

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

September 13, 2011

7:00 P.M.

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A. CALL TO ORDER	
B. ROLL CALL	
C. MOMENT OF SILENCE	
D. PLEDGE OF ALLEGIANCE – Kemani Green, a raising ninth-grade student at Warhill High School	
E. PRESENTATION – 2011 VACo Achievement Award	
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L. REPORTS OF THE COUNTY ADMINISTRATOR

M. BOARD REQUESTS AND DIRECTIVES

N. CLOSED SESSION

1. Consideration of a personnel matter, the appointment of individuals to County boards and/or commissions, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia.
- a. Historical Commission
 - b. Colonial Community Criminal Justice Board
 - c. Parks and Recreation Advisory Commission
 - d. Social Services Advisory Board

O. ADJOURNMENT to 4 p.m. on September 27, 2011

091311bos_age

AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 9TH DAY OF AUGUST 2011, AT 4:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

Mary K. Jones, Chairman, Berkeley District
Bruce C. Goodson, Vice Chair, Roberts District
James G. Kennedy, Stonehouse District
James O. Icenhour, Jr., Powhatan District
John J. McGlennon, Jamestown District

Robert C. Middaugh, County Administrator
Leo P. Rogers, County Attorney

C. BOARD DISCUSSIONS

1. Christmas Marketing

Mr. Robert Middaugh, County Administrator, discussed with the Board the purpose of the presentation, which is to provide information about a proposal for using the tourism incentive fund created in the FY 12 budget.

Mr. Carl Lum, President, Busch Gardens and Water Country USA, gave a presentation on “Christmas in Williamsburg, a Partnership Opportunity.” He further explained the advantages and benefits to the partnership, with two anchor attractions, Colonial Williamsburg and Busch Gardens, and other event attractions located in the greater Williamsburg area. The opportunity is to enhance and brand the shopping experience for holiday travelers and to increase meals, lodging, and sales tax revenue for James City County. The marketing plan is to target the Washington D.C. area, as it is the largest growing market for Busch Gardens. They may also market to residents located in Norfolk and Richmond. This opportunity will connect consumers to James City County using a website with links. Mr. Lum further discussed the benefits of investing for the County and the breakdown of advertisement and overall benefits of building James City County as a Christmas destination. They are asking James City County to provide \$100,000 toward an overall \$1 million campaign.

Mr. Middaugh asked Mr. Lum to explain why the time of this marketing is important.

Mr. Lum replied that it is important to buy advertising by Labor Day.

Mr. Kennedy asked what is the request to Williamsburg and York County for funding.

Mr. Lum replied that neither the City of Williamsburg nor York County has been asked for additional funding, but that they would be asked.

Mr. Goodson asked how the County can know how much revenue is being spent in stores.

Mr. Lum replied that the data can be reviewed by meals tax data for Busch Gardens, sales tax for the area, and hotel occupancy.

Mr. Kennedy asked Mr. Richard Schreiber, Greater Williamsburg Chamber and Tourism Alliance, about the website and who is the targeted audience.

Mr. Schreiber commented that the idea is to bring people to the area to for a weekend of activities. He also commented that the websites are a vital element which gives tourists information about all activities in the area during the Christmas season.

Mr. McGlennon commented that he believed in leading by example, however, he would like to see other efforts from other localities to participate in the marketing as well. He commented about encouraging pre-reservations to encourage people to come back for the summer.

Mr. McGlennon asked about making Route 60 more attractive, possibly a seasonal boulevard.

Mr. Lum commented that Busch Gardens is about to improve the landscaping along Route 60. It was further discussed about possibly having Route 60 lit up with Christmas lights from Busch Gardens to Colonial Williamsburg.

Mr. Middaugh commented on Christmas and a tree lighting event possibly in New Town.

Mr. Kennedy stated that the County needs an event for Christmas.

Mr. Goodson asked staff to look into holiday lighting along Route 60.

Ms. Jones commented on the holidays and possibly an Old Fashioned Christmas theme for Sullivan Square such as caroling, tree lighting, and having the Fife and Drum participating.

Mr. Middaugh asked if the Board wished for Mr. Lum to proceed. The Board agreed to continue the discussion at the end of the meeting.

2. Discharge of Firearms Ordinance Amendment

Mr. Middaugh introduced the Discharge of Firearms Ordinance Amendment. This presentation is to follow up on previous information sent to the Board regarding laws, both State and local, governing the discharge of firearms in the County. Mr. Middaugh introduced Mr. Todd Engelmeyer, Virginia Department of Game and Inland Fisheries (DGIF), and County staff; Ms. Lola Perkins, Mr. Emmett Harmon, and Mr. Allen Murphy. He further discussed the various options offered for hunting through DGIF.

Mr. Engelmeyer discussed the various options of permits that are issued outside and during deer season. He further commented on different permits and wildlife plans that are available through DGIF. DGIF writes deer plans for neighborhoods and data is collected and used to further the goal of controlling the deer population.

Mr. Middaugh asked Mr. Engelmeyer about platforms and stands for deer hunting.

Mr. Engelmeyer replied that DGIF does not get involved in those decisions. DGIF leaves it up to the counties and local ordinances. Citizens must comply with local ordinances even if they receive a DGIF permit or plan.

Mr. Middaugh commented about the option to expand DGIF's role and explore the possibility of allowing hunting on County property. One potential ordinance amendment is to provide a better definition for a subdivision. Another proposed amendment is to add DGIF plans to the exceptions which currently only include DGIF permits. Lastly, the County must change the reference to pneumatic guns based on a new law passed by the General Assembly.

Mr. Kennedy asked staff about hunting on subdivided property and can it be done on a resident's property. He used the example of one citizen that has problems with coyote and deer in the orchards. He asked if a property owner can protect their property.

Mr. Middaugh responded that under the County's ordinance, a citizen can discharge a weapon to protect his/her life. He stated that an owner can get a permit or management plan.

Mr. Engelmeyer commented that the issuance of a kill permit could be an issue in some instances, for example, if it is already hunting season it is an issue. He hopes that more people utilize the hunting season since this is the primary structure for management of wildlife populations.

Mr. Middaugh asked would a plan help with this issue on subdivided property.

Mr. Engelmeyer further discussed various other wildlife hunting plans could be used for a homeowner to protect their property. He further discussed that as the County grows there may be more issues with wildlife.

Mr. Kennedy asked staff if a family is excluded from hunting on their property.

Ms. Perkins replied that the family cannot hunt unless the homeowner uses one of the exceptions provided for in the ordinance.

Mr. Kennedy asked staff if the County has another subdivided property with similar issues which the homeowner is allowed to hunt.

Ms. Perkins replied not to her knowledge.

Mr. Murphy commented that some properties are allowed to hunt by deed and recorded plat. These properties are very old and they can hunt on their property. This would apply to property divided before August 1, 1964.

Ms. Perkins commented on the need for clarification though an amendment to the definition of subdivision to read: "*of property into two or more lots which (i) occurred after August 1, 1964; (ii) was approved by the county; and (iii) has a plat of which has been recorded in the county's circuit court clerk's office for the circuit court of the county.*" If it was deed or plat it would be recorded and meet the definition.

Mr. Kennedy asked if an individual can do anything to address this issue.

Mr. Engelmeyer responded that the individual is limited based on the County's ordinance and the fact that the property is in a recorded subdivision.

Ms. Perkins clarified that the exception is available if a permit is issued by DGIF and approved by the Chief of Police. The proposed ordinance amendment would also expand the exception to include DGIF issued wildlife management plan approved by the Chief of Police.

Mr. Kennedy wanted to confirm that DGIF would sign the permit for the homeowner.

Mr. Engelmeyer stated that having the permit issued would not be a problem.

Mr. Kennedy asked staff if the homeowner has been told they can protect their property, which staff responded no. He requested that the homeowner be informed that they can protect their property under certain circumstances, such as coyote.

Ms. Perkins discussed how the exceptions in the County Code 15-36 apply to all subsections including Section A and Section C and how there is no limitation on which type of firearm is used.

Mr. Kennedy requested that the Board meet with the two property owners and list everything in detail so the homeowner fully understands the procedures as well as answer any questions in reference to the ordinance.

Mr. Middaugh commented that he is trying to schedule a meeting with the property owner and asked the Board if it supports the two changes proposed by staff.

Mr. Goodson commented that he supports the changes recommended by staff.

Mr. Middaugh commented that it would be a policy change to hunt on County properties.

3. Review of County Memberships and Organizational Affiliations

Mr. Middaugh discussed the review of County memberships and organizational affiliations which was requested by the Board. He further discussed the two principal locations for these expenses which are in non-departmental budgets (contributions to other outside agencies) and also are within each department budget in the dues, subscriptions, and membership's line item. The Board was provided information on a spreadsheet and by departments. He further commented that the debate of sustainability has nothing to do with the International Council for Local Environmental Initiatives (ICLEI).

Ms. Jones commented that she discussed with the Board in June about ICLEI and Agenda 21. Citizens of the County want to be good stewards of the environment, but she thought it was good for the Board to have an open discussion and she supports withdrawing the County's membership from ICLEI.

Mr. McGlennon asked what was the basis to make the decision on this particular question. ICLEI's support of sustainability is consistent with the County's policies, and it has saved the County money by eliminating the need for consultants. He stated that he could not find any evidence where ICLEI has ordered the County what to do nor do they have any authority to direct it to do anything.

Ms. Jones commented that citizens are for sustainability, but not the type in Agenda 21. There is a lot of expertise in this community; the planners and the citizens have very good input on how to be creative and sustainable in James City County.

Mr. McGlennon commented that the Board heard comments from citizens asking the Board to withdraw and challenging the concept of sustainability.

Ms. Jones commented about the citizens challenging the sustainability outlined in Agenda 21, not sustainability in general.

Mr. McGlennon commented about the citizen concerns about private property, and that speakers said private property should not be regulated which conflicts with the Comprehensive Plan.

Mr. McGlennon stated that he has heard from citizens who have used the services of ICLEI and have benefited tremendously. Former members of the Planning Commission have used the software on a regular basis to make good plans. He further commented that ICLEI is a service and membership that has saved the County money. He further commented that the Board should not take this action.

Mr. Goodson commented that based on staff recommendations he would not support renewal of membership.

Mr. McGlennon stated that Agenda 21 has nothing to do with membership of an organization that assisted the County with the tools that were needed for the Comprehensive Plan.

Ms. Jones commented that the tools and resources can be found from other sources to further assist with planning and sustainability in the County. She also commented on keeping the planning local in the area. Ms. Jones again commented that she has asked the Board not to renew the membership and asked for a straw vote.

Mr. Kennedy further commented that it is a divisive issue and all he was looking for was the value of the membership and what amount is being spent. He also commented on other memberships and organizations.

The Board further discussed the various committees.

Mr. Icenhour commented that there will be times when boards and organizations may commit to and be involved in different issues with which the County might not agree. He singled out ICLEI commenting that it compromises the ability for the Board to do what is right for the citizens in the community.

Mr. Goodson stated that it is a divisive issue and that he believes the Board should let the membership for ICLEI lapse.

Ms. Jones reminded the Board about the work session agenda and that the Board needed to give guidance on funding for the Busch Gardens Christmas marketing and on memberships and organizations.

The consensus of the Board was to support the \$100,000 contribution for the Busch Gardens Christmas marketing program.

Mr. Kennedy commented on his concerns about the lack of participation from other localities and that they have events unique to them. Busch Gardens is looking for ongoing support for this marketing and he wants to see from staff what is unique to James City County and how revenue would be generated for the County.

Mr. Goodson stated that the Board should have a presentation to see how the marketing benefitted the County.

Mr. Icenhour stated that before the County invests its funds for this marketing again, the Board should be sure about the County's return on the investment.

Mr. Kennedy commented on Agenda 21 being a divisive issue and that he supports the Chairman not renewing the membership with ICLEI. He further stated that he would continue to evaluate the membership and reserved the right to change his mind before the membership expires in December 2011.

D. BREAK

At 6:07 p.m. the Board took a break.

E. CLOSED SESSION

At 6:12 p.m., Mr. Goodson made a motion to go into Closed Session to consider a personnel matter, the appointment of individuals to County boards and/or commissions, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia.

At 6:17 p.m., Mr. Icenhour made a motion to adopt the Closed Session resolution.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

RESOLUTION

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(1) of the Code of Virginia, consideration of a personnel matter, the appointment of individuals to County boards and/or commissions.

F. RECESS

At 6:18 p.m., the Board recessed until 7 p.m.

Robert C. Middaugh
Clerk to the Board

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 9TH DAY OF AUGUST 2011, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

Mary K. Jones, Chairman, Berkeley District
Bruce C. Goodson, Vice Chair, Roberts District
James G. Kennedy, Stonehouse District
James O. Icenhour, Jr., Powhatan District
John J. McGlennon, Jamestown District

Robert C. Middaugh, County Administrator
Leo P. Rogers, County Attorney

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – Blake Ozmer, a rising third-grade student at Rawls Byrd Elementary School, led the Board and citizens in the Pledge of Allegiance.

E. PUBLIC COMMENT

1. Mr. Keith Sadler, 9929 Mountain Berry Court, commented on his opposition to Agenda 21.
2. Ms. Sue Sadler, 9929 Mountain Berry Court, commented on her opposition to Agenda 21.
3. Mr. Shawn Johnson, 3428 Wexford Run, commented about the International Council for Local Environmental Initiatives (ICLEI), Agenda 21, and encouraged citizens to watch the Board of Supervisors work session.
4. Mr. Ed Oyer, 139 Indian Circle, commented about two depleted buildings in Grove. He memorialized Mr. Jack Rhein who often attended the Board meetings.

F. BOARD REQUESTS AND DIRECTIVES

Mr. Goodson made recommendations for Board and Commissions appointments. Mr. Ron Campana was appointed to the Board of Zoning Appeals; Mr. Roger Schmidt was appointed to the Chesapeake Bay/Wetlands Board and Mr. Louis Bott as alternate. Mr. Chris Basic was appointed to the Planning Commission from the Berkeley District.

Mr. Goodson made a motion to approve the recommendations.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

Mr. McGlennon also paid a tribute to Mr. Jack Rhein for bringing to the attention of the Board the needs of the visually disabled.

G. CONSENT CALENDAR

Mr. Goodson made a motion to adopt the Consent Calendar.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

1. Minutes –
 - a. July 26, 2011, Work Session
 - b. July 26, 2011, Regular Meeting
2. Local Aid to the State

RESOLUTION

LOCAL AID TO THE STATE

WHEREAS, State financial assistance for mandated and high priority programs, including public education, health and human services, public safety, and constitutional officers, is \$800 million less in FY 12 than in FY 09; and

WHEREAS, cities and counties must balance their budgets during a time in which future State assistance is unreliable, Federal stimulus dollars are dwindling, and real estate assessments are declining; and

WHEREAS, the Appropriation Act contains \$60 million in across-the-board cuts to cities and counties for both FY 11 and FY 12, under which localities are required to either elect to take reductions in particular State aid programs, or to send the State a check for the amounts determined by the Department of Planning and Budget (“Local Aid to the State”); and

WHEREAS, the reductions are applied to essential services, including law enforcement, jail administration, foster care and child protection services, election administration, and social services; and

WHEREAS, the County of James City does not have the authority to unilaterally decide to discontinue providing services such as election administration or to refuse to house and care for State prisoners in local and regional jails; and

WHEREAS, the State budget cuts are not accompanied by any reductions in State-imposed mandates, standards, and service requirements, nor do they provide any administrative flexibility for local agencies; and

WHEREAS, the County of James City remitted \$313,331 in FY 11 and will be required to remit another \$329,339 in FY 12; and

WHEREAS, cities and counties will have provided the State with \$220 million by the close of FY 12 for this “Local Aid to the State” program; and

WHEREAS, these reductions shift State costs to local taxpayers and artificially increase the amount of State surplus revenue; and

WHEREAS, State revenues have begun to recover and the State is expecting to have a revenue surplus for the second year in a row; and

WHEREAS, revenue collections for the County of James City continue to reflect the struggling housing market; and

WHEREAS, the State should not shift its share of the costs for mandates and responsibilities to local governments.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, asks Governor Bob McDonnell to submit a budget amendment to the 2012 session of the General Assembly to reverse the \$60 million-a-year reduction for the current year, FY 12, and to eliminate the aid to localities reduction in the budget submitted for FY 13 and FY 14 without any other State funding reductions to State mandated, locality provided programs.

BE IT FURTHER RESOLVED that the members of the General Assembly support a budget amendment to the 2012 session of the General Assembly to reverse the \$60 million-a-year reduction for the current year, FY 12, and to eliminate the aid to localities reduction in the budget submitted for FY 13 and FY 14.

