 to 2012	2.6%	0.1%
Land Area in Square Miles	9.23	7.23
Density: People per SM	2,912	8,210
<b>Demographics</b>		
Median Age	35.1	30.5
Under 5 Years	6.8%	8.0%
Age 5 to 19	19.5%	21.8%
Age 20 to 24	8.8%	10.3%
Age 25 to 34	14.9%	16.7%
Age 35 to 54	25.2%	25.4%
Age 55 to 64	10.9%	9.2%
Age 65 & Over	13.9%	8.6%
<b>Diversity</b>		
Born in the U.S.	87.6%	77.8%
Pct Households Speaking English Only	84.7%	65.0%
<b>Education</b>		
High School Diploma	29.6%	39.5%
Assoc. Degree/Some College	23.4%	20.1%
Bachelor Degree	16.6%	10.4%
Graduate Degree	12.6%	5.7%
<b>Housing</b>		
No. of Units	11,905	23,377
Home Ownership Rate	49.8%	44.4%
Median Value	\$255,000	\$98,500
Persons per Household	2.47	2.47
<b>Employment</b>		
Primary Jobs within City Limits	22,400	36,800
Primary Jobs within 5 Mile Radius	39,700	122,300
Average Commute Time in Minutes	22.7	19.2
<b>Income</b>		
Per Capita	\$26,343	\$16,212
Median Household	\$46,065	\$33,115
Persons below Poverty Level	18.7%	28.0%
<b>Businesses</b>		
Total Number of Firms	2,973	4,332
Retail Sales (000) - 2007	\$998,681	\$950,870
Retail Sales per Capita - 2007	\$38,614	\$17,209
Accommodations & Food Services Sales (000) - 2007	\$104,640	\$127,406

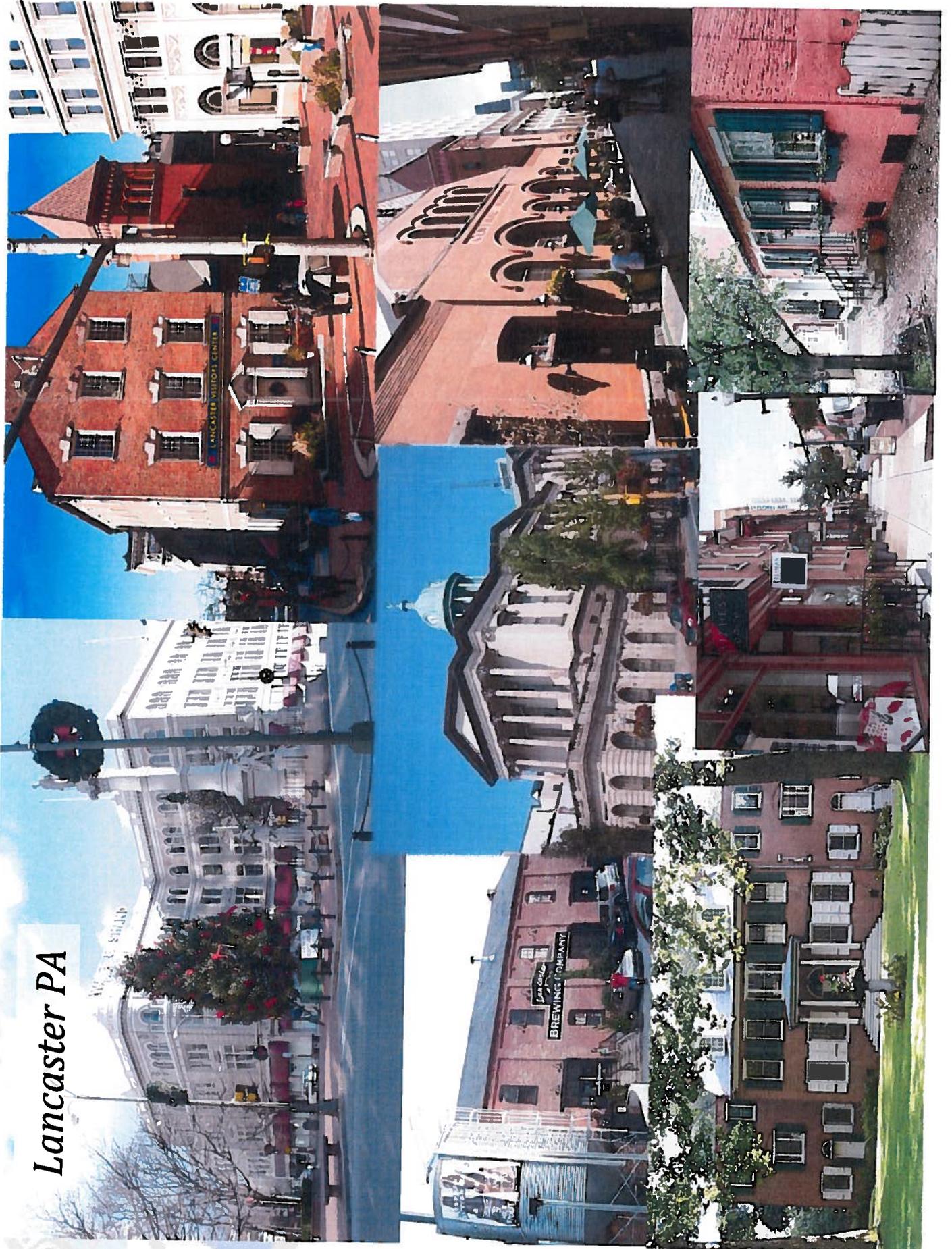
Source: US Census Bureau.

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# Comparison: Lancaster



# Lancaster PA



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# Lancaster Convention Complex

- Facility opened in 2009 for \$178M
- In downtown core using the façade of historic Watt & Shand dept. store
- 299-room attached Marriott hotel
- 46,500 SF Exhibit space
- 9,700 SF + 8,700 SF Ballrooms
- 6,700 SF Meeting space (16 rooms)
- Operated as one facility by Interstate



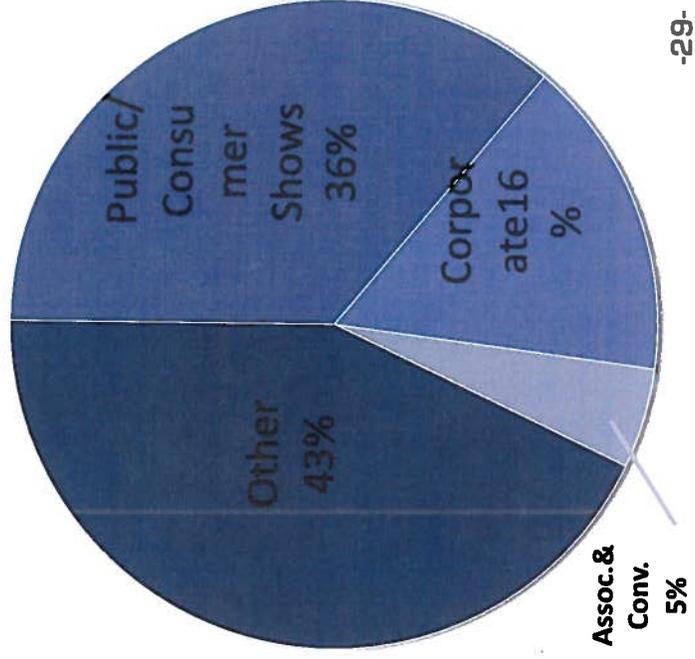
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# Lancaster Convention Complex

- Hotel occupancy 63% - 70% in last 3 years
- Facility hosts approx. 250 events per year
  - "Other" : Graduations/concerts/sports/dinners/dances

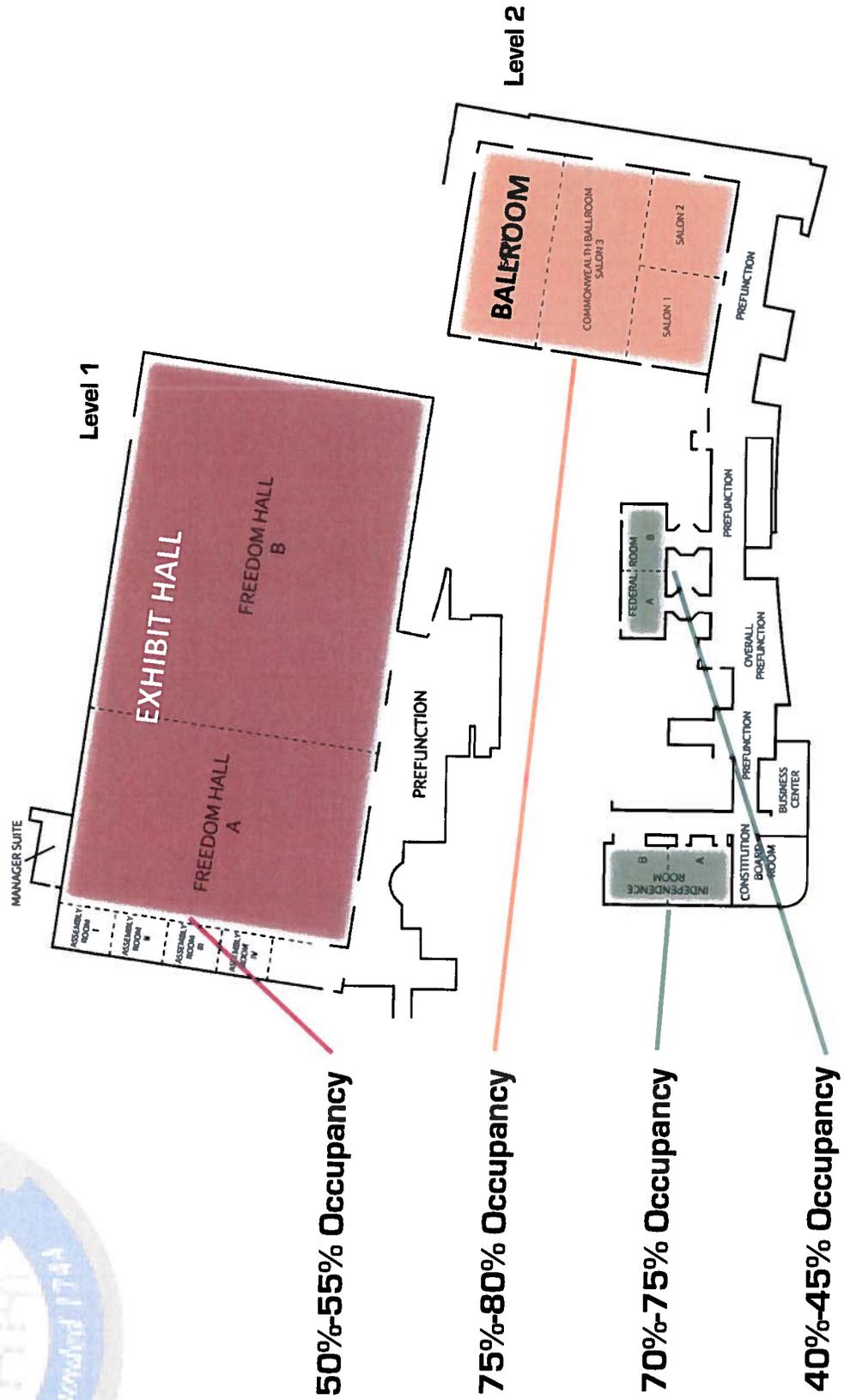
## Larger Events

- American Quilt Society Show 16,000
- American Consumer Show 15,000
- Global Awakening 14,000
- Mission Fest 9,000
- Starquest 8,000
- Leadership Team Development 7,500
- Show Stoppers 7,200
- Life Expo 6,000
- Baby & Toddler Show 6,000
- LaunchMusic 6,000
- MLK Volleyball 6,000



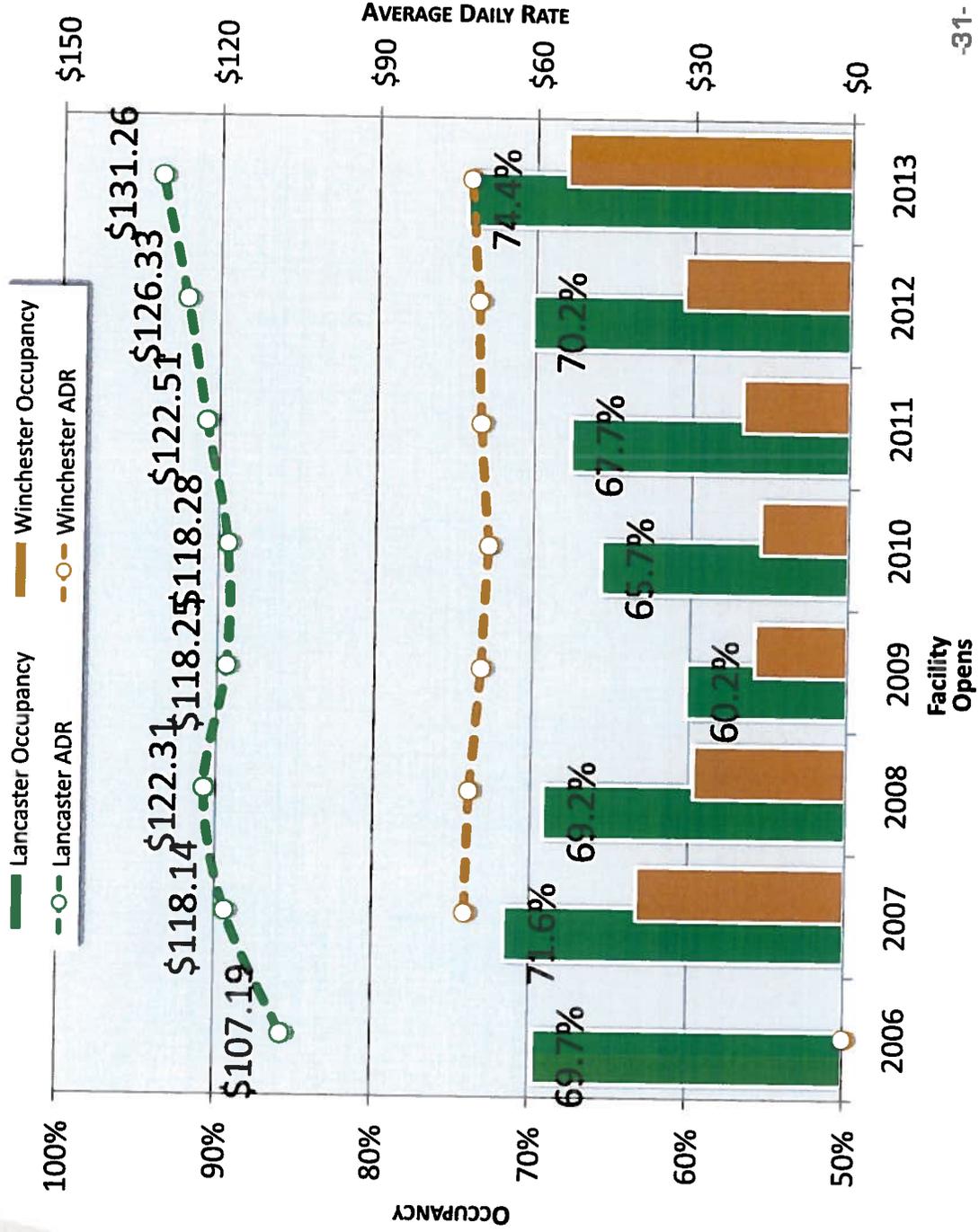
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# Lancaster Convention Complex



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# Lancaster Hotel Market

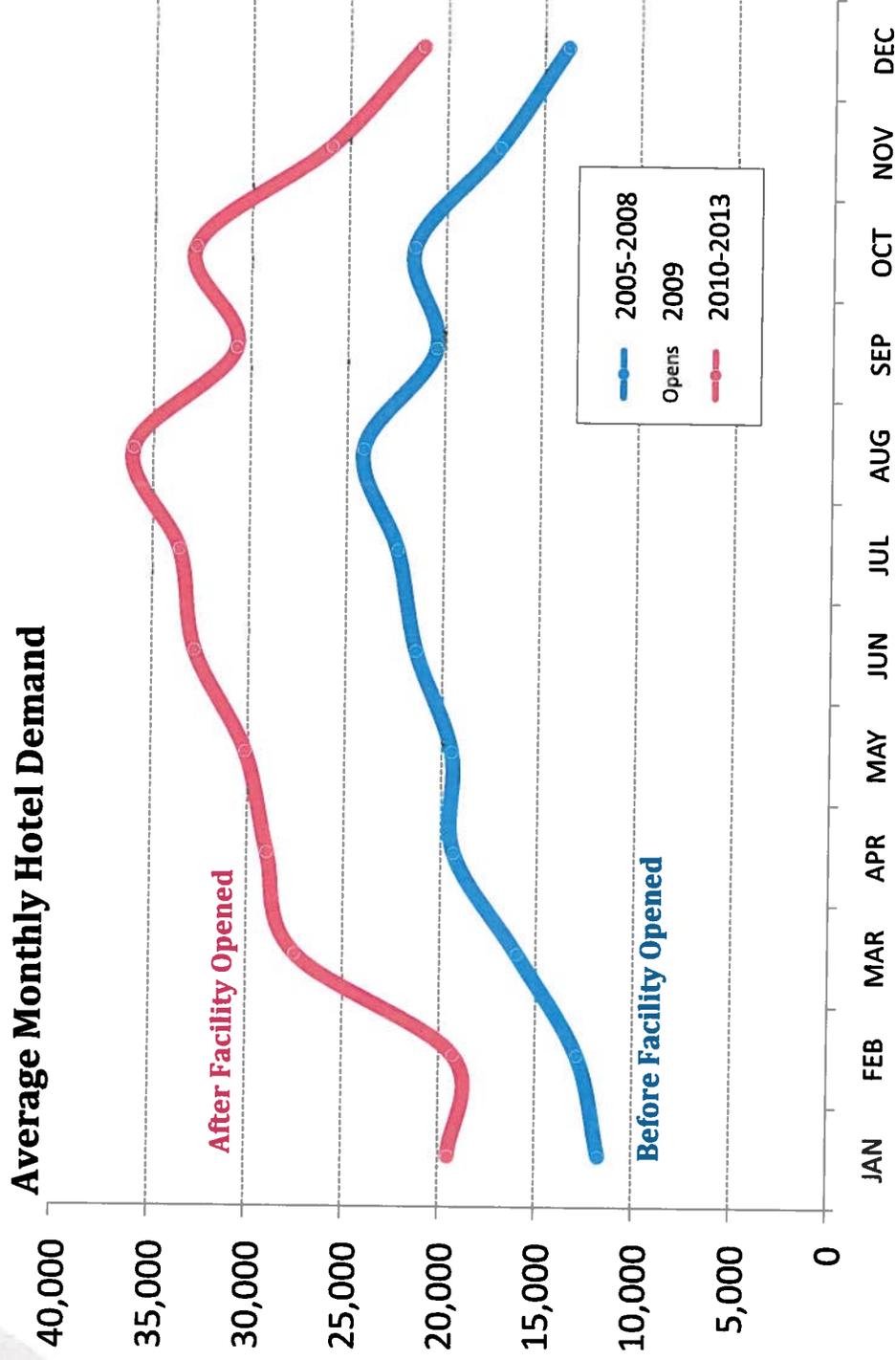


Source: STR, SAG.



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# Lancaster PA: Before & After



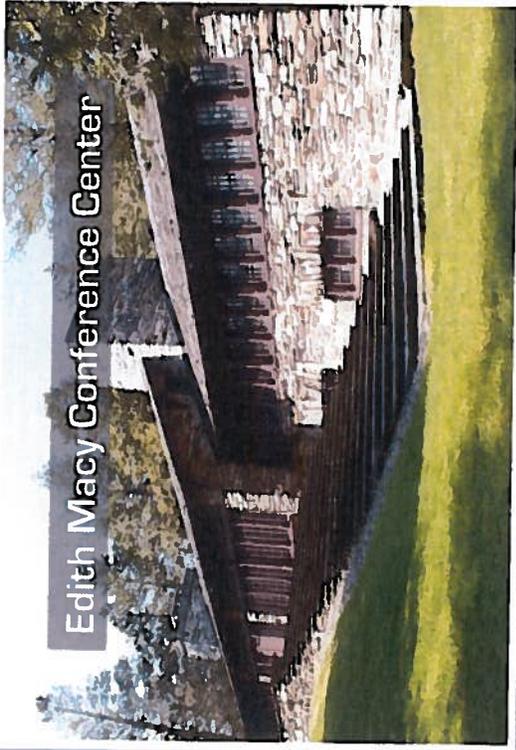
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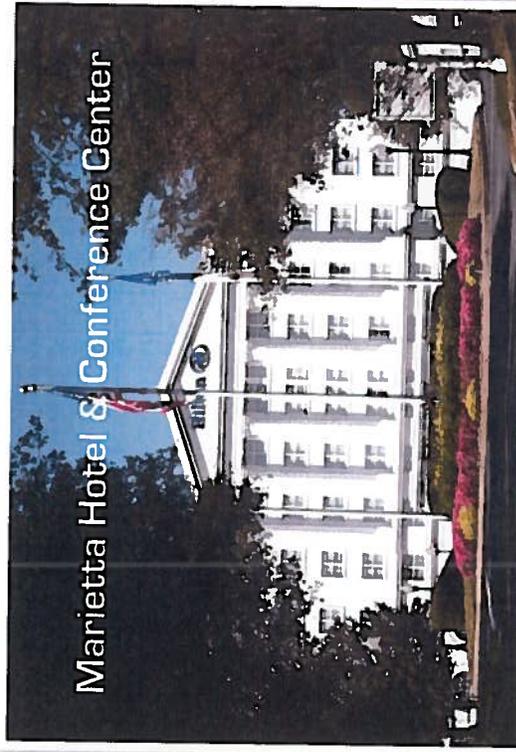
## **Financial Comps: *Conference Center Hotels***

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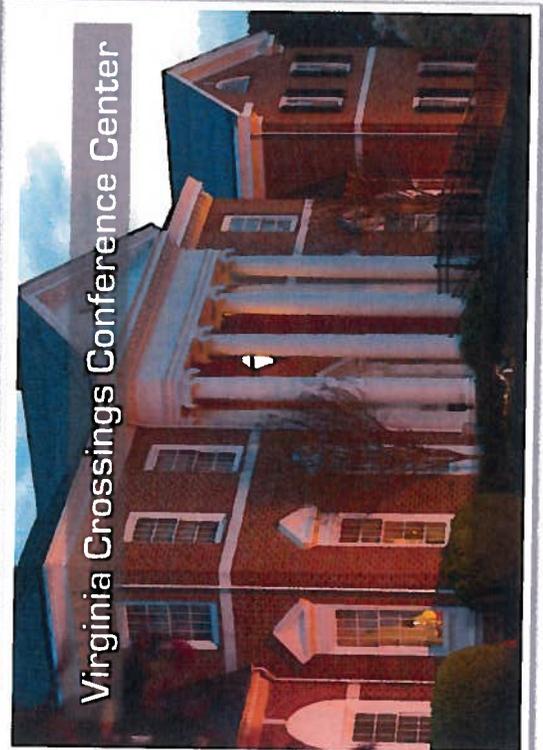
# Comparable Facilities



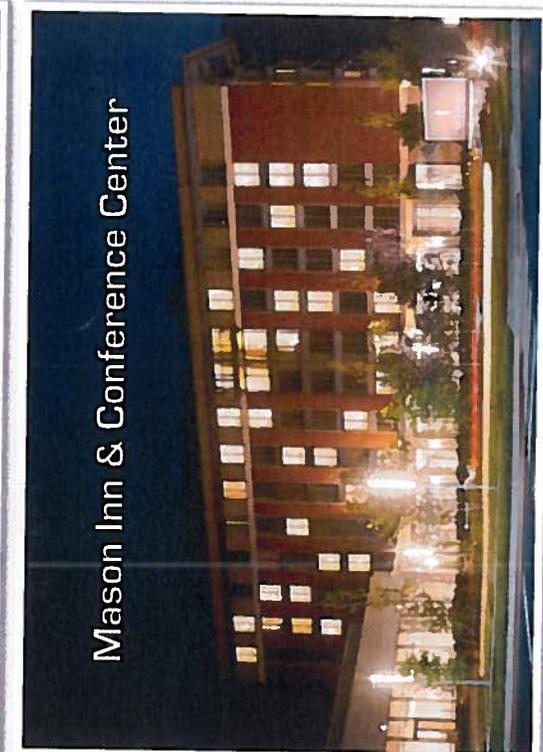
Edith Macy Conference Center



Marietta Hotel & Conference Center



Virginia Crossings Conference Center



Mason Inn & Conference Center



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# Comparable Facilities

**Edith Macy Conference Center**  
*White Plains NY Area*

58 Guestrooms  
14,000 SF Total Function Space  
No Formal Ballroom  
Independent

**Marietta Hotel & Conference Center**  
*Suburban Atlanta GA*

198 Guestrooms  
25,000 SF Total Function Space  
6,500 SF Ballroom  
Hilton

**Average Property Size is 147 rooms with 129 SF function space per room**

**Virginia Crossings Conference Center**  
*Suburban Richmond VA*

183 Guestrooms  
24,000 SF Total Function Space  
4,700 SF Ballroom  
Wyndham

**Mason Inn & Conference Center**  
*Fairfax VA - Suburban DC*

148 Guestrooms  
13,000 SF Total Function Space  
4,900 SF Ballroom  
Independent



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# Comps: Average Financials

2012				
	Ratio to Sales	Amount Per Available Room	Amount Per Occupied Room Night	
	%	\$	\$	
<b>REVENUE</b>				
Rooms	47.9 %	\$ 21,621	\$ 108.91	
Food	25.9	11,710	58.99	
Beverage	4.3	1,938	9.76	
Other Food & Beverage	10.3	4,663	23.49	
<i>Total F&amp;B</i>			<i>92.24</i>	
Telecommunications	-	13	0.06	
Other Operated Departments	9.9	4,462	22.48	
Rentals & Other Income	0.1	63	0.32	
Cancellation Fee	1.6	704	3.55	
<b>Total Revenue</b>	<b>100.0 %</b>	<b>\$ 45,173</b>	<b>\$ 227.56</b>	
<b>DEPARTMENTAL EXPENSES</b>				
Rooms	28.3 %	\$ 6,113	\$ 30.79	
Food & Beverage	69.8	12,777	64.36	
Telecommunications	1,360.0	173	0.87	
Rental Income	1.4	11	0.05	
Other Expenses	50.7	2,263	11.40	
<b>Total Departmental Expenses</b>	<b>47.2 %</b>	<b>\$ 21,337</b>	<b>\$ 107.48</b>	
<b>UNDISTRIBUTED OPERATING EXPENSES</b>				
Administrative & General	12.0 %	\$ 5,431	\$ 27.36	
Marketing	9.3	4,179	21.05	
Utility Costs	6.1	2,751	13.86	
Property Operation & Maintenance	5.4	2,447	12.33	
<b>Total Undistributed Expenses</b>	<b>32.8</b>	<b>\$ 14,808</b>	<b>\$ 74.60</b>	
<b>GROSS OPERATING PROFIT</b>	<b>20.0 %</b>	<b>\$ 9,028</b>	<b>\$ 45.48</b>	
Franchise Fees (Royalty)	0.9	419	2.11	
Management Fees	2.6	1,180	5.94	
<b>Income before Fixed Charges</b>	<b>16.4 %</b>	<b>\$ 7,429</b>	<b>\$ 37.42</b>	
<b>SELECTED FIXED CHARGES</b>				
Taxes				
Insurance	0.3 %	\$ 123	\$ 0.62	
Reserve For Capital Replacement	0.7	328	1.65	
	1.4	629	3.17	
<b>EBITDA</b>	<b>14.1 %</b>	<b>\$ 6,349</b>	<b>\$ 31.98</b>	