3. Changes to Chapter 3, Drug Free Workplace, of the Personnel Policies and Procedures Manual

RESOLUTION

CHANGES TO CHAPTER 3, DRUG FREE WORKPLACE,

OF THE PERSONNEL POLICIES AND PROCEDURES MANUAL

WHEREAS, the County’s Drug Free Workplace Policy was last updated in April 2009 and since then the Department of Transportation has updated 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs; and

WHEREAS, the County is committed to ensuring policies and procedures are up-to-date; and

WHEREAS, the FY11 Triennial Review of the Williamsburg Area Transit Authority, prepared on behalf of the Federal Transit Administration, recommended a revision to the wording in the policy to either list all refusals to test or state that refusals to test are listed in 49 CFR Part 40 as amended or 49 CFR 40.161 as amended for urine collections and 49 CFR 40.261 as amended for breath tests and should then state that a copy of 49 CFR Part 40 is available upon request; and

WHEREAS, this modification brings the policy into compliance.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the attached revision to Chapter 3, Drug Free Workplace, of the James City County Personnel Policy and Procedures Manual.

4. Acceptance of Property for a Veterans Tribute Tower

RESOLUTION

ACCEPTANCE OF PROPERTY FOR A VETERANS TRIBUTE TOWER

WHEREAS, the Board of Supervisors has expressed its support for locating a Veterans Tribute Tower in the County; and

WHEREAS, a suitable location has been identified in New Town.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute all documents necessary to accept a part of the parcel at 5380 Discovery Park Boulevard from New Town Associates, LLC for the purpose of locating a Veterans Tribute Tower.

5. Grant Award – Virginia Circuit Court Records Preservation Program – \$4,400

RESOLUTION

GRANT AWARD - VIRGINIA CIRCUIT COURT

RECORDS PRESERVATION PROGRAM - \$4,400

WHEREAS, the Clerk of the Circuit Court of Williamsburg-James City County has been awarded a \$4,400 grant from the Virginia Circuit Court Records Preservation Program; and

WHEREAS, the grant has been awarded to fund the preservation of permanent records of the Circuit Court; and

WHEREAS, there is no match required for this grant.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following budget appropriation to the Special Projects/Grants Fund:

Revenue:

FY 12 - Circuit Court Records Preservation	<u>\$4,400</u>
--------------------------------------------	----------------

Expenditure:

FY 12 - Circuit Court Records Preservation \$4,400

- 6. Chesapeake Bay Preservation Ordinance Violations – Civil Charge – Linda Schaller, 2509 Sanctuary Drive, Governors Land – \$29,000 – Deferred
- 7. Contingency Transfer – Virginia Peninsula Regional Jail

RESOLUTION

CONTINGENCY TRANSFER - VIRGINIA PENINSULA REGIONAL JAIL

WHEREAS, in FY 11, the Virginia Peninsula Regional Jail (VPRJ) experienced a very large, unplanned increase in inmate medical costs including increased outside medical care expenses and 24-hour nursing care; and

WHEREAS, Federal inmate bed days were substantially lower than anticipated; and

WHEREAS, additional funding is needed to cover these increased costs through June 30, 2011.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the previously adopted budget for FY 2011 as follows:

Expenditures:

Contingency	\$ (110,000)
Contribution to VPRJ	110,000

Ms. Jones asked that Item No. 4 be pulled so Mr. Harry Walters could give an update on the Veterans Tribute Tower.

Mr. Harry Walters gave the Board an update on the Veterans Tribute Tower which will be located on Discovery Boulevard. He mentioned that a parade is also scheduled in New Town on November 12, 2011, in tribute to veterans. He thanked County staff for their assistance.

Mr. McGlennon made the motion to adopt Acceptance of Property for a Veterans Tribute Tower.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

H. PUBLIC HEARINGS

1. Ordinance Amendment to Chapter 20, Taxation, Section 20-9. Definitions; and Section 20-10, Qualifications for Exemption

Ms. Erin Waugh, an Appalachian State University student and an Intern with the County Attorney's office, gave a presentation about Ordinance Amendment to Chapter 20, Taxation, Section 20-9. Definitions; and Section 20-10, Qualifications for Exemption. During its 2011 session, the Virginia General Assembly amended the Code of Virginia (the "Virginia Code") as it relates to real property tax exemptions for the elderly and disabled. If a locality exercises its option to provide real estate tax exemptions for the elderly and disabled, it must do so in conformance with the Virginia Code. Because the County has chosen to provide these exemptions, the County Code must be amended to include the recent changes adopted by the General Assembly. These amendments will have minimal impact on the individuals who qualified for exemption under the "old" regulations and there should not be a significant change in the number of people who qualify. Ms. Waugh further explained the following proposed changes to the County Code are mandatory: the ordinance must be amended to include only those sources of income that are subject to Federal income tax laws; the definition of "income" is now more limited; December 31 of the immediately preceding calendar year is the date upon which net worth valuation and annual income is to be calculated, and the County Code currently excludes the first \$6,500 when calculating an individual's total income. This amount may no longer be excluded. These amendments to the Virginia Code were passed as emergency legislation and became effective on March 24, 2011. Accordingly, the changes to the County Code must be made effective for tax years beginning on or after January 1, 2011. The Commissioner of the Revenue notified staff of these changes.

Mr. McGlennon asked Mr. Richard Bradshaw, Commissioner of the Revenue, since the legislation is effective would the Board be able to take action so those who may be eligible can apply.

Mr. Bradshaw commented that he would reopen the application process for those who may be eligible to apply.

Mr. Goodson asked staff how they can determine if a member of the household qualifies.

Mr. Bradshaw responded that his office makes that determination.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. McGlennon made the motion for the Commissioner of the Revenue to extend the application deadline for 30 days.

Mr. Bradshaw recommended a specific 30-day period.

Mr. McGlennon suggested a grace period from September 1 to September 30.

Mr. McGlennon made the motion to adopt the ordinance as amended.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

2. Ordinance Amendments – Fee Waivers

Mr. Allen Murphy, Jr., Director of Planning/Assistant Development Manager, presented the Ordinance Amendment waivers for the Board to consider as amended. Attached for its consideration were ordinances amending Chapter 4, Building Regulations; Chapter 8, Erosion and Sediment Control; Chapter 19, Subdivisions; Chapter 22, Wetlands; Chapter 23, Chesapeake Bay Preservation; and Chapter 24, Zoning. In accordance with Virginia Code § 15.2-2204 et seq., the amendments to Chapter 19, Subdivisions, and Chapter 24, Zoning, have been reviewed by the Planning Commission following advertised public hearings.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. McGlennon made the motion to adopt the revised ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

3. Ordinance to Amend Chapter 16, Public Parks and Recreation Facilities, Section 16-2, Alcoholic Beverages and Controlled Substances Prohibited

Mr. Max Hlavin, a William and Mary student and an Intern with the County Attorney's office, presented an Ordinance to Amend Chapter 16, Public Parks and Recreation Facilities, and Section 16-2, Alcoholic beverages and controlled substances prohibited. Currently, the County Code prohibits the consumption of alcohol at any public park or recreational facility. This general prohibition has been in place since 1984; since that time, the County has acquired a number of non-traditional parks, including a yacht basin, two campgrounds (one of which is open and the other is not), a beachfront, and Legacy Hall, among others. The Director of Parks and Recreation (the "Director") proposes to amend the County Code and to leave the general prohibition on alcohol in place, but permit the ability to develop regulations which would allow alcohol to be consumed during a particular event or in a particular area of a park. The Director intends at this time to permit alcohol in three situations/areas: Legacy Hall, Chickahominy Riverfront Park, and specific events. The applicant must provide insurance coverage and provide a copy of the Virginia Alcohol Beverage License.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Goodson made the motion to adopt the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

4. Alternative to Acquisition and Sale of Real Property – 4346 Ironbound Road

Mr. Middaugh discussed with the Board the Alternative to Acquisition and Sale of Real Property. The acquisition of 4346 Ironbound Road was part of the original redevelopment plan for the Ironbound Square neighborhood. However, the owners and the County were not able to reach an agreement at the time that the County was attempting to acquire property prior to construction. Recent discussions between the property owners and the County staff led to a new proposal to purchase the property. This item was on the Board of

Supervisors agenda at its June 28 meeting, but deferred until the August 9 meeting. The Office of Housing and Community Development will arrange for the demolition of the house and Habitat for Humanity (Habitat) will pay the costs of the demolition. In exchange for Habitat's cooperation, the Williamsburg Redevelopment and Housing Authority (WRHA) will sell Habitat six lots in the Ironbound Square subdivision.

Mr. Kennedy asked if \$35,000 is the assessed value of the lots.

Mr. Middaugh replied that it is not the assessed value.

Mr. Rogers replied that it is the market price for the lots and its operating through a grant funded by the Regional Housing Authority.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

No action was needed from the Board.

I. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, commented regarding a pool, the spending cost per student in schools, and rates being raised by the Newport News Waterworks.

J. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Middaugh reminded staff and everyone of the Household Chemical Collection, Saturday, August 13, Lafayette High School, 8 a.m.-noon. He commented that the James City Service Authority Board of Directors will hold a meeting following the Board of Supervisors meeting. He also commented on the Federal Government's bond rating and how it may not affect the County's rating.

K. BOARD REQUESTS AND DIRECTIVES

Mr. Icenhour read an article to the Board and citizens from a Roanoke newspaper article in reference to ICLEI.

L. ADJOURNMENT to 7 p.m. on September 13, 2011.

Mr. McGlennon made a motion to adjourn.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

At 7:48 p.m., Ms. Jones adjourned the Board until 7 p.m. on September 13, 2011.

Robert C. Middaugh
Clerk to the Board

080911bos_min

AT AN EMERGENCY MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 30TH DAY OF AUGUST 2011, AT 6:00 P.M. AT THE LAW ENFORCEMENT CENTER, 4600 OPPORTUNITY WAY, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

Mary K. Jones, Chairman, Berkeley District
Bruce C. Goodson, Vice Chair, Roberts District
James G. Kennedy, Stonehouse District
James O. Icenhour, Jr., Powhatan District
John J. McGlennon, Jamestown District

Robert C. Middaugh, County Administrator
Leo P. Rogers, County Attorney

C. BOARD CONSIDERATIONS

1. Declaration of Local Emergency

Mr. Middaugh explained that he declared a local emergency on Friday, August 26, 2011, due to Hurricane Irene. The declaration was necessary to coordinate local government response for the public safety of citizens. The Code of Virginia requires that the Board of Supervisors confirm the declaration of emergency.

Mr. Goodson made a motion to adopt the resolution declaring a local emergency.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

RESOLUTION

DECLARATION OF A LOCAL EMERGENCY - HURRICANE IRENE

WHEREAS, the Board of Supervisors of the County of James City, Virginia, does hereby find as follows:

1. That due to the imminent threat of Hurricane Irene, the County of James City is facing a condition of extreme peril to the lives, safety, and property of the residents of James City County; and
2. That as a result of this extreme peril, the proclamation of the existence of an emergency is necessary to permit the full powers of government to deal effectively with this condition of peril.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that a local emergency now exists throughout the County of James City.

NOW, THEREFORE, BE IT FURTHER RESOLVED that during the existence of this emergency, the powers, functions, and duties of the Director of Emergency Management and the Emergency Management organization, and functions of the County of James City shall be those prescribed by the laws of the Commonwealth of Virginia and the ordinances, resolutions, and approved plans of the County of James City in order to mitigate the effects of said emergency.

2. Resolution to Waive Building Permit Fees for Repairing Damage Caused by Hurricane Irene in James City County

Mr. Middaugh presented a resolution to waive building permit fees for repairing damage caused by Hurricane Irene to assist citizens with recovery efforts.

Mr. McGlennon made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

RESOLUTION

**TO WAIVE BUILDING PERMIT FEES FOR REPAIRING DAMAGE CAUSED
BY HURRICANE IRENE IN JAMES CITY COUNTY**

WHEREAS, Hurricane Irene affected James City County; and

WHEREAS, the hurricane caused damage to residential and commercial structures; and

WHEREAS, the Governor of the Commonwealth of Virginia declared a State of Emergency due to the hurricane; and

WHEREAS, the James City County Board of Supervisors declared a local emergency and desires to assist property owners with repairing damage to their structures caused by the hurricane.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby waives any building permit fees directly related to repairing damage caused by Hurricane Irene.

3. Resolution to Waive Tipping Fees for Woody Debris from Hurricane Irene

Mr. Middaugh presented a resolution to waive tipping fees at the Jolly Pond Convenience Center for woody debris caused by Hurricane Irene.

Mr. McGlennon made a motion to adopt the resolution.

Mr. Middaugh provided an update of the County's response to the hurricane. The Federal Emergency Management Agency has not yet included debris removal in its disaster declaration, and the County will monitor this very closely.

Mr. Goodson asked if the County was reimbursed for debris removal on private streets after Hurricane Isabel.

Mr. Middaugh provided an overview of the damage caused by the hurricane. The most recent assessment indicated that seven houses were destroyed, 130 received significant damage, 109 houses received minor damage, and 191 houses were affected. The value of the estimated damage is \$18 million, but is expected to climb to as much as \$25 million. Mr. Middaugh stated that County employees had been providing outreach to owners of homes that were damaged.

In terms of public damage, the James City Service Authority (JCSA) had a sewer bridge destroyed and a lift station destroyed. There was minor damage to several schools.

The James City/Williamsburg Community Center was opened as an emergency shelter and had a peak of 63 citizens. The shelter is closed but a few citizens with special needs have been placed in hotels. The James City/Williamsburg Community Center remains open for showers and as a cooling center. Child care is also being provided.

Some of the mobile home parks were significantly affected by the hurricane and staff is monitoring them closely.

The County has activated its contract with Crowder Gulf to remove debris. They will begin collection on September 6. The Virginia Department of Transportation (VDOT) is clearing primary and secondary roads, and the County cleared some subdivision roads where necessary.

There are currently 16,000 residents without electricity. Board members expressed frustration with Dominion Virginia Power's response to the hurricane and the lack of system maintenance prior to the hurricane.

Ms. Jones thanked the staff and stated that they provided a tremendous public service.

Mr. Kennedy noted that the JCSA was one of the few utilities that did not fail during the storm.

Mr. Icenhour asked for a report on flooding of roads, specifically News Road.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

RESOLUTION

TO WAIVE TIPPING FEES FOR WOODY DEBRIS FROM HURRICANE IRENE

WHEREAS, on August 26 and 27, Hurricane Irene affected James City County; and

WHEREAS, Hurricane Irene caused significant damage to residential and commercial structures; and

WHEREAS, the James City County Board of Supervisors, Governor to the Commonwealth of Virginia, and the President of the United States of America declared a State of Emergency; and

WHEREAS, the James City County Board of Supervisors desires to assist citizens with removal of debris caused by Hurricane Irene.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby waives fees at the Jolly Pond Convenience Center for woody debris caused by Hurricane Irene for citizens of James City County until September 11, 2011.

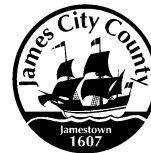
D. ADJOURNMENT

Mr. McGlennon made a motion to adjourn.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

At 6:45 p.m., Ms. Jones adjourned the Board until 7 p.m. on September 13, 2011.

Robert C. Middaugh
Clerk to the Board



MEMORANDUM COVER

Subject: Establishment of the Department of Parks and Recreation

Action Requested: Shall the Board adopt the resolution creating the Department of Parks and Recreation?

Summary: Parks and Recreation is currently an operating division within the Department of Community Services. Staff proposes that the Division of Parks and Recreation convert from a County Division in the Department of Community Services into a County Department reporting to the Assistant County Administrator. Staff believes that this will provide a more effective organizational structure for the County for numerous reasons as outlined in the memorandum. This proposal has no costs associated with it.

Staff recommends adoption of the attached resolution.

Fiscal Impact: None

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:
1. Memorandum
2. Resolution
3. FY 12 Staffing and Budget by Department

Agenda Item No.: H-2

Date: September 13, 2011

MEMORANDUM

DATE: September 13, 2011

TO: The Board of Supervisors

FROM: Robert C. Middaugh, County Administrator

SUBJECT: Establishment of the Department of Parks and Recreation

Parks and Recreation is currently an operating division within the Department of Community Services. Staff proposes that the Division of Parks and Recreation convert from a County Division in the Department of Community Services into a County Department reporting to the Assistant County Administrator. Staff believes that this will provide a more effective organizational structure for the County for numerous reasons as outlined below. This proposal has no costs associated with it.

Rebalance the County Organization Chart

Currently, the Division of Parks and Recreation is in the Department of Community Services, which has the largest number of employees in the County organization when accounting for regular employees and hours budgeted. Of these employees, approximately 60 percent are in Parks and Recreation. As shown on the attached chart, if Parks and Recreation becomes a department, it would have the third largest number of employees among County departments when accounting for both regular employees and hours budgeted. Also, the approved FY 12 budget for Parks and Recreation is \$4,885,742, which places it in the middle of existing departments, and out of scope with existing divisions. Parks and Recreation is currently the largest division in the County organization by a wide margin, with the second largest (Facilities Maintenance) only having a budget about half the size with approximately 1/4 of full-time equivalent employees.

While the size and budget of the organization alone could warrant department status, it should also be considered based on the nature of the work performed. On a daily basis, the Division of Parks and Recreation's staff probably interact with and serve more citizens and visitors than any other department. In FY 10, over 2.1 million participants were served through 18 parks, 39 miles of trails, 2,389 programs, and two community centers. In order to accomplish this work, the division has an extraordinary amount of partnerships to include internal County departments, the schools, the College of William and Mary, New Town, various nonprofits, and sporting organizations that enlarge its reach even more in the community. The sheer number of those served, the all encompassing nature of the work, and the visibility of the work should dictate closer supervision and better communication with County Administration.

Lastly, Parks and Recreation fits into the grouping under the Department of Community Services as well as it would under any other department, but it is still not a true fit. While it is true that it does serve those in need through a scholarship program, it is truly a service of choice. This creates an entirely different element of operation to include marketing while at the same time maintaining sensitivity to the concern of competing with the private sector. County Administration would have more oversight into assisting in these elements and could be more responsive to changes in the market if it operated at the department level.

Increased Coordination among County Departments

Dividing the County's largest department into two smaller departments should result in a more equitable allocation of resources among departments. Due to its size and scope, Parks and Recreation already works

independently with all of the other County departments. Removing one level of supervision should increase coordination among other departments and streamline decision making. It will also allow for more input at the Executive Leadership Team level at staff meetings and other work sessions.

Allow Community Services to Focus on Human Services

Another benefit of this proposal is that it will free up time to allow the Manager of Community Services to focus more directly on human services for those in need in Social Services and Housing and Community Development. This is important for several reasons: it elevates the work of the Division of Housing and Community Development to the appropriate level, it will help to streamline their decision making process, and it allows the Manager of Community Services to work directly and more closely with the new director of this division that currently is managing several important and visible projects. To further streamline County functions, I am also proposing that Extension and the Satellite Office become part of the Department of Community Services and report directly to the Assistant Manager. This better groups the services that are truly “citizen services” under one umbrella and manager.

Conclusion

Based on the resources dedicated to Parks and Recreation, its impact on the community, and the necessity to realign those services that are offered to the community, Parks and Recreation should be considered a department. The County’s charter stipulates that the Board of Supervisors must create new departments. Therefore, staff recommends that the Board of Supervisors adopt the resolution establishing Parks and Recreation as a department.

Robert C. Middaugh

RCM/nb
DeptParkRec_mem

Attachments

RESOLUTION

ESTABLISHMENT OF THE DEPARTMENT OF PARKS AND RECREATION

WHEREAS, Parks and Recreation is currently an operating division within the Department of Community Services; and

WHEREAS, the size of Parks and Recreation's organization and budget are out of balance with other divisions; and

WHEREAS, the nature of Parks and Recreation's work and the magnitude of its contact with citizens warrant a closer reporting link to County Administration; and

WHEREAS, creating Parks and Recreation as a department will improve communication and increase coordination of services; and

WHEREAS, the County Charter gives the Board of Supervisors the authority to create new departments.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby creates the Department of Parks and Recreation.

Mary K. Jones
Chairman, Board of Supervisors

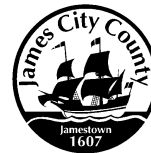
ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of September, 2011.

DeptParkRec_res

FY 12 STAFFING AND BUDGET BY BY DEPARTMENT (PROPOSED)				
<u>Department</u>	<u>Full-Time</u>	<u>Part-Time</u>	<u>Hours</u>	<u>Budget</u>
Parks and Recreation (Proposed)	49	14	93,780	\$ 4,885,742
Administration (Proposed)	16		624	\$ 1,649,621
Attorney	5		520	\$ 494,525
Community Services (Proposed)	66	4	1,404	\$ 9,159,981
Development Management	49	2	1,040	\$ 3,476,113
Financial and Management Services	47	1	900	\$ 4,144,999
Fire	139		2,916	\$ 12,337,643
General Services	64	9	6,300	\$ 7,922,117
Human Resources	7		120	\$ 626,744
JCSA	89	2	1,560	\$ 18,508,226
Police	112	3	4,713	\$ 8,600,509



MEMORANDUM COVER

Subject: Grant Award - Justice Assistance Grant (JAG) - \$11,875

Action Requested: Shall the Board approve the resolution that accepts the JAG award?

Summary: The James City County Police Department has been awarded a Justice Assistance Grant (JAG) through the Department of Justice/Bureau of Justice Assistance for \$11,875.

The funds will be used for the refurbishment and upgrade of the Simulated Impaired DrivINg Experience, known as SIDNE (a battery-powered vehicle that simulates the effects of impairment from alcohol and other drugs on a motorist's driving skills), the purchase of two radar units for the Department's motorcycles (currently ordered), and voice recorders for investigators.

This grant is a direct allocation and requires no matching funds.

Staff recommends adoption of the attached resolution.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution

Agenda Item No.: H-3

Date: September 13, 2011

MEMORANDUM

DATE: September 13, 2011
TO: The Board of Supervisors
FROM: Emmett H. Harmon, Chief of Police
SUBJECT: Grant Award – Justice Assistance Grant (JAG) – \$11,875

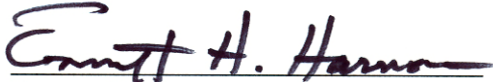
The James City County Police Department has been awarded a Justice Assistance Grant (JAG) through the Department of Justice/Bureau of Justice Assistance for \$11,875.

The funds will be used for the refurbishment and upgrade of the Simulated Impaired DrivINg Experience, known as SIDNE (a battery-powered vehicle that simulates the effects of impairment from alcohol and other drugs on a motorist’s driving skills), the purchase of two radar units for the Department’s motorcycles (currently ordered), and voice recorders for investigators.

The JAG allocation is typically an annually recurring grant; however, the amount of funding has been decreasing each year. Police Department staff has identified the need to use the funds for the refurbishment of the SIDNE, the purchase of motorcycle radar units, and voice recorders. These purchases will not take the place of budgeted expenses.

This grant is a direct allocation and requires no matching funds.

Staff recommends adoption of the attached resolution.


Emmett H. Harmon

CONCUR:

Robert C. Middaugh

EHH/nb
GA_JAssistance_mem

Attachment

RESOLUTION

GRANT AWARD – JUSTICE ASSISTANCE GRANT (JAG) – \$11,875

WHEREAS, the James City County Police Department has been awarded a Justice Assistance Grant (JAG) through the Department of Justice/Bureau of Justice Assistance for \$11,875; and

WHEREAS, funds will be used for the refurbishment and upgrade of the Simulated Impaired Driving Experience, known as SIDNE (a battery-powered vehicle that simulates the effects of impairment from alcohol and other drugs on a motorist’s driving skills), the purchase of two radar units for the Department’s motorcycles (currently ordered), and voice recorders for investigators; and

WHEREAS, the grant is a direct allocation and requires no match.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following budget appropriation to the Special Projects/Grants fund:

Revenue:

JAG (FY 11 Funds)	<u>\$11,875</u>
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Expenditure:

JAG (FY 11 Funds)	<u>\$11,875</u>
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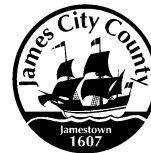
Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of September, 2011.

GA_JAssistance_res



MEMORANDUM COVER

Subject: Contract Award - Merrimac Trail Drainage Improvements - \$113,839

Action Requested: Shall the Board approve the contract award to Howard Brothers Contractors, Inc. in the amount of \$113,839 for the Merrimac Trail Drainage Improvements?

Summary: This project consists of improvements to an existing storm sewer system that collects runoff from the northeast side of Merrimac Trail and conveys it to the southwest behind Eagle Eye Automotive. At some point the system was reduced in size and has now failed causing periodic inundation of the Adams Road/Merrimac Trail intersection and adjoining private property, rendering it unusable. This project will intercept the 24-inch pipe in the Virginia Department of Transportation (VDOT) right-of-way and convey the runoff in a 42-inch reinforced concrete pipe across the front and side of Eagle Eye Automotive to approximately the same outfall location as the existing failed storm sewer system. Improved energy dissipation is provided at the outfall.

The Invitation for Bid (IFB) was publicly advertised and five bids were received. Based on the results, Howard Brothers Contractors, Inc. was the lowest responsive and responsible bidder.

Staff recommends approval of the attached resolution.

Fiscal Impact: Funds were included for this project in the Adopted Five-Year Capital Improvement Program FY 2010, April 28, 2009.

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution
3. Location Map

Agenda Item No.: H-4

Date: September 13, 2011

MEMORANDUM

DATE: September 13, 2011

TO: The Board of Supervisors

FROM: Frances C. Geissler, Stormwater Director

SUBJECT: Contract Award - Merrimac Trail Drainage Improvements - \$113,839

Merrimac Trail Drainage Improvements was publicly advertised and the following bids were considered for award.


<u>Firm</u>	<u>Base Bid</u>
Howard Brothers Contractor, Inc.	\$113,839.00
Henry S. Branscome, LLC	116,500.00
J. Sanders Construction Co	134,868.00
J.S.G. Corporation.....	139,100.79
Toano Contractors, Inc.	139,800.00

This project consists of improvements to an existing storm sewer system that collects runoff from the northeast side of Merrimac Trail and conveys it to the southwest behind Eagle Eye Automotive. A 24-inch concrete pipe exits the grate inlet on the northeast side of Merrimac Trail, crosses under the highway, runs underneath the Eagle Eye Automotive parking lot and eventually outfalls into a ravine behind Eagle Eye Automotive. At some point in the line beneath the Eagle Eye Automotive parking lot, the pipe size was reduced and has failed. The failure of the outfall causes periodic inundation of the Adams Road/Merrimac Trail intersection and the adjoining property. The parcel suffering the inundation is unusable.

This project will intercept the 24-inch pipe in the Virginia Department of Transportation (VDOT) right-of-way and convey the runoff in a 42-inch reinforced concrete pipe across the front and side of Eagle Eye Automotive to approximately the same outfall location as the existing failed storm sewer system. Improved energy dissipation is provided at the outfall.

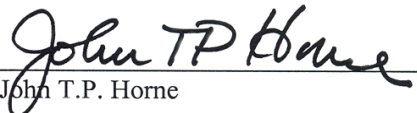
Sufficient funds currently exist to award the Base Bid amount to Howard Brothers Contractor, Inc., the lowest responsive and responsible bidder.

Staff recommends adoption of the attached resolution authorizing the County Administrator to execute a contract up to the amount of \$113,839 with Howard Brothers Contractor, Inc. for Merrimac Trail Drainage Improvements.



 Frances C. Geissler

CONCUR:



 John T.P. Horne

FCG/gb
CA-MerrimacDrain_mem

Attachments

RESOLUTION

CONTRACT AWARD - MERRIMAC TRAIL DRAINAGE IMPROVEMENTS - \$113,839

WHEREAS, bids were publicly advertised for Merrimac Trail Drainage Improvements and funded by the Capital Improvement Program appropriated by the Board of Supervisors on April 28, 2009; and

WHEREAS, five bids were considered for award and Howard Brothers Contractors, Inc. was the lowest responsive and responsible bidder; and

WHEREAS, sufficient funds are available to award the Base Bid amount of \$113,839.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute a contract up to the amount of \$113,839 with Howard Brothers Contractors, Inc. for Merrimac Trail Drainage Improvements.

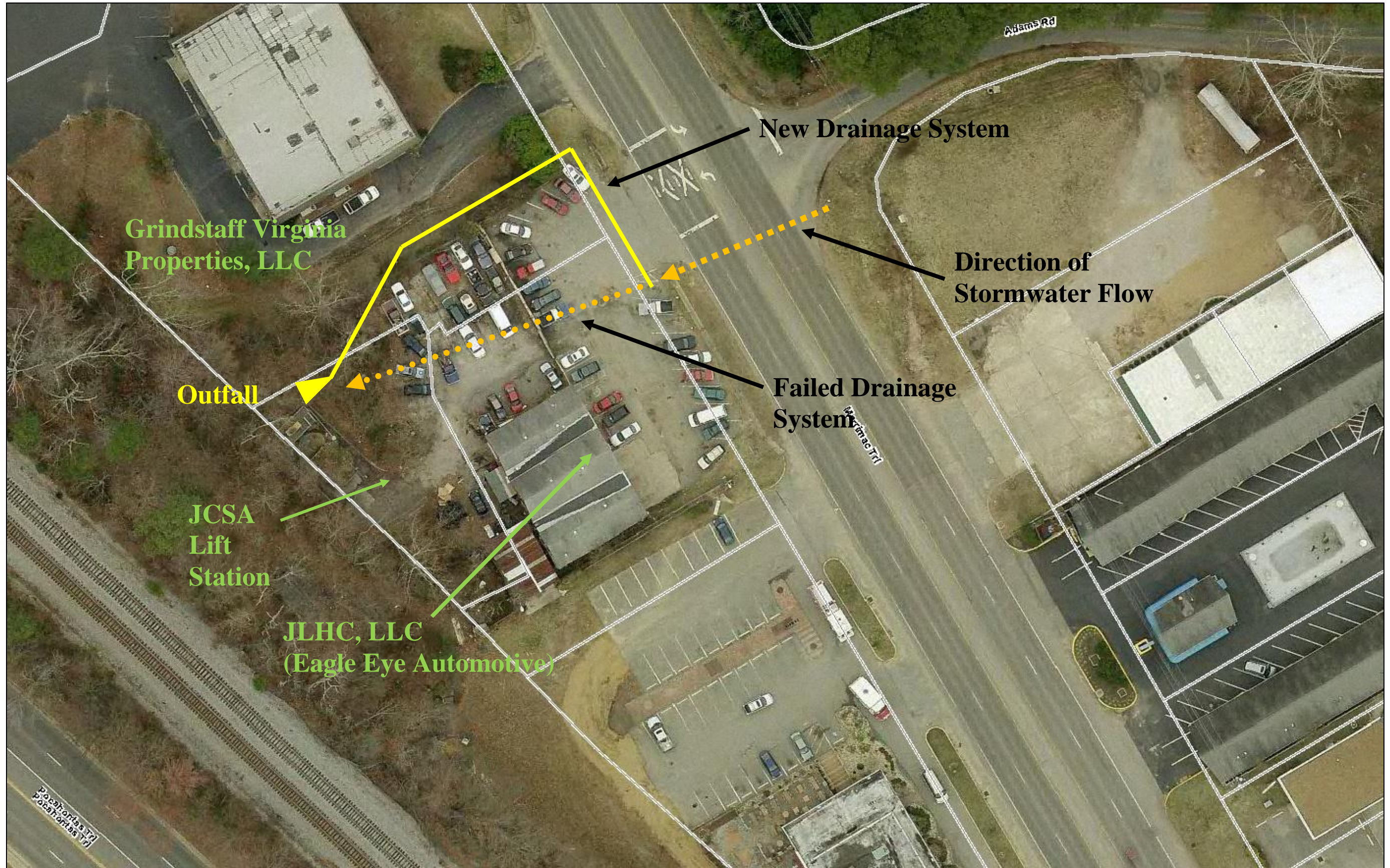
Mary K. Jones
Chairman, Board of Supervisors

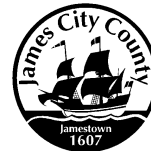
ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of September, 2011.

CA-MerrimacDrain_res





MEMORANDUM COVER

Subject: Change Order No. 2 – Longhill Road and Centerville Road Intersection Improvements

Action Requested: Shall the Board of Supervisors (BOS) approve the resolution to approve Change Order No. 2 for the Longhill Road and Centerville Road Intersection Improvements contract with Toano Contractors, Inc.?

Summary: The BOS approved the original contract for the Longhill Road and Centerville Road intersection improvements on October 12, 2010, in the amount of \$536,699.73 to Toano Contractors, Inc. The purpose of the work is to improve the traffic flow and capacity of the intersection by constructing and installing northbound and southbound turn lanes on Centerville Road, a right-turn lane on Longhill Road, storm water improvements, utility improvements, and asphalt pavement.