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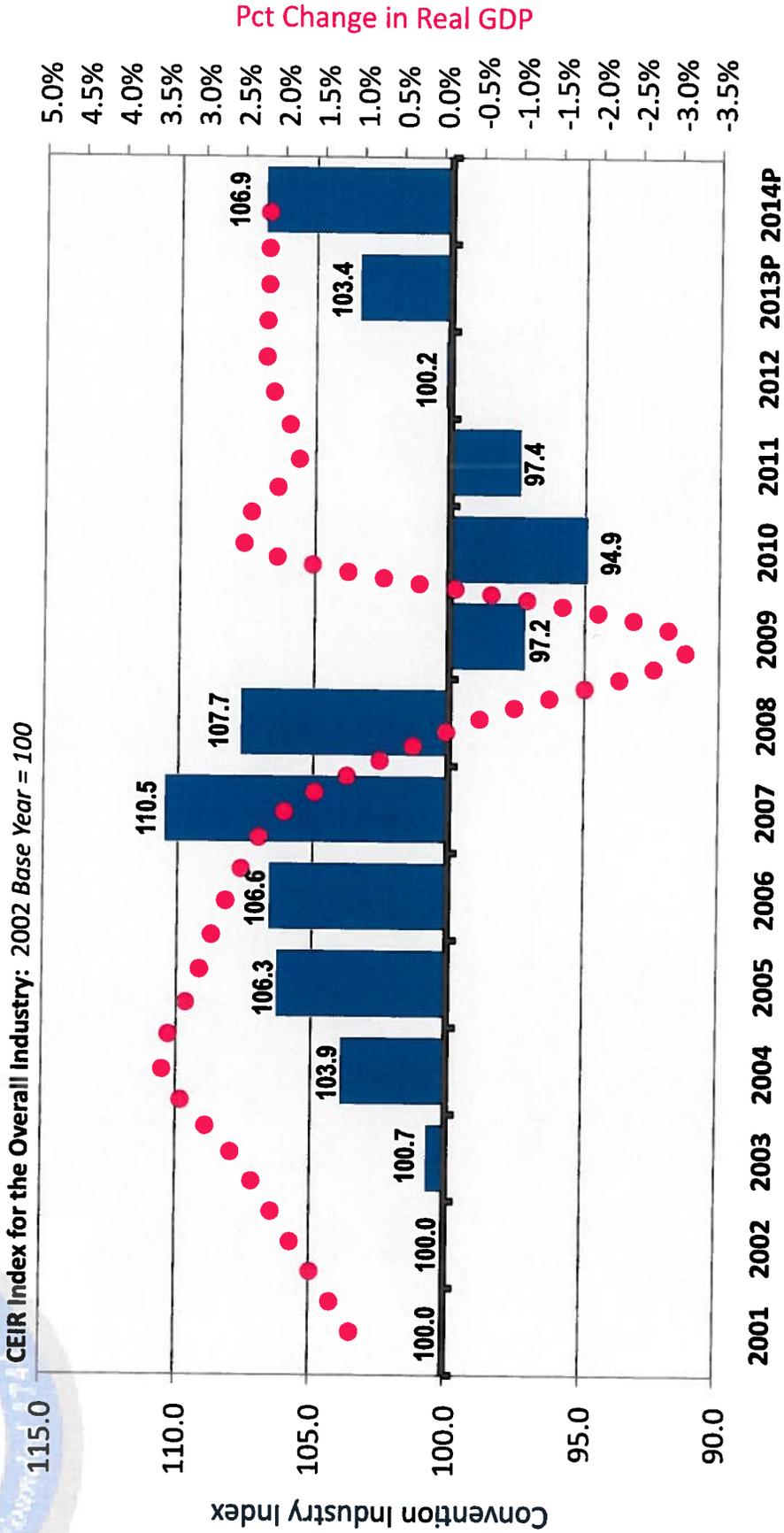


## Industry Trends

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# State of the Industry

## US Convention Center Market

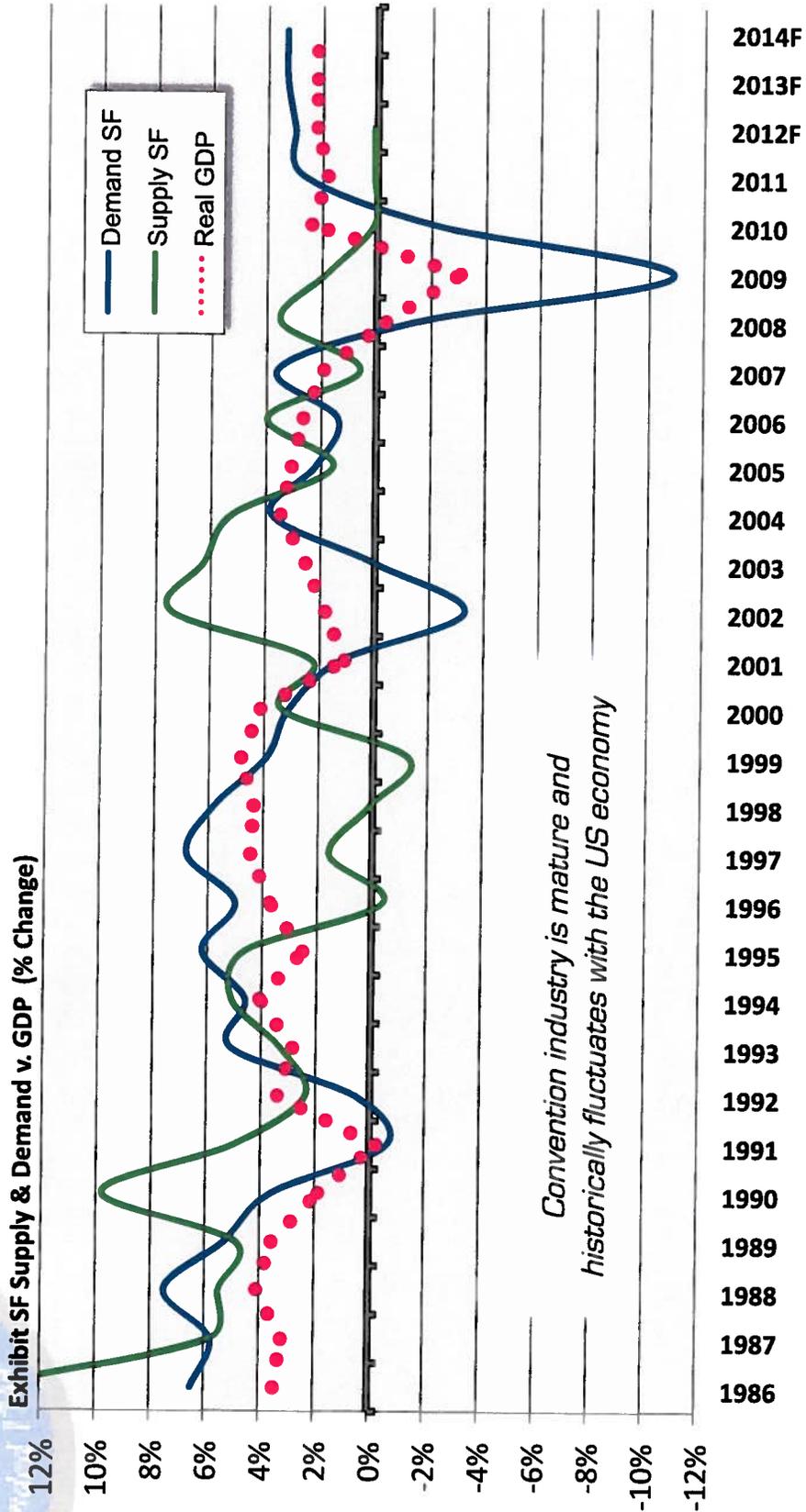


Source: Center for Exhibition Industry Research; Bureau of Economic Analysis; CBO.

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# State of the Industry

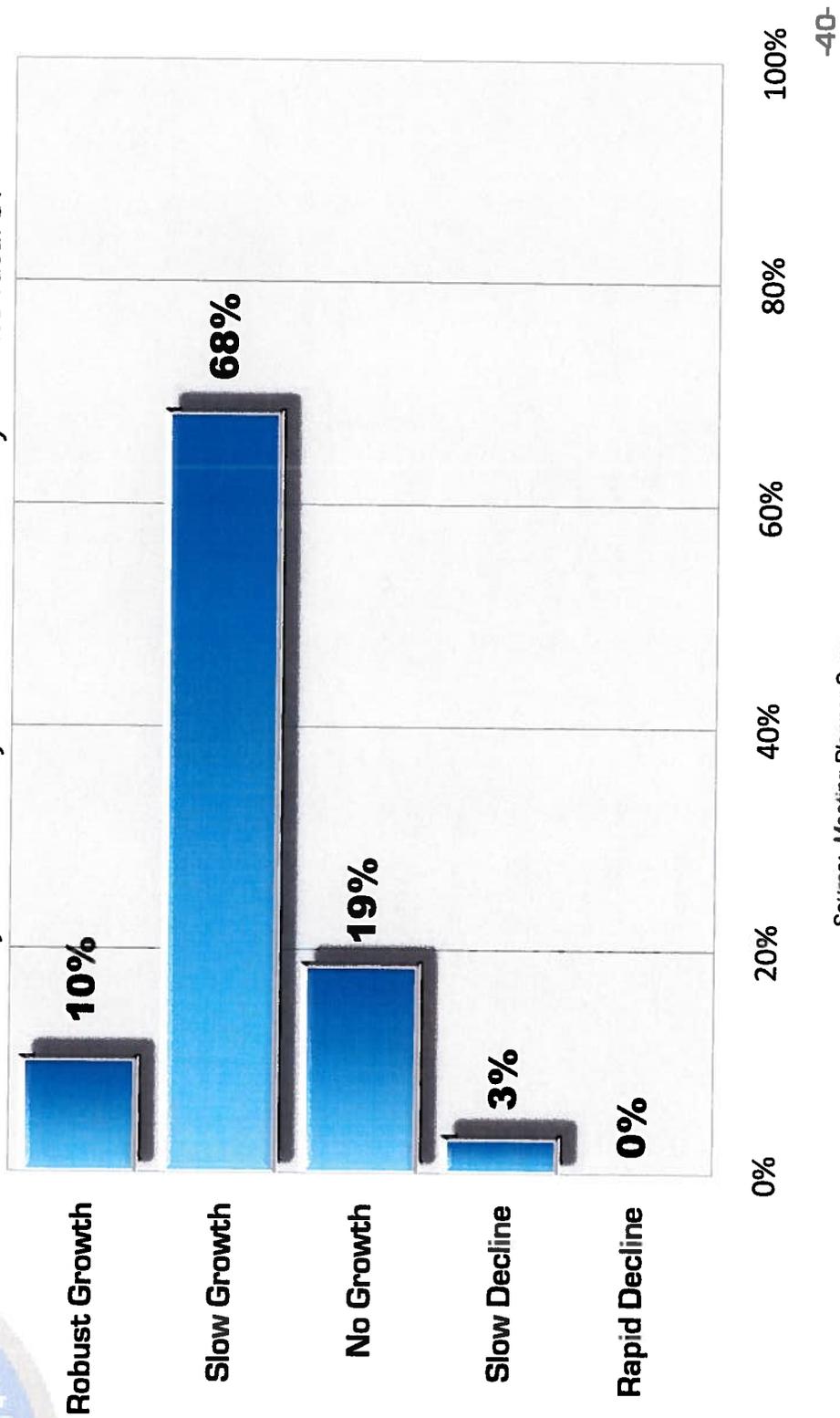
## US Convention Center Market



Source: Center for Exhibition Industry Research; CBO; Bureau of Economic Analysis; TradeShow Week; PwC.

# Growth in Future?

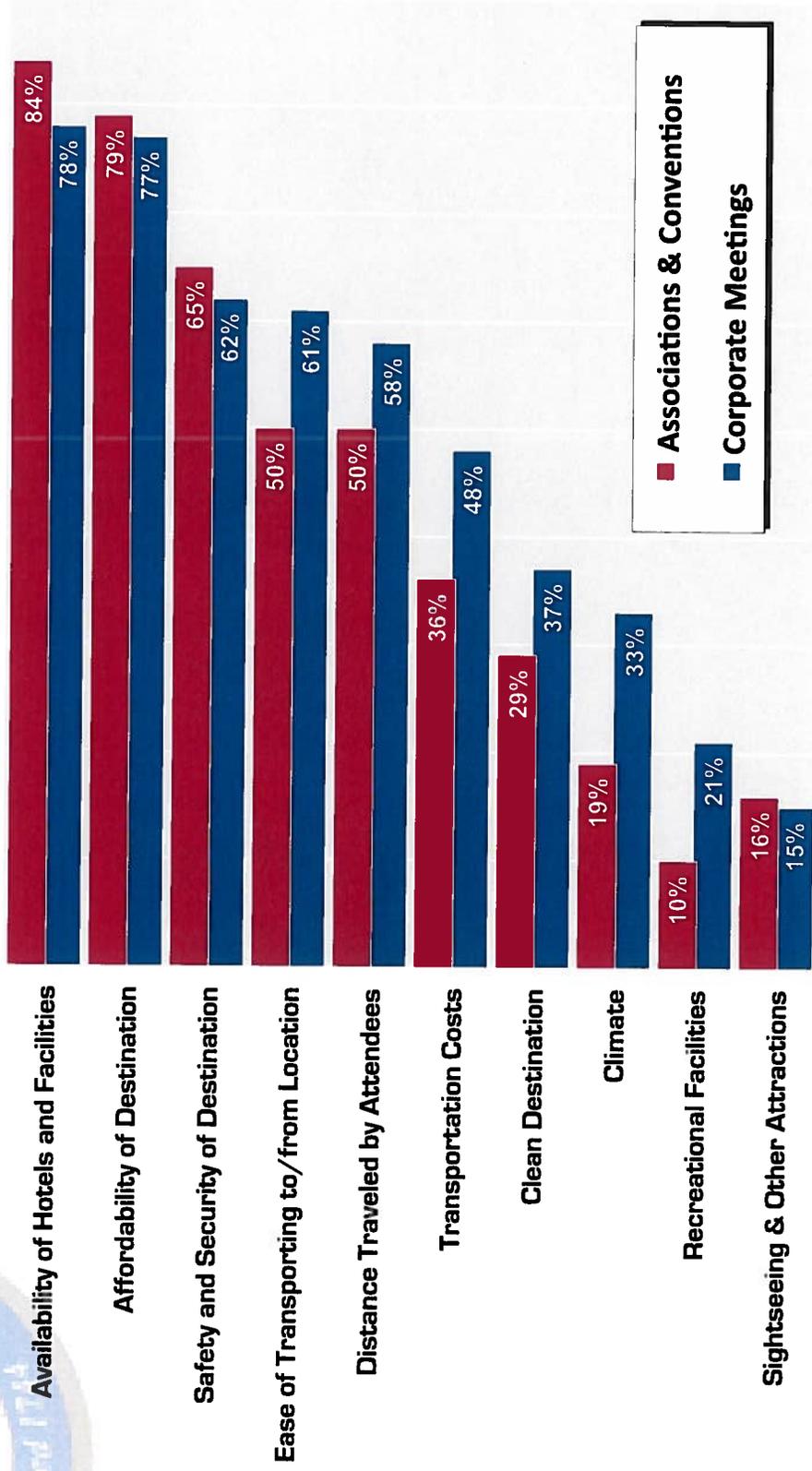
Meeting Planners were asked, "Given this past recession and changes in the economy, how does your event most likely view its future?"



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# Important Selection Criteria

*What Matters When Selecting a Destination?*

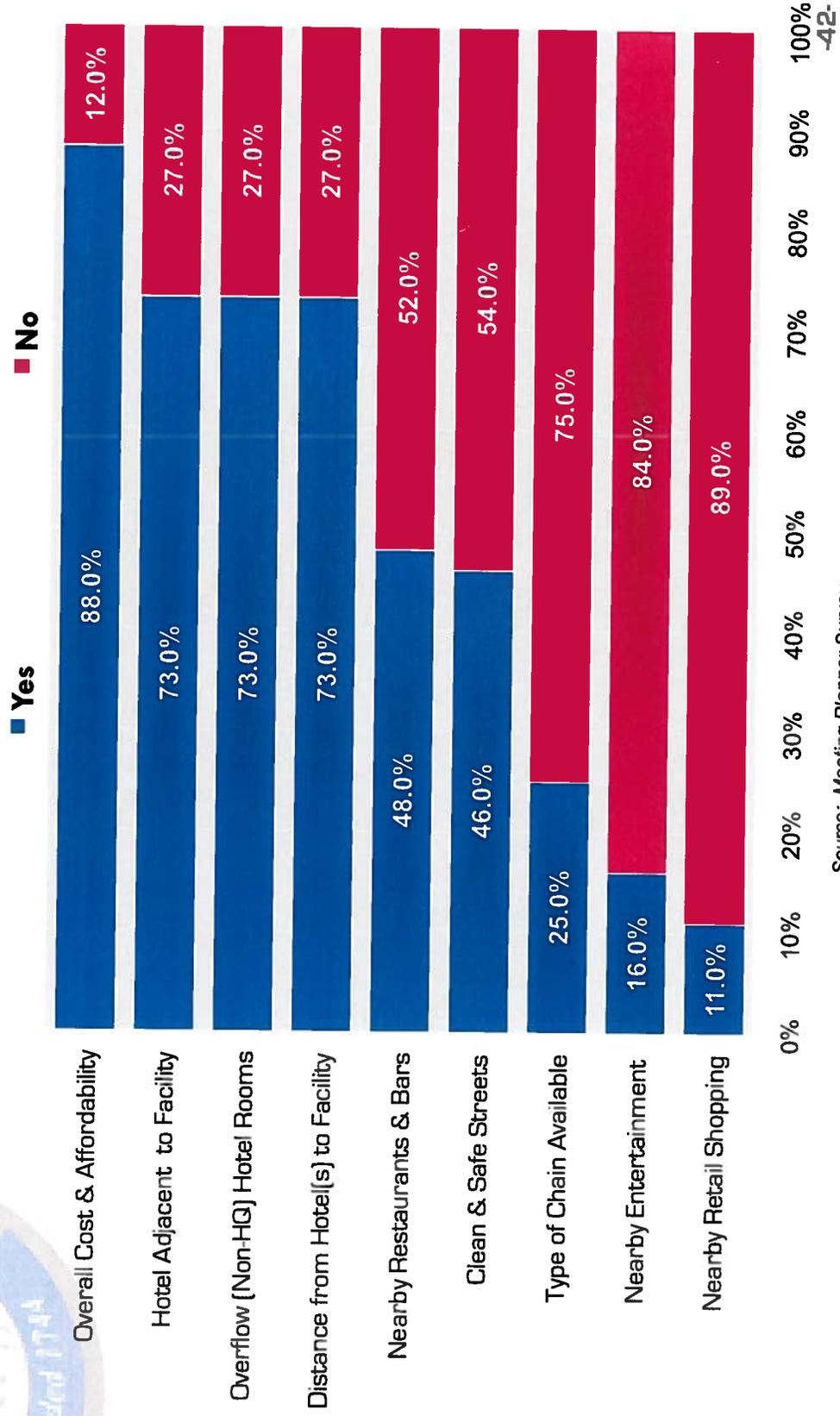


Source: Meeting Planner Survey.

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# Destination Factors

*Top 9 factors with potential to be a Deal-Breaker*



Source: Meeting Planner Survey.

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# Recommendations

# Conclusions

- Winchester is in population growth zone of US and offers easy regional accessibility
- Success of Nationally- and State-recognized “*Old Town Winchester*” has spurred over \$110M+ in private investment
- Growth at Shenandoah University and Winchester Medical Center
- Leading hotels in Winchester support healthy fundamentals
- Current lack of large, quality event space within the community
- Winchester has the destination components to penetrate group market
- Community already has signature event to help communicate and expedite the message



# Recommendations

- Pursue a 16,000± GSF facility to be attached/ adjacent to GW Hotel; equating to 9,100± NSF of Rentable Function Space
  - One highly flexible & divisible space
- Concurrent developments of 50± additional guestrooms at GW Hotel
  - Likely above facility
- Establish funding mechanism and marketing strategy for new facility

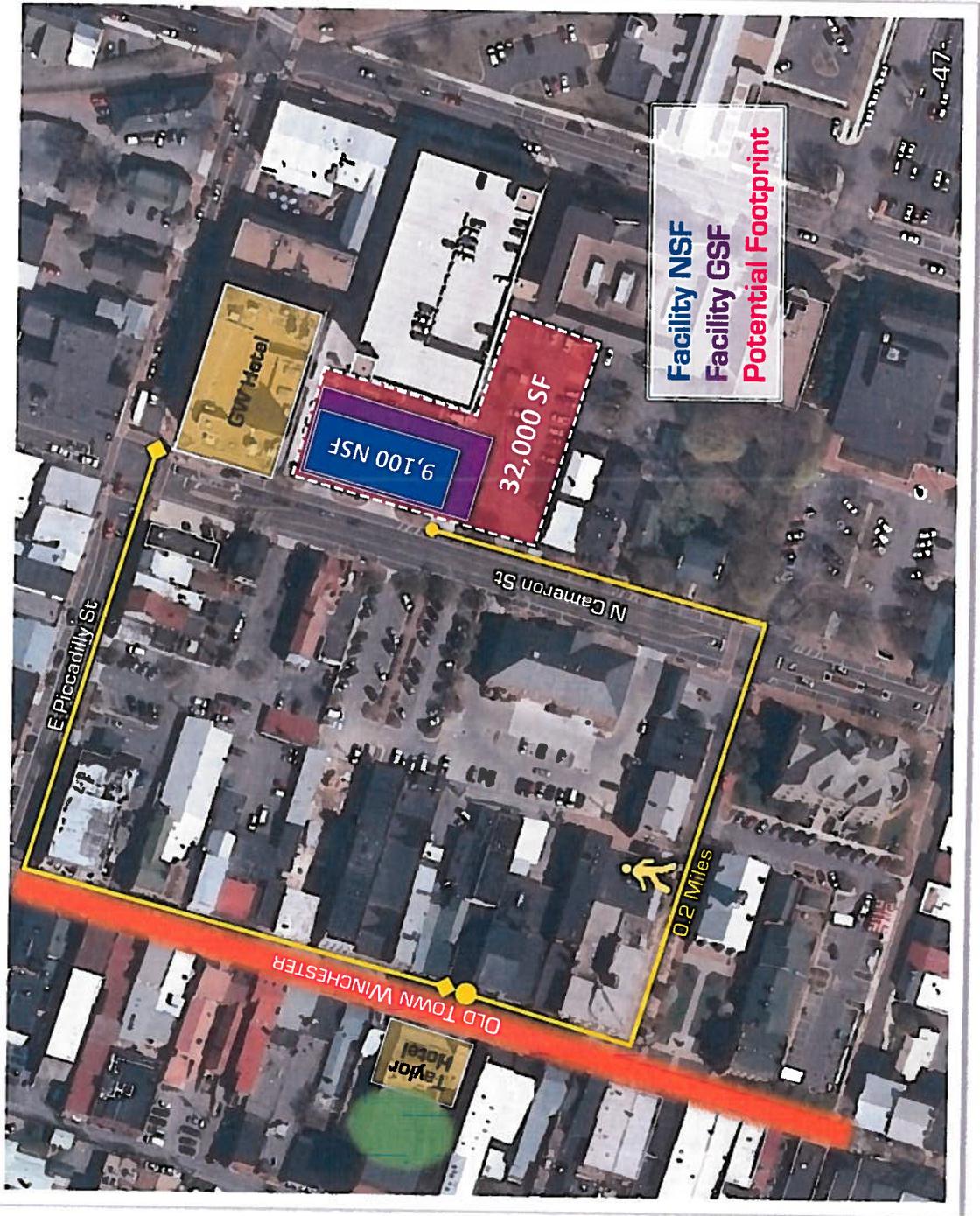
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# Marketing Recommendations

- Create new sales & marketing position within one of the existing DMO organizations
- Sell the facility and the destination
- Budget of \$200,000-\$350,000± annually
- Consider re-alignment of strategy and resources for all area DMO's

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# Recommended Site



# Keys to Success

- Facility must be proximate to Old Town
  - Where people want to be
- Adjacency to hotel rooms
  - Existing GW is most cost effective
- Don't get into the "conference" business but rather pursue the activity business
  - Fill facility, fill hotels, fill streets, fill restaurants, fill shops
- Hire an experienced sales professional that understands that business
  - Provide incentives for success

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## TIF Potential

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## **TIF: Major Assumptions**

- Facility is managed as one property by GW Hotel management
- Only these tax revenues were considered:
  - Incremental revenue from new 50 hotel rooms
  - Facility rental revenues
- Hotel 72% occupancy and \$105 ADR
  - 80% of Comp F&B Revenue
- Based on current City & State tax rates
- Annual inflation of 2.5%

# TIF Generation

- The NPV of the TIF over 30 years would be approximately \$4.8M
- Assuming 16,000± GSF in building area, the TIF could support approximately \$295 per SF in development cost
  - Excludes land and parking costs
- The facility likely to cost \$300-\$400±
- New hotel rooms to be 100% privately funded

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Feasibility Study: Multi-Purpose Conference Center  
**Event Facility**

## SUMMARY PRESENTATION

**StrategicAdvisoryGroup**

January 2014

# CITY OF WINCHESTER, VIRGINIA

## PROPOSED CITY COUNCIL AGENDA ITEM

**CITY COUNCIL/COMMITTEE MEETING OF:** Jan. 21, 2014 **CUT OFF DATE:** \_\_\_\_\_

**RESOLUTION** \_\_\_ **ORDINANCE** \_\_\_ **PUBLIC HEARING** \_\_\_ **DISCUSSION** X

**ITEM TITLE:** City Council Consideration of Implementing a Storm Water Utility - Discussion #3 - Storm Water Operational and Maintenance Needs

**STAFF RECOMMENDATION:** NA

**PUBLIC NOTICE AND HEARING:** NA

**ADVISORY BOARD RECOMMENDATION:** NA

**FUNDING DATA:** See attached.

**INSURANCE:** NA

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance	<u>B</u>	_____	<u>1-13-14</u>
2. City Attorney	<u>AW</u>	_____	<u>1/14/2014</u>
3. City Manager	<u>[Signature]</u>	_____	<u>1-16-14</u>
4. Clerk of Council	<u>[Signature]</u>	_____	<u>1-16-14</u>
Initiating Department Director's Signature:	<u>[Signature]</u>	_____	<u>1/13/14</u> Date



**APPROVED AS TO FORM:**

[Signature]  
**CITY ATTORNEY**

1/14/2014

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Perry Eisenach, Public Services Director  
**Date:** January 21, 2014 (Council work session)  
**Re:** Proposed Storm Water Utility – Discussion #3 – Operation and Maintenance Needs

**THE ISSUE:** Consideration of Implementing a Storm Water Utility – Operation and Maintenance Needs Related to the Storm Water System

**RELATIONSHIP TO STRATEGIC PLAN:** Goal 4: Create a More Livable City for All. Specifically, Policy Agenda Item #6: Develop a storm water management policy with policy directions, project priority and funding mechanisms, which could include the establishment of a storm water utility.

**BACKGROUND:** The City of Winchester is facing some significant operational expenditures in the coming years related to the operation and maintenance of the City’s storm water system. These expenditures will be necessary to meet increasingly more stringent state and federal storm water regulations and to provide increased maintenance of the storm water system to change the current operation from a “reactive mode” to a “proactive mode”. A storm water utility would provide a funding mechanism to pay for these increased expenditures that would otherwise likely fall on the General Fund to provide this funding.

For purposes of this discussion, the operational and maintenance needs related to storm water will be broken out into the three primary categories:

- A. New Regulatory requirements.
- B. Existing operational and maintenance activities related to the City’s storm water system.
- C. Improved maintenance of the City’s storm water system that would change the current operational mode from a reactive mode to a proactive mode.

Details on each of these categories are provided on the attached sheets.

**RECOMMENDED ACTIONS:**

The following actions are recommended to ensure that the City maintains compliance with all stormwater regulations and to ensure that the City’s stormwater drainage system operates correctly and efficiently:

1. Hire a Stormwater Engineer position in July 2014. Estimated annual cost is approximately \$85,000.
2. Add an additional street sweeper to the City's street sweeping program in July 2015. Estimated annual cost is \$75,000.
3. Add three additional employees to the Public Works Division in July 2015 so that there is one crew that is devoted solely to the maintenance of the City's stormwater drainage system. Estimated annual cost is \$175,000.
4. Conduct a detailed inventory, mapping, and condition evaluation of the City's stormwater drainage system over the next 2 to 3 years and develop a master plan of infrastructure replacements and improvements that are needed. Estimated cost to complete this activity is approximately \$300,000.

The proposed funding source for the \$335,000 in additional annual expenditures listed above and the one-time cost of \$300,000 to complete the system inventory, mapping, and master plan is the implementation of a stormwater utility.

**BUDGET IMPACT:** The following table summarizes the current and proposed annual expenditures related to the ongoing operation and maintenance of the City's stormwater system that could be funded by a proposed stormwater utility.

Description	Annual Cost
Hire a Stormwater Engineer (July 2014).	\$85,000
Add one additional Street Sweeper (July 2015) to the City's street sweeping program.	\$75,000
Add three new positions to Public Works (July 2015) so that there is one crew devoted solely to maintenance of the City's drainage system.	\$175,000
Current stormwater maintenance completed by Public Works funded by VDOT funds. These funds could be used instead for street paving and sidewalks.	\$250,000
Current stormwater related activities completed by Utilities and Engineering funded by Utility funds. These funds could be used instead for continued water and sewer infrastructure replacements.	\$300,000
Current stormwater activities funded by the General Fund. These funds could be used for other purposes in the General Fund.	\$60,000
Current utility billing activities that could be funded by a stormwater utility. These funds could be used instead for continued water and sewer infrastructure replacements.	\$100,000

**OPTIONS FOR CITY COUNCIL:**

No action from City Council is required at this time. The current schedule calls for City Council to take action on the proposed Storm Water Utility in May/June 2014.

**City of Winchester**  
**Stormwater System Operational and Maintenance Issues**

**A. New Stormwater Regulations**

**1. Virginia Stormwater Management Program**

The state has recently enacted legislation that will require the City to implement and manage the Virginia Stormwater Management Program beginning on July 1, 2014. Previously, the state administered this program which applies to all new developments over 1 acre in size. Implementing and managing this program will require extensive additional City resources to review proposed new stormwater facilities, inspect these facilities during construction, and ongoing inspections to ensure that the stormwater facilities are operating properly.