During construction of the new travel lanes, the existing pavement not originally proposed for milling and asphalt overlay was assessed and VDOT recommended the entire project limits be milled and asphalt overlay provided. This proposal would replace deteriorated asphalt not originally present during the design phase. In addition, an optimal cross sectional slope along Centerville Road would be achieved providing a direct benefit for road drainage and travel. While clearly beneficial, this work was not included in the original contract. VDOT supplied a surveying crew to obtain existing grades and prepare an asphalt milling plan to achieve the optimal road cross section. During this time the contractor demobilized and asphalt prices rose and some additional soil conditions were discovered requiring more work. A change order was executed on July 13, 2011, for this work.

The proposed amount of the second change order brings the cumulative total for all change orders to \$205,201.74. The BOS approval of this change is required by the County Purchasing Policy because the cumulative change order total exceeds 25 percent of the original contract amount. VDOT will fund the entire cost of all change orders.

Fiscal Impact: FY 2010 -2015 VDOT Six Year Secondary System Construction Program and Federal Funds to cover the construction phase expenses.

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:
1. Memorandum
2. Resolution

Agenda Item No.: H-5

Date: September 13, 2011

MEMORANDUM

DATE: September 13, 2011

TO: The Board of Supervisors

FROM: Shawn A. Gordon, Capital Projects Coordinator

SUBJECT: Change Order No. 2 - Intersection Improvements at Longhill Road and Centerville Road

The Board of Supervisors (BOS) approved the original contract for the Longhill Road and Centerville Road intersection improvements on October 12, 2010, in the amount of \$536,699.73 to Toano Contractors, Inc. The purpose of the work is to improve the traffic flow and capacity of the intersection by constructing and installing northbound and southbound turn lanes on Centerville Road, a right-turn lane on Longhill Road, storm water improvements, utility improvements, and asphalt pavement. While the County is locally administering the project, all funding is provided through the Virginia Department of Transportation (VDOT)

An initial change was administratively approved on July 13, 2011, in the amount of \$127,889.19. That change order addressed some utility conflicts, soils undercut requirements, and changes in material quantities. Procurement requirements allow for administrative approval of change orders until the cumulative percentage exceed 25 percent of the original contract amount.

During construction of the new travel lanes, the existing pavement not originally proposed for milling and asphalt overlay was assessed and VDOT recommended the entire project limits be milled and asphalt overlay provided. This proposal would replace deteriorated asphalt not originally present during the design phase. In addition, an optimal cross sectional slope along Centerville Road would be achieved providing a direct benefit for road drainage and travel. While clearly beneficial, this work was not included in the original contract. VDOT supplied a surveying crew to obtain existing grades and prepare an asphalt milling plan to achieve the optimal road cross section. During this time the contractor demobilized and asphalt prices rose and some additional soil conditions were discovered requiring more work. A change order was executed on July 13, 2011, for this work.

The proposed amount of the second change order brings the cumulative total for all change orders to \$205,201.74. The BOS approval of this change is required by the County Purchasing Policy because the cumulative change order total exceeds 25 percent of the original contract amount. The additional work for this Change Order will be reimbursed by VDOT.


Attached is a resolution authorizing approval of Change Order No. 2 to Toano Contractors, Inc. for the additional milling, paving, and pavement marking within the project limits of the Longhill Road and Centerville Road Intersection Improvements.

Staff recommends approval of the attached resolution.

Change Order No. 2 - Intersection Improvements at Longhill Road and Centerville Road

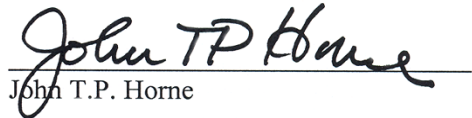
September 13, 2011

Page 2



Shawn A. Gordon

CONCUR:



John T.P. Horne

SAG/gb
Order2Chng_mem

Attachment

RESOLUTION

CHANGE ORDER NO. 2 - LONGHILL ROAD AND CENTERVILLE ROAD

INTERSECTION IMPROVEMENTS

WHEREAS, funds are available for James City County as part of the FY 2010-2015 Virginia Department of Transportation (VDOT) Six Year Secondary System Construction Program, listed as Priority No. 3, with Federal funding to cover the construction phase expenses for the Longhill Road and Centerville Road Intersection Improvements; and

WHEREAS, in accordance with the County Purchasing Policy, the cumulative change order total exceeds 25 percent of the original contract amount of \$536,699.73. The additional work for this Change Order will be reimbursed by VDOT.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves Change Order No. 2 for the Longhill Road and Centerville Road Intersection Improvements contract with Toano Contractors, Inc. in the total amount of \$205,201.74.

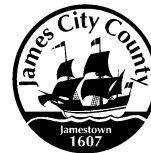
Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of
September, 2011.

Order2Chng_res



MEMORANDUM COVER

Subject: Appointment - 2011 County Fair Committee

Action Requested: Shall the Board adopt the resolution appointing the 2011 County Fair Committee?

Summary: For insurance purposes, the Board of Supervisors annually appoints the James City County Fair Committee. The term of the appointments is the length of the County Fair. This year the Fair will be held Saturday, September 24 through Sunday, September 25.

Staff recommends approval of the attached resolution.

Fiscal Impact: None

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:
1. Memorandum
2. Resolution

Agenda Item No.: H-6

Date: September 13, 2011

MEMORANDUM

DATE: September 13, 2011
TO: The Board of Supervisors
FROM: Doug Powell, Assistant County Administrator
SUBJECT: Appointment – 2011 County Fair Committee

For insurance purposes, the Board of Supervisors annually appoints the James City County Fair Committee. The term of the appointments is the length of the County Fair. This year the Fair will be held Saturday, September 24, through Sunday, September 25. Attached are a resolution and a list of the volunteers that make up the 2011 James City County Fair Committee.

Staff recommends adoption of the attached resolution appointing the 2011 Fair Committee.



Doug Powell

DP/gb
CFairComm11_mem

Attachments

RESOLUTION

APPOINTMENT – 2011 COUNTY FAIR COMMITTEE

WHEREAS, annually the Board of Supervisors appoints the James City County Fair Committee; and

WHEREAS, the 2011 County Fair will be held Saturday, September 24, through Sunday, September 25.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby appoint the attached list of volunteers to the 2011 James City County Fair Committee for the term of September 24 through September 25, 2011.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

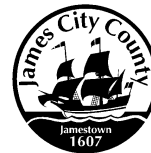
Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of
September, 2011.

CFairComm11_res

2011 James City County Fair Committee

Mr. Andy Bradshaw
Mr. Richard Bradshaw
Mr. Jim Bradsher
Lt. Anthony Dallman
Ms. Ann Davis
Mr. Rob Davis
Ms. Amy Fiedor
Ms. Loretta Garrett
Mr. Mike Garrett
Ms. Sylvia Hazelwood
Ms. Doris Heath
Ms. Kelley Herbert
Mr. Ken Jacovelli
Mr. Jeremy Johnson
Ms. Katie Jones
Mr. Tal Luton
Ms. Lynn Miller
Mr. Craig Nordeman
Ms. Lori Nordeman
Mr. Doug Powell
Ms. Charlotte Richardson
Mr. John Richardson
Mr. Charlie Rupe
Ms. Mary Rupe
Mr. Bob Ryalls
Ms. Angie Sims

CFairComm11_att



MEMORANDUM COVER

Subject: Chesapeake Bay Preservation Ordinance Violations - Civil Charge - Linda Schaller, 2509 Sanctuary Drive, Governor's Land Subdivision

Action Requested: Shall the Board accept a civil charge to settle a Chesapeake Bay Preservation Ordinance violation at 2509 Sanctuary Drive, 2505 Sanctuary Drive, and a parcel behind 2509 Sanctuary Drive in the Governor's Land subdivision?

Summary: Attached is a resolution for consideration by the Board of Supervisors involving a violation of the County's Chesapeake Bay Preservation Ordinance. The original case involved the unauthorized removal of understory vegetation and trees from the Chesapeake Bay Preservation Area (CBPA) on three separate properties, one of which includes a County conservation easement. In the initial fine calculation a violation was found for each of the three properties. A fourth violation was found for the County easement, which effectively subjected one property to two violations. By double counting one violation a fine of \$29,000 was set. In subsequent review it has been deemed inappropriate to issue two violations for the same property, but rather to treat that property violation as significant by virtue of the two easements. Therefore, instead of four violations, the civil charge recommendation is three violations. Under the provisions of the ordinance, the Board may accept civil charges for each individual violation of up to \$10,000. Therefore, under Sections 23-7, 23-9, and 23-10 of the County's Chesapeake Bay Preservation Ordinance the total of the three violations is \$13,000. The three properties covered under this civil charge are:

1. 2509 Sanctuary Drive, residence (Parcel Identification No. (PIN) 4420100016) - \$1,500
2. Behind 2509 Sanctuary Drive, Governor's Land common area, and County conservation easement (PIN 4420100016A) - \$10,000
3. 2505 Sanctuary Drive, residence (PIN 4420300017) - \$1,500

Staff recommends adoption of the attached resolution.

Fiscal Impact: None.

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:
1. Memorandum
2. Resolution
3. Chesapeake Bay Ordinance Civil Penalty Procedures Policy
4. Location Map

Agenda Item No.: H-7

Date: September 13, 2011

MEMORANDUM

DATE: September 13, 2011

TO: The Board of Supervisors

FROM: Michael D. Woolson, Senior Watershed Planner

SUBJECT: Chesapeake Bay Preservation Ordinance Violations - Civil Charge - Linda Schaller, 2509 Sanctuary Drive, Governor's Land Subdivision

Attached is a resolution for consideration by the Board of Supervisors involving a violation of the County's Chesapeake Bay Preservation Ordinance. The original case involved the unauthorized removal of understory vegetation and trees from the Chesapeake Bay Preservation Area (CBPA) on three separate properties, one of which includes a County conservation easement. In the initial fine calculation a violation was found for each of the three properties. A fourth violation was found for the County easement, which effectively subjected one property to two violations. By double counting one violation a fine of \$29,000 was set. In subsequent review it has been deemed inappropriate to issue two violations for the same property, but rather to treat that property violation as significant by virtue of the two easements. Therefore, instead of four violations, the civil charge recommendation is three violations. Under the provisions of the ordinance, the Board may accept civil charges for each individual violation of up to \$10,000. Therefore, under Sections 23-7, 23-9, and 23-10 of the County's Chesapeake Bay Preservation Ordinance the total of the three violations is \$13,000. The three properties covered under this civil charge are:

1. 2509 Sanctuary Drive, residence (Parcel Identification No. (PIN) 4420100016) - \$1,500
2. Behind 2509 Sanctuary Drive, Governor's Land common area, and County conservation easement (PIN 4420100016A) - \$10,000
3. 2505 Sanctuary Drive, residence (PIN 4420300017) - \$1,500

The Chesapeake Bay Ordinance Civil Penalty Procedures Policy endorsed by the Board in August 1999 (Attachment No. 2) was used by staff as guidance in determining the civil charge amount. The policy considers the water quality impact and the degree of noncompliance involved in the case. Factors that were considered as they relate to the violation's impact on water quality included the size of the collective violations totaling 7,250 square feet, the number and size of mature trees removed, and the amount of other vegetation that was removed. Other mitigating factors that were considered for these violations included whether the vegetation would have qualified for removal if a request had been made in accordance with the ordinance, how much functional value was lost in the buffer, and how long it will take for the function of the buffer to be restored.

For the RPA violation that occurred at the residence at 2509 Sanctuary Drive (PIN 4420100016), the understory vegetation was removed, but there was no ground disturbance. The water quality impact has been assessed as minor and the degree of noncompliance as major for a determination of \$1,500 for this violation. For the RPA violation that occurred behind the residence at 2509 Sanctuary Drive in the Governor's Land Foundation common area and the County conservation easement (PIN 4420100016A), three large mature white oak trees, one dead oak tree, and understory vegetation were removed. The water quality impact has been assessed as significant. The degree of noncompliance has been deemed major due to the deliberate act of removing large mature canopy trees and valuable buffer for the purpose of gaining a water view of the James River and the presence of two conservation easements. As a result, the maximum civil penalty is \$10,000. For

September 13, 2011

Page 2

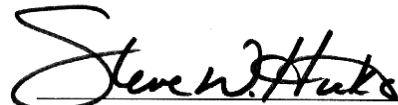
the RPA violation that occurred at the residence at 2505 Sanctuary Drive, one large mature oak tree was removed, but there was no ground disturbance. The water quality impact has been assessed as minor and the degree of noncompliance as major, for a determination of \$1,500 for this violation.

In accordance with the provisions of the ordinance, replanting of native vegetation and a civil charge are proposed to remedy the violation. Ms. Schaller has voluntarily entered into a Chesapeake Bay Preservation/Conservation Easement Civil Charge Consent Agreement on August 19, 2011, and has submitted and received approval of a restoration plan on July 27, 2011. Surety was also provided in the amount of \$10,000 to guarantee the implementation of the approved restoration plan to restore impacted RPA and the conservation easement on all properties. The cost of non-compliance for this case is then \$23,000.

Staff recommends adoption of the attached resolution establishing the civil charges for the Chesapeake Bay Preservation ordinance violations presented in this memorandum.

Michael D. Woolson

CONCUR:



Steven W. Hicks

MDW/nb
OrdVio-Schaller_mem

Attachments:

1. Resolution
2. Chesapeake Bay Ordinance Civil Penalty Procedures Policy
3. Location Map

RESOLUTION

CHESAPEAKE BAY PRESERVATION ORDINANCE VIOLATIONS - CIVIL CHARGE –

LINDA SCHALLER, 2509 SANCTUARY DRIVE, GOVERNOR’S LAND SUBDIVISION

- WHEREAS, Linda Schaller of 2509 Sanctuary Drive, Governor’s Land, is the owner of a certain parcel of land commonly known as 2509 Sanctuary Drive, Williamsburg, Virginia, designated as Parcel Identification No. (PIN) 4420100016, within James City County’s Real Estate system, herein referred to as the (“Property”); and
- WHEREAS, Ms. Mish Kara and Mr. Jay Cone of 2505 Sanctuary Drive, Governor’s Land, are the owners of a certain parcel of land commonly known as 2505 Sanctuary Drive, Williamsburg, Virginia, designated as PIN. 4420300017, within the James City County’s Real Estate system, herein referred to as the (“Property”); and
- WHEREAS, the Governor’s Land Foundation is the owner and James City County is the holder of a conservation easement of a certain parcel of land commonly known as Open Space 13 within the Whittaker Island subdivision, Williamsburg, Virginia, designated as PIN 4420100016A, within James City County’s Real Estate system, herein referred to as the (“Property”); and
- WHEREAS, on or about April 27, 2011, Ms. Schaller caused the removal of vegetation from within the Chesapeake Bay Preservation Area and conservation easement on the Property; and
- WHEREAS, Ms. Schaller will execute a Chesapeake Bay Restoration Agreement with the County agreeing to install native canopy trees, native understory trees, and native shrubs within the Resource Protection Area (RPA) on the Property in order to remedy a violation of the County’s Chesapeake Bay Preservation Ordinance and will post sufficient surety guaranteeing the installation of the aforementioned improvements and the restoration of the RPA and conservation easement on the Property; and
- WHEREAS, Ms. Schaller has agreed to pay a total of \$13,000 to the County as a civil charge under the County’s Chesapeake Bay Preservation Ordinance; and
- WHEREAS, the James City County Board of Supervisors is willing to accept the restoration of the impacted area and the civil charge in full settlement of the Chesapeake Bay Preservation Ordinance violation, in accordance with Section 23-18 of the Code of the County of James City.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to accept the \$13,000 civil charge from Ms. Schaller as full settlement of the Chesapeake Bay Preservation Ordinance Violations on the Property.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of
September, 2011.

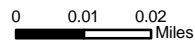
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Chesapeake Bay Preservation Ordinance Violations - Civil Charges
Linda Schaller, 2509 Sanctuary Drive, Governor's Land



This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be. If discrepancies are found, please contact the Real Estate Assessment Division of James City County, Mapping/GIS Section.
 Aerial Imagery Copyright 2005 James City County.



Chesapeake Bay Preservation Ordinance Civil Penalty Procedures
 (As adopted by the Board of Supervisors - August 19, 1999)

Principle

All violations of the Ordinance will be prosecuted to obtain an acceptable remedy. All RPAs and associated buffers that are disturbed without an exception or waiver granted in accordance with the provisions of the Ordinance will be restored on a 2:1 replacement basis.

Process

The process will be to document the violation with a Notice Of Violation that states the conditions necessary to bring their site into compliance with the Ordinance. If there is a failure to follow the terms stipulated in the Notice, the County will file suit to take the violator to court where civil penalties of up to \$5000 per day can be assessed. However, if the violator cooperates with all provisions of the Notice and remedies the violation, we will not file suit. An exception would be if we can determine that the violation was intentional as would be the case if we had prior contact with the violator regarding the matter of the RPA restrictions.