To successfully implement and manage all the requirements of the Virginia Stormwater Management Program, the Public Services Department, through the FY15 budget process, is requesting that a Stormwater Engineer position be added on July 1, 2014. In addition to managing the Virginia Stormwater Management Program, this position will also be very involved assisting in the following areas:

- a. Ensuring compliance with the City's Municipal Separate Storm Sewer System Permit (MS4).
- b. Management of the City's participation in the National Flood Insurance Program and efforts related to the participating in the Community Rating System which could help lower premiums for flood insurance policies within the City.
- c. Design and construction of stormwater capital improvement projects.
- d. Maintaining and regularly updating the database of property impervious areas used for billing stormwater utility fee (if stormwater utility is implemented).

The estimated total annual cost to add a Stormwater Engineer position is approximately \$85,000 per year.

**2. Quality of Stormwater Runoff**

In order to meet more stringent stormwater quality regulations, the City will need to increase its current street sweeping program by approximately 50%. As the City currently

operates two street sweepers on a continual basis, one additional street sweeper will need to be added.

The estimated total annual cost to operate an additional street sweeper is approximately \$75,000 per year (this includes the cost of one additional employee). This proposed additional street sweeper would be added in July 2015.

## **B. Existing and Operational and Maintenance Activities**

### **1. Public Works Division (Highway Maintenance Fund)**

The Public Works Division currently does spend significant resources on the current street sweeping program and maintaining the stormwater drainage system. It is estimated that this expenditure is approximately \$250,000 per year which comes from the maintenance funds the City receives annually from VDOT. Implementing a stormwater utility would provide an alternate funding mechanism for this expenditure and would allow the \$250,000 in annual VDOT funds to be used for street paving and sidewalks, both of which are City Council priorities.

### **2. Utilities and Engineering**

The Utilities and Engineering Division also spends significant resources annually on stormwater related activities. These activities include: ensuring compliance with the City's MS4 permit, participation in the National Flood Insurance Program, administering and enforcing soil erosion and sediment control regulations, and the design and construction of stormwater infrastructure improvements. It is estimated that the annual expenditure for these activities is approximately \$300,000. A stormwater utility would provide an alternate funding mechanism for these expenditures and would allow these utility funds to be used for continued water and sewer infrastructure replacement.

### **3. General Fund**

The General Fund currently expends approximately \$60,000 per year on operational and maintenance activities related to stormwater. These activities include engineering consulting, GIS, and the mowing of some drainage areas completed by the Parks Department.

### **C. Expanded Operational and Maintenance Activities**

While the Public Works Division does spend a considerable amount of time maintaining the stormwater drainage system, their staff resources are limited. Exhibit A shows the current organizational structure of the Public Works Division related to streets and stormwater.

As can be seen, there is only one crew of four employees that is available for maintaining the overall stormwater system. Unfortunately, these employees are also responsible for a multitude of other tasks so they are limited to the amount of time spent maintaining the City's large and complex stormwater system. Due to these limited resources, the current operational mode is one that is reactive in addressing problems that occur.

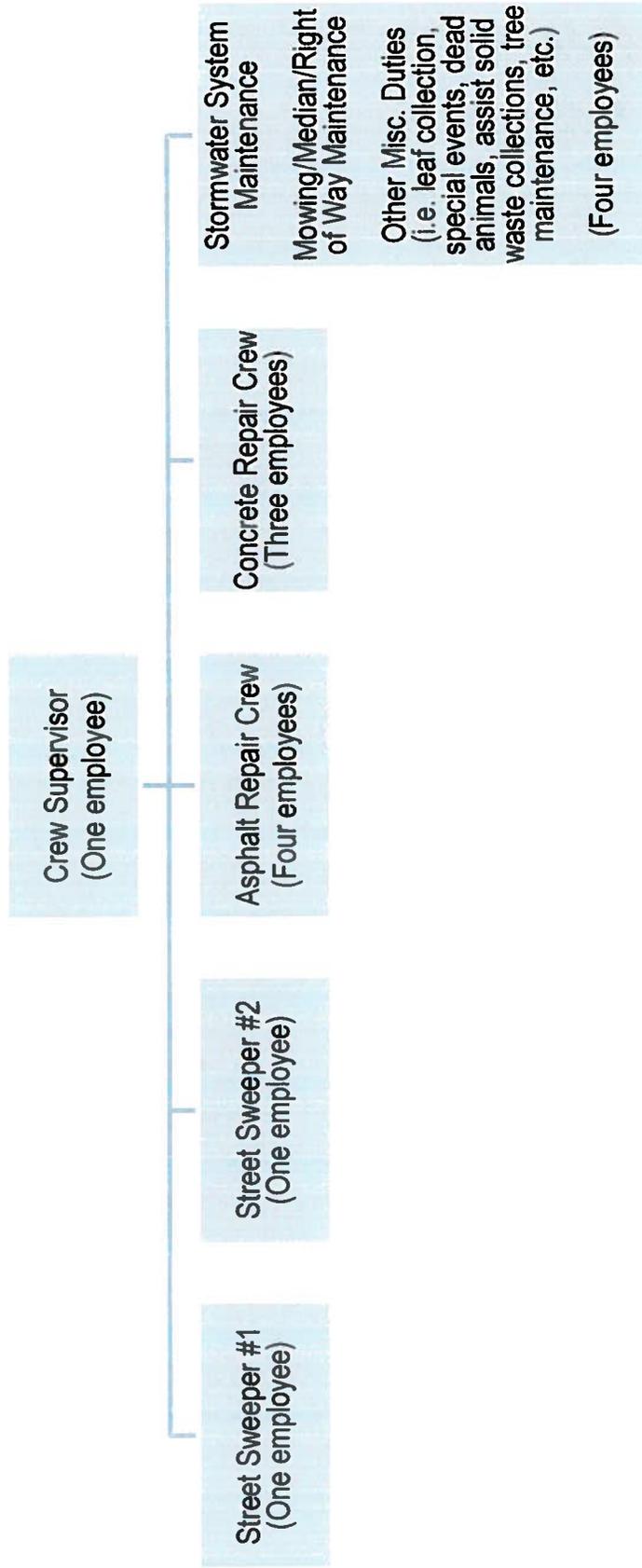
In order to modify the operational mode to become proactive in maintaining the drainage system to ensure the system operates properly and problems are prevented, additional resources are necessary. The Public Services Department is recommending that three additional employees be added so that there is one crew that is devoted solely to the maintenance of the City's stormwater drainage system.

The estimated cost of adding this additional crew is approximately \$175,000 per year which could be funded by implementing a stormwater utility. This proposed crew would be added in July 2015.

### **D. Utility Billing**

If a stormwater utility fee is approved by City Council, the most cost effective way to bill and collect this fee would be to utilize the current water and sewer utility bills. This would also have the benefit in that the stormwater utility could help pay for a portion of the existing expenditures related to utility billing. Overall, it is estimated that approximately \$100,000 in annual utility billing expenditures could be paid for by a stormwater utility which in turn would allow these water/sewer funds to be used for continuing water and sewer infrastructure replacements.

## Exhibit A – Existing Organizational Chart Public Works Division - Streets



CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: Jan. 21, 2014 CUT OFF DATE: \_\_\_\_\_

RESOLUTION \_\_\_ ORDINANCE XX PUBLIC HEARING XX

ITEM TITLE: An ordinance to amend Chapter 9 - "Water Protection" of the Winchester City Code to comply with all applicable regulations of the Virginia Stormwater Management Program.

STAFF RECOMMENDATION: Adopt the ordinance.

PUBLIC NOTICE AND HEARING: Will be required.

ADVISORY BOARD RECOMMENDATION: NA

FUNDING DATA: See attached.

INSURANCE: NA

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance	<u>B</u>		<u>1-13-14</u>
2. City Attorney	<u>[Signature]</u>		<u>1/14/2014</u>
3. City Manager	<u>[Signature]</u>		<u>1/15/14</u>
4. Clerk of Council			
Initiating Department Director's Signature:	<u>[Signature]</u>		<u>1/13/14</u> Date



APPROVED AS TO FORM:

[Signature] 1/14/2014  
CITY ATTORNEY

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Perry Eisenach, Public Services Director  
**Date:** January 21, 2014 (Council work session)  
**Re:** Modifications to Chapter 9 – “Water Protection” of the Winchester City Code

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**THE ISSUE:** An ordinance to amend Chapter 9 – “Water Protection” of the Winchester City Code to comply with all applicable regulations of the Virginia Stormwater Management Program.

**RELATIONSHIP TO STRATEGIC PLAN:** **Goal 4:** Create a More Livable City for All.

**BACKGROUND:** The Commonwealth of Virginia has adopted legislation that requires the City of Winchester to implement and enforce all applicable provisions of the Virginia Stormwater Management Program (VSMP). The deadline for implementing all these requirements is July 1, 2014.

The attached ordinance would make the necessary modifications to Winchester City Code Chapter 9 – “Water Protection” so that the City is in compliance with State Code.

**NOTE:** This ordinance was first presented to Council at the work session on November 19, 2013. The state made some minor revisions to their requirements in December and those changes are shown in yellow highlighted text on the attached ordinance. The ordinance is now ready for Council action.

**BUDGET IMPACT:** Implementing and enforcing these new regulations will have an impact on the City’s budget as additional resources will be required. Additional information regarding this will be provided during Discussion #3 regarding a proposed Storm Water Utility at the Council work session on January 24, 2014.

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**OPTIONS FOR CITY COUNCIL:**

Either adopt or not adopt the proposed ordinance.

**RECOMMENDATION:**

Adopt the proposed ordinance.

## CHAPTER 9

### WATER PROTECTION

- Art. I. In General, §§9-1--9-19
- Art. II. Erosion and Sediment Control, §§9-20--9-49  
Div. 1. In General, §§9-20--9-29  
Div. 2. Erosion and Sediment Control Plan for  
Land Disturbing Activities, §§9-30--9-49
- Art. III. Stormwater Management and Water Quality, §§9-50--9-79  
Div. 1. In General, §§9-50--9-55  
Div. 2. ~~Plan Requirements: Water Quantity and Water~~  
~~Quality Protection~~Requirements for Water Quantity and Water Quality  
Protection, §§9-56--9-79
- Art. IV. Stream Buffers, §§9-80--9-99
- Art. V. Storm Sewer Discharges, §§9-90--9-95

### ARTICLE I. IN GENERAL

#### SECTION 9-1. SHORT TITLE.

This Chapter shall be known and may be cited as the City's "Water Protection Ordinance."

#### SECTION 9-2. AUTHORITY.

This Chapter is adopted pursuant to authority conferred by the Virginia Erosion and Sediment Control Law (Virginia Code §§ 10.1-560 et seq.), the Virginia Stormwater Management Act (Virginia Code §§10.1-603.1+2 et seq.), Virginia Code §10.1-2108 of the Chesapeake Bay Preservation Act, and the Federal Clean Water Act.

#### SECTION 9-3. PURPOSES.

The City Council finds that this Chapter is necessary to protect the general health, safety and ~~general~~ welfare of the citizens of the City and the Commonwealth of Virginia and to prevent stormwater from being rendered dangerous to the health of persons living in the City, and is supported by the findings of related studies that have been conducted. Therefore, the specific purposes of this Chapter are to:

**Editor's Note: Ordinance No. 15-2006, adopted April 11, 2006, repealed and re-enacted Chapter 9 in its entirety.**

## WINCHESTER CODE

- (1) Inhibit the deterioration of public waters and waterways resulting from land disturbing activities;
- (2) Protect the safety and welfare of citizens, property owners, and businesses by minimizing the negative impacts of increased stormwater runoff from new land development and redevelopment;
- (3) Control nonpoint source pollution, erosion and sedimentation, and stream channel erosion;
- (4) Maintain the integrity of existing stream channels and networks for their biological functions, drainage, and natural recharge of groundwater;
- (5) Protect the condition of public waters for all reasonable public uses and ecological functions;
- (6) Provide for the long-term responsibility for and maintenance of stormwater management facilities and best management practices;
- (7) Facilitate the integration of stormwater management and pollution control with other City ordinances and with federal, Commonwealth of Virginia and local programs, policies, regulations and guidelines; ~~and~~
- (8) Prohibit illicit connections and discharges to the City's municipal storm sewer system;
- (9) 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;
- (10) Provide the framework for the administration, implementation, and enforcement of the provisions of the Virginia Erosion and Sediment Control Act and Virginia Stormwater Management Act and their attendant regulations by the City;
- (11) Establish a local Virginia Stormwater Management Program (VSMP) consistent with the requirements of §62.1-44.15:27 of the Code of Virginia;
- (12) Establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced; and
- (13) Establish the procedures and requirements to be followed in connection with land disturbance permits and VSMP authority permits issued by the City.

### **SECTION 9-4. RULES OF CONSTRUCTION.**

This Chapter protects paramount public interests and shall be liberally construed to effectuate its several purposes. The following rules of construction shall apply in the construction of this Chapter, unless such application would be contrary to the purposes of this Chapter or the context clearly indicates otherwise:

- (1) All references to any statute, ordinance, regulation, guideline, handbook, manual or standard shall be to such statute, ordinance, regulation, guideline, handbook, manual or standard as it exists on the date of adoption of this Chapter and includes any amendment thereafter or reissue in a subsequent edition.
- (2) Any reference to "this Article," "Article II," "Article III," or "Article IV"

## WATER PROTECTION

shall include references to all applicable references of Article I. (3) All references to “days” shall be to calendar days.

- (4) All references to a “fee schedule” shall mean and refer to a schedule of the fees and charges associated with the various applications, inspections, permits and approvals required by this Chapter, as approved and amended by the City Council from time to time. All required fees shall be made payable to the City Treasurer.

### SECTION 9-5. DEFINITIONS.

The following terms, whenever used or referred to in this Chapter, shall have the respective meanings set forth below, unless the context clearly requires a contrary meaning or any such term is expressly defined to the contrary elsewhere in this Chapter:

Administrator or Program Administrator means the City Engineer for the City of Winchester, Virginia.

*Agreement in lieu of a plan* means a contract between the program authority and the owner which specifies conservation measures which must be implemented in the construction of a single family residence; this contract may be executed by the program authority in lieu of a formal erosion and sediment control plan.

*Applicant* means any person submitting a plan for approval, or applying for or requesting the issuance of a permit, when required, under this Ordinance authorizing land disturbing activities to commence.

*Authorized City Official* means includes any officer or employee of the department of Public Services and Engineering authorized by the City Engineer to act pursuant to this Chapter, except for where the context clearly indicates otherwise.

*Best management practices (“BMP’s”)* means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices and facilities, both structural and nonstructural, to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, ~~receiving waters, or~~ stormwater conveyance systems, and other receiving waters, including surface waters and groundwater. BMP’s also include treatment practices, operating procedures, and practices to control site runoff, stormwater discharges from land disturbing activities, spillage or leaks, or combination of practices that is determined by the Commonwealth of Virginia, ~~a designated area-wide planning agency,~~ or the program authority, to be the most effective, practical means of preventing or reducing the amount of surface water runoff and pollution generated by nonpoint sources to a level compatible with water quality goals.

*Board or State Board* means: ~~(i) as used in Article I, the Virginia Soil and Water Conservation Board, and (ii) as used in Article II, the Virginia Board of Conservation and Recreation~~ State Water Control Board.

## WINCHESTER CODE

*Certified inspector* means an employee or agent of the program authority implementing the City's local erosion and sediment control program or stormwater management program who (1) holds a certificate of competence from the Virginia ~~Soil and Water Conservation~~State Water Control Board in the area of project inspection or (2) is enrolled in that Board's training program for project inspection and successfully completes such program within one (1) year after enrollment.

*Certified plan reviewer* means an employee or agent of the program authority implementing the City's local erosion and sediment control program or stormwater management program, who (1) holds a certificate of competence from the Virginia ~~Soil and Water Conservation~~State Water Control Board in the area of plan review, (2) is enrolled in that Board's training program for plan review and successfully completes such program within one (1) year after enrollment, or (3) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Virginia Code § 54.1-400, et seq.

*Certified program administrator* means an employee or agent of the program authority implementing the City's local erosion and sediment control program or stormwater management program who (1) holds a certification of competence from the Virginia ~~Soil and Water Conservation~~State Water Control Board in the area of program administration, or (2) is enrolled in that Board's training program for program administration and successfully completes such program within one (1) year after enrollment.

*Channel* means a natural stream or human-made waterway.

*City* means the City of Winchester, Virginia.

*Clean Water Act (CWA)* means the Federal Water Pollution Control 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, and any subsequent amendments thereto.

*Common plan of development or sale* means a contiguous area where separate and distinct construction activities occur at different times or according to different schedules.

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

*Conservation standards, criteria or specifications* means the criteria, guidelines, techniques, and methods for the control of erosion and sedimentation whether promulgated by the

## WATER PROTECTION

program authority or contained in (1) the Virginia Erosion and Sediment Control Handbook and other regulations promulgated by the Virginia ~~Soil and Water Conservation~~ State Water Control Board or (2) the Stormwater Management Handbook and other regulations promulgated by the Virginia ~~Department of Conservation and Recreation~~ Department of Environmental Quality.

*Construction record drawing* means a drawing or plan showing the exact dimensions, geometry, and location of completed stormwater management facilities.

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

*DEQ or VDEQ* means the Virginia Department of Environmental Quality.

*Development, land development and land development project* as used within this Chapter each refer to any manmade change to, or construction on, a land surface that potentially changes its runoff characteristics, or the landform resulting from any such manmade change to the land surface or associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, or the clearing of land for purposes other than agricultural or silviculture. A land disturbing activity as defined herein shall be considered land development for the purposes of administering this Chapter.

*Director*, for the purposes of Article V of this Chapter, shall mean and include the City's Director of Public Utilities or the City Engineer, and the employees and agents authorized by either of them to exercise authority or to take enforcement action under the provisions of Article V.

*Discharge* means to dispose, deposit, spill, pour, inject, dump, leak or place by any means, and also refers to that which is disposed, deposited, spilled, poured, injected, dumped, leaked or placed by any means.

*Drainage Basin* means a watershed.

*Erosion and sediment control plan* means a document which sets forth the major soil and water resources conservation measures that will be implemented to assure that the unit or units of land will be so treated to achieve the conservation objectives of this Chapter, and which may also include appropriate illustrations in the form of maps or a site plan, and appropriate narratives, such as a soil and water plan inventory and management information with needed interpretations, a record of decisions contributing to conservation treatment, and any specifications submitted with the plan.

*Erosion impact area* means an area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of five thousand (5,000) square feet or less used for residential purposes.

## WINCHESTER CODE

General Permit means the state permit titled “General Permit for Discharges of Stormwater from Construction Activities” found in 9VAC25-880-1 et seq. of the regulations authorizing a category of discharges under the federal Clean Water Act and the Virginia Stormwater Management Act within a geographical area of the Commonwealth of Virginia.

*Illegal discharge and illicit discharge* each means and refers to any discharge to the City’s municipal separate storm sewer system (“MS4”) that is not composed entirely of stormwater, except: (i) discharges pursuant to a Virginia Pollutant Discharge Elimination System (VPDES) permit; (ii) discharges resulting from firefighting activities; and (iii) any discharges specifically authorized within Article V of this Chapter.

*Illicit connection* means either of the following: (i) any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by the Program Authority; or (ii) any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records approved by the Program Authority.

Land *disturbance or land disturbing activity* means a man-made change to the land surface that potentially changes its runoff characteristics, or any such land change which may result in soil erosion from water or wind and the movement of sediments into waters or onto lands in the City or adjacent jurisdictions, including, but not limited to, clearing, grading, excavating, transporting and filling of land, ~~except provided~~ that the term shall not include the exempt activities set forth in Sec. 9-50 for purposes of administering Article III of this Chapter, and provided further that, for the purposes of administering Article II of this Chapter, the term shall not include :

- (1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work that ~~are disturb~~ less than five thousand (5,000) square feet<sub>;</sub>
- (2) Installation, maintenance or repair of any ~~other~~ underground public utility mains or lines, when such activity occurs on an existing hard surfaced road, street or sidewalk and the land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced<sub>;</sub>
- (3) Construction, installation, maintenance or repair of any type of individual utility service connections<sub>;</sub>
- (4) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of a building to be served by a septic tank system<sub>;</sub>
- (5) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company<sub>;</sub>
- (6) Disturbed land areas of less than five thousand (5,000) square feet in size<sub>;</sub>
- (7) Installation of fence and sign posts or telephone and electric poles and

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- other kinds of posts or poles;:-
- (8) 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 established~~ stabilized in accordance with the requirements of the Virginia Erosion and Sediment Control Handbook;:-
- (9) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;
- (10) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, 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 the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of §10.1-1163 of the Code of Virginia; and
- (11) 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 (§10.1-604 et seq.) of Chapter 6, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.

Layout means a conceptual drawing containing sufficient information, as determined by the program administrator, to provide for the specified stormwater management facilities required at the time of approval.

*Linear development* means a land development that is linear in nature, such as (but not limited to): (i) the construction of electric and telephone utility lines and natural gas pipelines; (ii) the construction of railroad tracks, rights-of-way, bridges, communication facilities and related facilities; and (iii) highway construction projects.

*Local erosion and sediment control program* means an outline of the various methods employed by the City to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program, including, without limitation, City ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

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

## WINCHESTER CODE

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.

*Mitigation plan* means a plan, a component of a stormwater management/BMP plan, erosion and sediment control plan, or an agreement in lieu of a plan that describes how encroachments into a stream buffer will be mitigated through runoff treatment, re-vegetation, the addition of extra buffer areas, or other appropriate measures.

*Municipal Separate Storm Sewer System (MS4)* means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of Winchester and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

*Nonpoint source pollution* means pollution whose sources cannot be pin-pointed but rather is washed from the land surface in a diffuse manner by stormwater runoff.

*Operator* means the owner or operator of any facility or activity subject to regulation under this Ordinance

*Owner* means the owner of the freehold of land, or the owner of a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person in control of a property. As used herein, *owner* also refers to, in the appropriate context: (i) any person authorized to act as the agent for the owner, (ii) any person who submits an erosion and sediment control plan or stormwater management plan for approval, or requests issuance of a permit, when required, authorizing land disturbing activities or land development to commence, and (iii) any person responsible for complying with an approved erosion and sediment control plan, agreement in lieu of a plan, or an approved stormwater management plan.

*Permit* means any building permit, grading permit, or other permit, including the approval of any site plan or subdivision plat, which is required to be issued by any board, commission, officer, employee or agency of the City as a prerequisite to any land development.

*Permittee* means (i) the person to whom a permit authorizing land disturbing activities is issued, (ii) the person who certifies that an approved erosion and sediment control plan will be followed, ~~or~~ (iii) the person who certifies that an approved stormwater management plan will be followed, or (iv) the person to whom the VSMP Authority Permit is issued.

*Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state, county, City, town or other political subdivision of this state, federal, state, or local governmental body, ~~any~~ interstate body, or any other legal entity.

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*Plan Approving Authority* means the City Engineer of the City of Winchester, Virginia, who is responsible for determining the adequacy of a plan submitted for land disturbing activities on a unit or units of land and for approving plans.

*Pollutant* refers to, without limitation, paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances and accumulations; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues resulting from construction of a building or structure; noxious or offensive matter of any kind; and other, similar substances that cause or contribute to water pollution.

~~*Program Administrator* means the City Engineer for the City of Winchester, Virginia.~~

*Program Authority* means the department of Public Services and Engineering. Except for where the context clearly indicates otherwise, the term “program authority” includes any officer or employee of the department of Public Services and Engineering authorized by the City Engineer to act pursuant to this Chapter.

*Public waters* means and refers to the waters refers to the public waters and waterways of the United States and of the Commonwealth of Virginia.

*Redevelopment* for purposes of this Chapter means and refers to construction of buildings and structures as replacement(s) for existing improvements.

~~*Regulations* means the Virginia Stormwater Management Program (VSMP) Regulations, 9VAC25-870, as amended, unless otherwise specified.~~

*Residential development* means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control, and which is to contain three or more residential dwelling units.

~~*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.~~

~~*State* means the Commonwealth of Virginia.~~

~~*State permit* means an approval to conduct a land-disturbing activity issued by the Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the 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 Virginia Stormwater Management Program (VSMP) Regulations.~~

## WINCHESTER CODE

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

*Storm sewer system* means the City's municipal system of roads, streets, catch basins, retention and detention basins, curbs, gutters, ditches, pipes, lakes, ponds, channels, storm drains and other facilities located within the City which are designed or used for collecting, storing or conveying stormwater, or through which stormwater is collected, stored or conveyed.

*Stormwater* means any surface flow, runoff and drainage consisting of water discharged across the land surface, or through conveyances, to one or more waterways, from any form of natural precipitation.

*Stormwater management facility maintenance agreement* means an agreement that binds the owner or other designated parties to maintain and inspect stormwater management facilities constructed in accordance with this Chapter, based on specific terms and conditions of the agreement.

*Stormwater management plan* means a document containing material that describes how existing runoff characteristics will be maintained within a land development project, that describes controls for the management of the rate of stormwater discharge, and that describes any best management practices provided for water quality protection. A stormwater management plan may include a narrative section, a map or site plan, pertinent calculations and specifications included with the plan.

*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. 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.

*Stream buffer* means an area of land at or near a tributary streambank and/or nontidal wetland that has an intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes which may result in significant degradation to the quality of state waters.

*Subdivision* means the division, including resubdivision, of any lot, tract or parcel of land into two (2) or more lots, tracts or parcels, for the purpose, whether immediate or future, of sale or building development.

*Total maximum daily load or TMDL* means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that load among the various sources of that pollutant in accordance with the requirements of the federal Clean Water Act. TMDLs include the sum of the individual

## WATER PROTECTION

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.

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 Act means Article 1.1 (§10.1-603.2 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

Virginia Stormwater Management Program or VSMP means a program approved by the 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. A VSMP 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, and evaluation consistent with the requirements of the Virginia Stormwater Management Act and associated regulations.

Virginia Stormwater Management Program Authority or VSMP Authority means an authority approved by the Virginia State Water Control Board after September 13, 2011 to operate a Virginia Stormwater Management Program.

Virginia Stormwater Management Program (VSMP) authority permit means an approval issued by the Administrator to initiate a land disturbing activity pursuant to the requirements of Article III of this Chapter, and which may only be issued after evidence of general permit coverage has been provided by the DEQ.

*Watershed* means a defined land area drained by a river, stream or drainage ways, or system of connecting rivers, streams, or drainage ways such that all surface water within the area flows through a single outlet.

*Wetlands, non-tidal* means wetlands other than tidal wetlands that are inundated or saturated by surface or groundwater at a frequency and duration 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.

(Ord. No. 2011-21, 10-11-11)

### **SECTION 9-6. DESIGNATION OF PROGRAM AUTHORITY; POWERS AND DUTIES.**

## WINCHESTER CODE

- (a) The City Council hereby designates the ~~department~~ Department of Public Services and Engineering as the program authority for the purposes of administering Articles II, III, and IV of this Chapter.
- (b) The program authority shall administer and enforce the provisions of this Chapter, acting by and through authorized City officials and employees.
- (c) The program authority shall establish reasonable regulations and interpretive guidelines for the administration of this Chapter. Such regulations and guidelines shall be consistent with this Chapter and all applicable Federal and Commonwealth of Virginia statutes and regulations (including, without limitation, the provisions of ~~Va. Code~~ §10.1-570 and §10.1-603.7 of the Code of Virginia), and ~~they~~ shall be subject to the approval of City Council).
- (d) ~~Within one year of the date of adoption of this Chapter~~ †The program authority shall ~~assure~~ ensure that the erosion and sediment control program set forth in Article II is administered by a certified program administrator, a certified plan reviewer, and a certified project inspector. The program authority shall also ensure that the stormwater management program set forth in Article III is administered by a certified program administrator, certified plan reviewer, and a certified project inspector not later than June 30, 2014. Such positions may be filled by the same person.
- (e) The program authority shall take appropriate enforcement actions to achieve compliance with this Chapter, and shall maintain a record of enforcement actions for all active land disturbing activities and land developments.
- (f) The program authority is authorized to cooperate with any federal or state agency in connection with plans for erosion and sediment control or stormwater management. The program authority may also recommend to the City ~~manager~~ Manager any proposed agreement with such agency for such purposes, which agreement shall be executed, if at all, by the City ~~manager~~ Manager on behalf of the City.

### SECTION 9-7. SAVING PROVISION.

The adoption of this Chapter shall not abate any pending action, liability, or penalty of any person accruing or about to accrue, nor waive any right of the City under any provision in effect prior to the date of adoption of this Chapter, unless expressly provided for in this Chapter. Any erosion and sediment control plan, runoff control permit and, to the extent they pertain to stormwater management, any final site plan or plat, approved prior to the date of adoption of this Chapter shall remain in full force and effect, and all rights and remedies of the City in enforcing such plans, permits and plats are hereby preserved.

### SECTION 9-8. APPEALS FROM DECISIONS UNDER THIS CHAPTER; HEARINGS ON APPEAL.

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- (a) Any person who is aggrieved by any action, inaction or decision of the program authority pursuant to this Chapter shall have the right of review of such action by the City Council. Any such appeal shall be filed in writing with the clerk of the City Council within ~~ten (10)~~thirty (30) days of the date of such action, inaction or decision.
- (b) An appeal received by the City Council pursuant to this section shall be referred to the planning commission for review and findings of fact. The planning commission shall review the appeal at its next regular meeting following the date the notice of appeal is received by the clerk of council, and shall report its findings to City Council. The City Council shall review the appeal within thirty (30) days after the date of the planning commission meeting at a regular or special meeting of the Council.
- (c) The City Council shall consider evidence presented by the owner, the program authority, and any other aggrieved person and such other persons as shall be deemed necessary by the Council for a complete review of the matter. The Council shall render its decision in writing and may affirm, reverse or modify the program authority's decision. The Council's decision shall constitute the final decision of the City on the matter(s) which are the subject of the appeal.
- (d) Any person aggrieved by a final decision of the City Council pursuant to this section shall have the right of review of such decision by the Circuit Court of the City. Any such appeal shall be filed in writing with the Circuit Court within thirty (30) days of the Council's final decision.
- (e) For the purposes of this section, "aggrieved person" is limited to the owner, a permittee, owners of adjacent and downstream property and any interested governmental agency or officer thereof.
- (f) Formal hearings conducted pursuant to this Chapter shall comply with all applicable provisions of §62.1-44.15:45 and §62.1-44.26 of the Code of Virginia.