Penalty

In order to serve as a deterrent, even in the event of a cooperative restoration settlement, civil charges will be sought. Under current state law, the Board of Supervisors must approve all civil charges. The amount of the civil charge recommended will be dependent on the violation's impact on water quality and the degree of non-compliance. Violations that are more severe and will take longer to be restored to an acceptable condition will have larger charges recommended by staff. Violations comprising less than 100 square feet of disturbance or the removal of no more than three trees will not have a civil charge recommended unless there have been prior violations by the violator. The maximum civil charge is \$10,000 per violation.

The following table presents a matrix that will guide staff recommendations on the establishment of a civil charge for a specific violation. The amounts presented are not absolute and are intended to be a guide. Each violation will have several unique characteristics that will require the exercise of judgment in arriving at a civil charge. Charges in each case could vary by up to 100% depending on the specific circumstances involved.

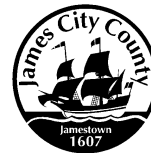
		<u>Civil Charge Determination</u>		
Water Quality Impact	Significant	\$5000	\$7500	\$10,000
	Moderate	\$1500	\$3000	\$4500
	Minor	\$500	\$1000	\$1500
		Minor	Moderate	Major
Degree of Non-Compliance				

Water Quality Impact

The impact of a given violation will be determined based on several factors. It involves more than just the square footage of impact; it also addresses the relative environmental value of the resource lost. Factors that will be considered as they relate to the violation's impact on water quality include the size of the violation, the number of trees and other vegetation removed, the size and maturity of the vegetation removed, the amount of tree canopy removed, the amount of ground disturbance involved, etc. Mitigating factors that will be considered are whether the vegetation removed would have qualified for removal if a request was made in accordance with the Ordinance. The Ordinance allows for the removal of vegetation weakened by age, storm, fire or other natural causes or vegetation that is dead, diseased or dying. These factors will be used to determine how much of the functional value of the buffer was lost and how long it will take for the function to be recovered.

Degree of Non-compliance

This factor will be used to assess the motivation behind the violation. Factors that will be considered in assessing the degree of non-compliance are degree of willfulness, history of non-compliance, and cooperation. Unintentional violations that are cooperatively restored will not be charged the same as intentional violations that are difficult to resolve.



MEMORANDUM COVER

Subject: Case No. SUP-0005-2011. Williamsburg Landing Construction Commencement Extension

Action Requested: Shall the Board of Supervisors approve the Special Use Permit (SUP) for the Williamsburg Landing construction commencement extension?

Summary: Mr. Paul Gerhardt has applied to amend the SUP conditions for SUP-0018-2008 to allow for an extension to the construction time limit that was established for 36 months in January 2009. The extension would allow for additional time to construct the previously approved 100-bed nursing home facility, 100 assisted living units, and 87 independent units. No increase in units or changes to the development plans are proposed at this time. The applicant is only requesting an additional 36-month construction window for this project, which would make the new expiration date for January 2015. The proposal has minimal impacts and is generally compatible with the 2009 Comprehensive Plan.

Staff recommends approval of the attached resolution.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:
1. Staff Report
2. Resolution
3. Location Map
4. Unapproved minutes from the August 3, 2011, Planning Commission meeting

Agenda Item No.: I-1

Date: September 13, 2011

SPECIAL USE PERMIT-0005-2011. Williamsburg Landing Construction Commencement Extension
Staff Report for the September 13, 2011, Board of Supervisors Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Complex

August 3, 2011, 7:00 p.m.
September 13, 2011, 7:00 p.m.

SUMMARY FACTS

Applicant: Paul Gerhardt of Kaufman & Canoles, P.C.

Land Owner: Williamsburg Landing, Inc.

Proposal: The applicant has proposed amending the previously approved SUP-0018-2008, to allow an extension of the construction commencement clause for an additional 36 months. The project will result in 100-assisted living units, 100-nursing units, and 87-independent living units.

Location: 5560 Williamsburg Landing Drive

Tax Map/Parcel No.: 4820100003

Parcel Size: Approximately 50.01 acres.

Zoning: R-5, Multi-family residential, with proffers.

Comprehensive Plan: Low Density Residential

Primary Service Area: Inside

STAFF RECOMMENDATION

The proposal has minimal impacts and is generally compatible with the 2009 Comprehensive Plan. Staff recommends the James City County Board of Supervisors approve this application with the attached resolution.

Staff Contact: Jason Purse Phone: 253-6685

PLANNING COMMISSION RECOMMENDATION

On August 3, 2011, the Planning Commission voted 6-0 to recommend approval of this application.

Proposed Changes Made Since Planning Commission Meeting

None.

PROJECT DESCRIPTION

Mr. Paul Gerhardt has applied to amend the Special Use Permit (SUP) conditions for SUP-0018-2008 to allow for an extension to the construction time limit that was established for 36 months in January 2009. The extension would allow for additional time to construct the previously approved 100-bed nursing home facility, 100 assisted living units, and 87 independent units. No increase in units or changes to the development plans are proposed at this time. The property is located at 5560 Williamsburg Landing Drive, is zoned R-5, Multi-family Residential, and is designated Low-Density Residential on the Comprehensive Plan. An SUP is required because nursing homes and facilities for the residence and/or care of the aged are specially permitted uses in the R-5, Multi-family Residential, district.

Currently, the existing construction commencement condition expires in January 2012. The applicant has indicated that due to the extensive renovations necessary for the Landing Building and due to the current economic climate, Williamsburg Landing will not be able to commence construction on the project within the allotted 36-month time period. The applicant is requesting an additional 36-month construction window for this project, which would make the new expiration date for January 2015. No other changes are proposed to this project at this time.

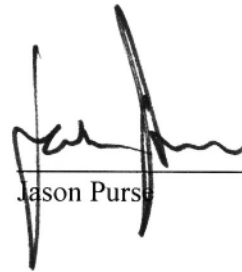
COMPREHENSIVE PLAN

The site is designated Low Density Residential on the 2009 Comprehensive Plan Land Use Map. Recommended uses include very limited commercial establishments, single-family homes, duplexes, and cluster housing with a recommended gross density of one unit per acre up to four units per acre in developments that offer particular public benefits. The Comprehensive Plan also recommends projects be located inside the Primary Service Area (PSA), provide adequate screening from adjacent uses and minimize impact on major roads by limiting access points.

The Williamsburg Landing development is located within the PSA. Furthermore, the existing development provides adequate buffers and screening from both Route 199 as well as adjacent residential neighborhoods, and provides internal on-site collector roads and access off Lake Powell Road rather than Route 199. Staff finds the proposed development to be consistent with the 2009 Comprehensive Plan.

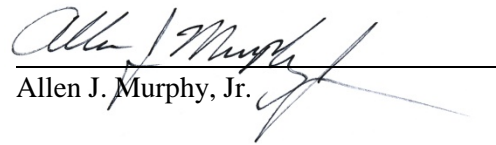
RECOMMENDATION

The proposal has minimal impacts and is generally compatible with the 2009 Comprehensive Plan. Staff recommends the Board of Supervisors approve this application with the attached resolution.

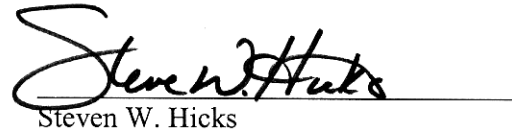


Jason Purs

CONCUR:



Allen J. Murphy, Jr.



Steven W. Hicks

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JP/gb

ATTACHMENTS:

1. Resolution
2. Location Map
3. Unapproved minutes from the August 3, 2011, Planning Commission meeting

RESOLUTION

CASE NO. SUP-0005-2011. WILLIAMSBURG LANDING

CONSTRUCTION COMMENCEMENT EXTENSION

WHEREAS, the Board of Supervisors of James City County has adopted by Ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Mr. Paul Gerhardt has applied to amend the SUP conditions for SUP-0018-2008 to allow for an extension to the construction time limit that was established for 36 months in January 2009; and

WHEREAS, the extension of the construction commencement condition will be valid through January 2015; and

WHEREAS, the extension will allow for additional time to construct the previously approved 100-bed nursing home facility, 100 assisted living units, and 87 independent units; and

WHEREAS, the property is located at 5560 Williamsburg Landing Drive, is zoned R-5, Multi-family Residential, and can be further identified as James City County Real Estate Tax Map/Parcel No. 4820100003; and

WHEREAS, the Planning Commission of James City County, following its public hearing on August 3, 2011, recommended approval of this application by a vote of 6-0; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2009 Comprehensive Plan Land Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing, does hereby approve the issuance of SUP No. 0005-2011 as described herein with the following conditions:

1. Development of the site shall be generally in accordance with the master plan entitled "Williamsburg Landing Conceptual Plan" and dated November 7, 2008, as determined by the Director of Planning. Minor changes may be permitted by the Director of Planning, as long as they do not change the basic concept or character of the development.
2. If construction has not commenced on the project by January 15, 2015, it shall become void. Construction shall be defined as obtaining permits for building construction and installation of footings and/or foundations.
3. This SUP shall be limited to the following specially permitted uses:
 - Single-family dwellings
 - Nursing homes and facilities for the residence and/or care of the aged

These specially permitted uses are in addition to those generally permitted uses specified in Proffer 1 of the Amended Proffers. Nursing home facilities shall be limited to one 100-bed nursing home. Assisted living units shall be limited to 100 units. Independent units shall be limited to 87 units.

4. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of Septebmer, 2011.

Sup05-11WL-Cons_res

SUP-0005-2011

Williamsburg Landing



A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE THIRD DAY OF AUGUST, TWO-THOUSAND AND ELEVEN, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101-F MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Planning Commissioners

Present:

Jack Fraley
Joe Poole III
Al Woods
Mike Maddocks
Rich Krapf
Tim O'Connor

Staff Present:

Allen Murphy, Director of Planning/Assistant
Development Manager
Adam Kinsman, Deputy County Attorney
Jason Purse, Senior Planner
Russell Seymour, Director of Economic Development

Mr. Jack Fraley called the meeting to order at 7:00 p.m.

2. PUBLIC COMMENT

Mr. Fraley opened the public comment period.

There being none, Mr. Fraley closed the public comment period.

3. MINUTES

Mr. Joe Poole moved to approve the July 6th, 2011 minutes.

In a unanimous voice vote, the minutes were approved (6-0).

4. COMMITTEE AND COMMISSION REPORTS

A. DEVELOPMENT REVIEW COMMITTEE (DRC)

Mr. Rich Krapf stated the DRC met on July 27th. The DRC discussed Case Number SP-0067-2011, Williamsburg Crossing Car Wash. The applicant requested a sidewalk waiver to extend the existing sidewalk along Pilot's Way as opposed to placing it along John Tyler Highway. The DRC granted the waiver (2-0; Yes: Krapf, Maddocks; Absent: Poole, O'Connor). The DRC also reviewed Case Number C-0026-2011, Chambrel at Williamsburg for master plan consistency. A proposed memory care facility would be located in an area currently designated for apartments and condominiums on the master plan. The project area is current in use as a parking lot. The DRC approved master plan consistency by a vote of (2-0; Yes: Krapf, Maddocks; Absent: Poole, O'Connor). The DRC also reviewed Case Number C-0031-2011, King of Glory Parking Lot Expansion. The DRC found the additional 70 parking spaces consistent with the adopted master plan by 2-0(Yes: Krapf, Maddocks; Absent: Poole, O'Connor).

Mr. Poole moved to approve the DRC report.

In a unanimous voice vote, the report was approved (6-0).

B. POLICY COMMITTEE

The Policy Committee met twice in July, reviewing the draft Economic Opportunity ordinance and Commercial Districts ordinances at the July 13th meeting and reviewing the draft Green Building and Residential Cluster Overlay District ordinances at the July 18th meeting. At the upcoming August 30th meeting, the Committee is scheduled to review Residential and Multiple Use Districts.

C. REGIONAL ISSUES COMMITTEE / OTHER COMMISSION REPORTS

Mr. Fraley stated the Regional Issues Committee met July on 21st. The Committee heard presentations from Busch Gardens on their planned Route 60 corridor landscaping enhancements and from the Williamsburg Area Transit Authority on potential new and extended services. He stated the three local jurisdictions also discussed their 2012 Comprehensive Plan updates.

Mr. Allen Murphy stated York, Williamsburg, and James City all met with the Hampton Roads Transportation Planning Organization (HRTPO) to discuss an ongoing transportation study that will be incorporated into the 2012 Comprehensive Plan updates. Three regional public forums will be held in February 2012, with follow-up joint Planning Commission work sessions in March or April 2012. All three jurisdictions are scheduled to complete their land use mapping by October 2011.

5. PLANNING COMMISSION CONSIDERATIONS

A. ZO-0002-2011 INITIATING RESOLUTION – ZONING ORDINANCE AMENDMENT, SECTION 24-7, ADMINISTRATIVE FEE WAIVERS

B. SO-0002-2011 INITIATING RESOLUTION – SUBDIVISION ORDINANCE AMENDMENT, SECTION 19-15, ADMINISTRATIVE FEE WAIVERS

Mr. Murphy stated the initiating resolutions for the Zoning Ordinance amendment and the Subdivision Ordinance amendment are for the Commission to consider the elimination of planning fees for federal, state, and local governments. Staff recommends approval of eliminating the fees.

Mr. Krapf moved to approve both resolutions.

In a roll call vote, the Commission approved both initiating resolutions (6-0).

Mr. Fraley stated he had received a letter requesting exempting homeowners' associations from paying planning fees. Mr. Fraley stated the request would be forwarded to the Board of Supervisors.

6. PUBLIC HEARINGS

A. ZO-0003-2011 ECONOMIC OPPORTUNITY DISTRICT

Mr. Jason Purse stated that staff is presenting the final draft ordinance to the Commission. The Economic Opportunity District is designed to facilitate economic development, diversify the tax base, and create jobs. Staff has made two changes to the packets delivered to Commission members. First, in the definition of residential unit types, staff recommends removal of the terms 'two family dwelling' and 'townhouse' from the use list since those items are included in the definitions section. Staff had also calculated density based on developable area, so a reference to 'gross area' on page 4 will be edited to 'developable area'. Construction phasing policy language was forwarded to Commission members earlier in the week to reference that policy in the Zoning Ordinance. Staff recommends approval of draft ordinance.

Mr. Fraley opened the public comment period.

Mr. Mac Mestayer, 105 Gilley Drive, stated he was concerned with preserving zoning to maintain the county's quality of life and the large amount of free upzoning. He stated the Transfer of Development Rights (TDR) process should be used, with half of the district used as a sending area to maintain open space while making the other half a receiving area.

Mr. Jim Brown, 4 Longleaf Circle, stated he was opposed to the Economic Opportunity District concept. He stated he was against the district due to a struggling economy, partially empty shopping centers, environmental loss, increased traffic, possible large-scale industries, the objections of nearby residents, and concerns over the placement of a new road near Skimino Creek and Lightfoot Road.

Mr. Craig Metcalfe, 4435 Landfall Drive, representing James City County Citizen's Coalition (J4C), stated EO storm water requirements need to be master planned and clearly defined. He stated the ordinance lacks provisions for green building design and that the county's 60% impervious cover rule should be upheld. The EO ordinance should be postponed until all other ordinance updates have been made. He questioned why the ordinance was moving ahead so quickly.

Mr. Wayne Moyer, 268 Peach Street, stated he owns 32 acres across EO-designated land and plans to preserve his property through a conservation easement. He stated he was concerned with the loss of natural environment. The EO industrial park could integrate business and nature, using walking and biking trails, retaining agricultural land, vegetation, open space, and wildlife habitat, and a single parking garage instead of parking lots.

Mr. Dick Schreiber, president of the Greater Williamsburg Chamber and Tourism Alliance, stated his members primary concern is continued quality of life. He stated that

balanced growth can be achieved in ways consistent with maintaining current quality of life. Balanced growth includes determining the quantity, type, and location of growth, as well as master planning.

Ms. Susan Gaston, representing the Williamsburg Area Association of Realtors, stated her organization supports the EO district. The EO district represents increased quality of life, including increased jobs, more diversified businesses, and reducing the 'brain drain' of college graduates leaving the community. Increased business opportunities will help retain this group.

Mr. Tom Tingle, chair of the James City County Economic Development Authority (EDA), stated the EDA identified areas throughout the county favorable for commercial development over the next generation. He stated of these areas, the Lightfoot-Croaker proved most attractive due to 500 acres of developable acreage, well-suited transportation infrastructure and the opportunity for regional cooperation with York County. A County-commissioned traffic study found a built-out EO zone increased County population 1% while increasing employment 14% and decreasing traffic improvement costs by 8%. The EO zone can attract businesses that attract and create high-paying jobs and allows increased long-range planning. The EDA requests approval of the EO ordinance.

Mr. Fraley closed the public hearing.

Mr. Fraley stated in response to citizen concerns regarding the timing of the ordinance, the Board voted for five ordinance update priorities for the Commission and staff. These priorities included EO, commercial districts, cumulative impacts, development standards, and a sustainability audit. The Board wants to review these priorities by November.

Mr. Poole asked if the Virginia Enterprise Zone designation was still in place for James River Commerce Center, GreenMount, and the south end of the county and if that zone still provides opportunity for predictability and business enhancements.

Mr. Purse stated the Enterprise Zone designations are still in effect. He stated the Board has included additional properties in the Hankins Industrial and Stonehouse Commerce parks into that designation. The EO zone is not in an Enterprise Zone, but will allow longer range planning after the Enterprise Zones expire in 2015.

Mr. Russell Seymour stated the state program expires in 2015. He stated the county is limited to 3800 acres it can designate Enterprise Zone.

Mr. Poole asked how businesses respond to Enterprise Zone incentives. He asked how it relates to Economic Opportunity zone predictability.

Mr. Seymour stated businesses are referred to the program through the State's economic development organization, the Hampton Roads Economic Development Association, or through Economic Development contacts. He stated the Enterprise Zone is a focal point for a certain type of business. Economic Development seeks large-scale, industrial-type businesses. There is no mechanism for the Enterprise Zone to cater to smaller-scale businesses.

Mr. Mike Maddocks asked if the Commission's approval for the ordinance would speed any development or compromise the planning process.

Mr. Purse stated that was not correct. He stated the ordinance adoption was the second step of a long-term planning process. He stated the third step would be presentation of a master plan and rezoning application to the County.

Mr. Maddocks asked whether any potential development would still be required to go through stringent oversight.

Mr. Purse stated that was correct.

Mr. Krapf stated he voted for the Economic Opportunity designation on the Comprehensive Plan while on the Steering Committee. He stated developing an EO ordinance is the next logical step. He stated the EO zone will give the county a new tool for developing a future vision. It provides additional revenue streams, since the County cannot rely on its traditional residential, retail, and manufacturing tax base, while attracting the best and the brightest. EO development will proceed at a measured pace and not outstrip infrastructure. The EO zone also provides an affordable/workforce housing component, and helps relieve development pressure on the rural lands. The new tool will still require safeguards, including the legislative process and site plan review.

Mr. Fraley stated the ordinance, if approved by the Board, provides several environmental protection 'firsts' for the county, including a pre-environmental inventory, density based on developable acreage, limits on clear cutting, construction phasing, tree preservation plan, view shed protections, green building standards, and transfer of development rights. The EO zone represents sound long-term planning. He has heard citizen concerns regarding the area turning into a New Town or the Marquis, but that is not consistent with the EO concept. The EO district is intended as an employment center for county residents that creates a positive fiscal impact, with intense commercial and office uses that use available transportation infrastructure. Residential units should be clustered near transit nodes while retail should primarily support industrial employees. Grid-like streets will provide connectivity, including pedestrian and bike access to employment areas. Parking should be limited, preserving land for more productive uses. The potential for commuter light rail should be reviewed. Sensitive environmental features and surrounding properties should be protected through view shed protection, integrated open space, building location and scale, mass, and architectural design, construction phasing, and tree preservation.

Mr. Poole stated that he supported the EO concept during the Comprehensive Plan. He stated there were unclear aspects of the ordinance and he had multiple concerns. The ordinance lacks open space design guidelines and has a large number of non-commercial by-right uses. The ordinance has been moved too quickly through the process, especially with the number of other ordinances under review and with half-empty empty shopping centers in the area. He stated he would prefer to wait on the EO ordinance, since the one presented does not match his vision in the Comprehensive Plan.

Mr. Tim O'Connor stated that given the economic climate, he can see owners and developers jumping on any economic opportunity that comes along. Delaying the ordinance would only increase the chances of ad hoc development.

Mr. Poole stated Anheuser-Busch's move to the county in the late sixties represented a golden goose to the community through its mix of commercial, industrial, residential, and entertainment uses. He stated he was unsure if the county had zoning in place at that time. The county should not feel threatened by what may or may not be developed in the area in order to rush the ordinance through. Anheuser-Busch taught this community it can have it all without trying to be prescriptive. Neither zoning nor a comprehensive plan would have been able to allow a development of that quality.

Mr. Al Woods stated staff does not support defining or adding open space language to the ordinance. He stated that he would like to see open space illustrations added to the ordinance before it is presented to the Board.

Mr. Fraley stated he had raised his concerns about the open space language with staff, but that language is not in the ordinance presented tonight.

Mr. Poole stated the Commission clearly expressed its desire at the July Committee meeting to include open space guidelines. He stated staff did not mention that intent in the evening's staff report, and he was concerned staff may not present open space language to the Board.

Mr. Fraley asked Mr. Purse how the Chesapeake Bay Preservation ordinance would apply to the EO zone.

Mr. Purse stated there are percentage limits to impervious cover, tree preservation language, and provisions for open space in the Chesapeake Bay ordinance.

Mr. Maddocks stated he remembered Anheuser Busch moving to the county in the late sixties. He stated the County seized an opportunity that has since fueled the county's economic growth. Although he understands concerns about the ordinance moving too quickly, he is unsure what stopping, depriving the county of this tool, would accomplish. Staff crafted the ordinance with all appropriate restrictions and guidelines. He stated, as a banker he does not expect any projects to move into the county with lightning speed. He stated he would support the ordinance.

Mr. Fraley asked Mr. Purse to review the ordinance's time line.

Mr. Purse stated the Board approved the zoning ordinance update methodology in May 2010, which included EO as a priority item. Staff brought an EO ordinance framework to the Policy Committee in November 2010. After receiving feedback, staff brought the framework to a January 2011 Board worksession. Staff brought a draft ordinance, based on feedback from the two groups, to the Committee in April. Staff received additional feedback from citizens and the Committee. Staff presented the reworked ordinance at a June Board work session. Based on

Board feedback, staff brought the ordinance back to the Committee in July, with the entire Commission present.

Mr. Krapf asked if the chair wanted to revisit open space design principles.

Mr. Fraley said yes. He asked Mr. Murphy how the Commission could address open space guidelines.

Mr. Murphy stated open space design guidelines language could be included as part of the Commission's motion.

Mr. Woods asked if the Commission would have an opportunity to review the language prior to submittal to the Board.

Mr. Murphy stated the Commission's recommendation would go the Board. He stated staff would probably rely on Board direction. If the Board asks staff to include open space language, staff will share it with the Commission.

Mr. Krapf moved to recommend approval of the EO ordinance with language added for open space design guidelines.

In a roll call vote, the Commission recommended approval, with language added for open space design guidelines. (4-2; Yes: O'Connor, Maddocks, Krapf, Fraley; No: Woods, Poole).

B. SUP-0005-2011, WILLIAMSBURG LANDING CONSTRUCTION COMMENCEMENT EXTENSION

Mr. Purse stated Mr. Paul Gerhardt has applied to amend the SUP conditions for SUP-0018-2008 to allow an extension to the 36-month construction commencement limit approved in January 2009. Due the extensiveness of other construction projects on-site and the economic climate, the applicant is unable to commence construction of the previously approved SUP within the time limit. The applicant requests no other changes. Staff recommends approval of the extension.

Mr. Fraley opened the public hearing.

There being no one, Mr. Fraley closed the public hearing.

Mr. Poole moved to approve staff's recommendation.

In a unanimous roll call vote, the Commission recommended approval (6-0: Yes: O'Connor, Woods, Maddocks, Krapf, Poole, Fraley).

C. ZONING ORDINANCE AMENDMENT, SECTION 24-7, ADMINISTRATIVE FEES

D. SUBDIVISION AMENDMENT, SECTION 19-15, ADMINISTRATIVE FEES

Mr. Murphy stated the amendment provided fee waivers for state and federal agencies, as well as organizations receiving County financial assistance. He stated the fee waivers have been done by practice for decades. Only the Board has the ability to waive fees. Fee waivers will now be written directly into the ordinance. Staff recommends approval of the amendments.

Mr. Fraley stated Mr. Kinsman said the Commission could review both amendments at once.

Mr. Fraley opened the public hearing.

There being none, Mr. Fraley closed the public hearing.

Mr. Poole moved to recommend approval of the zoning ordinance and subdivision ordinance amendments.

In a unanimous roll call vote, the Commission recommended approval (6-0: Yes: O'Connor, Woods, Maddocks, Krapf, Poole, Fraley).

7. PLANNING DIRECTOR'S REPORT

Mr. Murphy had no additional comments.

8. COMMISSION DISCUSSIONS AND REQUESTS

Mr. Fraley stated Mr. Poole was the September Board representative.

Mr. Kinsman introduced Ms. Lola Perkins, the new Assistant County Attorney.

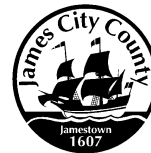
9. ADJOURNMENT

Mr. Woods moved to adjourn.

The meeting was adjourned at 8:21 p.m.

Jack Fraley, Chairman

Allen J. Murphy, Secretary



MEMORANDUM COVER

Subject: Case No. ZO-0003-2011. Economic Opportunity Zoning District

Action Requested: Shall the Board approve the Economic Opportunity Zoning District?

Summary: Staff has been working on the Economic Opportunity ordinance since the Board adopted the Zoning Ordinance update process methodology in May 2010. A draft ordinance was presented to the Policy Committee in April 2011, and comments from that meeting were incorporated into a draft ordinance reviewed by the Board of Supervisors in June 2011. Staff presented the Board's changes to the Planning Commission at its meeting on August 3, 2011. The Planning Commission voted 4-2 to recommend approval of the ordinance. The Planning Commission approval added language that is not supported by staff. The added language would recommend open space design techniques for the primary workplace areas (the main industrial areas of the EO development). After consulting with the Office of Economic Development, staff does not support the new language as additional regulations may impact the marketability of the property and impact the economic development potential of these areas. Staff continues to believe that open space design is important for residential development, and open space design techniques are included for the urban/residential core of the EO area. An alternative ordinance that incorporates the Planning Commission's recommended language (under section 24-536.6 has been attached for Board consideration) referencing open space for non-urban/residential core areas.

Staff recommends approval of the Economic Opportunity ordinance.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

- Attachments:**
- 1. Memorandum
 - 2. Ordinance
 - 3. Construction Phasing Guidelines
 - 4. Unapproved Minutes from the August 3, 2011, Planning Commission Meeting
 - 5. Public Comment Received August 4, 2011

Agenda Item No.: I-2

Date: September 13, 2011

MEMORANDUM

DATE: September 13, 2011

TO: The Board of Supervisors

FROM: Jason Purse, Senior Planner

SUBJECT: Case No. ZO-0003-2011. Economic Opportunity Zoning District

Staff has been working on the Economic Opportunity (EO) ordinance since the Board adopted the Zoning Ordinance update process methodology in May 2010. Staff brought an ordinance framework to the Policy Committee in November 2010 and subsequently presented the same framework to the Board of Supervisors at a work session in January 2011.

A draft ordinance was presented to the Policy Committee in April 2011, and comments from that meeting were incorporated into a draft ordinance reviewed by the Board of Supervisors in June 2011. Staff then presented the Board's changes to the full Planning Commission at a Policy Committee meeting in July. Finally, on August 3, 2011, staff presented the ordinance at the regularly scheduled Planning Commission meeting. The Planning Commission voted 4-2 to recommend approval of the ordinance. The Planning Commission approval added language that is not supported by staff. The added language would recommend open space design techniques for the primary workplace areas (the main industrial areas of the EO development). After consulting with the Office of Economic Development, staff does not support the new language as additional regulations may impact the marketability of the property and impact the economic development potential of these areas. Staff continues to believe that open space design is important for residential development, and open space design techniques are included for the urban/residential core of the EO area. An alternative ordinance that incorporates the Planning Commission's recommended language (under section 24-536.6 has been attached for Board consideration). In accordance with the adopted methodology, staff has completed the final ordinance text for the September 13, 2011, Board of Supervisors meeting.

The EO ordinance is intended to serve areas designated EO on the Comprehensive Plan land use map. Currently, only one area has been designated EO, however; the ordinance was designed to accommodate any future areas that may be similarly designated.

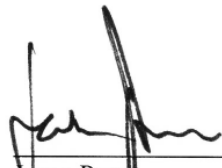
The purpose of the EO district is to facilitate economic development, an increased non-residential tax base and the creation of jobs. The principal uses and development form should optimize the economic development potential of the area and encourage development types that have certain attributes, which principally offer a positive fiscal contribution, provide quality jobs, and support economic stability. The ordinance includes the following sections:

- Establishment of a statement of intent, which formulates the purpose of the EO district;
- Documents required for submission of a rezoning, including documentation of master planning efforts, proposed transit infrastructure, construction phasing, and urban/residential core information;
- Minimum area requirements of not less than 25 acres;
- Establishment of density standards, including a balance of uses section, which limits the amount of residential/commercial development in an EO district, as well as maximum residential densities;
- Establishment of permitted and specially permitted uses;
- Requirements for improvements and design, including unified building design/open space, as well as parking and recreation standards for the urban/residential core;

- Requirements for open space and a description of what type of land can be counted toward that calculation;
- Requirements for the heights of structures, including a cap of 60 feet by-right, with the ability to get a height waiver approved by the Board of Supervisors to a total of 100 feet;
- Establishment of setbacks and buffers for the district, including but not limited to, 25 feet from external streets, 25 feet from the perimeter of the district, as well as 100 feet from adjacent property designated low-density residential or rural lands on the Comprehensive Plan or land that is located in a Community Character Area. This section also includes a setback/buffer modification provision should the development meet certain requirements; and
- Establishment of street provisions for both construction standards for public streets, as well as procedures for permitting private streets.

In the construction phasing section of the ordinance (section 24-536.1 (4)), staff has drafted a policy guideline resolution for Board approval. This guideline establishes more specific construction phasing standards that should be included with any rezoning application.

Staff recommends approval of the EO ordinance.



Jason Purs
CONCUR:



Steven W. Hicks

JP/nb

ZO-03-11EODist_mem

Attachments:

1. Ordinance
2. Alternate Planning Commission ordinance
3. Construction Phasing Resolution
4. Unapproved Minutes from the August 3, 2011, Planning Commission Meeting
5. Public Comment Received August 4, 2011

RESOLUTION

JAMES CITY COUNTY ECONOMIC OPPORTUNITY DISTRICT

CONSTRUCTION PHASING GUIDELINES

WHEREAS, the task of creating the Economic Opportunity Zoning District was undertaken as a part of the Board of Supervisors adopted methodology for the zoning ordinance update in May 2010; and

WHEREAS, the 2009 Comprehensive Plan referenced the importance of construction phasing to ensure residential development did not take place before a majority of commercial/industrial development was completed; and

WHEREAS, after meeting with the Policy Committee, the Planning Commission, and the Board of Supervisors, the following policy is recommended for all Economic Opportunity area development.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby endorse the following:

Construction within the Economic Opportunity development shall be sequenced in accordance with a project build-out schedule submitted for review as a part of the initial application, and approved by the board of supervisors. As a guideline, project proposals that adhere to the following sequencing requirements will be considered consistent with the objectives of the phasing plan:

1. Building permits for 20 percent of the primary workplace square footage, as proposed on the master plan, must be issued prior to commencing any residential construction; and
2. Any certificate of occupancy must be issued for at least 50 percent of the primary workplace square footage, as designated on the master plan, prior to building permits being issued for any residential unit above 50 percent of the total proposed units as shown on the master plan; and
3. Prior to issuance of building permits for construction of the final 10 percent of the residential units, any certificates of occupancy must be issued for at least 90 percent of the primary workplace square footage as shown on the master plan.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of
September, 2011.

EOConsGLs_res

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE V, DISTRICTS, BY ADDING DIVISION 17, ECONOMIC OPPORTUNITY, EO, SECTION 24-536, STATEMENT OF INTENT; SECTION 24-536.1, DOCUMENTS REQUIRED FOR SUBMISSION; SECTION 24-536.2, MINIMUM AREA OF DISTRICTS; SECTION 24-536.3, DENSITY; SECTION 24-536.4, USE LIST; SECTION 24-536.5, REQUIREMENTS FOR IMPROVEMENTS AND DESIGN; SECTION 24-536.6, OPEN SPACE; SECTION 24-536.7, HEIGHT OF STRUCTURES; SECTION 24-536.8, SETBACK AND BUFFER REQUIREMENTS; SECTION 24-536.9, STREET IMPROVEMENTS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, Article V, Districts, is amended by adding Division 17, Economic Opportunity, EO, Section 24-536, Statement of intent; Section 24-536.1, Documents required for submission; Section 24-536.2, Minimum area of districts; Section 24-536.3, Density; Section 24-536.4 Use list; Section 24-536.5, Requirements for improvements and design; Section 24-536.6, Open space; Section 24-536.7, Height of structures; Section 24-536.8, Setback and buffer requirements; Section 24-536.9, Street improvements.