Any person who is aggrieved by any action of the program authority because of its disapproval of a plan submitted pursuant to this Article, or in the interpretation of the provisions of this Article, shall have the right to apply for and receive a review of such action by the City Council, as provided herein:

- (a) An appeal shall be filed in writing with the clerk of the board of supervisors within thirty (30) days of the date notice of the action is given by the program authority or, if an exception to the requirements of this Article as provided in section 17-308 is requested and denied, within thirty (30) days of the date notice of the denial of such exception. Notice shall be deemed to be given on the date that it is mailed or is hand delivered.
- (b) When reviewing the program authority's action, the City Council shall consider evidence and opinion presented by the aggrieved person, the program authority, and such other persons as shall be deemed by the City Council to be necessary for a complete review of the matter. The City Council may affirm, reverse or modify the program authority's

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~~action. The decision of the City Council shall be final, subject only to review by the Circuit Court as provided in Virginia Code § 10.1-603.13.~~

~~(e) For the purposes of this section, the term *person aggrieved* shall be limited to the owner, owners of adjacent or down-stream property, and any interested governmental agency or officer thereof.~~

### **SECTION 9-9. COMPLIANCE WITH CHAPTER PREREQUISITE TO ISSUANCE OF PERMITS AUTHORIZING LAND DEVELOPMENT ACTIVITIES PERFORMANCE GUARANTEE; SURETY.**

~~A grading, building or other permit for~~ A permit for activities involving land disturbing activities pursuant to Section 9-20 and Section 9-50 of this Chapter may be issued by the program authority only as provided herein:

~~(a) The owner shall submit with his application for such permit a proposed erosion and sediment control plan and/or stormwater management plan, as may be required by this Chapter, for review and approval pursuant to this Article, or an approved erosion and sediment control plan and/or stormwater management plan and certification that the plan(s) will be followed. A permit shall not be issued until all such required plans have been approved and the required certification(s) are submitted.~~

~~(b)~~ (a) Prior to issuing a any such permit, the permit-issuing department program authority shall require, or in the case of an agreement in lieu of a plan may require, the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the program authority, to ensure that measures could be taken by the City at the applicant's expense, should he ~~she~~ fail, after proper notice, within the time specified to initiate or maintain appropriate corrective action which may be required of him ~~her~~ by the approved plan as a result of his land disturbing activity.

~~(e)~~ (b) A bond or other surety shall not exceed the total of the estimated cost to initiate, maintain and repair all erosion and sediment control and/or stormwater management practices, facilities, structures, systems, and control measures identified ~~within on an~~ the approved plan(s), and to comply with all other terms and conditions of the plan(s). In addition:

(1) The amount of the bond or other surety shall be based on unit prices for new public or private sector construction in the City of Winchester, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25% of the estimated cost to initiate, maintain and repair all structures, systems, and measures identified within an approved plan, and to comply with all other terms and conditions of the plan.

(2) The performance bond or other surety shall be provided from a date prior to the

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issuance of any permit until 60 days after the requirements of the approved stormwater management plan have been completed, as determined by the program authority.

- (3) If approved by the program authority, the owner may submit the performance bond or other surety as part of, or included in, any performance bond or surety required in connection with a site plan, subdivision plat or other required approval.
- (~~dc~~) If the program authority is required to take corrective action pursuant to this Article, then the City may collect from the owner the amount by which the reasonable cost of such corrective action exceeds the amount of the surety.
- (~~ed~~) Within sixty (60) days of the achievement of adequate stabilization of the land disturbing activity, or section thereof, in any land development project in accordance with the approved erosion sediment control plan or section thereof, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the owner or terminated based upon the percentage of stabilization accomplished in the project or section thereof.
- (e) Within sixty (60) days of the completion of the requirements of the approved stormwater management plan, as determined by the program authority, the bond or other surety, or any unexpended or unobligated portion thereof, shall be refunded to the owner or terminated. Thereafter, compliance with the requirements of this Article shall be ensured by a maintenance agreement entered into by and between the owner and the program authority in accordance with Section 9-63.

**SECTIONS 9-10 – 9-19. RESERVED.**

## ARTICLE II. EROSION AND SEDIMENT CONTROL

### DIVISION 1. IN GENERAL

**SECTION 9-20. PERMIT REQUIRED FOR LAND DISTURBING ACTIVITIES.**

No person shall engage in any land disturbing activity within the City until he has acquired a permit from the Program Administrator.

**SECTION 9-21. DETERMINATION OF LAND DISTURBING ACTIVITY.**

The determination of whether an activity is a land disturbing activity for purposes of this

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Article shall be made as provided herein:

- (a) The program authority shall determine whether an activity is a land disturbing activity, including any claim by an owner that the activity is exempt from the requirements of this Article.
- (b) If a land disturbing activity includes activity at a separate location, including but not limited to borrow and disposal areas, the program authority may either:
  - (1) Consider the off-site activity as being part of the land disturbing activity, and require an erosion and sediment control plan to be submitted and approved; or
  - (2) If the off-site activity is already covered by an erosion and sediment control plan approved by the City, require the owner to provide proof of the approval and to certify that the plan will be implemented in accordance with this Article.
- (c) If a property will be developed in phases, the determination of whether an activity constitutes a land disturbing activity shall be determined by considering the development of the property as a whole, regardless of the phasing of the development.
- (d) Land disturbing activity of less than 5,000 square feet on individual lots in a residential development shall not be exempt from this Article if the total land disturbing activity in the residential development is equal to or greater than 5,000 square feet.
- (e) Upon the determination by the program authority that an activity is a land disturbing activity the owner shall immediately comply with the requirements of this Article.

### **SECTION 9-22. DETERMINATION OF EROSION IMPACT AREA.**

The determination of whether an erosion impact area exists on property shall be rendered as provided herein:

- (a) The program authority shall determine whether an erosion impact area exists on a property and the property and the owner thereof are subject to the requirements of this Article. The program authority shall make this determination after an investigation brought either on his own initiative or upon the complaint of any citizen.
- (b) Upon making a determination that an erosion impact area exists, the program authority shall immediately notify the owner of the property, in writing, of its determination. The notice shall be served by certified mail to the address of the owner based on the most recent tax records of the City, or by personal delivery. The written notice shall (i) instruct the owner to submit an erosion and sediment control plan for review and

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approval as provided in this Article, and (ii) state the date by which the plan must be submitted.

- (c) Upon receipt of the notice required by this section, the owner shall immediately submit to the program authority a conservation plan designed to prevent further erosion, and the owner shall in all other aspects comply with the requirements of the notice and of this Article. The owner shall not permit any portion of the land that is the subject of the notice to remain in a condition such that soil erosion and sedimentation causes reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes or ponds.
- (d) For good cause shown, the program authority may grant to an owner an extension of time to comply with the requirements of this section and this Article.

**SECTIONS 9-23 – 9-29. RESERVED.**

### **DIVISION 2. EROSION AND SEDIMENT CONTROL PLAN FOR LAND DISTURBING ACTIVITIES**

#### **SECTION 9-30. APPLICABILITY.**

This Article shall apply to any land disturbing activity. Each owner shall comply with the requirements of this Article, as provided herein:

- (1) Prior to engaging in any land disturbing activity, or allowing any land disturbing activity to occur, on his property;
- (2) At all times during any land disturbing activity until it is completed, including all times when the land disturbing activity is performed by a contractor engaged in construction work; and
- (3) When notified by the program authority that an erosion impact area exists on his land, and the notice requires the owner to submit an erosion and sediment control plan in order to control erosion and sedimentation.

#### **SECTION 9-31. RESPONSIBILITIES OF OWNER OF LAND WHEN WORK TO BE CONDUCTED BY CONTRACTOR.**

Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.

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### SECTION 9-32. CONFORMITY TO COMMONWEALTH OF VIRGINIA HANDBOOK.

Except as modified below, all plans and specifications submitted under this Article shall be in conformance with the standards, specifications and criteria of the Virginia Erosion and Sediment Control Handbook and those regulations promulgated by the Virginia ~~Soil and Water Conservation~~ State Water Control Board, including, without limitation, the criteria, techniques and methods set forth in ~~4VAC50-30-409~~VAC25-840-40, as amended. ~~T, provided that the following subsections are hereby changed of VAC 50-30-409~~VAC25-840-40 of the Virginia Erosion and Sediment Control Regulations shall not apply to land disturbing activities regulated pursuant to this article:

- (1) The provision found in Subsection 19b. (1) ~~is deleted.~~

### SECTION 9-33. REVIEW AND INSPECTION FEE.

A ~~plan review and inspection~~ fee shall be submitted at the time of filing any erosion and sediment control plan or application for a permit pursuant to this article. This fee shall be an amount as set forth ~~within the most recent fee schedule approved by City Council~~ below:

<u>Site Plans:</u>	<u>\$300 + \$50 per disturbed acre</u>
<u>Subdivision Plans:</u>	<u>\$400 + \$50 per disturbed acre</u>
<u>Single Family Residences</u>	
<u>(With An Agreement in Lieu of a Plan):</u>	<u>\$50 per building unit</u>
<u>Land Disturbance not associated with a Site</u>	
<u>Plan, Subdivision Plan or Single Family Home:</u>	<u>\$200 -</u>

### SECTION 9-34. EROSION AND SEDIMENT CONTROL PLAN.

Each owner subject to this Article shall submit to the program authority for review and approval an erosion and sediment control plan as provided herein:

- (a) The owner shall submit a completed application on a form provided by the program authority, together with three (3) copies of an erosion and sediment control plan that satisfies the requirements of this section, and a certification stating that all requirements of the approved plan will be complied with.
- (b) The plan shall include specifications for temporary and permanent controls of soil erosion and sedimentation in such detail as the program authority shall deem reasonably adequate, considering the nature and extent of the proposed land disturbing activity, and a statement describing the maintenance responsibilities of the owner to assure that the land disturbing activity will satisfy the purposes and requirements of this Article. As a

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minimum, the plan shall follow the format and conform to the approved standards and specifications for control techniques as set forth in the "Virginia Erosion and Sediment Control Handbook", which by reference is adopted as a part of this Chapter. The plan shall be consistent with the criteria, techniques and methods as set forth in the Minimum Standards (~~9VAC25-840-40~~~~§ 4 VAC 50-30-40~~) of the Virginia Erosion and Sediment Control Regulations adopted by the Virginia ~~Soil and Water~~State Water Control Conservation Board. The plan shall identify the person holding a certificate of competence, as described in Virginia Code § 10.1-561, who shall be in charge of and responsible for carrying out the land disturbing activity.

- (c) The program authority may require additional information as may be necessary for its complete review of the plan.
- (d) In lieu of paragraphs (a)-(c), above, if the land disturbing activity involves land also under the jurisdiction of another local erosion and sediment control program, the owner may, at his option, choose to have a conservation plan approved by the Virginia ~~Department of Conservation and Recreation~~Department of Environmental Quality-~~Division of Soil and Water Conservation~~. The owner shall notify the program authority of such plan approval by such board.
- (e) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:
  - (1) Construction, installation or maintenance of electric, natural gas and telephone utility lines, and pipelines; and;
  - (2) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when Board approved specifications are followed, however, projects included in subdivisions 1 and 2 must comply with Board approved specifications. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the City of Winchester erosion and sediment control program.

- (f) State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Sec. 10.1-564.

(Ord. No. 2007-21, 07-10-07)

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### **SECTION 9-35. REVIEW AND APPROVAL OF EROSION AND SEDIMENT CONTROL PLAN.**

Each erosion and sediment control plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

- (a) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations.
- (b) During its review of the plan, the program authority may correspond with the owner from time to time to review and discuss the plan with the owner, and shall inform the owner in writing of any modifications, terms, or conditions required to be included in the plan in order for it to be approved.
- (c) Except as provided in paragraph (d), below, the program authority shall approve or disapprove a plan in writing within forty-five (45) days from the date a complete application was received. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations. If the plan is disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. The decision shall be communicated to the applicant by mail or delivery.
- (d) If the program authority fails to act on the plan within 45 days from the date the complete application was received by it, then the plan shall be deemed approved.
- (e) If the owner is required to obtain approval of a site plan or subdivision plat, the program authority shall not approve an erosion and sediment control plan unless and until the site plan or plat is approved as provided by law. For purposes of this paragraph, a site plan or plat may be deemed approved by the program authority if its approval is conditioned upon the approval of an erosion and sediment control plan pursuant to this Article, and the program authority determined that review and approval of the erosion and sediment control plan will not affect approval of the site plan or plat. The program authority may approve an erosion and sediment control plan prior to approval of a required site plan or plat in the following circumstances:
  - (1) To correct any existing erosion or other condition conducive to excessive sedimentation which is occasioned by any violation of this Chapter or by accident, act of God, or other cause beyond the control of the owner, provided that the activity proposed shall be strictly limited to the correction of such condition;
  - (2) To clear and grub stumps and other activity directly related to the

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- selective cutting of trees, as may be permitted by law;
- (3) To fill earth with spoils obtained from grading, excavation or other similar, lawful activities;
- (4) To construct temporary access roads, provided that the area disturbed shall be returned to substantially its previous condition, with no significant change in surface contours, within thirty (30) days of the completion of such temporary use, or within thirteen (13) months of the commencement of any land disturbing activity on the land which is related to such temporary use, whichever period shall be shorter.
- (5) To establish burrow, fill, or waste areas, if permitted by the City's zoning ordinance.

### **SECTION 9-36. AGREEMENT IN LIEU OF A PLAN.**

- (a) If land disturbing activity is for the purpose of establishing or modifying a single family detached dwelling, the program authority may allow an agreement in lieu of a plan for the construction of such dwelling, provided:
  - (1) The single family dwelling is located on an individual lot which is not part of a subdivision; or
  - (2) The single family dwelling is located within a residential development or subdivision, and the individual lots are being developed by different property owners; or
  - (3) The single family dwelling is located within a subdivision that no longer has an active erosion and sediment control plan; and
  - (4) The agreement in lieu of a plan identifies the person holding a certificate of competence, as described in Virginia Code 10.1-561, who shall be in charge of and responsible for carrying out the land disturbing activity.
- (b) In determining whether to allow an agreement in lieu of a plan, the program authority shall include as part of its consideration the potential threat to water quality and to adjacent land resulting from the land disturbing activity. When an agreement in lieu of a plan is authorized and approved by the program authority, the program authority and the owner shall have all of the rights, responsibilities and remedies set forth in this Article as though such agreement in lieu of a plan was an erosion and sediment control plan.
- (c) At the discretion of the program authority a bond may be required in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to cover potential threats to water quality. (Ord. No. 2011-21, 10-11-11)

### **SECTION 9-37. AMENDMENT OF APPROVED PLAN.**

The program authority may change an approved erosion and sediment control plan,

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and/or require an owner to submit an amended plan, in the following circumstances:

- (1) An inspection reveals that the plan is inadequate to satisfy the requirements of this Article; or
- (2) The owner finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out and proposed amendments to the plan, consistent with the requirements of this Article are agreed to by the program authority and the owner; or
- (3) The land disturbing activity was not commenced during the one hundred eighty (180) day period following plan approval, or ceased for more than one hundred eighty (180) days, and the existing plan has been evaluated to determine whether it still satisfies the requirements of this Article and Commonwealth of Virginia erosion and sediment control criteria and to verify that all design factors are still valid, and it has been determined that the plan is inadequate. In such a case, the land disturbing activity shall not be resumed until a modified plan is submitted and approved as provided in this Article.

### **SECTION 9-38. DUTY TO COMPLY, MAINTAIN AND REPAIR.**

Upon approval by the program authority of an erosion and sediment control plan, each owner shall:

- (1) Comply with the approved plan when performing, or allowing to be performed, any land disturbing activities, or activities to correct an erosion impact area;
- (2) Maintain and repair all erosion and sediment control structures and systems to ensure continued performance of their intended function;
- (3) Comply with all requirements of this Article; and
- (4) Have a person holding a certificate of competence, as described in Virginia Code §10.1-561, in charge of and responsible for carrying out the land disturbing activity. This person shall be designated prior to commencement of land disturbing activity.

(Ord. No. 2007-21, 07-10-07)

### **SECTION 9-39. INSPECTION AND MONITORING.**

- (a) As a condition of approval of an erosion and sediment control plan, the program authority may require the owner to monitor and report to the program authority as provided herein:
  - (1) Any monitoring conducted shall be for the purpose of ensuring compliance with the erosion and sediment control plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment.
  - (2) The condition requiring monitoring and reporting shall state: (i) the

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method and frequency of such monitoring, and (ii) the format of the report and the frequency for submitting reports.

- (b) The program authority shall inspect any land disturbing activity or erosion impact area as provided herein:
- (1) The program authority shall conduct periodic inspections of land disturbing activities and erosion impact areas to determine compliance with the approved erosion and sediment control plan, and to determine whether such approved plan and permit as implemented are adequate to satisfy the requirements of this Article.
  - (2) Except as provided in paragraph (3), below, inspections shall be conducted (i) during or immediately following initial installation of erosion and sediment controls; (ii) at times indicated by Commonwealth of Virginia conservation standards; and (iii) upon completion of the land development project prior to the release of any surety. The inability of the program authority to conduct inspections within the time periods set forth within this paragraph shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the City, the program authority, or to any official or employee thereof shall arise therefrom.
  - (3) Notwithstanding paragraph (2), above, the program authority is authorized to establish an alternative inspection program which ensures compliance with an approved erosion and sediment control plan. Such alternative inspection program shall be: (i) approved by the Virginia ~~Soil and Water Conservation~~ State Water Control Board prior to implementation; (ii) established in writing; (iii) based on a system of priorities which, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; (iv) documented by inspection records; and (v) maintained and available for public review in the department of Public Services and Engineering.
  - (4) The program authority shall have the right to enter upon property subject to an erosion and sediment control plan for the purposes of conducting an inspection as provided in this section or an investigation pertaining to an erosion or sedimentation complaint. The owner shall be given notice of the inspection. Such notice may be either verbal or in writing.

### **SECTION 9-40. DETERMINATION OF NONCOMPLIANCE WITH PLAN.**

Upon a determination by the program authority that an owner has failed to comply with an approved erosion and sediment control plan, the following procedures shall apply:

- (a) The program authority shall immediately serve upon the owner a written notice to comply. The notice shall (i) instruct the owner to take corrective measures immediately, when immediate action is necessary to prevent erosion or sedimentation

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problems; (ii) state specifically the measures needed to come into compliance with the approved plan; and (iii) state a reasonable time for compliance. The notice shall be served by certified mail to the address provided by the owner in the application for approval of the plan, by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the permitted activities who is supervising such activities.

- (b) If the owner fails to take corrective measures stated in the notice to comply within the time specified in the notice, the permit-issuing department may revoke any permit it has issued related to the land disturbing activity and the owner shall be deemed to be in violation of this Article. Furthermore, he shall be deemed to be in violation of this Chapter and shall be subject to the penalties provided by the Chapter.
- (c) If the owner fails, within the time specified in the notice, to take the corrective measures for compliance stated in the notice, the program authority, upon finding that such action is reasonably necessary to protect the public health, safety and welfare, may take all corrective measures it deems necessary in order to protect the public health, safety and welfare, and shall be entitled to recover the expenses of such action from the owner.
- (d) Upon receipt of a sworn complaint of a violation of this Article or of an approved erosion and sediment control plan, from the program authority, the Program Administrator may, in conjunction with or subsequent to a notice of violation, 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 taken or, if land disturbing activity has commenced without an approved plan, requiring that all of the land disturbing activity be stopped until an approved plan and any required permits have been obtained.
  - (1) Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands, sediment deposition in waters, or water quality problems within the watersheds of the Commonwealth, or where the land disturbing activity has commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply.
  - (2) A stop-work order shall be served in the same manner as a notice to comply, and it shall remain in effect for seven (7) days from the date of service, pending application by the enforcing authority or alleged violator for appropriate relief to the Circuit Court.
  - (3) If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of a stop-work order, the City Engineer may issue an order to the owner requiring that all construction or other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by certified mail to the address

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- specified in the permit application.
- (4) The owner may appeal the issuance of any stop-work order to the Circuit Court.
  - (5) Final decision of the Plan Approving Authority shall be subject to review by the Circuit Court of the City provided an appeal is filed within thirty (30) days from the date of the final written decision adversely affecting the rights, duties or privileges of the person engaging or proposing to engage in land disturbing activity.
  - (6) Any person violating or failing, neglecting or refusing to obey an order issued by the City Engineer may be compelled in a proceeding instituted in the Circuit Court to obey the order and to comply therewith, by injunction, mandamus or other appropriate remedy.
  - (7) Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.
  - (8) Nothing in this section shall prevent the Program Administrator from taking any other action authorized by this Chapter or by any other provision of law.

(Ord. No. 2011-21, 10-11-11)

### **SECTION 9-41. CERTIFICATION OF PROGRAM PERSONNEL.**

As required by Commonwealth of Virginia law, the City's erosion and sediment control program shall meet, within one (1) year following the adoption of this section, the following minimum standards for effectiveness:

- (1) An erosion and sedimentation control plan shall not be approved until it is reviewed by a certified plan reviewer;
- (2) Inspections of land disturbing activity shall be conducted by a certified inspector; and
- (3) The City's erosion control program shall contain a certified program administrator, a certified plan reviewer and a certified project inspector, who may be the same person.

(Ord. No. 2011-21, 10-11-11)

### **SECTION 9-42. PENALTIES, INJUNCTIONS AND OTHER LEGAL ACTIONS.**

- (a) Any person violating the provisions of this Article shall, upon conviction, be guilty of a Class 1 misdemeanor.
- (b) The following may apply to the Circuit Court for injunctive relief to enjoin a

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- (1) The City.
  - (2) The owner of property that has sustained damage or that is in imminent danger of being damaged; however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the provisions of this Article, and the program authority, that a violation of this Article has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated this Article 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 the owner's property.
- (c) In addition to any criminal penalties provided for a violation of this Chapter, any person who violates any provision of this Chapter may be liable to the City in a civil action for damages.
- (d) Each violation of any regulation or order of the Board, any provision of this Chapter, or any provision of Title 10.1, Chapter 5, Article 4 of the Code of Virginia shall be subject to a civil penalty of one hundred dollars (\$100.00). Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same set of facts result in civil penalties which exceed a total of three thousand dollars (\$3,000.00), except that a series of violations arising from the commencement of land disturbing activity without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000. An appropriate official or employee of the program authority, or a certified inspector for the City, may issue a summons for collection of the civil penalty and the action may be prosecuted by the City.
- (e) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the City against such person.
- (f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Program Administrator issued under this Chapter any condition of a permit issued under this Chapter or any provision of this Chapter, the Program Administrator may provide, in an order issued against such person, 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 which could be imposed under subsection (d) or (e) of this section.
- (g) Any civil penalties assessed by a court pursuant to this section shall be paid

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into the City treasury, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the Commonwealth of Virginia treasury.

(Ord. No. 2011-21, 10-11-11)

**SECTIONS 9-43 -9-49. RESERVED.**

### ARTICLE III. STORMWATER MANAGEMENT AND WATER QUALITY

#### DIVISION 1. IN GENERAL

**SECTION 9-50. STORMWATER MANAGEMENT PLAN; APPLICABILITY VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) AUTHORITY PERMIT; APPLICABILITY; EXEMPT ACTIVITIES.**

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued by the program authority in accordance with the provisions of this Article. In addition, no grading, building or other permit shall be issued, nor any site plan approved, for any property unless a VSMP authority permit has been issued by the program authority in accordance with the provisions of this Article. Each owner shall comply with the requirements of this Article prior to commencing any land development or land-disturbing activity, or allowing any land development or land-disturbing activity to occur, on his property, ~~for residential, commercial, industrial or institutional use~~, and at all times thereafter.
- (b) No person may commence ~~development of any land~~ any land-disturbing activity until he has submitted ~~a stormwater management/best management plan (BMP) all plans and documents required by this section~~ a stormwater management/best management plan (BMP) all plans and documents required by this section to the ~~City program authority~~ City program authority and has obtained the ~~City's program authority's~~ City's program authority's approval of ~~that all such plans and documents~~ that all such plans and documents. ~~No building permit, site plan approval or other permit for activities involving land development shall be issued by any City department or official, unless a stormwater management/BMP plan has been approved by the program authority consistent with the provisions of this division. No VSMP authority permit shall be issued unless:~~
- (1) A permit application on a form provided by the program authority has been submitted to the program authority, and the permit application has been reviewed and approved in accordance with the provisions of this Article. The applicant shall submit with his application for such permit certification by the owner that all land clearing, construction, land development and drainage will be performed according to the approved stormwater management plan and permit. No VSMP authority permit shall be issued unless and until the permit application and

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- supporting documentation demonstrate, to the satisfaction of the program authority, that all land clearing, construction, disturbance, land development and drainage will be performed according to the approved permit;
- (2) An erosion and sediment control plan has been submitted and approved in accordance with the provisions of Article II of this Chapter, and a permit has been issued by the program authority for the land-disturbing activity in accordance with Section 9-20;
  - (3) A stormwater management plan has been submitted to the program authority and reviewed and approved in accordance with all applicable requirements of this Article;
  - (4) Evidence has been submitted to the program authority demonstrating that the applicant has applied for and obtained coverage under a general permit, including a completed general permit registration statement;
  - (5) A performance guarantee or surety has been submitted to the program authority in accordance with Section 9-9;
  - (6) All fees required by this Chapter have been paid to the City; and
  - (7) If an operator intends to meet the water quality and/or quantity requirements set forth in Division 2 of this Article through the use of off-site compliance options as authorized under §10.1-603.8:1 of the Code of Virginia and 9VAC25-870-69 of the Virginia Administrative Code, then a letter of availability from the off-site provider must be provided to the program authority. 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 §10.1-603.8:1 of the Code of Virginia.
- (c) Notwithstanding any other provisions of this Chapter, the following activities shall not be considered a land-disturbing activity for the purposes of administering the requirements of this Article and shall be exempt from the requirements of this Article:
- (1) Permitted surface or deep mining operation 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 Board in the 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 the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of §10.1-1163 of the Code of Virginia;
  - (3) Single-family residences separately built and disturbing less than one (1) 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 (1) acre of land area;
  - (5) Discharges to a sanitary sewer or a combined sewer system;
  - (6) Activities under a state or federal reclamation program to return an abandoned

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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) Land-disturbing activities conducted 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 VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with all applicable requirements of this Article is required within 30 days of commencing the land-disturbing activity.

(e) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:

- (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) Tilling, planting or harvesting or agricultural, horticultural, or forest crops;
- (3) Construction, extension or replacement of a building or buildings on a site of 5,000 square feet or less, not including cases where development is to be done in phases and the total land disturbance for all phases is greater than 5,000 square feet;
- (4) Land development or a portion of a land development on land which is designated as lying within a flood plain, except in cases where the flood plain has been modified by permitted fill or other activities in compliance with the zoning ordinance;
- (5) Land development or a portion of a land development where the land is adjacent to a flood plain, and the owner has demonstrated to the reasonable satisfaction of the program authority that off-site improvements or other provisions for the disposition of surface water runoff would equally or better serve the public interest and safety, and that such method of disposition would not adversely affect downstream properties or stream channels; and
- (6) Any land development related to a final site plan or plat approved by the appropriate governing authority prior to the effective date of this Chapter.

(b) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:

- (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) Tilling, planting or harvesting or agricultural, horticultural, or forest crops; and
- (3) Single-family dwelling units separately built and not part of a division of land, including additions or modifications to existing single-family detached

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~~dwelling units, except if the land disturbance exceeds 5,000 square feet.~~

### SECTION 9-51. STORMWATER MANAGEMENT ~~/BMP~~ PLAN; REQUIREMENTS CONTENTS.

Each person subject to this Article shall submit to the program authority for review and approval a stormwater management ~~/BMP~~ plan as provided herein:

- (a) Together with the required stormwater management ~~/BMP~~ plan, the owner of property proposed for development or redevelopment shall submit:
- (1) An application on a form provided by the program authority;
  - (2) Any required application fee, as set forth within the most recent fee schedule approved by City Council.
  - ~~(3) A certification stating that all land clearing, construction, land development and drainage will be done according to the approved plan;~~
  - ~~(4)~~ (3) Specifications for stormwater management and best management practices in order to satisfy the requirements of Division 2 of this Article. The program authority may require the owner to submit maps, calculations, detail drawings, reports, a listing of all major permit decisions and any other information as are determined by the program authority to be necessary to allow a complete review of the plan.
- (b) For purposes of this section, major permit decisions include, but are not limited to, decisions pertaining to zoning map amendments, special use permits, grading permits, building and erosion and sediment control plans and any permit related to the land development required under Commonwealth of Virginia or ~~Federal~~ federal law.
- (c) Each stormwater management plan submitted for approval shall contain, at a minimum, the following information:
- (1) 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;
  - (2) A narrative that includes a description of current site conditions and final site conditions;
  - (3) 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

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- 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.
- (4) 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 predevelopment and postdevelopment drainage areas;
- (5) 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;
- (6) 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;
- (7) Hydrologic and hydraulic computations, including runoff characteristics; and
- (8) Documentation and calculations verifying compliance with the water quality and quantity technical requirements of Division 2 of this Article.
- (d) The stormwater management plan required under this Article shall apply the stormwater management technical requirements set forth in Division 2 of this Article to the entire land disturbing activity, and shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- (e) If an operator intends to meet the water quality and/or quantity requirements set forth in Division 2 of this Article through the use of off-site compliance options as authorized under §10.1-603.8:1 of the Code of Virginia and 9VAC25-870-69 of the Virginia Administrative Code, then a letter of availability from the off-site provider must be provided to the program authority. 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 §10.1-603.8:1 of the Code of Virginia.
- (f) 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.
- (g) 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.

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### MANAGEMENT/BMP PLAN RESERVED.

Each stormwater management/BMP plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

- ~~(a) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable Federal and Commonwealth of Virginia laws and regulations. Where a proposed stormwater management plan includes facilities or BMPs for which design requirements and specifications, and/or maintenance requirements, are specified within the Virginia Stormwater Management (SWM) Handbook and/or the Virginia Stormwater Management Regulations set forth within 4 VAC 3-20 et seq., the program authority shall utilize those design requirements, specifications and/or maintenance requirements in reviewing and making decisions as to the acceptability of such facilities or BMPs under this Article.~~
  - ~~(b) The plan shall be reviewed by the program authority to determine whether it complies with the requirements of section 9-51 and all other requirements of this Article.~~
- ~~(c) During its review of the plan, the program authority may meet with the owner from time to time to review and discuss the plan with the owner, and to request any additional data as may be reasonably necessary for a complete review of the plan.~~
- ~~(d) The program authority shall approve or disapprove a plan within forty five (45) days from the date a complete application was accepted for review. The decision of the program authority shall be based on the plan's compliance with this Article. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.~~
- ~~(e) Each stormwater management/BMP plan approved by the program authority shall be subject to the following:
  - ~~(1) The owner shall comply with all applicable requirements of the approved plan, this Article, the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.), and the Commonwealth of Virginia stormwater management regulations set forth in 4 VAC 3-20-10 et seq.;~~
  - ~~(2) The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;~~
  - ~~(3) Land development shall be conducted only within the area specified in the approved plan;~~
  - ~~(4) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (e)(2);~~
  - ~~(5) The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in section 9-63;~~
  - ~~(6) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections as provided in section 9-67; and~~~~

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- ~~(7) The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.~~
- ~~(f) Nothing in this section shall require approval of a plan or part thereof that is determined by the program authority to pose a danger to the public health, safety, or general welfare or to deviate from sound engineering practices.~~

~~Commonwealth of Virginia law reference—Va. Code § 10.1-603.8.~~

### SECTION 9-53. MONITORING AND REPORTING.

As a condition of approval of a stormwater management/BMP plan, the program authority may require the owner to monitor and report to the program authority as provided herein:

- (a) Any monitoring conducted shall be for the purpose of ensuring compliance with the stormwater management/BMP plan and to determine whether the plan provides effective stormwater management.
- (b) The condition(s) requiring monitoring and reporting shall state the method and frequency of such monitoring.
- (c) The condition(s) requiring monitoring and reporting shall state the format of the report and the frequency for submitting reports.
- ~~(d) Pursuant to § 10.1-603.12:2 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 Ordinance, 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 Ordinance, provided that the disclosure requirements of 10.1-603.12:2 of the Code of Virginia shall be met by the program authority.~~
- ~~(f) As a condition of approval of a stormwater management plan, the program authority may require the owner to monitor and report to the program authority as follows:~~
- ~~Any monitoring conducted by the owner shall be for the purpose of ensuring compliance with the approved stormwater management plan and to determine whether the plan provides effective stormwater management.~~
- ~~The condition(s) requiring monitoring and reporting shall state the method and frequency of such monitoring.~~
- ~~The condition(s) requiring monitoring and reporting shall state the format of the report and the frequency for submitting reports.~~

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~~Commonwealth of Virginia law reference—Va. Code § 10.1-603.8.~~

### **SECTION 9-54. ISSUANCE OF PERMIT; SURETY RESERVED.**

~~A grading, building or other permit for activities involving land development may be issued by a permit issuing department only as provided herein:~~

- ~~(a) The owner shall submit with his application for such permit an approved stormwater management/BMP plan and certification by the owner that all land clearing, construction, land development and drainage will be done according to the approved plan. A permit shall not be issued until such approved plan and certification are submitted.~~
- ~~(b) Prior to the issuance of any such permit, the owner 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 or the program authority at the owner's expense should he fail, after proper notice as provided in section 9-68, to take timely corrective action specified in the notice. The performance bond or other surety shall be provided from a date prior to the issuance of any permit by the permit issuing department until sixty (60) days after the requirements of the approved stormwater management/BMP plan have been completed, as determined by the program authority.~~
- ~~(c) A performance bond or other surety pursuant to paragraph (b) shall not exceed the total of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan as a result of the land development. The amount of the bond or other surety shall be based on unit price for new public or private sector construction in the City of Winchester, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty five (25) percent of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan.~~
- ~~(d) If the program authority is required to take corrective action pursuant to section 9-68 upon the failure of the owner to do so, the City may collect from the owner for the difference if the amount of the reasonable cost of the corrective action exceeds the amount of the surety.~~
- ~~(e) Within sixty (60) days of the completion of the requirements of the approved stormwater management/BMP plan, as determined by the program authority, the bond or other surety, or any unexpended or unobligated portion thereof shall be refunded to the owner or terminated. Thereafter, compliance with the requirements of this Article shall be assured by a maintenance agreement entered into by and between the owner and the program authority, which agreement shall be in a form approved by the City.~~

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~~Attorney.~~

~~(Ord. No. 2011-21, 10-11-11)~~

~~Commonwealth of Virginia law reference—Va. Code § 10.1-603.8.~~

### SECTION 9-55. FEES.

Each owner seeking approval of a stormwater management ~~BMP~~ plan shall pay a fee upon submittal of such plan and application for a VSMP authority permit, and shall pay a fee for ~~each inspection, in amounts as set forth in the most recent fee schedule approved by City Council~~ the modification or transfer of registrations statements from the general permit issued by the State Board, and for maintaining coverage under an approved VSMP authority permit, as provided below:

- (a) Fees for issuance of a VSMP authority permit and associated general permit coverage shall be imposed in accordance with Table 1. Each Applicant shall be subject to a fee (“total fee to be paid by applicant” column) in accordance with the disturbed acreage of their site or sites as provided in Table 1.

**Table 1: Fees for permit issuance**

<u>Fee type</u>	<u>Total fee to be paid by Applicant</u>	<u>Department portion of “total fee to be paid by Applicant” (based on 28% of total fee paid*)</u>
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 1 acre and less than 5 acres)</u>	<u>\$2,700</u>	<u>\$756</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>	<u>\$3,400</u>	<u>\$952</u>

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<u>Fee type</u>	<u>Total fee to be paid by Applicant</u>	<u>Department portion of "total fee to be paid by Applicant" (based on 28% of total fee paid*)</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing [Sites with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]</u>	<u>\$4,500</u>	<u>\$1,260</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$6,100</u>	<u>\$1,708</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 100 acres)</u>	<u>\$9,600</u>	<u>\$2,688</u>

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

~~Commonwealth of Virginia law reference~~ Va. Code § 10.1-603.10.

(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, 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**

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### General Permit for Discharges of Stormwater from Construction Activities

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

(c) The following annual permit maintenance fee shall be imposed on all VSMP authority permits in accordance with Table 3, including fees imposed on expired permits that have been administratively continued. Maintenance fees shall be paid annually to the City by the anniversary date of permit coverage. Such fees shall apply until the permit coverage is terminated. No permit will be reissued or automatically continued without payment of the required fee.

**Table 3: Permit Maintenance Fees**

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

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

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

- (1) All persons seeking a VSMP authority permit and associated 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 of Environmental Quality for an Individual Permit for Discharges of Stormwater From Construction Activities.
- (4) Permit and permit coverage maintenance fees outlined under Section 9-55 (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 9-5 of this Ordinance. 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 of Environmental Quality, 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 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The City shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

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### DIVISION 2. ~~PLAN REQUIREMENTS: WATER QUANTITY AND WATER QUALITY PROTECTION~~ REQUIREMENTS FOR WATER QUANTITY AND WATER QUALITY PROTECTION

#### **SECTION 9-56. STORMWATER MANAGEMENT FACILITIES AND CHANNELS. TECHNICAL REQUIREMENTS FOR THE DESIGN OF STORMWATER MANAGEMENT FACILITIES; GRANDFATHERED ACTIVITIES; EXCEPTIONS.**

- (a) The City of Winchester hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Virginia Stormwater Management Program (VSMP) 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]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development projects]; and, 9VAC25-870-85 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this Article, except as expressly set forth in subsections (e) through (l) of this section. The City hereby adopts the technical criteria for grandfathered land-disturbing activities as set forth in Part II C of the Regulations, expressly to include 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 (watershed-wide) stormwater management plans].
- (b) Stormwater management facilities and ~~modifications to channels, and modifications thereto,~~ required as part of a stormwater management/BMP plan shall be designed, installed and constructed as provided herein:
- (1) Stormwater management facilities, best management practices, and modifications to channels shall be designed and constructed in compliance with applicable local, ~~Commonwealth of Virginia state~~ and ~~Federal federal~~ laws, regulations, and standards, including, but not limited to the Federal Clean Water Act; the Virginia Stormwater Management Act (VA Code §§10.1-603.2 et seq.) and the ~~Virginia s~~Stormwater ~~management Management Program (VSMP) r~~Regulations promulgated by the ~~state Board of Conservation and Recreation state board,~~ set forth within ~~4 VAC 3-20-109~~9VAC25-870-10 et seq.; the National Flood Insurance Program; ~~the Virginia BMP Clearinghouse website~~ and the City of Winchester ~~Stormwater Management Design~~Public Services Standards Manual.
  - (2) Stormwater management facilities and best management practices shall be designed and sited to capture, to the maximum extent practicable, the runoff from the entire land development project area and, in particular, areas of impervious cover within the development project area. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities.

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- (3) Hydrologic parameters shall reflect the ultimate buildout in the land development project area and shall be used in all engineering calculations.
- (4) Post-development runoff rate of flow shall be maintained, as nearly as practicable, as the pre-development runoff characteristics, ~~subject further to the requirements of §9-52.~~
- (5) The number, type, and siting of stormwater management facilities shall be designed so as to preserve natural channel characteristics and natural groundwater recharge on a site to the extent practical.

(ac) Each stormwater management/BMP plan shall require that land and receiving waterways which are downstream from the land development be protected from stormwater runoff damage, as provided herein:

- (1) To protect downstream properties and receiving waterways from flooding, the ten (10) year post-development peak rate of runoff from the land development shall not exceed the ten (10) year pre-development peak rate of runoff.
- (2) To protect downstream properties and receiving waterways from channel erosion, the two (2) year post-development peak rate and velocity of runoff from the land development shall not exceed the two (2) year pre-development peak rate and velocity of runoff.
- (3) If the land development is in a watershed for which a hydrologic and/or hydraulic study has been conducted or a stormwater model developed, the program authority may modify the requirements of paragraphs (1) and (2) so that runoff from the land development is controlled in accordance with the findings in the study or model, or to prevent adverse watershed stormflow timing, channel degradation, and/or localized flooding problems.
- (4) In addition to the requirements of paragraphs (1) and (2), the program authority may require that the plan include additional measures to address damaging conditions to downstream properties and receiving waterways caused by the land development.

(d) Pre-development and post-development runoff rates determined for purposes of paragraph (c) shall be verified by calculations that are consistent with accepted engineering practices, as determined by the program authority.

(e) Until June 30, 2019, any land-disturbing activity shall be considered grandfathered by the Administrator and shall be subject to the technical criteria of Part II C of the Regulations provided:

(1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plan, preliminary or final site plan, or any document determined by the Administrator to be equivalent thereto (i) was approved by the City prior to July 1, 2012, (ii) provided a layout as defined in Section 9-5 of this Chapter, (iii) will comply with the Part II C technical criteria of the Regulations, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorous 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

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- (3) Land disturbance did not commence prior to July 1, 2014.
- (f) Locality, state, and federal projects shall be considered grandfathered by the City and shall be subject to the technical requirements of Part II C of the Regulations 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 of Conservation and Recreation 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.
- (g) Land-disturbing activities grandfathered under subsection (f) of this section shall remain subject to the Part II C technical criteria of the Regulations 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.
- (h) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be considered grandfathered and subject to the technical requirements of Part II C of the Regulations.
- (i) 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 Ordinance 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 Ordinance.
- (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.
- (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 of the Regulations have been considered and found not available.
- (j) Other than requests for permission to develop within a required stream buffer, which requests shall be handled pursuant to §9-74, a request for an exception to the requirements of this Article pursuant to subsection (i) of this section shall be made and reviewed as follows:
- (a1) A written request for an exception shall be submitted to the program authority, which shall immediately forward a copy of the request to the City attorney's office for its recommendation. The request shall address the factors listed in paragraph

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(eg), ~~below~~above.

~~(b2)~~ After receiving a recommendation from the City attorney's office and considering a recommendation from the program authority~~the request~~, the City Council Administrator shall grant or deny a request for an exception within 60 days from the date of the program authority's receipt of the request.

~~(c)~~ A request for exception may be granted by the City Council, upon finding that:

- ~~(1)~~ A stormwater management plan has been submitted to the program authority for review in accordance with this Article, and the plan demonstrates that reasonable alternatives to the exception have been considered and determined to not be feasible through attempts to meet the provisions of this Article, the use of non-structural measures, the use of a mitigation plan, or by other means;
- ~~(2)~~ The exception requested is the minimum necessary to afford relief;
- ~~(3)~~ Reasonable and appropriate conditions can be imposed to ensure that the purposes of this Article are satisfied; and
- ~~(4)~~ The sole basis for the request is not economic hardship, which shall be deemed an insufficient reason to grant an exception.

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

~~(l)~~ The program authority may develop comprehensive stormwater management plans to be approved by DEQ that meet the water quality objectives, quantity objectives, or both of this Chapter in accordance with 9VAC25-870-92 of the Regulations.

~~Commonwealth of Virginia law reference—~~ Va. Code § 10.1-603.3.

### **SECTION 9-57. NON-STRUCTURAL MEASURESSTORMWATER POLLUTION PREVENTION PLAN (SWPPP);REQUIREMENTS.**

- ~~(a)~~ The Stormwater Pollution Prevention Plan (SWPPP) shall include the content and address all of the requirements specified by Section 9VAC25-870-54 of the Virginia Administrative Code 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 owner 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 owner 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. Owners shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.

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~~Non-structural measures may be used in conjunction with or in place of structural measures in order to satisfy the requirements of this Article, as provided herein:~~

- ~~(1) The program authority may allow non-structural measures to satisfy, partially or in whole, the requirements of this Article, if such measures are identified in accepted technical literature, are acceptable to the program authority based on its exercise of sound professional judgment, and the program authority finds~~

~~that the measures achieve equivalent benefit for water quantity and/or quality protection as would otherwise be provided by structural measures.~~

- ~~(2) Non-structural measures include, but are not limited to, minimization of impervious surfaces, stream buffer reforestation, providing additional stream buffer areas, wetland restoration, waste reuse and recycling, and development design that reduces the rate and volume of runoff.~~

~~Commonwealth of Virginia law reference—Va. Code § 10.1-603.3.~~

### **SECTION 9-58. CONTROL OF PEAK RATE AND VELOCITY OF RUNOFF POLLUTION PREVENTION PLAN FOR MINIMIZING DISCHARGES DURING CONSTRUCTION; REQUIREMENTS.**

- (a) A Pollution Prevention Plan, as required by 9VAC25-870-56 of the Virginia Stormwater Management Program (VSMP) Regulations, 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 during construction. 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.

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(c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

- ~~(a) Each stormwater management/BMP plan shall require that land and receiving waterways which are downstream from the land development be protected from stormwater runoff damage, as provided herein: (1) To protect downstream properties and receiving waterways from flooding, the ten (10) year post-development peak rate of runoff from the land development shall not exceed the ten (10) year pre-development peak rate of runoff~~
- ~~(2) To protect downstream properties and receiving waterways from channel erosion, the two (2) year post-development peak rate and velocity of runoff from the land development shall not exceed (3) If the land development is in a watershed for which a hydrologic and/or hydraulic study has been conducted or a stormwater model developed, the program authority may modify the requirements of paragraphs (1) and (2) so that runoff from the land development is controlled in accordance with the findings in the study or model, or to prevent adverse watershed stormflow timing, channel degradation, and/or localized flooding problems.~~
- ~~(4) In addition to the requirements of paragraphs (1) and (2), the program authority may require that the plan include additional measures to address damaging conditions to downstream properties and receiving waterways caused by the land development.~~
- ~~(b) Pre-development and post-development runoff rates determined for purposes of paragraph (a) shall be verified by calculations that are consistent with accepted engineering practices, as determined by the program authority.~~
- ~~(c) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:~~
- ~~(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) Tilling, planting or harvesting of agricultural, horticultural, or forest crops;~~
- ~~(3) Construction, extension or replacement of a building or buildings on a site of 5,000 square feet or less, not including cases where development is to be done in phases and the total land disturbance for all phases is greater than 5,000 square feet;~~
- ~~(4) Land development or a portion of a land development on land which is designated as lying within a flood plain, except in cases where the flood plain has been modified by permitted fill or other activities in compliance with the zoning ordinance;~~
- ~~(5) Land development or a portion of a land development where the land is adjacent to a flood plain, and the owner has demonstrated to the reasonable satisfaction of the program authority that off-site improvements or other provisions for the disposition of surface water runoff would equally or better serve the public interest and safety, and that such method of disposition would not adversely affect downstream properties or stream channels; and~~
- ~~(6) Any land development related to a final site plan or plat approved by the appropriate governing authority prior to the effective date of this Chapter.~~

### SECTION 9-59. BEST MANAGEMENT PRACTICES.

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(a) Each stormwater management/~~BMP~~ plan shall require that best management practices be provided in conjunction with or in addition to stormwater management facilities designed for water quantity treatment, as provided herein:

- (1) Best management practices shall be designed and sited to capture runoff from the entire land development project area and, in particular, areas of impervious cover within the land development, to the maximum extent practicable.
- (2) Best management practices shall be designed to remove the difference between post-development and pre-development total phosphorus loads in cases where post-development loads exceed pre-development loads.
- (3) Calculation methods and expected removal ranges for various best management practices shall be included in the ~~design manual~~Public Services Standards Manual maintained by the program authority.

~~(b) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:~~

- ~~(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) Tilling, planting or harvesting of agricultural, horticultural, or forest crops; and~~
- ~~(3) Single family dwelling units separately built and not part of a division of land, including additions or modifications to existing single family detached dwelling units, except if the land disturbance exceeds 5,000 square feet.~~

~~(b) Non-structural measures may be used in conjunction with or in place of structural measures in order to satisfy the requirements of this Article, as provided herein:~~

- ~~(1) The program authority may allow non-structural measures to satisfy, partially or in whole, the requirements of this Article, if such measures are identified in accepted technical literature, are acceptable to the program authority based on its exercise of sound professional judgment, and the program authority finds that the measures achieve equivalent benefit for water quantity and/or quality protection as would otherwise be provided by structural measures.~~
- ~~(2) Non-structural measures include, but are not limited to, minimization of impervious surfaces, stream buffer reforestation, providing additional stream buffer areas, wetland restoration, waste reuse and recycling, and development design that reduces the rate and volume of runoff.~~

~~Commonwealth of Virginia law reference—Va. Code § 10.1-603.3.~~

### **SECTION 9-60. CONTRIBUTION TO REGIONAL STORMWATER MANAGEMENT PROGRAM.**

(a) Each stormwater management/~~BMP~~ plan shall require that the owner contribute to a regional stormwater management program, as provided herein:

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- (1) If the land development is located within the watershed of a regional stormwater management program established by the ~~county~~ City which requires pro rata share contributions, the owner shall pay a pro rata share of the cost of the facility in accordance with any ordinance of the ~~county~~ City establishing the program.
- (2) An owner's payment pursuant to paragraph (1) shall relieve the owner of the requirements of ~~section~~ Section 17-3149-56(c), if the regional program is designed to control the peak rate and velocity of runoff, and/or the requirements of ~~section~~ Section 17-3159-59, if the regional program is designed to provide best management practices. An owner's payment pursuant to paragraph (1) shall not relieve an owner of his responsibility to comply with any other requirement of this Chapter, except as provided in this section.

~~Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.~~

### SECTION 9-61. REVIEW OF STORMWATER MANAGEMENT PLAN; APPROVAL.

- (a) Each stormwater management plan submitted pursuant to this Article shall be reviewed and approved as provided herein:
  - (1) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable ~~Federal~~ local, state, and federal and Commonwealth of Virginia laws and regulations. Where a proposed stormwater management plan includes facilities or BMPs for which design requirements and specifications, and/or maintenance requirements, are specified ~~with~~ in the Virginia Stormwater Management (SWM) Handbook and/or on the Virginia BMP Clearinghouse website, and/or the Virginia Stormwater Management Regulations set forth within 4VAC 3-20 et seq., the program authority shall utilize those design requirements, specifications and/or maintenance requirements in reviewing and making decisions as to the acceptability of such facilities or BMPs under this Article.
  - (2) During its review of the plan, the program authority may meet and correspond with the owner from time to time to review and discuss the plan with the owner, and to request any additional data as may be reasonably necessary for a complete review of the plan.
  - ~~(3) The program authority shall approve or disapprove a plan within 45 days from the date a complete application was received. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations. The decision shall be in writing and shall be communicated to the applicant by mail or delivery. If the plan is rejected or disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. If the program authority fails to act on a plan within the 45-day period, the plan shall be deemed approved.~~
  - (4) Nothing in this Article or section shall require approval of a plan, or any portion thereof, that is determined by the program authority to pose a danger to the public health, safety, or general welfare, or to deviate from sound engineering practices.

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- (b) The Administrator shall determine the completeness of a plan 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. If a determination of completeness is not made within 15 calendar days of receipt, then the plan shall be deemed complete.
- (c) The program authority shall approve or disapprove a plan within 60 days from the date a complete application was received, provided that for any plan that is deemed complete in accordance with paragraph (b) of this section, the program authority shall approve or disapprove the plan within 60 days from the date the plan was submitted to the program authority. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable local, state and federal laws and regulations. The decision shall be in writing and shall be communicated to the applicant by mail or delivery. If the plan is rejected or disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. If the program authority fails to act on a plan within the 60-day period, the plan shall be deemed approved. The Administrator shall review any plan that has been previously disapproved within 45 calendar days of the date of resubmission.

(e) Each stormwater management/BMP plan approved by the program authority shall be subject to the following:

- (1) The owner shall comply with all applicable requirements of the approved plan, this Article, the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.), and the Commonwealth of Virginia stormwater management regulations set forth in 4 VAC 3-20-10 et seq.;
- (2) The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;
- (3) Land development shall be conducted only within the area specified in the approved plan;
- (4) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (e)(2);
- (5) The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in section 9-63;
- (6) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections as provided in section 9-67; and
- (7) The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.

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### SECTION 9-62. CONDITIONS OF APPROVAL.

(ea) Each stormwater management/BMP plan approved by the program authority shall be subject to the following conditions, at a minimum:

- (1) The owner shall comply with all applicable requirements of the approved plan, this Article, and the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.) and Regulations, and the Commonwealth of Virginia stormwater management regulations set forth in 4 VAC 3-20-10 et seq.;
- (2) The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;
- (3) Land development shall be conducted only within the area specified in the approved plan;
- (4) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision paragraph (ed)(2) of this section;
- (5) The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in sSection 9-63; and
- (6) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections of the land development in accordance with Section 9-67 to determine the owner's compliance with the provisions of this Article. The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.

~~Each stormwater management plan approved by the program authority shall be subject to the following:~~

- ~~(a) The owner shall comply with all applicable requirements of this Article, the Virginia Stormwater Management Act (Va. Code §§10.1-603.2 et seq), the Commonwealth of Virginia stormwater regulations set forth in 4 VAC 3-20-10 et seq, and the Virginia Stormwater Management Handbook.~~
- ~~(b) The owner shall certify in writing that all land clearing, construction, land development and drainage will be done according to the approved plan.~~
- ~~(c) Land development shall be conducted only within the area specified within the approved plan.~~
- ~~(d) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (b), above.~~

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~~(e) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections of the land development to determine the owner's compliance with the provisions of this Article. The program authority may require, as a condition of approval of a stormwater management plan, that the owner enter into a right of entry agreement, or grant an easement, for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.~~

~~(3) The condition(s) requiring monitoring and reporting shall state the format of the report and the frequency for submitting.~~ **SECTION 9-63. DUTY TO COMPLY, MAINTAIN AND REPAIR; MAINTENANCE AGREEMENT.**

(a) The owner shall maintain and repair all structural and nonstructural stormwater management measures required by the plan, as follows:

(1) The owner shall be responsible for the operation and maintenance of such measures and shall pass such responsibility to any successor owner, unless such responsibility is lawfully transferred to the City or to another governmental entity.

(2) ~~The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other measures specified to manage the quality and quantity of runoff. If an approved a stormwater management plan includes the use of requires structural or nonstructural measures best management practices, the owner shall execute a stormwater management facilities maintenance agreement prior to the program authority granting final approval for any site plan or other development for which a permit is required of the stormwater management plan. The required stormwater management facilities maintenance agreement shall be in a form approved by the City Attorney. If an owner certifies that it cannot exercise its rights under a purchase agreement until a site plan or other development plan receives final approval from the City, the program authority may grant its final approval without a signed an executed and recorded agreement, provided that the agreement is submitted to the Administrator for review and approval prior to the approval of the stormwater management plan, and is signed executed and recorded as provided herein prior to issuance of any certificate of occupancy for any building on the site the development project. The agreement shall be recorded in the office of the clerk of the Circuit Court for the City of Winchester and shall, at a minimum:~~

~~(i) Be stated to run with the land. If an owner certifies that it cannot exercise its rights under a purchase agreement until a site plan or other development receives final approval from the City, the program authority may grant its final approval without a signed agreement, provided that the agreement is signed and recorded as provided herein prior to issuance of any certificate of occupancy for the development project. The required stormwater management facilities maintenance agreement shall be in a form approved by the City Attorney and shall, at a minimum:~~

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- (ii) Provide for all necessary access to the property for the purposes of maintenance and regulatory inspections;
- (iii) Provide for periodic inspections and the submission of inspection and maintenance reports to the Administrator;
- (iv) Designate for the land development the owner, governmental agency, or other legally-established entity which shall be permanently responsible for maintenance of the structural or non- structural measures required by the plan;
- (vi) Pass the responsibility for such maintenance to successors in title;  
and
- (vii) Ensure the continued performance of the maintenance obligations required by the plan and by this Article.; and
- (viii) Be enforceable by all appropriate governmental parties.

### SECTION 9-64. AMENDMENT OF APPROVED STORMWATER MANAGEMENT PLANS.

~~An approved stormwater management plan may be changed or amended only as provided herein:~~

- (a) The program authority may change an approved stormwater management/BMP plan only as provided herein.
- (b) The owner shall submit ~~additional data identified in section — (plan requirements)~~ information as required by Section 9-51 in order to allow the program authority to determine whether any such change ~~will comply~~ complies with the requirements of this Article.
- (c) The owner shall submit to the program authority a written request and justification for a change or amendment of an approved stormwater management plan, and shall provide such data as may be required by the program authority in order to determine whether the proposed change will comply with the requirements of this Article.
- (d) The program authority shall conduct its review and shall make its decision with respect to the proposed change in accordance with the procedures for initial submission and approval of a stormwater management plan. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving of the request for an amendment. ~~(d) If the proposed change to the approved plan complies with the requirements of this Article, the program authority shall approve such proposed change in writing.~~
- (e) ~~A~~ Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. An owner shall make no changes to an approved plan without first complying with this section.
- (f) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies

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noted during an inspection.