ARTICLE V. DISTRICTS

DIVISION 17. ECONOMIC OPPORTUNITY

Sec. 24-536. Statement of intent.

The purpose of the economic opportunity district is to facilitate economic development, increase the non-residential tax base, and create jobs. The lands should be at strategic locations in the county relative to both available and planned transportation and utilities infrastructure, and developed consistent with the approved Comprehensive Plan. All parcels zoned economic opportunity shall be located inside the primary service area.

The principal uses and development form should optimize the economic development potential of the area and encourage development types that have attributes that offer a positive fiscal contribution, provide

quality jobs, enhance community values, are environmentally friendly, and support economic stability. Master planning is at the core of this designation, and development should be limited unless incorporated into master planning efforts which should address environmentally sensitive areas, available infrastructure (roads, water, sewer, transit, etc.), public facilities, and adjacent land uses to include lands in adjacent jurisdictions.

Sec. 24-536.1. Documents required for submission.

(a) Required documents. In addition to the submittal requirements set forth in section 24-23 of the zoning ordinance, the applicant shall submit the following documents to the planning director for submission to the planning commission:

(1) Documentation of master planning efforts. Since the economic opportunity district may incorporate parcels owned by many different property owners, encounter multiple infrastructure capacity issues, and in some cases cross jurisdictional boundaries, it is important that a comprehensive master plan is established for each economic opportunity designated area. The master planning effort shall ensure that all property owners have an opportunity to participate. If an individual landowner who owns property designated economic opportunity does not wish to participate in the master planning process, such land shall still be included in the master planning effort in order to create a cohesive development, although individual landowners will retain discretion in use and rezoning of properties. Properties not designated economic opportunity on the Comprehensive Plan shall be recognized and adequate buffers provided in the master plan to protect the current use of that land if applicable.

Prior to any rezoning, the applicant must demonstrate that any planning effort has ensured that a project has phased development to be concurrent with, and provide for, adequate road infrastructure, water, sewer, transit, fire stations, police and general government services, parks and recreation facilities, schools, and other facilities and service needs generated by the development.

(2) Transit. A master plan that shows the proposed location of any bus, rapid transit or commuter/light rail stations, and documentation supporting the plan or infrastructure for construction of such facilities.

(3) Urban/residential core. If any residential/commercial development is proposed, the master plan shall delineate an area as the urban/residential core of the Economic Opportunity area. The urban/residential core shall include all areas planned for residential development in the economic opportunity area, as well as all areas planned for commercial/retail uses to serve as support uses to the residential and employment centers of the economic opportunity area. There shall be no more than one urban/residential core for an entire economic opportunity area, as designated on the Comprehensive Plan. The urban/residential core shall not exceed fifteen (15) percent of the total developable economic opportunity area, as designated on the Comprehensive Plan. If bus rapid transit or commuter/light rail stations are proposed, the urban/residential core must be within one-quarter (1/4) mile of those stops. Development outside the urban/residential core shall consist of primary workplace uses, including office, research, and light industrial, or other uses that will provide a significant fiscal benefit to the county.

(4) Construction phasing. A project build-out schedule shall be submitted for review by staff, the planning commission and board of supervisors, in accordance with the board of supervisors adopted construction phasing guidelines adopted on September 13, 2011. The purpose of such phasing plan shall be to provide assurance to the board of supervisors that infrastructure improvements will be constructed

in order to support the development intensities proposed. The project build-out schedule shall also provide assurances that the development will include both the proposed non-residential and residential elements at certain project milestones and/or at build-out.

(5) Accommodating rail usage. If rail or bus rapid transit is proposed or approved, the master plan shall demonstrate design characteristics supportive and accommodating of rail usage (i.e. reduced and/or structured parking, pedestrian accommodations, finer mixing of uses, etc.).

(6) Natural features and amenities. Existing features such as specimen trees, wildlife habitats, watercourses, historical sites and similar irreplaceable assets shall be preserved to the maximum extent possible, and an environmental inventory shall be provided in accordance with section 24-23.

(7) Viewshed narrative. The applicant shall submit a narrative, with illustrations, describing the existing external viewsheds, as well as how development of the economic opportunity district will integrate with the character of the surrounding area. This narrative should address building scale and massing, architectural design, on-site building location with respect to topography and natural features, as well as buffers.

Sec. 24-536.2. Minimum area of districts.

Economic opportunity districts shall be located on a single parcel of land, or separate parcels that are a part of an approved master plan, which shall total not less than twenty-five acres.

Sec. 24-536.3. Density.

(a) Balance of land uses. Not more than fifteen (15) percent of the developable land area within an economic opportunity area, as delineated on the master plan, shall be dedicated to non-primary workplace uses. The remaining 85% of the developable land area shall be dedicated to primary uses. Non-primary workplace uses include, retail, convenience and service uses, restaurants, child care, residential development or other uses intended to support and complement primary workplace uses. For the purposes of this requirement primary workplace uses include office, research, light industrial, or other uses that will provide a significant fiscal benefit to the county.

Additionally, non-primary workplace uses should be grouped together in an effort to maximize the area for workplace uses. The location of the non-primary workplace uses should not prevent the availability of large contiguous sections of land for office, research, or light industrial development.

(b) Residential. Residential dwelling units are permitted in the urban/residential core area, as delineated on the master plan, which shall not exceed ten (10) percent of the total developable master planned economic opportunity area. The number of dwelling units which may be constructed in any the urban/residential core as indicated on the master plan shall be determined by the number of acres of the economic opportunity master plan area and the use proposed. The maximum densities of dwelling units per acre which may be constructed are:

<i>Dwelling Type</i>	<i>Maximum Density</i>
<i>Multi-Family structures (attached housing)</i>	<i>7</i>
<i>Apartments</i>	<i>10</i>

(1) In the economic opportunity district, only developable area shall be used for the purposes of calculating density.

Sec. 24-536.4. Use list.

In economic opportunity districts, all structures to be erected or land to be used shall be for one or more of the following uses:

<i>Use Category</i>	<i>Use List</i>	<i>Permitted Uses</i>	<i>Special Permit Uses</i>
<i>Residential Uses</i>	<i>Accessory structures, as defined in section 24-2</i>	<i>P</i>	
	<i>Apartments</i>		<i>SUP</i>
	<i>Multiple-family dwellings</i>		<i>SUP</i>
	<i>Group quarters</i>		<i>SUP</i>
	<i>Nursing homes</i>		<i>SUP</i>
<i>Commercial Uses</i>	<i>Accessory structures, as defined in section 24-2</i>	<i>P</i>	
	<i>Adult day care centers</i>	<i>P</i>	
	<i>Automobile rental</i>	<i>P</i>	
	<i>Automobile repair and service including tire, transmission, glass, body and fender, and other automotive product sales (new and/or rebuilt) and service with major repair under cover and storage of parts and vehicle storage screened from adjacent property by landscaping and fencing</i>	<i>P</i>	
	<i>Automobile service stations; if fuel is sold, then in accordance with section 24-38</i>	<i>P</i>	
	<i>Banks and other similar financial institutions</i>	<i>P</i>	
	<i>Barber and beauty shops</i>	<i>P</i>	
	<i>Business, professional and governmental offices</i>	<i>P</i>	
	<i>Child day care centers</i>	<i>P</i>	
	<i>Clubs, public or private, civic or service clubs, county clubs, lodges and fraternal organizations</i>	<i>P</i>	
	<i>Community recreation facilities, public or private, including parks, playgrounds, clubhouses, boating facilities, swimming pools, ball fields, tennis courts and other similar recreation facilities</i>	<i>P</i>	
	<i>Contractor offices, equipment storage yards, shops and warehouses with storage under cover or</i>	<i>P</i>	

	<i>screened with landscaping and fencing from adjacent property</i>		
	<i>Convenience stores; if fuel is sold, then in accordance with section 24-38</i>	<i>P</i>	
	<i>Corporate offices</i>	<i>P</i>	
	<i>Courier services</i>	<i>P</i>	
	<i>Data processing centers</i>	<i>P</i>	
	<i>Drug stores</i>	<i>P</i>	
	<i>Dry cleaners and laundries</i>	<i>P</i>	
	<i>Employment services or agencies</i>	<i>P</i>	
	<i>Farmer's markets</i>	<i>P</i>	
	<i>Fast food restaurants</i>		<i>SUP</i>
	<i>Feed, seed and farm supply stores</i>	<i>P</i>	
	<i>Fire stations</i>	<i>P</i>	
	<i>Fish farming</i>	<i>P</i>	
	<i>Gift stores</i>	<i>P</i>	
	<i>Greenhouses and nurseries</i>	<i>P</i>	
	<i>Health clubs, exercise clubs and fitness centers</i>	<i>P</i>	
	<i>Home occupations as defined</i>	<i>P</i>	
	<i>Hotels, motels, tourist homes and convention centers</i>	<i>P</i>	
	<i>Indoor sport facilities</i>	<i>P</i>	
	<i>Indoor theaters</i>	<i>P</i>	
	<i>Janitorial service establishments</i>	<i>P</i>	
	<i>Limousine service</i>	<i>P</i>	
	<i>Lumber and building supply with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property</i>	<i>P</i>	
	<i>Marinas, docks, piers, yacht clubs, boat basins, boat storage and servicing, repair and sale facilities for the same; if fuel is sold, then in accordance with section 24-38</i>		<i>SUP</i>
	<i>Marine or waterfront businesses to include the receipt, storage and transshipment of waterborne commerce, or seafood receiving, packaging or distribution under cover or screened with landscaping and fencing from adjacent property</i>		<i>SUP</i>
	<i>Off-street parking as required by section 24-53</i>	<i>P</i>	
	<i>Office supply stores, secretarial and duplicating services</i>	<i>P</i>	
	<i>Parking lots and garages</i>	<i>P</i>	
	<i>Photographer, picture, artist and sculptor stores and studios</i>	<i>P</i>	
	<i>Plumbing and electrical supply with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property</i>	<i>P</i>	

	<i>Printing and publication establishments</i>	<i>P</i>	
	<i>Property maintenance facilities, sheds or garages</i>	<i>P</i>	
	<i>Public billiard parlors, arcades, pool rooms, bowling alleys, dance halls and other indoor centers of amusement</i>	<i>P</i>	
	<i>Rental of rooms to a maximum of three rooms</i>	<i>P</i>	
	<i>Restaurants, tea rooms and taverns</i>	<i>P</i>	
	<i>Retail and service stores, including the following stores: books, cabinet, candy, carpet, coin, department, dressmaking, florist, furniture, furrier, garden supply, greeting card, gunsmith (excluding shooting ranges), hardware, home appliance sales and service, ice cream, jewelry sales and service, locksmith, music and records, paint, pet, picture framing, plan supply, shoe, sporting goods, stamp, tailor, tobacco and pipes, toys, travel bureau, upholstery, wearing apparel, and yard goods</i>	<i>P</i>	
	<i>Retail food stores, bakeries and fish markets</i>	<i>P</i>	
	<i>Security service offices</i>	<i>P</i>	
	<i>Shooting ranges, indoor</i>		<i>SUP</i>
	<i>Taxi services</i>	<i>P</i>	
	<i>Theme parks</i>		<i>SUP</i>
	<i>Truck stop; if fuel is sold, then in accordance with section 24-38</i>		<i>SUP</i>
	<i>Truck terminals; if fuel is sold, then in accordance with section 24-38</i>		<i>SUP</i>
	<i>Vehicle and trailer sales and service (with major repair limited to a fully enclosed building)</i>	<i>P</i>	
	<i>Veterinary hospitals</i>	<i>P</i>	
	<i>Water well drilling establishments</i>	<i>P</i>	
<i>Civic</i>	<i>Nonemergency medical transport</i>	<i>P</i>	
	<i>Post offices</i>	<i>P</i>	
	<i>Water impoundments, new or expansion of</i>	<i>P</i>	
<i>Utility</i>	<i>Electrical generation facilities, public or private, electrical substations with a capacity of 5,000 kilovolt amperes or more and electrical transmission lines capable of transmitting 69 kilovolts or more</i>		<i>SUP</i>
	<i>Radio stations, television stations, transmission relay stations and communication towers</i>		<i>SUP</i>
	<i>Railroad facilities including tracks, bridges and stations. However, spur lines which are to serve and are accessory to existing or proposed development adjacent to existing railroad right-of-ways and track and safety improvements in existing railroad right-of-ways are permitted generally and</i>		<i>SUP</i>

	<i>shall not require a special use permit</i>		
	<i>Telephone exchanges and telephone switching stations</i>	<i>P</i>	
	<i>Tower mounted wireless communication facilities in accordance with division 6, Wireless Communication Facilities</i>		<i>SUP</i>
	<i>Transmission pipelines (public or private), including pumping stations and accessory storage, for natural gas, propane gas, petroleum products, chemicals, slurry coal and any other gases, liquids or solids. However, extensions for private connections to existing pipelines, which are intended to serve an individual residential or commercial customer and which are accessory to existing or proposed development, are permitted generally and shall not require a special use permit</i>		<i>SUP</i>
	<i>Wireless communications facilities that utilize alternative mounting structures, or are building mounted, or area camouflaged, and comply with division 6, Wireless Communications Facilities</i>	<i>P</i>	
	<i>Water facilities (public or private), and sewer facilities (public), including, but not limited to, treatment plants, pumping stations, storage facilities and transmission mains, wells and associated equipment such as pumps to be owned and operated by political jurisdictions. However, the following are permitted generally and shall not require a special use permit:</i> <i>(a) Private connections to existing mains that are intended to serve an individual customer and that are accessory to existing or proposed development, with no additional connections to be made to the line; and</i> <i>(b) Distribution lines and local facilities within a development, including pump stations</i>		<i>SUP</i>
<i>Open</i>	<i>Timbering</i>	<i>P</i>	
	<i>Wineries</i>	<i>P</i>	
<i>Industrial Uses</i>	<i>Food processing and storage, but not the slaughter of animals</i>	<i>P</i>	
	<i>Heavy equipment sales and service, with major repair under cover or screened with landscaping and fencing from adjacent property</i>		<i>SUP</i>
	<i>Heliports, helistops</i>		<i>SUP</i>
	<i>Hospital</i>		<i>SUP</i>
	<i>Industrial and technical training schools</i>	<i>P</i>	
	<i>Laser technology production</i>	<i>P</i>	

<i>Machinery sales and service with major repair under cover</i>		<i>SUP</i>
<i>Manufacture and assembly of musical instruments, toys, novelties and rubber and metal stamps</i>	<i>P</i>	
<i>Manufacture and bottling of soft drinks and wine</i>	<i>P</i>	
<i>Manufacture and processing of textiles and textile products in structures not more than 10,000 square feet</i>	<i>P</i>	
<i>Manufacture and processing of textiles and textile products in structures more than 10,000 square feet</i>		<i>SUP</i>
<i>Manufacture, compounding, assembly or treatment of products made from previously prepared paper, plastic, metal, textiles, tobacco, wood, paint, fiber glass, glass, rubber, leather, cellophane, canvas, felt, fur, horn, wax, hair, and yarn</i>	<i>P</i>	
<i>Manufacture, compounding, processing or packaging of cosmetic, toiletry and pharmaceutical products</i>	<i>P</i>	
<i>Manufacture of carpets and carpet yarns in structures of not more than 10,000 square feet</i>	<i>P</i>	
<i>Manufactured home or mobile home sales</i>	<i>P</i>	
<i>Manufacture of pottery and ceramic products, using kilns fired only by gas or electricity</i>	<i>P</i>	
<i>Manufacture or assembly of appliances, tools, firearms, hardware products and heating, cooling or ventilating equipment</i>	<i>P</i>	
<i>Manufacture or assembly of electronic instruments, electronic devices or electronic components</i>	<i>P</i>	
<i>Manufacture or assembly of medical, drafting, metering, marine, photographic and mechanical instruments</i>	<i>P</i>	
<i>Petroleum storage</i>		<i>SUP</i>
<i>Private streets within "qualifying industrial parks" in accordance with section 24-55</i>	<i>P</i>	
<i>Processing, assembly and manufacture of light industrial products or components, with all storage, processing, assembly and manufacture conducted indoors and under cover, with no dust, noise, odor or other objectionable effect</i>	<i>P</i>	
<i>Research, development and design facilities or laboratories</i>	<i>P</i>	
<i>Warehouse, storage and distribution centers with storage under cover or screened with landscaping and fencing from adjacent property</i>	<i>P</i>	
<i>Welding and machine shops with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property</i>	<i>P</i>	

Sec. 24-536.5. Requirements for improvements and design.