### **SECTION 9-65.     ~~EXCEPTIONS~~RESERVED.**

~~Other than requests for permission to develop within a required stream buffer, which requests shall be handled pursuant to §9-74, a request for an exception to the requirements of this Article shall be made and reviewed as follows:~~

- ~~(a) A written request for an exception shall be submitted to the program authority, which shall immediately forward a copy of the request to the City attorney's office. The request shall address the factors listed in paragraph (c), below:~~
- ~~(b) After receiving and considered a recommendation from the program authority, the City council shall grant or deny a request for an exception within 60 days from the date of the program authority's receipt of the request.~~
- ~~(c) A request for exception may be granted by the City Council, upon finding that:
  - ~~(1) A stormwater management plan has been submitted to the program authority for review in accordance with this Article, and the plan demonstrates that reasonable alternatives to the exception have been considered and determined to not be feasible through attempts to meet the provisions of this Article, the use of non-structural measures, the use of a mitigation plan, or by other means;~~
  - ~~(2) The exception requested is the minimum necessary to afford relief;~~
  - ~~(3) Reasonable and appropriate conditions can be imposed to ensure that the purposes of this Article are satisfied; and~~
  - ~~(4) The sole basis for the request is not economic hardship, which shall be deemed an insufficient reason to grant an exception.~~~~

### **SECTION 9-66.     DEDICATION OF FACILITIES TO THE PUBLIC.**

The owner of a stormwater management facility required by this Article may offer for dedication any such facility, together with such easements and appurtenances as may be reasonably necessary, as provided herein:

- (a) Any such offer shall be made in writing and delivered to the office of the City attorney, with a copy to the program authority. The owner, at his sole expense, shall provide any documents or information requested by the program authority or the City Council. The program authority shall make a preliminary assessment as to whether the dedication of such facility is appropriate and will promote the public health, safety and general welfare. In making its assessment, the program authority shall inspect the facility in question and shall determine whether it has been properly maintained and is in good repair. The program authority shall estimate the annual cost of maintenance and repair of the facility, and of the remaining useful life of the facility. The program authority shall forward a report of its assessment to the City Council.
- (b) The City Council shall review the offer, taking into account the recommendations of

## WINCHESTER CODE

the program authority and other City staff or officials, and may accept or refuse the offer of dedication.

- (c) If the City Council decides to accept the offer of dedication, the document dedicating the stormwater management facility shall be recorded in the office of the clerk of the Circuit Court for the City of Winchester.
- (d) If the dedication of a stormwater management facility is required by City ordinance as a condition of approval of a subdivision plat, then the applicable provision of the City's subdivision ordinance shall apply in lieu of this section.

### SECTION 9-67. INSPECTIONS.

The program authority shall inspect any land subject to an approved stormwater management plan, as provided herein:

- (a) The program authority 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 implementing 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 may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purposes of obtaining information of conducting surveys or investigations necessary in the enforcement of the provisions of this Article.
- (ac) During the installation of stormwater management measures, or the conversion of erosion and sediment control measures into stormwater management measures, the program authority shall conduct periodic inspections to determine whether such measures are being installed as provided in the approved plan.
- (ad) Upon completion of the installation of stormwater management measures, the program authority shall conduct periodic inspections to determine whether such measures are being maintained as provided in the approved plan, or to investigate a complaint pertaining to the plan.
- (ae) ~~The inspections shall be conducted at least annually, measured from the date the installation or implementation of the stormwater management measures is deemed by the program authority to be complete.~~ The inability of the program authority to conduct inspections within the time periods set forth in this paragraph-section shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the City, the program authority, or any official or employee thereof shall arise therefrom.
- (af) The program authority shall be allowed, after giving notice to the owner, occupier or

## WATER PROTECTION

operator of the land development, to conduct any inspection required by this section. The notice may be either verbal or in writing. Notice shall not be required if the program authority and the owner have entered into a right of entry agreement, or if the owner has granted to the program authority an easement for purposes of inspection and maintenance.

(g) Notwithstanding any other provision of this section or Article, post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator or any duly authorized agent of the Administrator pursuant to the City's inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in the stormwater management facilities maintenance agreement executed in accordance with Section 9-63, measured from the date the installation or implementation of the stormwater management measures is deemed by the program authority to be complete.

### **SECTION 9-68. DETERMINATION OF NONCOMPLIANCE WITH PLAN; PROCEDURE.**

(a) Upon a determination by the program authority that an owner has failed to comply with an approved VSMP authority permit or stormwater management plan, or any conditions thereof, the following enforcement provisions and procedures shall apply:

(1) The program authority shall serve upon the owner, permittee, or person responsible for implementing the permit a written notice to comply. The notice shall be served by certified mail, to the owner's address of record with the City assessor's office, or by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the permitted activities who is supervising such activities. The notice shall:

- (i) Instruct the owner to take corrective measures immediately, when immediate action is necessary to prevent or abate drainage, erosion, or water pollution problems;
- (ii) Specify the measures required to comply with the approved plan or permit, or any conditions thereof;
- (iii) Specify the time within which such required measures must be completed; and
- (iv) Include copies of inspection reports or other such documentation demonstrating non-compliance with the approved plan or permit, or any conditions thereof.

(2) If a permittee fails to comply with a notice issued in accordance with paragraph (a)(1) of 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

## WINCHESTER CODE

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 the Administrator or any duly authorized 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 Section 9-69.

(3) If the owner fails to take corrective measures stated in the notice to comply, within the time specified in the notice, then the City may revoke any building permit or other permit for activities involving the land development, and the owner shall be deemed to be in violation of this Article.

(34) If the program authority determines, upon completion of a maintenance inspection, that maintenance or repair of the measures has been neglected, or that any stormwater management facility is a danger to public health or safety, it may perform the work necessary to assure that such measures or facilities are not a danger to public health or safety, and shall be entitled to recover the costs of such work from the owner. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument pursuant to Section 9-9 and/or Section 9-63 of this Chapter, the Administrator may 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.

(5) In addition to any other remedy provided by this ordinance, if the Administrator or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the Public Services Standards Manual, as applicable.

### **SECTION 9-69. PENALTIES, INJUNCTIONS AND OTHER LEGAL ACTIONS.**

Enforcement of this Article shall be as follows:

- (a) Any person who violates any provision of this Article shall be guilty of a misdemeanor and shall be subject to a fine not exceeding one thousand dollars

## WATER PROTECTION

(\$1,000.00), or up to 30 days imprisonment for each violation, or both.

Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully and 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 nor more than \$32,500, or both.

(b) 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 Circuit Court by the City to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. The City may apply to the Circuit Court to enjoin a violation or threatened violation of the provisions of this Article, without the necessity of showing that an adequate remedy at law exists.

(c) Without limiting the remedies that may be obtained pursuant to this section, the City may bring a civil action against any person for violation of any provision of this Article, or of any term or condition of a permit, plan, or maintenance agreement. The action may seek the imposition of a civil penalty of not more than two thousand dollars (\$2,000.00) against the person for each violation. Each day of violation of each requirement shall constitute a separate offense. The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court. In imposing a civil penalty pursuant to this paragraph, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance. Violations for which a penalty may be imposed under this paragraph shall include but not be limited to the following:

- (1) No state permit registration;
- (2) No SWPPP;
- (3) Incomplete SWPPP;
- (4) SWPPP not available for review;
- (5) Failure to install stormwater BMPs;
- (6) No approved erosion and sediment control plan;
- (7) Stormwater BMPs improperly installed or maintained;
- (8) Operational deficiencies of stormwater BMPs;
- (9) Failure to conduct required inspections or maintenance;
- (10) Incomplete, improper, or missed inspections; and
- (11) Discharges not authorized or not in compliance with the requirements of Section 9VAC25-880-70 of the general permit coverage issued for the land-disturbing activity.

Any civil penalties assessed by a court as a result of a summons issued by the City shall be paid into the treasury of the City 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.

(d) With the consent of any person who has violated or failed, neglected or refused to obey, or comply with any permit, obligation or a plan or agreement, or any

## WINCHESTER CODE

provision of this Article, the program authority may provide, in an order issued by the program authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified above in paragraph (c). Such civil charges shall be in lieu of any civil penalty which could be imposed under paragraph (c).

### ~~SECTION 9-70. REVIEW OF CERTAIN PROGRAM AUTHORITY ACTIONS.~~

~~Any person who is aggrieved by any action of the program authority because of its disapproval of a plan submitted pursuant to this Article, or in the interpretation of the provisions of this Article, shall have the right to apply for and receive a review of such action by the City Council, as provided herein.~~

~~(a) An appeal shall be filed in writing with the clerk of the board of supervisors within thirty (30) days of the date notice of the action is given by the program authority or, if an exception to the requirements of this Article as provided in section 17-308 is requested and denied, within thirty (30) days of the date notice of the denial of such exception. Notice shall be deemed to be given on the date that it is mailed or is hand delivered.~~

~~(b) When reviewing the program authority's action, the City Council shall consider evidence and opinion presented by the aggrieved person, the program authority, and such other persons as shall be deemed by the City Council to be necessary for a complete review of the matter. The City Council may affirm, reverse or modify the program authority's action. The decision of the City Council shall be final, subject only to review by the Circuit Court as provided in Virginia Code § 10.1-603.13.~~

~~(c) For the purposes of this section, the term person aggrieved shall be limited to the owner, owners of adjacent or down stream property, and any interested governmental agency or officer thereof.~~

**SECTIONS 9-71-70 - 9-79. RESERVED.**

## ARTICLE IV. STREAM BUFFERS

### **SECTION 9-80. DUTY TO RETAIN OR ESTABLISH STREAM BUFFER.**

(a) Except as otherwise provided in this Article, any land adjacent to the following listed waters, and/or nontidal wetlands adjacent to these streams, shall provide buffers for the purposes of retarding runoff, preventing erosion, and filtering

## **WATER PROTECTION**

nonpoint source pollution from runoff:

- (1) Abrams Creek
  - (2) Town Run
  - (3) Hogue Run
  - (4) Buffalo Lick Run
  - (5) Redbud Run
- (b) A required stream buffer shall be no less than thirty-five (35) feet wide on each side of the stream, which buffer shall be measured horizontally from the top of the stream bank.
- (c) Existing stream buffers shall be retained, except as allowed in §9-83(d).
- (d) Each required stream buffer shall be maintained and incorporated into the design of the land development to the fullest extent possible.
- (e) Within a required stream buffer, no indigenous vegetation shall be disturbed or removed, except as follows:
- (1) Activities pertaining to the management of the stream buffer, identified in §9-81 of this Article;
  - (2) Development activities authorized in a stream buffer, identified in §9-83;
  - (3) Activities authorized in §9-82;
  - (4) Tilling, planting or harvesting of agricultural or horticultural crops in home gardens.
- (f) With respect to developments that are required to have an approved site plan, and involving land containing existing and/or required stream buffers, contour lines shall be shown at two-foot intervals. In any case where any proposed development

(Ord. No. 2007-14, 5-8-07)

### **SECTION 9-81. MANAGEMENT OF A STREAM BUFFER.**

Each stream buffer required to be established or maintained pursuant to this Article shall be managed as provided herein:

- (a) The target vegetative cover in a stream buffer area shall be an indigenous riparian forest with ground cover, shrub and tree canopy layers.
- (b) Within twenty-five (25) feet of the top of the stream bank and on land classified as nontidal wetland:
  - (1) Indigenous riparian vegetation shall be preserved, or, where it does not exist, it shall be restored or allowed to evolve by natural succession;
  - (2) Dead, diseased, and dying trees may be removed;

## WINCHESTER CODE

- (3) Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where stream bank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem;
  - (4) Removal or pruning of invasive shrub and vine species is allowed, provided that such removal or pruning is done in a manner that prevents erosion;
  - (5) Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and to minimize adverse impacts to the buffer, subject to applicable provisions of §9-83, below; and
  - (6) Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.
- (c) Beyond twenty-five (25) feet from the top of the stream bank to the limits of the required buffer:
- (1) Dead, diseased and dying trees may be removed;
  - (2) Trees 6 inches in diameter or greater, measured 48 inches from the ground, shall be preserved;
  - (3) Removal or pruning of invasive shrub and vine species shall be allowed, provided that such removal or pruning is done in a manner that prevents erosion; and
  - (4) Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and minimize adverse impacts to the buffer, subject to applicable provisions of §9-83, below.
  - (5) Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.
- (d) Where an existing structure (i.e. building, street, road, bridge, etc.) is located within the buffer, vegetation, not including the ground cover, can be removed within 15 feet of the structure. Removal of additional vegetation can be allowed if required by State or Federal requirements or if necessary for the health, safety or welfare of the City's citizens and approved by the City Engineer.

### **SECTION 9-82. DEVELOPMENT EXEMPT FROM STREAM BUFFER REQUIREMENTS.**

The following types of development shall not be required to retain, establish or manage a stream buffer, provided that the requirements of this section are satisfied:

- (a) The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the Erosion and Sediment Control Law (Virginia Code §§10.1-560 et seq.) or an erosion and sediment control plan approved by the Virginia ~~Soil and Water Conservation~~ State Water Control Board.

## **WATER PROTECTION**

- (b) The construction, installation and maintenance by public agencies of water, sewer, electric and gas lines, including lines constructed by private entities for dedication to public agencies, provided that:
  - (1) To the extent practical, the location of such lines shall be outside required stream buffer areas;
  - (2) No more land shall be disturbed than is necessary to construct, install and maintain the water or sewer lines; and
  - (3) Construction, installation and maintenance of such lines shall comply with applicable federal, state and local requirements and permits and be conducted in a manner that protects water quality.

### **SECTION 9-83. DEVELOPMENT AUTHORIZED IN A STREAM BUFFER.**

If otherwise authorized by applicable regulations of the City's zoning ordinance, the following land development activities shall be allowed in a stream buffer area, provided that the requirements of this section are satisfied and performance standards established by the program authority are met:

- (a) A building or structure which existed on the date of adoption of this Chapter may continue at such location. However, nothing in this section authorizes the continuance, repair, replacement, expansion or enlargement of such building or structure except as authorized by the City's zoning ordinance.
- (b) On-site or regional stormwater management facilities, and temporary erosion and sediment control measures, provided that:
  - (1) To the extent practical the location of such facilities shall be outside the stream buffer;
  - (2) No more land shall be disturbed than is necessary to provide for construction and maintenance of the facility;
  - (3) The facilities are designed and constructed so as to minimize impacts to the functional value of the stream buffer and to protect water quality; and
  - (4) Facilities located within a floodplain adhere to floodplain regulations and are designed and located, to the extent practical, to maintain their water quantity and/or water quality control value during flood conditions.
- (c) Water dependent facilities, passive recreation access (such as unpaved pathways and trails), historic preservation, and archaeological activities, provided that all applicable federal, state, and local permits are obtained.
- (d) Development in a stream buffer, where authorized by the program authority in the circumstances described below, may be allowed if a mitigation plan is submitted to and approved by the program authority pursuant to §9-84:

## WINCHESTER CODE

- (1) On a lot which was of record prior to the date of adoption of this Chapter, if:
  - (i) Establishment or preservation of the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the lot, or
  - (ii) The proposed development consists of redevelopment not exceeding the current level of encroachment resulting from existing improvements, or
  - (iii) The proposed development is for construction of an accessory building or structure (including, without limitation, an accessory apartment) permitted by the City's zoning ordinance.
- (2) On a lot on which development within the stream buffer will consist of an ecological/wetland restoration project;
- (3) On a lot on which the development in the stream buffer will consist of the construction and maintenance of a driveway or roadway, and the program authority determines that the stream buffer would prohibit reasonable access to a portion of the lot which is necessary for the owner to have a reasonable use of the lot;
- (4) On a lot on which the development in the stream buffer will consist of the construction and maintenance of a paved pathway or trail not exceeding five (5) feet in width;
- (5) On a lot which was of record prior to the date of adoption of this Chapter, on which development within the stream buffer will consist of the construction, installation and maintenance of water and sewer facilities or sewage disposal systems, and the program authority determines that the stream buffer would prohibit the practicable development of such facilities or systems.
- (6) On a lot on which the development in the stream buffer will consist of the construction and maintenance of the Green Circle Trail System.

(Ord. No. 2007-14, 5-8-07)

### **SECTION 9-84. MITIGATION PLAN REQUIRED.**

Each owner who seeks to develop in a stream buffer pursuant to §9-83(d) shall submit to the program authority for review and approval a mitigation plan as provided herein:

- (a) The owner shall submit a mitigation plan that satisfies the applicable requirements of this section; the required fee, as set forth within the most recent fee schedule approved by City Council; and a certification stating that all requirements of the approved plan will be complied with.
- (b) The mitigation plan shall be reviewed by the program authority to determine whether it complies with the requirements of this section and all other

## **WATER PROTECTION**

requirements of this Article. The program authority shall approve or disapprove a mitigation plan within 30 days of the date that a complete plan was accepted for review. The decision shall be in writing and shall be communicated to the owner. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.

(c) Each mitigation plan shall:

- (1) Identify the impacts of proposed development on water quality and lands within the stream buffer;
- (2) Identify the alternatives to development in the stream buffer that have been explored by the applicant;
- (3) Ensure that, where development does take place within a stream buffer, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of the stream buffer;
- (4) Demonstrate and assure that development will be conducted using best management practices;
- (5) Specify mitigation which will address water quality and stream buffer impacts; and
- (6) Contain other information requested by the program authority.

(d) Each mitigation plan shall be evaluated by the program authority based on the following criteria:

- (1) Whether all reasonable alternatives to development in the stream buffer have been explored and exhausted;
- (2) Whether the development in the stream buffer is the minimum necessary and is to be conducted in a manner that will be least disruptive to the natural function of the stream buffer; and
- (3) Whether best management practices will effectively mitigate adverse impacts from the encroachment on the stream buffer and its natural functions.

### **SECTION 9-85. INSPECTIONS**

The program administrator shall inspect any land subject to establishing a vegetated stream buffer to insure that the buffers are installed as per the criteria outlined in Article IV.

### **SECTIONS 9-86 - 9-89. RESERVED.**

## **ARTICLE V. STORM SEWER DISCHARGES**

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### **SECTION 9-90. FINDINGS AND DETERMINATIONS.**

- (a) Pollutants in stormwater from many sources are largely uncontrolled and have an adverse impact upon the quality of receiving waters. Major sources of stormwater that cause water quality impacts include construction sites, illicit connections, illegal discharges and industrial activities.
- (b) Amendments to the Federal Clean Water Act (CWA) in 1987 required the United States Environmental Protection Agency to establish National Pollutant Discharge Elimination System (NPDES) requirements for municipal separate storm sewer (MS4) systems. NPDES regulations require the City to control through ordinance, permit, contract or other available means (collectively, the City's "stormwater management program") the contribution of pollutants into waters of the United States.
- (c) This Article is adopted as an integral part of the City's stormwater management program.

### **SECTION 9-91. DISCHARGES TO THE CITY'S STORM SEWER SYSTEM.**

- (a) It shall be unlawful and a violation of this Article to:
  - (1) Throw, drain, or otherwise discharge into the City's storm sewer system any pollutants or waters containing pollutants other than stormwater;
  - (2) Connect, or cause or allow to be connected, any sanitary sewer to the storm sewer system, any such connections owned or authorized by the City prior to April 11, 2006;
  - (3) Cause or allow any illicit connection to the City's storm sewer system; or
  - (4) Violate any condition or provision of this Article, or any permit or approval granted to allow any stormwater discharges to the City's storm sewer system.
- (b) Subject to the provisions of subsection (c) of this section, the following activities shall not be considered illicit discharges:
  - (1) Water line flushing;
  - (2) Landscape irrigation;
  - (3) Diverting stream flows or rising groundwater, or infiltration of uncontaminated groundwater;
  - (4) Public safety activities, including, but not limited to, law enforcement and fire fighting;
  - (5) Pumping of uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs, or water from crawl spaces or footing drains;
  - (6) Lawn watering;

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- (7) Individual car washing on residential properties;
  - (8) De-chlorinated swimming pool discharges (less than 1 PPM chlorine);
  - (9) Street washing;
  - (10) Any activity authorized by a valid National Pollutant Discharge Elimination System (NPDES) permit, waiver or discharge order, a Virginia Pollutant Discharge Elimination System (VPDES) permit, waiver or discharge order, or a Virginia Pollution Abatement (VPA) permit;
  - (11) Any activity by a governmental entity in accordance with Federal, state, and local regulations and standards for the maintenance or repair of drinking water reservoirs or drinking water treatment or distribution systems; and
  - (12) Any activity by the City, its employees and agents, in accordance with federal, state and local regulations and standards, for the maintenance of any component of its stormwater management system.
  - (13) Discharges specified in writing by the director as being necessary to protect public health and safety.
  - (14) Dye testing, following notification to the City engineer.
- (c) If any of the activities listed in subsection (b), above, of this section are found to be sources of pollutants to public waters, the Program Authority (as defined in §9-5 of this Chapter) shall so notify the person performing such activities and shall order that such activities be stopped or conducted in such manner as to avoid the discharge of pollutants into such waters. The failure to comply with any such order shall be unlawful and a violation of this Article.

### **SECTION 9-92. WATERCOURSE PROTECTION.**

Every person owning property through which a watercourse passes, or such a person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity or the watercourse.

### **SECTION 9-93. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.**

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of such compliance may be required in a form acceptable to the Program Authority prior to allowing discharges to the City's storm sewer system.

### **SECTION 9-94. INSPECTIONS AND MONITORING.**

## **WINCHESTER CODE**

- (a) The Program Authority shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance. The Program Authority shall have authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with the provisions of this Article, including the prohibition of illicit discharges to the storm sewer system. The Program Authority may monitor stormwater outfalls or other components of the municipal storm sewer system as may be appropriate in the administration and enforcement of this Article.
- (b) The Program Authority shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of a VPDES permit.

### **SECTION 9-95. ENFORCEMENT, PENALTIES, REMEDIES.**

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

## **WATER PROTECTION**

- (b) Any person who commits any act prohibited by this Article 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.
- (c) Any person who commits any act prohibited by this Article shall be subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000.00) for each day that a violation continues. The court assessing such penalty may, at its discretion, order that the penalty be paid into the treasury of the City for the purpose of abating, preventing or mitigating environmental pollution.
- (d) The City may bring legal action to enjoin the continuing violation of this Article. The existence of any other remedy, at law or in equity, shall be no defense to any such action.
- (e) The Program Authority shall have authority to order that any activity found to be in violation of this Article be stopped or conducted in such a manner as to avoid the discharge of sewage, industrial wastes or other wastes into the storm sewer system.
- (f) Any discharge caused or permitted to exist in violation of any provisions of this Article constitutes a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance. Following receipt of written notice of such nuisance from the Program Authority, if the responsible person fails to abate or obviate such nuisance, then the City may do so and charge and collect the cost thereof from the responsible person, in any manner provided by law (including, without limitation, any manner provided by law for the collection of state or local taxes).
- (g) The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable Federal, State or local law.
- (h) The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.

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0-2014-04

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: January 21, 2014 CUT OFF DATE: \_\_

RESOLUTION \_\_ ORDINANCE \_X\_ PUBLIC HEARING \_\_

ITEM TITLE: Amendment of Chapter 8 and Chapter 27 Ordinances in Order to Accommodate the Establishment of the Winchester Enterprise Zone and its Related Incentives

STAFF RECOMMENDATION: Approval

PUBLIC NOTICE AND HEARING: To be held February 11, 2014.

ADVISORY BOARD RECOMMENDATION: The Winchester Economic Development Authority approves of the ordinances amendments

FUNDING DATA: We estimate that the program could result in incentives up to \$500,000 annually. However, many of the incentives are based on local tax rebates paid annually in arrears and will result in a positive return in investment over a five to ten year period. The success of the enterprise zone in attracting new economic development projects will determine the actual cost.

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance	<u>JB</u>		<u>1-17-13</u>
2. Commissioner of the Revenue	<u>DTB</u>		<u>01/14/14</u>
3. _____			
4. _____			
5. City Attorney	<u>aw</u>		<u>1/14/2014</u>
6. City Manager	<u>DI</u>		<u>1-16-14</u>
7. Clerk of Council	<u>DI</u>		<u>1-16-14</u>

Initiating Department Director's Signature:

[Signature]  
Economic Redevelopment Director

1/14/13  
Date

APPROVED AS TO FORM:



[Signature] 1/17/2014  
CITY ATTORNEY

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Jim Deskins, Economic Redevelopment Director  
**Date:** January 21, 2014  
**Re:** Adoption of Enterprise Zone Ordinance

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**THE ISSUE:** The purpose of these ordinances are to establish an enterprise zone as authorized and guided by the Code of Virginia, § 59.1-543 et seq., to improve the economic conditions of the downtown area of Winchester.

**RELATIONSHIP TO STRATEGIC PLAN:** Goal 1: Grow the Economy

**BACKGROUND:** The City was recently awarded Virginia Enterprise Zone designation. Council is required to adopt these ordinances before the enterprise zone can begin offering incentives.

**BUDGET IMPACT:** We estimate that the program could result in incentives up to \$500,000 annually. However, many of the incentives are based on local tax rebates paid annually in arrears and will result in a positive return in investment over a five to ten year period. The success of the enterprise zone in attracting new economic development projects will determine the actual cost.

**OPTIONS:** Council has the option to approve or reject the proposed ordinances.

**RECOMMENDATIONS:** City Staff recommends that Council adopt the ordinances.

**CHAPTER 8  
ENTERPRISE ZONE**

- Art. I: ~~General Provisions, §§8-1-8-15~~
- Art. II: ~~Tax Rebates, §§8-16-8-25~~
- Art. III: ~~Exemption from Land Development Fees, §§8-26-8-40~~
- Art. IV: ~~Substantially Rehabilitated Property, §§8-41-8-44~~

Art. I. General Provisions, §§8-1--8-25

Art. II. Exemption from Land Development Fees, §§8-26--8-4032

Art. III. Substantially Rehabilitated Property, §§8-41-8-47

**ARTICLE I - GENERAL PROVISIONS**

**SECTION 8-1. PURPOSE.**

The purpose of this chapter is to establish an enterprise zone as authorized and guided by the Code of Virginia, § 59.1-251 *et seq.*, to improve the economic conditions of the downtown and other areas of Winchester. (Ord. No. 033-95, 9-12-95)

**SECTION 8-2. APPLICABILITY.**

The provisions of this chapter shall apply only to the area described herein and designated by the Commonwealth of Virginia as an enterprise zone. If for any reason the Commonwealth of Virginia ceases to recognize the area as an enterprise zone, the provisions of this chapter shall be void. (Ord. No. 033-95, 9-12-95)

**SECTION 8-3. ADMINISTRATION.**

The Local Zone Administrator of the Winchester Enterprise Zone shall be the city manager or his designee. The Local Zone Administrator shall determine and publish the procedure for obtaining the benefits created by this chapter. (Ord. No. 033-95, 9-12-95)

**SECTION 8-4. DEFINITIONS.**

When used in this chapter, the definitions found in Code of Virginia §59.1-271, *et seq.*, as amended from time to time, shall control and are incorporated herein by reference. (Ord. No. 033-95, 9-12-95)

**Editor's note**--Ord. No. 033-95 adopted on September 12, 1995 enacted this chapter.

## ENTERPRISE ZONE

### SECTION 8-5. BOUNDARIES.

The enterprise zone shall be that area located within the following boundary lines:

~~Commencing at the Northeast Corner of the intersection of Cecil Street and Braddock Street;~~

~~thence east along the North line of Cecil Street to Cameron Street;~~

~~thence north along the West line of Cameron Street to the North side of Clifford Street;~~

~~thence east along the North line of Clifford Street to Kent Street;~~

~~thence north along the West line of Kent Street to the north side of Cork Street;~~

~~thence east along the North side of Cork Street to the West side of East Lane;~~

~~thence north along the West side of East Lane to the Southwest corner of the~~

~~intersection of East Lane and Fairfax Lane;~~

~~thence West along the south side of Fairfax Lane to the intersection with West Lane;~~

~~thence North along the west side of West Lane to the South side of Elk St.;~~

~~thence West along the South side of Elk St. to the intersection of Elk Street and~~

~~Chase Street;~~

~~thence North along the west side of Chase Street to the South side of Kern Street; thence~~

~~West along the south side of Kern Street to the West side of Kent Street; thence North~~

~~along the West side of Kent Street to the south side of the public~~

~~way crossing the CSXT railroad tracks;~~

~~thence West along the south side of the public way crossing the CSXT railroad tracks to the east side of Cameron Street;~~

~~thence South along the east side of Cameron Street to the South side of North Avenue;~~

~~thence West along the south side of North Avenue to the east side of Loudoun~~

~~Street; thence south along the east side of Loudoun Street to the South side of Fairfax~~

~~Lane; thence west along the south side of Fairfax Lane to the east side of Washington~~

~~Street; thence south along the east side of Washington Street to the North side of Cork~~

~~Street; thence east along the north side of Cork Street to the East side of Braddock Street;~~

~~thence south along the east side of Braddock Street to the point of beginning;~~

~~as shown on the map which is adopted as a part of this ordinance. (Ord. No. 033-95, 9-12-95)~~

The boundaries of the Winchester Enterprise Zone ("the Zone") are those established pursuant to Code of Virginia, § 59.1-543 et seq. (the "Enterprise Zone Grant Program Act" or, "the Act", as referred to herein this Chapter), and the designation as an enterprise zone of such area(s) as approved by the Governor of the Commonwealth of Virginia and described in those official Winchester Enterprise Zone real estate parcel maps, which shall be retained by the Local Zone Administrator, and as may be amended from time to time (the "designation").

### SECTIONS 8-6 - 8-1415. RESERVED.

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**SECTION 8-15. LOCAL ENTERPRISE ZONE INCENTIVES**

Pursuant to the Act and the designation; and pursuant to the requirement of the Act that local incentives be offered to qualifying recipients located within an enterprise zone as pledged by enterprise zone applicant and approved by the Governor of the Commonwealth of Virginia and described in the application made by the City of Winchester for the designation of the Zone, and as may be amended from time to time, such local incentives as are delineated in this section are hereby authorized.

The Local Zone Administrator is authorized to administer and deliver, and the City of Winchester is authorized to fund, as required, the following local enterprise zone incentives as further authorized subsequently in this Chapter: Exemption from Land Development Fees for commercial, industrial or residential properties. The Local Zone Administrator and the Winchester Economic Development Authority are authorized to administer and deliver, and the City of Winchester and the Winchester Economic Development Authority are authorized to fund, as required, the following local enterprise zone incentives: Business Growth Revolving Loan Fund, Commercial Façade Program, Real Estate Development Revolving Loan Fund, and Winchester Enterprise Zone Micro-loan Program. The Local Zone Administrator and the Winchester Economic Development Authority are authorized to administer and deliver, and the City of Winchester is authorized to enter into a funding agreement with the Winchester Economic Development Authority in order to fund the following enterprise zone incentives: Business Development Grant for Vacant Properties, Entrepreneurship Incentive, Knowledge-based Jobs Grant, Major Economic Development Project Incentive, Major Mixed-use Development Incentive, New or Expanding Technology-driven Business Grant, and Retail Mix Enhancement Grant. The Commissioner of the Revenue is authorized to administer the Substantially Rehabilitated Enterprise Zone Property Real Estate Tax Exemption for commercial, industrial or residential properties as described in Chapter 27 Division 4A of Code of the City of Winchester.

**SECTIONS 8-16 – 8-18. REPEALED.**

**SECTIONS 8-19 – 8-25. RESERVED**

**ENTERPRISE ZONE**

**ARTICLE II. TAX REBATES**

**SECTION 8-16. TAXES ELIGIBLE FOR REBATE.**

Qualified business firms shall receive a rebate of a percentage of the following local taxes:

- a. ~~The meals tax imposed by Winchester City Code § 27-70 et seq.~~
- b. ~~The motel tax imposed by Winchester City Code § 27-90 et seq.~~
- c. ~~The machinery and tools tax imposed by Winchester City Code § 27-50.~~
- d. ~~The utility tax on local telephone usage imposed by Article V of Chapter 27 of the Winchester City Code.~~
- e. ~~The business, professional and occupational license taxes imposed by Chapter 28 of the Winchester City Code. (Ord. No. 033-95, 9-12-95)~~

**SECTION 8-17. AMOUNT OF REBATE.**

The amount of each type of tax rebate under §8-16 shall be a percentage of that tax paid by the firm each year. The percentage rebated each year shall be determined by the following schedule:

Year 1 . . . . .	100%
Year 2 . . . . .	80%
Year 3 . . . . .	60%
Year 4 . . . . .	40%
Year 5 . . . . .	20%

Year 1 is the calendar year following the year in which the firm becomes a qualified business firm. Qualified business firms shall receive the tax rebates established by this article for five years. If a business ceases to be a qualified business firm during a year in which the rebates apply, any rebates shall be prorated for the months the business was a qualified business firm. (Ord. No. 033-95, 9-12-95)

**SECTION 8-18. PROCEDURE FOR REBATE.**

Qualified business firms shall pay the taxes listed in this article in the manner prescribed by

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~~the Winchester City Code. Business firms shall apply to the Local Zone Administrator for certification as a qualified business firm. Upon certification and proof that no taxes are currently due, the qualified business firm shall be entitled to the rebates~~

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**ENTERPRISE ZONE**

~~created by this article. The schedule for rebating the taxes shall be regulated by the Local Zone Administrator. Failure of the firm to pay in full by the due date any of the taxes listed in this article, shall result in forfeiture of the rebate of that tax for that year. (Ord. No. 033-95, 9-12-95)~~

**~~SECTIONS 8-19 – 8-25. RESERVED.~~**

**ARTICLE III. II. EXEMPTION FROM LAND DEVELOPMENT FEES**

**SECTION 8-26. QUALIFIED ZONE RESIDENTS PERMIT AND FEE EXEMPTIONS**

~~For purposes of this article, the term "qualified zone resident" shall have the meaning provided in the Code of Virginia §59.1-280.1(D), as amended from time to time. The term shall also include a person who has entered into a contract to purchase or lease land within the enterprise zone, who will become a "qualified zone resident" except that such person does not yet hold title to the land at the time the fee is incurred. (Ord. No. 033-95, 9-12-95)~~

**~~(a) Commercial, Industrial and Mixed-Use Property.~~**

(a) Pursuant to the Act and the designation, an exemption from certain building permit, zoning and subdivision fees is hereby authorized for the new construction and renovation or rehabilitation of commercial, industrial, or mixed-use real estate which is located within the Zone and which have met the qualification criteria described in this Article. For purposes of this article, the term "mixed-use" shall mean any building developed as a mixed-use building, as defined in the Code of Virginia, § 59.1-548(A) or, if a development qualifying for a Major Mixed-use Development Incentive and consisting of more than a single building, structure(s) developed on a tract of land for two or more different uses, such as, but not limited to, residential, office, retail, institutional, public or entertainment and including the on-site infrastructure necessary to support such uses. The said exemption shall be in the form of a refund of such fees as are described in this Article, except that no fee or portion of any fee which is remanded to the Commonwealth of Virginia or to any entity other than the City of Winchester shall be refunded.

**~~(b) Residential Property.~~**

(b) Pursuant to the Act and the designation, an exemption from certain building permit, zoning and subdivision fees is hereby authorized for the new construction and

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renovation or rehabilitation of residential real estate which is located within those portions of the N. Loudoun Street District located in the Zone and which have met the qualification criteria described below. The boundaries of the N. Loudoun Street District are described in those official real estate parcel maps, which shall be retained by the Local Zone Administrator, and as may be amended from time to time.

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**SECTION 8-27. BUILDING CODE FEES. QUALIFIED RECIPIENTS**

Qualified zone residents shall be exempt from the application fee imposed by Winchester City Code §6-26 and the building permit fees imposed by Winchester City Code §6-27. (Ord. No. 033-95, 9-12-95)

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(a) SUBSTANTIALLY REHABILITATED REAL ESTATE.

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COMMERCIAL/INDUSTRIAL PROPERTY REAL ESTATE TAX EXEMPTION

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Qualified recipients shall be those owners of residential, commercial, industrial or mixed-use property who complete a substantial rehabilitation project as defined in Chapter 27 Division 4A of Code of the City of Winchester.

Qualified recipients shall be those owners of residential, commercial, industrial, or mixed-use property located within the Zone who complete new construction costing at least five hundred thousand dollars (\$500,000) or who complete a rehabilitation or renovation costing at least sixty percent (60%) of the pre-renovation assessed value of the rehabilitated or renovated improvements.

(b) SUBSTANTIALLY REHABILITATED RESIDENTIAL PROPERTY REAL ESTATE TAX EXEMPTION

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Qualified recipients shall be those owners of residential property located within the N. Loudoun Street district inside the Zone who complete a substantial rehabilitation that increases their assessed value of the residential structure by at least 40% without increasing total square footage by more than 15%. If the total square footage of the improved structure exceeds that of the original structure by more than fifteen percent (15%), the excess square footage above said additional fifteen percent (15%) shall not be entitled to the real estate tax exemption authorized by this article.

(eb) BUSINESS DEVELOPMENT GRANT FOR VACANT PROPERTIES.

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Qualifying recipients shall also include eligible businesses that conduct a substantial rehabilitation of a property within the Zone equal to or more than 75% of the assessed value of the property. The property must be at least 5,000sf, have been consecutively vacant for the two years prior to the commencement of the renovation and the business must be new to the City, or an expansion location within the City.

Completion shall be evidenced by the issuance of a final certificate of occupancy or, where no certificate of occupancy is required, by a final building inspection certificate.

(dc) INCENTIVE VALUATION.

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## ENTERPRISE ZONE

The value of the incentive shall be measured and determined by the property's assessed value immediately before commencement of substantial rehabilitation and the assessed value immediately after completion of substantial rehabilitation, as determined by the City's assessing official.

### (de) EXCLUDED RECIPIENTS.

Properties that possess or will possess not-for-profit enterprises are excluded from receiving any of the aforementioned incentives. Mixed-use properties that possess a not-for-profit enterprise must house residential or for profit businesses that amount for sixty percent (60%) or more are qualified recipients.

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### **SECTION 8-28. ~~WATER AND SEWER AVAILABILITY CHARGE.~~ AMOUNT.**

~~Qualified zone residents shall be exempt from the availability charge imposed by Winchester City Code §29-7(e) on water and sewer connections. (Ord. No. 033-95, 9-12-95)~~  
Fees to be refunded to a qualified recipient shall include and be limited to the building permit fees imposed by Winchester City Code §6-27, the fees imposed by §23-8-1 et seq. of the Zoning Ordinance, and the charge for the submission of a subdivision plat imposed by the Subdivision Ordinance §4-8.

### **SECTION 8-29. ~~ZONING ORDINANCE FEES.~~ OWNER'S APPLICATION.**

~~Qualified zone residents shall be exempt from the fees imposed by §23-8-1 et seq. of the Zoning Ordinance. (Ord. No. 033-95, 9-12-95)~~

The owner of property which is qualified to be exempted from those fees described above shall be required to file an application requesting the exemption provided for in this article with the Local Zone Administrator not later than one year after completing the qualifying construction. No property owner may apply for an exemption under this article on the basis of a building permit issued prior to the establishment of the enterprise zone.

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### **SECTION 8-30. ~~SUBDIVISION ORDINANCE FEE.~~ REPEALED**

~~Qualified zone residents shall be exempt from the charge for the submission of a subdivision plat imposed by the Subdivision Ordinance §4-8. (Ord. No. 033-95, 9-12-95)~~

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**SECTION 8-31. NONWAIVER.**

This article shall not be construed to waive the requirement of any application, permit, or approval from the City as mandated by other code sections. Nothing in this article shall be construed as waiving the right of the City of Winchester to collect any fines or penalties imposed by other sections of the Code. (Ord. No. 033-95, 9-12-95)

**~~SECTIONS 8-32 – 8-40. RESERVED.~~**

**~~ARTICLE III. SUBSTANTIALLY REHABILITATED PROPERTY~~**

Comment [AB1]: Mov  
ed to Chapter 27 Division  
4.

**~~SECTION 8-41. RESIDENTIAL REAL ESTATE. AUTHORIZED; AMOUNT;  
DURATION~~**

~~Any residential real estate within an Enterprise Zone, upon which there is an existing structure which is no less than fifteen (15) years old, and which has been improved as to increase the assessed value thereof by no less than forty percent (40%), without increasing the total square footage by more than fifteen percent (15%) shall qualify for the real estate tax exemptions granted by Winchester City Code § 27-29. (Ord. No. 033-95, 9-12-95)~~

~~(a)~~

~~Pursuant to the Act and the designation, a real estate tax exemption is hereby authorized for commercial or industrial use real estate which is located within the Zone and which has undergone substantial rehabilitation or renovation. The exemption shall be in an amount equal to the increase in the assessed value resulting from the rehabilitation of the real estate, as determined by the Commissioner, and this amount only shall be applicable to any subsequent assessment or reassessment for a period of twelve (12) years commencing on July 1 of the year following the completion of the rehabilitation or renovation.~~

~~(b)~~

~~Pursuant to the Act and the designation, a real estate tax exemption is hereby authorized for residential real estate which is located within those portions of the Winchester Historic District, to include the entire N. Loudoun Street District, located in the Zone and which has undergone substantial rehabilitation or renovation. The boundaries of the Winchester Historic District and N. Loudoun Street District are~~

## ENTERPRISE ZONE

~~described in those official real estate parcel maps, which shall be retained by the Local Zone Administrator, and as may be amended from time to time. The exemption shall be in an amount equal to the increase in the assessed value resulting from the rehabilitation of the real estate, as determined by the Commissioner, and this amount only shall be applicable to any subsequent assessment or reassessment for a period of twelve (12) years commencing on July 1 of the year following the completion of the rehabilitation or renovation.~~

(e)

~~Property shall be eligible for the exemption referred to in subsections (a) and (b) of this section if the appropriate building permits were acquired by the property owner and the rehabilitation indicated on the application was completed subsequent to the inclusion of the property in the Zone as verified by the Commissioner.~~

~~State law reference— Authority to provide above exemption, Code of Virginia, §§ 58.1-3220(A), 58.1-3221(A); amount and duration of exemption and authority of city relating thereto, Code of Virginia, §§ 58.1-3220(B), 58.1-3221(B).~~

### SECTION 8-42. SUBSTANTIAL REHABILITATION OF COMMERCIAL OR INDUSTRIAL REAL ESTATE.

~~Any commercial or industrial real estate within an Enterprise Zone, upon which there is an existing structure which is no less than fifteen (15) years old, and which has been so improved as to increase the assessed value thereof by no less than sixty percent (60%), without increasing the total square footage by more than fifteen percent (15%) shall qualify for the real estate tax exemptions granted by Winchester City Code § 27-29. (Ord. No. 033-95, 9-12-95)~~

~~For the purposes of this article commercial or industrial real estate shall be deemed to have undergone substantial rehabilitation, renovation or replacement when a structure which is no less than fifteen (15) years of age has been so improved as to increase the assessed value of the structure by no less than 60 percent (60%) without increasing the total square footage of the structure by more than fifteen percent (15%). In the event of complete replacement of such structure, the increase in the total square footage shall be no more than fifteen percent (15%). If the total square footage of such rehabilitated, renovated, or replacement structure exceeds that of the original structure by more than fifteen percent (15%), the excess square footage above said additional fifteen percent (15%) shall not be entitled to the real estate tax exemption authorized by this article. Rehabilitation, renovation, or replacement shall not include rehabilitation, renovation, or replacement occasioned by damage or destruction by fire, natural disaster or other acts of God.~~

~~State law reference— Authority for above section, Code of Virginia, § 58.1-3221(A).~~

### SECTION 8-43. DEFINITIONS. SUBSTANTIAL REHABILITATION OF RESIDENTIAL REAL ESTATE.

~~The definitions and eligibility requirements of Division D of Article II of Chapter 27~~

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~~of the Winchester City Code shall apply to this article *mutatis mutandis*. (Ord. No. 033-95, 9-12-95)~~

~~**For the purpose of this article, residential real estate shall be deemed to have undergone substantial rehabilitation, renovation or replacement when a structure which is not less than fifteen (15) years of age has been so improved as to increase the assessed value of the structure by no less than 40 percent without increasing the total square footage of this structure by more than fifteen percent (15%). In the event of complete replacement of such structure, the increase in the total square footage shall be no more than fifteen percent (15%). If the total square footage of such rehabilitated, renovated, or replacement structure exceeds that of the original structure by more than fifteen percent (15%), the excess square footage above said additional fifteen percent (15%) shall not be entitled to the real estate tax exemption authorized by this article. Rehabilitation, renovation, or replacement shall not include rehabilitation, renovation, or replacement occasioned by damage or destruction by fire, natural disaster or other acts of God.**~~

~~*State law reference— Authority for above section, Code of Virginia, § 58.1-3220(A).*~~

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**SECTION 8-44. — RESTRICTIONS. OWNER'S APPLICATION**

~~No property owner may apply for an exemption under this article on the basis of a building permit issued prior to the establishment of the enterprise zone. (Ord. No. 033-95, 9-12-95)~~

~~*State law reference— Authority for above fee, Code of Virginia, §§ 58.1-3220(D), 58.1-3221(D).*~~

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**DIVISION 4. SUBSTANTIALLY REHABILITATED HISTORIC PROPERTY**

**SECTION 27-28. HISTORIC REHABILITATION DEFINITIONS.**

For the purpose of this division, the following words and phrases shall have the meanings, respectively ascribed to them:

- (a) **SUBSTANTIALLY REHABILITATED HISTORIC RESIDENTIAL REAL ESTATE**, shall mean any residential real estate within the Historic Winchester District (HW), as defined by Article 14 of the Zoning Ordinance of the City of Winchester, 1976, as amended, upon which there is an existing structure which is no less than twenty-five (25) years old, and which has been so improved as to increase the assessed value thereof by no less than forty percent (40%), without increasing the total square footage by more than fifteen percent (15%).
- (b) **SUBSTANTIALLY REHABILITATED HISTORIC COMMERCIAL, ~~OR~~ INDUSTRIAL OR MIXED-USE REAL ESTATE**, shall mean any commercial, ~~or~~ industrial or mixed-use real estate within the Historic Winchester District (HW), as defined by Article 14 of the Zoning Ordinance of the City of Winchester, 1976, as amended, upon which there is an existing structure which is no less than twenty-five (25) years old, and which has been so improved as to increase the assessed value thereof by no less than sixty percent (60%), without increasing the total square footage by more than fifteen percent (15%).
- (c) **AMOUNT OF EXEMPTION**, shall mean an amount equal to the increase in assessed value resulting from the rehabilitation of the structure as determined by the assessing officer, and this amount only shall be applicable to assessment commencing on the first day of January of the year following the rehabilitation. An increase in assessment occurring after the first year of such rehabilitation exemption shall not result in an increase in such exemption.
- (d) **TAXABLE YEAR**, shall mean the calendar year from January first through December thirty-first for which such real property tax is imposed or exemption claimed. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

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**SECTION 27-~~29~~28.1. HISTORIC REHABILITATION EXEMPTIONS  
DECLARED.**

The purpose of this division shall be to provide real estate tax exemptions for substantially rehabilitated residential, commercial, ~~or industrial~~ or mixed-use real estate for a period of ten (10) years, commencing on January first of the year following completion of such rehabilitation. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2011-28, 8-9-11)

**State Law Reference--** Code of Virginia, §§58.1-3220, *et seq.*

**SECTION 27-3028.2. HISTORIC REHABILITATION EXEMPTION  
ELIGIBILITY REQUIREMENTS.**

Exemptions pursuant to this division shall not become effective unless the persons owning such property have:

- (a) Prior to commencement of a plan to rehabilitate the property, obtained the required building permit and applied for the herein prescribed exemption on a form approved by the Commissioner of the Revenue. Application for exemption must be filed before the work designated by the building permit is begun.
- (b) Paid to the Treasurer an application processing fee in the amount of twenty dollars (\$20.00). No application for the exemption approved by this article shall be deemed to have been filed until the fee herein imposed has been paid.
- (c) Prior to commencement of a plan to rehabilitate the property, contacted the ~~real-estate assessor~~ Commissioner of the Revenue to make an assessment of the property in its current condition.
- (d) After rehabilitation of the building, contacted the ~~real-estate assessor~~ Commissioner of the Revenue to assess the fair market value of the renovation improvements, and reflect such value in the real estate tax assessment records.
- (e) ~~Submitted the application for exemption~~ Obtained the final assessment prior to January first of the taxable year for which such exemption is claimed.  
(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2011-28, 8-9-11)

**DIVISION 4A. SUBSTANTIALLY REHABILITATED ENTERPRISE ZONE  
PROPERTY**

**SECTION 27-29. ENTERPRISE ZONE REHABILITATION DEFINITIONS.**

For the purpose of this division, the following words and phrases shall have the meanings, respectively ascribed to them:

- (a) SUBSTANTIALLY REHABILITATED ENTERPRISE ZONE RESIDENTIAL REAL ESTATE, shall mean any residential real estate within the North Loudoun Street District of the Enterprise Zone, but outside the boundaries of the Winchester Historic District, upon which there is an existing structure which is no less than fifteen (15) years old, and which has been so improved as to increase the assessed value thereof by no less than

forty percent (40%), without increasing the total square footage by more than fifteen percent (15%).

(b) SUBSTANTIALLY REHABILITATED ENTERPRISE ZONE COMMERCIAL, INDUSTRIAL OR MIXED-USE REAL ESTATE, shall mean any commercial or industrial or mixed use real estate within the Enterprise Zone, upon which there is an existing structure which is no less than fifteen (15) years old, and which has been so improved as to increase the assessed value thereof by no less than sixty percent (60%), without increasing the total square footage by more than fifteen percent (15%). Any commercial, industrial or mixed-use property that possesses or will possess not-for-profit enterprises that amount for more than forty percent (40%) of total improvement space is excluded from receiving this exemption.

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(c) AMOUNT OF EXEMPTION, shall mean an amount equal to the increase in assessed value resulting from the rehabilitation of the structure as determined by the assessing officer, and this amount only shall be applicable to assessment commencing on the first day of January of the year following the rehabilitation. An increase in assessment occurring after the first year of such rehabilitation exemption shall not result in an increase in such exemption.

(d) TAXABLE YEAR, shall mean the calendar year from January first through December thirty-first for which such real property tax is imposed or exemption claimed.

#### **SECTION 27-29.1. ENTERPRISE ZONE EXEMPTIONS DECLARED.**

The purpose of this division shall be to provide real estate tax exemptions for substantially rehabilitated residential, commercial, industrial or mixed-use real estate for a period of twelve (12) years, commencing on January first of the year following completion of such rehabilitation.

State Law Reference-- Code of Virginia, §§58.1-3220, et seq.

#### **SECTION 27-29.2. ENTERPRISE ZONE REHABILITATION EXEMPTION ELIGIBILITY REQUIREMENTS.**

Exemptions pursuant to this division shall not become effective unless the persons owning such property have:

(a) Prior to commencement of a plan to rehabilitate the property, obtained the required building permit and applied for the herein prescribed exemption on a form approved by the Commissioner of the Revenue. Application for exemption must be filed before the work designated by the building permit is begun.

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(b) Paid to the Treasurer an application processing fee in the amount of twenty dollars (\$20.00). No application for the exemption approved by this article shall be deemed to have been filed until the fee herein imposed has been paid.

(c) Prior to commencement of a plan to rehabilitate the property, contacted the Commissioner of the Revenue to make an assessment of the property in its current condition.

(d) After rehabilitation of the building, contacted the Commissioner of the Revenue to assess the fair market value of the renovation improvements, and reflect such value in the real estate tax assessment records.

(e) Obtained the final assessment prior to January first of the taxable year for which such exemption is claimed.

SECTION 27-30. RESERVED.

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# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council  
**From:** Jim Deskins, Economic Redevelopment Director  
**Date:** January 21, 2014  
**Re:** Adoption of Enterprise Zone Funding Resolution

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**THE ISSUE:** The Winchester Economic Development Authority requires funding to award the economic development incentives identified in the enterprise zone funding agreement

**RELATIONSHIP TO STRATEGIC PLAN:** Goal 1: Grow the Economy

**BACKGROUND:** The City was recently awarded Virginia Enterprise Zone designation. The zone goes into effect upon Council's adoption of this resolution and the related enterprise zone ordinance. Additionally, Council approved R2013-26 pledging funding to the incentives

**BUDGET IMPACT:** We estimate that the program could result in incentives up to \$500,000 annually. However, many of the incentives are based on local tax rebates paid annually in arrears and will result in a positive return in investment over a five to ten year period. The success of the enterprise zone in attracting new economic development projects will determine the actual cost.

**OPTIONS:** Council has the option to approve or reject the proposed resolution.

**RECOMMENDATIONS:** City Staff recommends that Council adopt the resolution.

## RESOLUTION

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF WINCHESTER, VIRGINIA, THAT CERTAIN WINCHESTER VIRGINIA ENTERPRISE ZONE LOCAL INCENTIVES GRANTS FUNDING AGREEMENT DATED AS OF THE <sup>TH</sup> DAY OF \_\_\_\_\_, 2014, BY AND BETWEEN THE CITY OF WINCHESTER, VIRGINIA AND THE WINCHESTER ECONOMIC DEVELOPMENT AUTHORITY.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Winchester:

1. That it hereby authorizes the City Manager to execute, and the City Clerk to attest, on behalf of the City of Winchester, Virginia, that certain Winchester Virginia Enterprise Zone Local Incentives Grants Funding Agreement dated as of the <sup>th</sup> day of \_\_\_\_\_, 2014, by and between the City of Winchester, Virginia and the Winchester Economic Development Authority.

2. That a copy of the said Funding Agreement is attached hereto and made a part hereof.

3. That this resolution shall be in effect on and after \_\_\_\_\_, 2014.

**WINCHESTER VIRGINIA ENTERPRISE ZONE LOCAL INCENTIVES GRANTS  
FUNDING AGREEMENT**

This Winchester Virginia Enterprise Zone Local Incentives Grants Funding Agreement (hereafter “this Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014, between the CITY OF WINCHESTER, VIRGINIA, a Virginia municipal corporation (hereafter “the City”), and the WINCHESTER ECONOMIC DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia (hereafter “the EDA” or “the authority”). The City and the EDA are collectively referred to as “the Parties.”

**RECITALS**

Whereas, the Governor of Virginia is authorized to establish enterprise zones within the Commonwealth of Virginia, by Section 58.1-538, et seq. of the Code of Virginia, the boundaries of such enterprise zones to be established by certain eligible Virginia municipal corporations through application made to the Commonwealth and approved by the Governor;

Whereas, an enterprise zone consists of an area within the boundaries of a locality in which certain business enterprises may become eligible to receive financial incentives from the locality for certain investment and job creation activities;

Whereas, the City has determined that the establishment of enterprise zones will foster the development of commercial and industrial businesses to the benefit of the public health, safety, welfare and convenience of the City through the enhancement of public revenues and the creation of employment opportunities;

Whereas, on October 17, 2013, the Governor of Virginia did so designate an enterprise zone in the City of Winchester, to become effective January 1, 2014, in such areas, as may be amended from time to time, that are further described in those official Winchester Virginia Enterprise Zone real estate parcel maps, which shall be retained by the Local Zone Administrator;

Whereas, the EDA is directed by the charter granted to it by the General Assembly of Virginia to participate in economic development activities within the City of Winchester;

Whereas, the EDA is authorized by its charter to exercise all or any of the powers and authority vested in an industrial development authority established under the Industrial Development and Revenue Bond Act, which is set out in Chapter 49 of Title 15.2 of the Code of Virginia, section 15.2-4905;

Whereas, among the powers of industrial development authorities thus granted to the EDA is the power to make grants to any business firm, as later defined herein, for the purpose, among others, of promoting economic development;

Whereas, the City is henceforward willing to consider providing funds to the EDA for the purpose of enabling it to make certain grants within the enterprise zones the Governor has established;

Whereas, the circumstances under which the City is willing to consider providing such funds to any given business firm relate to the nature of its business, to the monetary value of its taxable capital investments, and to its creation of new positions;

Whereas, the City is authorized to enter into agreements with the EDA to contract obligations, both contingent and absolute, and to appropriate, donate or contribute, from tax

revenues or from any other sources, funds to assist the authority in the carrying out of any of the purposes of the act creating the EDA; and

Whereas, the Parties desire to memorialize their agreement with respect to the City's willingness to provide funds to the EDA for the purpose of its making certain Business Development Grants for Vacant Property, Entrepreneurship Incentives, Knowledge-based Job Grants, Major Economic Development Project Incentives, New or Expanding Technology-driven Business Grants, Retail Mix Enhancement Grants and grants and/or provision of in-kind services made by the EDA in order to deliver Major Mixed-Use Development Incentives, (hereafter, collectively, the "Enterprise Zone Local Incentive Grants"), as well as to provide funds to the EDA for the purpose of capitalizing, as and when necessary, certain loan funds, all of which have been pledged by the City, through its application to the Governor for designation of an enterprise zone in the City of Winchester, as local incentives required by the Commonwealth to be offered in enterprise zones as herein specified.

#### AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree:

##### I. Definitions

(a) "Business Firm" means any corporation, partnership, electing small business (subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth of Virginia, or any subsidiary thereof.

(b) "Enterprise Zone" means a zone created by the Governor of Virginia as authorized by the Code of Virginia, Section 58.1-538 et seq. in such areas, as may be amended from time to time, that are further described in those official Winchester Virginia Enterprise Zone real estate parcel maps which shall be retained by the local zone administrator.

(c) “Grant Period” means the period commencing on the first day of the first tax year for which an Enterprise Zone Local Incentive Grant is payable and ending on the last day of the last tax year for which an Enterprise Zone Local Incentive Grant is payable, unless otherwise defined in an Incentive Agreement. For the purposes of this Agreement, a tax year begins on the first day on which the relevant property is assessed for the first time or on the first day on which a tax upon which an Enterprise Zone Local Incentive Grant is calculated is paid to the City, whichever is applicable.

(d) “Incentive Agreement” means the agreement between the EDA and a Business Firm that is a Qualified Recipient for an Enterprise Zone Local Incentive Grant, which agreement governs the terms and conditions under which the firm may receive and retain Enterprise Zone Local Incentive Grants. For purposes of this section, the term “Enterprise Zone Local Incentive Grant” includes the provision of in-kind services through the Major Mixed-Use Development Incentive. With respect to the Major Mixed-Use Development Incentive, the term “Incentive Agreement” may refer to a development agreement or to a section(s) of a development agreement between the EDA and a Business Firm that is a Qualified Recipient.

(e) “Mixed-use Project” means a tract of land or structure(s) developed for two or more different uses, such as, but not limited to, residential, office, retail, institutional, public or entertainment and including the on-site infrastructure necessary to support such uses. In the case of a single structure, the structure shall meet the definition of a mixed-use building, as defined in the Code of Virginia, § 59.1-548(A).

(f) “Net Increase,” with respect to any tax, means the positive change of that tax occurring during the Grant Period due to the assessment of a capital investment made by, or caused to be made by, a Qualified Recipient and not by any change in the rate at which such

capital investment is taxed, as compared to the amount of that tax levied upon the Qualified Recipient during a period prior to the Grant Period, as defined in the Incentive Agreement or, if no Incentive Agreement has been executed, as determined by the local zone administrator.

(g) “New Positions” means jobs of indefinite duration at a Business Firm located within an Enterprise Zone requiring each employee to report for work within the Enterprise Zone and requiring: 1) a minimum of 35 hours of the employee's time per week for the entire normal year of the Business Firm's operation, which "normal year" must consist of at least 48 weeks, 2) a minimum of 35 hours of the employee's time per week for the portion of the calendar year in which the employee was initially hired for or transferred to the Business Firm, or 3) a minimum of 1,680 hours per year. “New Positions” shall not include seasonal or temporary positions.

(h) “Post-performance Provision” means a requirement contained in an Incentive Agreement pledging the Qualified Recipient to return all or a portion of Enterprise Zone Local Incentive Grants it has received from the EDA if the Qualified Recipient leaves the Enterprise Zone within five (5) years of receiving its final Enterprise Zone Local Incentive Grant.

(i) “Qualified Amounts” means an amount corresponding to the Net Increase in the various taxes paid by or held in trust by each Qualifying Recipient to the City.

(j) “Qualified Recipient” means the recipient of any Enterprise Zone Local Incentive Grant as further specified herein.

(k) “Qualified Business Development Grant for Vacant Properties Recipient” means a Business Firm, which is new to the City or is expanding and which is located in an Enterprise Zone, which has substantially rehabilitated real property of at least five thousand (5,000) square feet for commercial or mixed-use, which property shall have been vacant for a minimum of two (2) years prior to the commencement of such rehabilitation. A property shall be considered to

have been substantially rehabilitated if the cost of such rehabilitation equals at least seventy-five percent (75%) of the assessed value of the property improvements measured from the last assessment prior to commencement of the rehabilitation, the rehabilitation cost being measured by the construction cost declared on a building permit for the rehabilitation issued by the City plus the cost declared on any receipts for rehabilitation work not requiring a building permit. The Business Firm must also authorize the commissioner of the revenue to release pertinent data to the city manager or his designee.

(l) “Qualified Entrepreneurship Incentive Recipient” means a new Business Firm located in an Enterprise Zone, fifty percent (50%) of whose market is located outside of the City and Frederick County or which provides a product not currently available in the City (all of which as determined by the EDA in its sole discretion), and which shall: 1) create at least one (1) but not more than nine (9) New Positions (businesses creating more than nine (9) New Positions will not be eligible for the incentive) in an Enterprise Zone within the first twelve (12) months of commencing business operations; 2) acquire a business license from the City; 3) be located in a commercially zoned district; 4) sign an Incentive Agreement which shall include, among other provisions, a Post-performance Provision, and 5) authorize the commissioner of the revenue to release pertinent data to the city manager or his designee.

(m) “Qualified Knowledge-based Jobs Grant Recipient” means a Business Firm located in an Enterprise Zone which shall: 1) within a twelve (12) month period, create at least ten (10) New Positions which are Knowledge-based Professional Jobs, as herein defined, if newly located in the City, or create at least five (5) New Positions which are Knowledge-based Professional Jobs, if an existing Business Firm in the City (collectively, the “Qualifying Jobs”); 2) pay wages or salaries to holders of the Qualifying Jobs which, averaged, are equal to or above

one hundred and twenty percent (120%) of the City's median annual income as determined by the latest data available from the U.S. Census Bureau; 3) sign an Incentive Agreement which shall include, among other provisions, a Post-performance Provision, and 4) authorize the commissioner of the revenue to release pertinent data to the city manager or his designee. A Knowledge-based Professional Job is defined as one within one of the following: the architecture and engineering occupations; arts, design, entertainment, sports and media occupations; business and financial occupations, except loan counselors and tax preparers; computer and mathematical occupations; healthcare practitioners (excluding technicians); lawyers; life, physical, and social science occupations; and management occupations.

(n) "Qualified Major Economic Development Project Incentive Recipient" means a Business Firm located in an Enterprise Zone which shall: 1) make a capital investment of at least two million, five hundred thousand dollars (\$2.5 million) within the Enterprise Zone; 2) create at least twenty-five (25) New Positions within the Enterprise Zone whose wages and salaries, averaged, are at least equal to the City's median annual income as determined by the latest data available from the U.S. Census Bureau; 3) sign an Incentive Agreement which shall include, among other provisions, a Post-performance Provision, and 4) authorize the commissioner of the revenue to release pertinent data to the city manager or his designee.

(o) "Qualified Major Mixed-Use Development Incentive Recipient" means a Business Firm which shall: 1) make a capital investment of at least five million dollars (\$5 million) in a Mixed-use Project located in an Enterprise Zone; 2) sign an Incentive Agreement and 3) authorize the commissioner of the revenue to release pertinent data to the city manager or his designee.

(p) “Qualified New or Expanding Technology-based Business Grant Recipient” means a Business Firm which is a High-Tech Business, as herein defined, located in an Enterprise Zone and which shall: 1) make a one million dollar (\$1 million) capital investment in the Enterprise Zone; 2) sign an Incentive Agreement which shall include, among other provisions, a Post-performance Provision and 3) authorize the commissioner of the revenue to release pertinent data to the city manager or his designee. A High-Tech Business is defined as one classified in one of the following industry sectors: advanced manufacturing; bio-information and bio-medical; knowledge-producing federal government contractors; and other technology-driven firms, all as determined by the EDA in its sole discretion.

(q) “Qualified Retail Mix Enhancement Grant Recipient” means a Business Firm located in the Downtown or Berryville Avenue areas of the Enterprise Zone and doing business in the retail industry sector which, as determined by the EDA in its sole discretion, are positioned to attract shoppers from beyond the City. Such qualifying Business Firms may include, but are not limited to: art galleries, antique dealers, book stores, “high end” or specialty grocers, high fashion retailers, and specialty item gift stores. For the purpose of administering the Retail Mix Enhancement Grant, the local zone administrator shall delineate and publish the boundaries of the Downtown and Berryville Avenue areas of the Enterprise Zone on official real estate parcel maps of the City of Winchester, Virginia, which shall be retained by the local zone administrator.

(r) “Qualifying Event” means the creation of New Positions and/or capital investment, as the case may be, of such magnitudes as to fulfill the requirements for the definition of a Qualified Recipient for any Enterprise Zone Local Incentive Grant, as described herein.

(s) “Qualifying Wage” means an average level of wages and salaries as herein

specified in the definitions of a Qualified Knowledge-based Jobs Grant Recipient and Qualified Major Economic Development Project Incentive Recipient.

## II. Eligibility

The City will provide funds to the EDA for the purpose of its making Enterprise Zone Local Incentive Grants to a Business Firm if 1) the firm is a Qualified Recipient; and 2) it applies for the applicable Enterprise Zone Local Incentive Grant no later than twelve (12) months after the occurrence of the last Qualifying Event, provided that no more than twelve (12) months have transpired between the first Qualifying Event and the last Qualifying Event, unless such period is extended by an Incentive Agreement which is signed prior to the occurrence of the first Qualifying Event; except that, for a Major Mixed-Use Development Incentive, a Business Firm must apply for the incentive prior to the occurrence of the first Qualifying Event and an executed development agreement shall constitute the application for the Major Mixed-Use Development Incentive.

## III. Amount and Delivery of Grants

The City will provide funds to the EDA for the purpose of its making Enterprise Zone Local Incentive Grants in amounts and in manners as are described more fully herein.

- A. Business Development Grant for Vacant Properties. The amount of any Business Development Grant for Vacant Properties shall be equal to:
  - a) twenty-five percent (25%) of the Net Increase in business personal property taxes, business license fees or taxes, local option sales taxes, meals taxes, lodging taxes and/or admissions taxes paid to the City by a Qualified Business Development Grant for Vacant Properties Recipient during a Grant Period equal to five (5) years,

- if the substantially rehabilitated structure is at least five thousand (5,000) square feet but no more than twenty thousand (20,000) square feet;
- b) fifty percent (50%) of the Net Increase in business personal property taxes, business license fees or taxes, local option sales taxes, meals taxes, lodging taxes and/or admissions taxes paid to the City by a Qualified Business Development Grant for Vacant Properties Recipient during a Grant Period equal to five (5) years, if the substantially rehabilitated structure is more than twenty thousand (20,000) square feet but no more than forty thousand (40,000) square feet;
  - c) one hundred percent (100%) of the Net Increase a in business personal property taxes, business license fees or taxes, local option sales taxes, meals taxes, lodging taxes and/or admissions taxes paid to the City by a Qualified Business Development Grant for Vacant Properties Recipient during a Grant Period equal to five (5) years, if the substantially rehabilitated structure exceeds (40,000) square feet.

Such funds shall be provided only upon actual receipt of such taxes by the City. A Qualified Business Development Grant for Vacant Properties Recipient shall not be delinquent in the payment or remittance of any other taxes or fees to the City. The EDA shall pay such grants to a Qualified Business Development Grant for Vacant Properties Recipient who has applied for the Business Development

Grant for Vacant Properties, and whose application has been approved by the EDA Board, semi-annually upon receipt of such funds as are herein provided to be paid by the City to the EDA for the purposes of making such funds available for payment by the EDA of the Business Development Grant for Vacant Properties.

- B. Entrepreneurship Incentive. The amount of any Entrepreneurship Incentive shall be equal to fifty percent 50% of the cost of website design and construction, up to a maximum amount of one thousand dollars (\$1,000); plus fifty percent (50%) of the cost of website hosting or high speed internet access, up to a maximum amount of five hundred dollars (\$500); plus a two hundred (200) basis point reduction on a Winchester Enterprise Zone Micro-loan, if the Qualified Entrepreneurship Recipient is approved by the EDA for such loan. A Qualified Entrepreneurship Incentive Recipient shall not be delinquent in the payment or remittance of any taxes or fees to the City. The EDA shall pay such grants to a Qualified Entrepreneurship Incentive Recipient who has applied for the Entrepreneurship Incentive, and whose application has been approved by the EDA Board from such funds as are herein provided to be paid by the City to the EDA for the purposes of making such funds available for payment by the EDA of the Entrepreneurship Incentive.
- C. Knowledge-based Jobs Grant. The amount of any Knowledge-based Jobs Grant shall be equal to the sum of one thousand dollars (\$1,000) multiplied by the number of qualifying Knowledge-based Professional Jobs, up to a maximum amount of twenty-five thousand dollars (\$25,000). A Qualified Knowledge-based

Jobs Grant Recipient shall not be delinquent in the payment or remittance of any taxes or fees to the City. The EDA shall pay such grants to a Qualified Knowledge-based Jobs Grant Recipient who has applied for the Knowledge-based Jobs Grant, and whose application has been approved by the EDA Board from such funds as are herein provided to be paid by the City to the EDA for the purposes of making such funds available for payment by the EDA of the Knowledge-based Jobs Grant.

D. Major Economic Development Project Incentive. The amount of any Major Economic Development Project Incentive shall be equal to one hundred percent (100%) of the Net Increase in any and all taxes paid to the City by a Qualified Major Economic Development Project Incentive Recipient during a Grant Period equal to three (3) years. Such funds shall be provided only upon actual receipt of such taxes by the City and under condition that the Qualified Major Economic Development Project Incentive Recipient shall not be delinquent in the payment or remittance of any other taxes or fees to the City. The EDA shall pay such grants to a Qualified Major Economic Development Project Incentive Recipient who has applied for the Major Economic Development Project Incentive, and whose application has been approved by the EDA Board, semi-annually upon receipt of such funds as are herein provided to be paid by the City to the EDA for the purposes of making such funds available for payment by the EDA of the Major Economic Development Project Incentive. An approved application for the Major Economic Development Project Incentive shall be a fully executed Incentive Agreement. If the Qualified Major Economic

Development Project Incentive Recipient receives any other Enterprise Zone Local Incentive Grant, then the sum of all such Enterprise Zone Local Incentive Grants shall not exceed the present value of the sum of the Net Increase of all taxes paid by the Qualified Major Economic Development Project Incentive Recipient to the City during a five (5) year period. If the sum of all such Enterprise Zone Local Incentive Grants exceeds the present value of the sum of the Net Increase of all taxes paid by the Qualified Major Economic Development Project Incentive Recipient to the City during a five (5) year period, then the amount of the Major Economic Development Project Incentive shall be reduced to equal the present value of the sum of the Net Increase of all taxes paid by the Qualified Major Economic Development Project Incentive Recipient to the City during a five (5) year period. The Incentive Agreement entered into by the Qualified Major Economic Development Project Incentive Recipient shall provide that any amount of the Major Economic Development Project Incentive received by the Qualified Major Economic Development Project Incentive Recipient in excess of the maximum amount of the Major Economic Development Project Incentive so determined (the "Excess Grant Amount") shall be paid by the Qualified Major Economic Development Project Incentive Recipient to the EDA and the EDA shall remit such amount to the City. The Incentive Agreement may alternatively provide that the Excess Grant Amount may be reduced or eliminated by reducing the amounts due to the Qualified Major Economic Development Project Incentive Recipient from other Enterprise Zone Local Incentive Grants.

E. Major Mixed-Use Development Incentive. The amount or value and nature of the

Major Mixed-Use Development Incentive provided by the EDA to a Qualified Major Mixed-Use Development Incentive Recipient shall be specified in an Incentive Agreement and shall be an amount or value equal to at least thirty-five percent (35%) but not more than sixty-five percent (65%) of the Net Increase in all taxes paid to the City derived from the qualifying Mixed-use Project. The EDA may, but is not required to, provide all or a portion of the Major Mixed-Use Development Incentive to a Qualified Major Mixed-Use Development Incentive Recipient as a cash grant or as a series of cash grants. The EDA may, but is not required to, provide all or a portion of the Major Mixed-Use Development Incentive by providing in-kind services for the benefit of the Qualified Major Mixed-Use Development Incentive Recipient, including, but not limited to, such services as: site assemblage, land cost write-down or below-market sale of property, provision of on or off-site public infrastructure, provision of public facilities, the issuance and/or payment by the EDA of debt service on a bond(s), or provision of favorable financing terms. The EDA's provision of such in-kind services may require the City to provide funds to the EDA in order that the EDA may affect the provision of such services in whole or in part. Additionally or alternatively, the City or its agent may, but is not required to, provide all or a portion of the Major Mixed-Use Development Incentive by directly providing in-kind services for the benefit of the Qualified Major Mixed-Use Development Incentive Recipient and/or the public welfare, including, but not limited to, such services as: abandonment of public rights-of-way, provision of on or off-site public infrastructure, provision of public facilities, or provision of favorable

financing terms. The amount and mode of delivery of the Mixed-Use Development Incentive, whether by grant(s), in-kind services delivered by the EDA, or in-kind services delivered by the City, or any combination of the above shall be specified in the Incentive Agreement governing that Major Mixed-Use Development Incentive.

- F. New or Expanding Technology-based Business Grant. The amount of any New or Expanding Technology-based Business Grant shall be equal to fifty percent (50%) of the Net Increase in any and all taxes paid to the City tax by a Qualified New or Expanding Technology-based Business Grant Recipient during a Grant Period equal to five (5) years. Such funds shall be provided only upon actual receipt of such taxes by the City. A Qualified New or Expanding Technology-based Business Grant Recipient shall not be delinquent in the payment or remittance of any other taxes or fees to the City. The EDA shall pay such grants to a Qualified New or Expanding Technology-based Business Grant Recipient who has applied for the New or Expanding Technology-based Business Grant, and whose application has been approved by the EDA Board, semi-annually upon receipt of such funds as are herein provided to be paid by the City to the EDA for the purposes of making such funds available for payment by the EDA of the New or Expanding Technology-based Business Grant. An approved application for the New or Expanding Technology-based Business Grant shall be a fully executed Incentive Agreement. If the Qualified New or Expanding Technology-based Business Grant Recipient is also a Qualified Major Economic Development Project Incentive Recipient, the Incentive Agreement may contain a provision to

reduce or eliminate the Excess Grant Amount.

- G. Retail Mix Enhancement Grant. The amount of any Retail Mix Enhancement Grant shall be equal to fifty percent (50%) of the Net Increase in any and all of the taxes delineated herein (the "Retail Mix Enhancement Grant Taxes") paid to the City by a Qualified Retail Mix Enhancement Grant Recipient during a Grant Period equal to the first twelve (12) months of operation of the Business Firm. The Retail Mix Enhancement Grant Taxes include: the business license fee, or business professional and occupational license (BPOL) tax; the food and beverage, or meals, tax; and the local option sales tax. Such funds shall be provided only upon actual receipt of such taxes by the City. A Qualified Retail Mix Enhancement Grant Recipient shall not be delinquent in the payment or remittance of any other taxes or fees to the City. The EDA shall pay such grants to a Qualified Retail Mix Enhancement Grant Recipient who has applied for the Retail Mix Enhancement Grant, and whose application has been approved by the EDA Board, at the end of the Grant Period and upon receipt of such funds as are herein provided to be paid by the City to the EDA for the purposes of making such funds available for payment by the EDA of the Retail Mix Enhancement Grant. The Retail Mix Enhancement Grant shall be used by the Qualified Retail Mix Enhancement Grant Recipient for the sole purpose of the bona fide marketing expenses incurred during pre-opening and the first year of operation of the Business Firm (the "Eligible Expenses") and the amount of the Retail Mix Enhancement Grant shall be limited to the amount of the Eligible Expenses. The Qualified Retail Mix Enhancement Grant Recipient shall provide the EDA with

evidence of the Eligible Expenses prior to the EDA's disbursement of the Retail Mix Enhancement Grant.

H. With respect to the Business Development Grant for Vacant Properties, Major Economic Development Project Incentive, New or Expanding Technology-based Business Grant and Retail Mix Enhancement Grant (collectively, the "Tax-based Grants"), the following procedure shall be implemented in order to provide the necessary funding for the Tax-based Grants.

- a) Annually, the local zone administrator shall provide to the director of finance an estimate of the total amount to be disbursed to Qualified Recipients of the Tax-based Grants during the forthcoming fiscal year. Upon being invoiced by the EDA, the City shall transfer to the EDA from time to time such amounts as may be determined and required for disbursement to fulfill the EDA's obligations to fund the Tax-based Grants.
- b) Semi-annually, the local zone administrator shall verify with the commissioner of the revenue and the city treasurer the amounts of the various taxes paid by each Qualifying Recipient to the City.
- c) Semi-annually, upon receiving verification from the commissioner of the revenue and the city treasurer the amounts of the various taxes paid by each Qualifying Recipient to the City, the local zone administrator shall request the EDA to invoice the City for the Qualified Amounts and the director of finance shall transfer the Qualified Amounts from the City to the EDA.

- d) Upon receipt of such funds from the City, the EDA shall disburse the various Tax-based Grants in the appropriate amounts to the appropriate Qualified Recipients.
- I. With respect to the Entrepreneurship Incentive and Knowledge-based Jobs Grant (the “Direct Grants”), the following procedure shall be implemented in order to provide the necessary funding for the Direct Grants.
  - a) Upon securing an eligible applicant and being invoiced by the EDA, the City shall transfer the full amount of the applicable incentive to the EDA in order to fund the Entrepreneurship Incentive and the Knowledge-based Jobs Grant.
  - b) Annually, upon being invoiced by the EDA, the City shall transfer to the EDA such amounts as are determined to be necessary to fully fund the Entrepreneurship Incentive and the Knowledge-based Job Grant.
- J. With respect to the Major Mixed-Use Development Incentive, upon being invoiced by the EDA, the City shall transfer to the EDA from time to time such amounts as may be determined and required by various Incentive Agreements to be necessary for the EDA to fulfill its obligations under said Incentive Agreements.
- K. With respect to the Business Growth Revolving Loan Fund, the Commercial Façade Program, the Real Estate Revolving Loan Fund and the Winchester Enterprise Zone Micro-loan Fund (collectively, the “Loan Funds”), upon being invoiced by the EDA, the City shall transfer to the EDA from time to time such amounts as may be determined and required by various Incentive Agreements to

be necessary for the EDA to fulfill its obligations under said Incentive Agreements.

- L. No reference to the timing of payments of Local Enterprise Zone Incentive Grants provided herein shall preclude a reasonable period for verification and processing of payments from being assumed to be included in or be in addition to those timings referenced herein.

#### IV. Approval of Incentive Agreements

Notwithstanding anything to the contrary expressed or implied by the terms of this Agreement, the City retains the right in its discretion to approve or disapprove any proposed Incentive Agreement for a Major Mixed-Use Development Incentive negotiated pursuant to the terms of this Agreement without regard to whether the proposed qualifying activity provides the minimum taxable capital investment and meets the minimum job creation criterion. No Incentive Agreement for a Major Mixed-Use Development Incentive may be executed by the EDA without first being authorized by a resolution of the City Council of the City of Winchester.

#### V. Execution in Counterparts

This Agreement may be executed in any number of counterparts, each of which when fully executed shall be deemed to be an original.

**WINCHESTER ECONOMIC  
DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary of the Winchester  
Economic Development Authority

APPROVED AS TO FORM:

\_\_\_\_\_  
Counsel for the Winchester  
Economic Development Authority

## 2013 Fire and Rescue Department Statistics

Month	Incidents											Casualties		Training Hours		Resuscitation Efforts	
	EMS	Fire	Total	Struc. Fire	Fire Other	ALS 1	ALS 2	BLS	Pt. Ref.	Mutual Aid Given	Mutual Aid Recvd.	Fire	Civ.	Dept. Personnel	LFCC Ride-Along Students	Cardiac Arrest	Cardiac Arrest Saved
January	349	96	445	5	91	160	2	137	21	50	13	1	0	935	0	1	1
February	309	65	374	2	63	138	1	109	25	18	13	0	1	424	0	2	1
March	390	103	493	7	96	171	6	161	23	40	7	0	1	879	12	4	2
April	333	95	428	3	92	153	3	130	19	27	15	1	0	872	282	1	0
May	388	113	501	5	108	144	5	144	30	35	11	1	2	410	54	3	1
June	341	112	453	8	104	134	4	150	31	39	10	0	3	386	0	4	1
July	388	106	494	7	99	170	7	137	29	39	15	0	0	1444	0	4	1
August	357	105	462	6	99	175	2	123	27	25	6	2	0	1467	0	1	0
September	373	82	455	3	79	187	10	124	27	23	10	0	0	1481	0	6	3
October	346	118	464	4	114	151	7	140	26	35	6	0	1	876	0	5	1
November	351	103	454	9	94	152	5	123	28	33	16	0	0	611	0	4	0
December	416	118	534	2	116	192	10	144	20	37	12	1	0	808	0	3	0
<b>TOTAL</b>	<b>4341</b>	<b>1216</b>	<b>5557</b>	<b>61</b>	<b>1155</b>	<b>1927</b>	<b>62</b>	<b>1622</b>	<b>306</b>	<b>401</b>	<b>134</b>	<b>6</b>	<b>8</b>	<b>10592</b>	<b>348</b>	<b>38</b>	<b>11</b>

**28.95%**  
26.3% National Average

10 Years of Incidents											
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
4932	5288	5711	5673	5571	5365	5407	5539	5541	5756	5557	

**Other Monthly Activity:**



Vehicle Extrication Training



Friendship Fire Company Honored at the Iwo Jima Memorial

## FY 2014 EMS Revenue Recovery Statistics

	Total billed	Payment Adj.	Net Collectable	Total paid by insurance	Patient Payment	Refunds	Total Deposit	Total Revenue	Increase from FY2012	Percent Increase From FY2012
<b>JULY</b>	\$162,940.00	\$24,446.29	\$138,493.71	\$77,877.66	\$11,029.60	\$0.00	\$88,907.26	\$88,907.26	\$6,999.94	9%
<b>AUGUST</b>	\$154,507.00	\$7,921.18	\$146,585.82	\$73,522.65	\$6,533.14	\$786.97	\$79,268.82	\$168,176.08	\$561.43	0%
<b>SEPTEMBER</b>	\$168,585.00	\$10,688.87	\$157,896.13	\$66,236.78	\$0.00	\$309.00	\$65,927.78	\$234,103.86	(\$3,789.67)	-2%
<b>OCTOBER</b>	\$154,659.00	\$0.00	\$154,659.00	\$100,980.62	\$1,880.64	\$0.00	\$102,861.26	\$336,965.12	\$11,830.10	4%
<b>NOVEMBER</b>	\$143,059.00	\$0.00	\$143,059.00	\$81,167.99	\$1,831.47	\$1,066.84	\$81,932.62	\$418,897.74	\$16,923.43	4%
<b>DECEMBER</b>	\$187,121.00	\$0.00	\$187,121.00	\$94,435.19	\$4,102.04	\$595.67	\$97,941.56	\$516,839.30	\$43,855.25	9%
<b>JANUARY</b>										
<b>FEBRUARY</b>										
<b>MARCH</b>										
<b>APRIL</b>										
<b>MAY</b>										
<b>JUNE</b>										
<b>TOTALS</b>	<b>\$970,871.00</b>	<b>\$43,056.34</b>	<b>\$927,814.66</b>	<b>\$494,220.89</b>	<b>\$25,376.89</b>	<b>\$2,758.48</b>	<b>\$516,839.30</b>			



## 2013 Fire Marshal Division Statistics

Month	City Fire Property Dollar Loss/Save			Plan Review		Inspections/Investigations								Public Education			
	Loss	Value	Saved	#	Revenue	Fire Insp.	Follow-up	Sprinkler	Alarm	Supres.	Site	Other Insp.	Investig.	Smoke Alarms Installs	Car Seat Installs	Pub Ed Children	Pub Ed Adult
January	\$100.00	\$175,000.00	\$174,900.00	2	\$75.99	10	18	2	3	1	1	0	0	0	13	2	17
February	\$600.00	\$107,000.00	\$106,400.00	9	\$0.00	16	9	3	0	0	0	0	1	2	10	64	53
March	\$0.00	\$0.00	\$0.00	11	\$758.30	14	18	8	0	1	2	42	0	4	8	15	40
April	\$26,100.00	\$111,100.00	\$85,000.00	5	\$214.20	38	26	2	0	0	0	21	2	1	4	2	8
May	\$105,500.00	\$148,400.00	\$42,900.00	14	\$1,239.86	8	9	5	1	3	0	23	1	1	11	143	43
June	\$98,000.00	\$17,846,200.00	\$17,748,200.00	6	\$517.16	15	14	4	3	3	3	10	3	1	3	113	19
July	\$7,250.00	\$8,100.00	\$850.00	14	\$1,159.18	14	19	3	4	1	1	7	3	1	14	48	20
August	\$309,262.00	\$1,469,204.00	\$1,159,942.00	3	\$68.34	16	20	4	1	4	1	13	2	7	13	219	332
September	\$14,000.00	\$28,337,600.00	\$28,323,600.00	11	\$765.00	38	18	4	0	2	0	6	3	1	19	137	101
October	\$31,550.00	\$2,313,150.00	\$2,281,600.00	6	\$363.12	54	37	7	0	0	0	20	1	0	11	2668	1629
November	\$84,050.00	\$756,050.00	\$672,000.00	6	\$433.50	12	44	1	0	2	0	5	1	1	11	635	71
December	\$95,400.00	\$245,500.00	\$150,100.00	5	\$153.00	5	14	3	2	5	0	3	0	0	12	1	15
<b>TOTAL</b>	<b>\$771,812.00</b>	<b>\$51,517,304.00</b>	<b>\$50,745,492.00</b>	<b>92</b>	<b>\$5,747.65</b>	<b>240</b>	<b>246</b>	<b>46</b>	<b>14</b>	<b>22</b>	<b>8</b>	<b>150</b>	<b>17</b>	<b>19</b>	<b>129</b>	<b>4047</b>	<b>2348</b>



## 2013 Station/Apparatus Statistics

Month	Station Logbook Runs			
	1	2	4	5
January	174	73	151	196
February	148	71	122	180
March	188	80	180	215
April	164	80	161	203
May	173	72	157	226
June	168	77	137	218
July	202	89	152	229
August	183	72	156	194
September	168	76	148	221
October	176	80	147	216
November	189	82	136	205
December	191	111	186	272
<b>TOTAL</b>	<b>2124</b>	<b>963</b>	<b>1833</b>	<b>2575</b>



**A Virginia Accredited Law Enforcement Agency**

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**WINCHESTER POLICE DEPARTMENT  
MONTHLY COUNCIL REPORT  
December 2013**

*5 YEAR TREND FOR MAJOR CRIMES- December*

	2009	2010	2011	2012	2013
<b>THEFT</b>	65	76	51	55	77
<b>GRAND THEFT</b>	21	16	19	13	24
<b>MVT</b>	1	3	2	0	4
<b>ROBBERY</b>	2	2	6	3	2
<b>RAPE</b>	2	0	0	1	1
<b>B&amp;E</b>	11	7	15	13	9

*5 YEAR TREND ENFORCEMENT -Enforcement for December - 5 year trend*

	2009	2010	2011	2012	2013
Felony Arrests	18	13	32	11	39
Misdemeanor Arrests	77	148	117	152	169
Legal Document - Felony	78	13	29	50	37
Legal Document - Misdemeanor	115	159	117	166	109
DUI Arrests	19	32	26	31	13
Incident Reports	298	280	286	302	301
Field Contacts Documented	0	9	54	33	16
Speeding - Radar	39	117	144	62	82
Traffic Violations	262	325	273	199	198
Vehicle Crash Investigations	83	80	64	56	52
Warning Citations*					75
Vehicle Stops*					1122
Parking Violations	111	265	122	112	115

Up-to-date statistics can be found at [www.winchesterpolice.org/crimestats/index1.html](http://www.winchesterpolice.org/crimestats/index1.html) and up-to-date crime maps are available at [www.winchesterpolice.org/crimemap/index1.html](http://www.winchesterpolice.org/crimemap/index1.html).

\*New category added

*“Committed to improving the quality of life for all people by preventing crime in the city.”*