(a) Complementary design. Economic opportunity districts are intended to have an integrated character with strong unifying design elements meeting the following standards:

(1) Unified building design. Building design, in the urban/residential core as designated on the master plan, should be coordinated with regard to color, materials, architectural form and detailing to achieve design harmony, continuity, and horizontal and vertical relief and interest.

The urban/residential core shall focus on pedestrian-scaled design, a mixing of uses within buildings, and general design standards (such as landscaping, road design, etc.) that may be different from the design of the primary uses within an economic opportunity area.

(2) Unified open space. Projects, in the urban/residential core as designated on the master plan, shall include a unifying internal system of pedestrian-oriented paths, open spaces and walkways that function to organize and connect buildings, and provide connections to common origins and destinations (such as transit stops, restaurants, child care facilities and convenience shopping centers). All buildings or building clusters within the development must be connected with linkages other than roads (i.e., sidewalks, bikeways or multi-use paths). The master plan shall utilize open space and natural features that serve as buffers and transitions to adjacent area(s). See section 24-536.8 for more details on open space.

(b) Water and sewer. All structures and uses within an economic opportunity district shall be served by publicly owned and operated water and sewer systems.

(c) Recreation areas. Residential areas and mixed-use structures, within the urban/residential core, shall be provided with a recreation area or areas adequate to meet the needs of the residents. The developer shall provide and install playground equipment, playfields, tennis courts or other recreation facilities in accordance with the guarantees established as part of master plan or final development plan approval. The composition of the facilities to be installed shall be approved by the planning director. Such facilities shall be owned and maintained by the developer or a residents' association.

(d) Parking. Off-street parking facilities, within the urban/residential core, shall be provided in accordance with the off-street parking requirements of section 24-53. The visibility of parking lots or structures shall be minimized by placement to the side or rear of buildings and/or with landscape screening.

(e) Streetlights. Streetlights, within the urban/residential core, shall generally be provided at each intersection and other public areas. The lighting shall be directed so as not to produce objectionable glare on adjacent property or into residences within or near the development.

(f) Signage and entry points. All signs within an economic opportunity district shall comply with article II, division 3 of this chapter.

(g) Traffic circulation in the urban/residential core as designated on the master plan. Vehicular access points and drives shall be designed to encourage smooth traffic flow with controlled turning movements and minimum hazards to pedestrian traffic. Buildings, parking areas and drives shall be arranged in a

manner that encourages pedestrian access and minimizes traffic movement. All streets shall be constructed and designed in accordance with section 24-536.9.

(h) Landscaping. All landscaping and tree preservation shall be undertaken in accordance with section 24-86 and chapter 23 of the County Code, the Chesapeake Bay Preservation Ordinance.

Sec. 24-536.6. Open space.

Development within the urban/residential core of the economic opportunity districts shall provide usable open space area. The amount of open space shall be not less than ten percent of the developable area of the site. Nondevelopable area shall not be counted towards meeting the open space requirement.

For the purposes of this article, open space does not include any landscape area in parking lots or adjacent to structures. The requirements of this section shall supplement the requirements of the county's Chesapeake Bay Ordinance, section 24-86 (landscaping and tree preservation requirements) and other county requirements relating to open space. For the purposes of this article, open space may include, but is not limited to:

(1) Perpetual easement(s) of no less than 50 feet in width dedicated to James City County or another group approved by the county adjoining any road designated as a community character corridor on the Comprehensive Plan.

(2) Buffer area(s) of no less than 50 feet around a non-RPA wetland features (isolated wetlands), intermittent streams, or from floodplain zones A or AE, or from the edge of the RPA buffer.

(3) Preservation of any archaeological site, any landmark registered in the Virginia Landmarks Register, the National Register of Historic Places or National Historic Site register.

(4) Preservation of any developable area demonstrated to be a habitat for any endangered, rare or threatened species of plant or wildlife so designated by the federal government, the State of Virginia (as referenced by the county's Natural Areas Inventory or listed in Virginia's Endangered Species, (Virginia Department of Game and Inland Fisheries, 1991)), where preservation of such area is not required by local, state or federal law.

(5) Bikeways, bike paths, sidewalks, hiking trails, greenways or other similar amenity.

(6) Public or private picnic areas, parks, plazas or other gathering areas.

(7) Public or private community facilities such as swimming pools, tennis courts, and recreation buildings. Golf courses may also be counted as open space for the purpose of meeting the open space requirement to a maximum of 50 percent of the required open space.

Open space area shall be protected by easements, maintenance agreements and/or other assurances satisfactory to the county attorney.

Sec. 24-536.7. Height of structures.

(a) Structures may be erected up to 60 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of the structure and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade.

(b) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank, radio, television and microwave antennas, and towers or other accessory functions, and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of the maximum approved height of the structure to which it is mounted, may be erected only upon the granting of a height limitation waiver by the board of supervisors.

(c) Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

(1) Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;

(2) Such structure is part of a Transit Oriented Development that utilizes a mass transit system, or is a primary economic opportunity use as determined by the county administrator and is of substantial fiscal benefit to the county;

(3) Such structure will not obstruct light from adjacent property;

(4) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;

(5) Such structure will not impair property values in the surrounding area;

(6) Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the structure is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and

(7) Such structure would not be contrary to the public health, safety or general welfare.

Sec. 24-536.8. Setback and buffer requirements.

(a) Location of structures. Structures shall be located 25 feet or more from any external existing or planned public road right-of-way, or any internal arterial road right-of-way, which is 50 feet or greater in width. Where the external existing or planned public road right-of-way, or the internal arterial road right-of-way, is less than 50 feet in width, structures shall be located 45 feet or more from the centerline of the external existing or planned or internal arterial public road. Structures shall be located a minimum of 50 feet or more from any community character corridor.

(b) Required buffers from economic opportunity districts. A buffer of 25 feet shall be maintained from the perimeter of an economic opportunity district. The buffer in an economic opportunity district shall be increased to 100 feet where adjoining property is designated low-density residential or rural lands on the Comprehensive Plan. In addition, the buffer shall also be increased to 100 feet where an economic opportunity district adjoins property in a community character area, except where those properties are included in the economic opportunity master plan.

The buffer shall be left in its natural undisturbed state and/or planted with additional or new landscape trees, shrubs and other vegetative cover such that the setback serves to minimize the visual intrusion and other negative impacts of new development or redevelopment on adjacent development.

(c) Setback and/or buffer modifications; criteria for determination. Reduction of the width of the setbacks and/or buffers specified in subsections (a) and (b) above may be approved for an economic opportunity zoning district upon demonstration that the proposed setback and/or buffer, by substitution of technique or design, will achieve results which clearly satisfy the overall purposes and intent of the setback and/or buffer requirement of this section and the intent of section 24-86 (Landscaping and Tree Preservation Requirements), shall have no additional adverse impact on adjacent properties or public areas, and will not result in detrimental impacts to the orderly development or character of the area, the environment, sound engineering or planning practice, or the goals, objectives, strategies and policies of the Comprehensive Plan. In addition, a request for a setback and/or buffer modification must meet one or more of the following criteria:

(1) The proposed setback and/or buffer is for the purpose of integrating proposed economic opportunity development with adjacent development, and if located in a community character area, compliments the character of the existing structures;

(2) The proposed setback and/or buffer substantially preserves, enhances, integrates and complements existing trees and topography;

(3) The proposed setback and/or buffer is due to unusual size, topography, shape or location of the property, or other unusual conditions, excluding the proprietary interests of the developer.

(d) Requests for modifications. Requests for modifications pursuant to subsection (c) above shall be filed in writing with the planning director and shall identify the reasons for such requests together with the proposed alternative. The planning director shall approve, deny or conditionally approve the request and shall include a written statement certifying that one or more of the above criteria are met.

(e) No minimum lot size or yard requirements. Except for required setbacks specified in (a) and (b) above, there shall be no minimum lot size nor minimum front, side or rear yard requirements for any lot within a economic opportunity district other than as specified in approved final plans.

(f) Uses prohibited. Setbacks shall not be used for streets or for parking except for entrances and driveways which may penetrate the setback.

Sec. 24-536.9. Street improvements.

(a) All dedicated public streets shown on the development plan shall meet the design and construction requirements of the Virginia Department of Transportation's standards. Such public streets shall be coordinated with the major transportation network shown in the county Comprehensive Plan.

(b) Private streets may be permitted upon the approval of the board of supervisors and shall be coordinated with existing or planned streets of both the master plan and the county Comprehensive Plan. Private streets shown on the development plan shall meet the requirements of the Virginia Department of Transportation, except as specified in paragraph (d) below.

The construction of streets, whether public or private, shall be guaranteed by appropriate surety, letter of credit, cash escrow or other form of guarantee approved by the county attorney and development manager or designee.

(c) To the extent streets are private rather than public, the applicant must also submit assurances satisfactory to the planning commission that a property owner's community association or similar organization has been legally established under which the lots within the area of the development plan will be assessed for the cost of maintaining private streets and that such assessments shall constitute a pro rata lien upon the individual lots shown on the development plan.

(d) The uniqueness of each proposal for an economic opportunity development requires that the specifications for the width, surfacing, construction and geometric design of streets with associated drainage and the specifications for curbs and gutters be subject to modification from the specifications established in chapter 19. The development manager or designee may, therefore, within the limits hereinafter specified, waive or modify the specifications otherwise applicable for these facilities where the development manager or designee finds that such specifications are not required in the interests of the residents and property owners of the economic opportunity development and that the modifications of such specifications are not inconsistent with the interests of the entire county.

It shall be the responsibility of the applicant to demonstrate to the satisfaction of the development manager or designee with respect to any requested waiver or modification:

(1) That the waiver or modification will result in design and construction that is in accordance with accepted engineering standards;

(2) That the waiver or modification is reasonable because of the uniqueness of the economic opportunity development or because of the large area of the economic opportunity development, within which the nature and excellence of design and construction will be coordinated, preplanned and controlled;

(3) That any waiver or modification as to streets is reasonable with respect to the generation of vehicular traffic that is estimated will occur with the area of the master plan;

(4) That traffic lanes of streets are sufficiently wide enough to carry the anticipated volume and speed of traffic and in no case less than ten feet wide; and

(5) That waivers or modifications as to base and surface construction of streets and as to the condition of ditches or drainage ways be based upon the soil tests for California Bearing Ratio value and erosion characteristics of the particular subgrade support soils in the area.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th Day of September, 2011.

ZO-03-11EODist_ord

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE V, DISTRICTS, BY ADDING DIVISION 17, ECONOMIC OPPORTUNITY, EO, SECTION 24-536, STATEMENT OF INTENT; SECTION 24-536.1, DOCUMENTS REQUIRED FOR SUBMISSION; SECTION 24-536.2, MINIMUM AREA OF DISTRICTS; SECTION 24-536.3, DENSITY; SECTION 24-536.4, USE LIST; SECTION 24-536.5, REQUIREMENTS FOR IMPROVEMENTS AND DESIGN; SECTION 24-536.6, OPEN SPACE; SECTION 24-536.7, HEIGHT OF STRUCTURES; SECTION 24-536.8, SETBACK AND BUFFER REQUIREMENTS; SECTION 24-536.9, STREET IMPROVEMENTS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, Article V, Districts, is amended by adding Division 17, Economic Opportunity, EO, Section 24-536, Statement of intent; Section 24-536.1, Documents required for submission; Section 24-536.2, Minimum area of districts; Section 24-536.3, Density; Section 24-536.4 Use list; Section 24-536.5, Requirements for improvements and design; Section 24-536.6, Open space; Section 24-536.7, Height of structures; Section 24-536.8, Setback and buffer requirements; Section 24-536.9, Street improvements.

ARTICLE V. DISTRICTS

DIVISION 17. ECONOMIC OPPORTUNITY

Sec. 24-536. Statement of intent.

The purpose of the economic opportunity district is to facilitate economic development, increase the non-residential tax base, and create jobs. The lands should be at strategic locations in the county relative to both available and planned transportation and utilities infrastructure, and developed consistent with the approved Comprehensive Plan. All parcels zoned economic opportunity shall be located inside the primary service area.

The principal uses and development form should optimize the economic development potential of the area and encourage development types that have attributes that offer a positive fiscal contribution, provide

quality jobs, enhance community values, are environmentally friendly, and support economic stability. Master planning is at the core of this designation, and development should be limited unless incorporated into master planning efforts which should address environmentally sensitive areas, available infrastructure (roads, water, sewer, transit, etc.), public facilities, and adjacent land uses to include lands in adjacent jurisdictions.

Sec. 24-536.1. Documents required for submission.

(a) Required documents. In addition to the submittal requirements set forth in section 24-23 of the zoning ordinance, the applicant shall submit the following documents to the planning director for submission to the planning commission:

(1) Documentation of master planning efforts. Since the economic opportunity district may incorporate parcels owned by many different property owners, encounter multiple infrastructure capacity issues, and in some cases cross jurisdictional boundaries, it is important that a comprehensive master plan is established for each economic opportunity designated area. The master planning effort shall ensure that all property owners have an opportunity to participate. If an individual landowner who owns property designated economic opportunity does not wish to participate in the master planning process, such land shall still be included in the master planning effort in order to create a cohesive development, although individual landowners will retain discretion in use and rezoning of properties. Properties not designated economic opportunity on the Comprehensive Plan shall be recognized and adequate buffers provided in the master plan to protect the current use of that land if applicable.

Prior to any rezoning, the applicant must demonstrate that any planning effort has ensured that a project has phased development to be concurrent with, and provide for, adequate road infrastructure, water, sewer, transit, fire stations, police and general government services, parks and recreation facilities, schools, and other facilities and service needs generated by the development.

(2) Transit. A master plan that shows the proposed location of any bus, rapid transit or commuter/light rail stations, and documentation supporting the plan or infrastructure for construction of such facilities.

(3) Urban/residential core. If any residential/commercial development is proposed, the master plan shall delineate an area as the urban/residential core of the Economic Opportunity area. The urban/residential core shall include all areas planned for residential development in the economic opportunity area, as well as all areas planned for commercial/retail uses to serve as support uses to the residential and employment centers of the economic opportunity area. There shall be no more than one urban/residential core for an entire economic opportunity area, as designated on the Comprehensive Plan. The urban/residential core shall not exceed fifteen (15) percent of the total developable economic opportunity area, as designated on the Comprehensive Plan. If bus rapid transit or commuter/light rail stations are proposed, the urban/residential core must be within one-quarter (1/4) mile of those stops. Development outside the urban/residential core shall consist of primary workplace uses, including office, research, and light industrial, or other uses that will provide a significant fiscal benefit to the county.

(4) Construction phasing. A project build-out schedule shall be submitted for review by staff, the planning commission and board of supervisors, in accordance with the board of supervisors adopted construction phasing guidelines adopted on September 13, 2011. The purpose of such phasing plan shall be to provide assurance to the board of supervisors that infrastructure improvements will be constructed

in order to support the development intensities proposed. The project build-out schedule shall also provide assurances that the development will include both the proposed non-residential and residential elements at certain project milestones and/or at build-out.

(5) Accommodating rail usage. If rail or bus rapid transit is proposed or approved, the master plan shall demonstrate design characteristics supportive and accommodating of rail usage (i.e. reduced and/or structured parking, pedestrian accommodations, finer mixing of uses, etc.).

(6) Natural features and amenities. Existing features such as specimen trees, wildlife habitats, watercourses, historical sites and similar irreplaceable assets shall be preserved to the maximum extent possible, and an environmental inventory shall be provided in accordance with section 24-23.

(7) Viewshed narrative. The applicant shall submit a narrative, with illustrations, describing the existing external viewsheds, as well as how development of the economic opportunity district will integrate with the character of the surrounding area. This narrative should address building scale and massing, architectural design, on-site building location with respect to topography and natural features, as well as buffers.

Sec. 24-536.2. Minimum area of districts.

Economic opportunity districts shall be located on a single parcel of land, or separate parcels that are a part of an approved master plan, which shall total not less than twenty-five acres.

Sec. 24-536.3. Density.

(a) Balance of land uses. Not more than fifteen (15) percent of the developable land area within an economic opportunity area, as delineated on the master plan, shall be dedicated to non-primary workplace uses. The remaining 85% of the developable land area shall be dedicated to primary uses. Non-primary workplace uses include, retail, convenience and service uses, restaurants, child care, residential development or other uses intended to support and complement primary workplace uses. For the purposes of this requirement primary workplace uses include office, research, light industrial, or other uses that will provide a significant fiscal benefit to the county.

Additionally, non-primary workplace uses should be grouped together in an effort to maximize the area for workplace uses. The location of the non-primary workplace uses should not prevent the availability of large contiguous sections of land for office, research, or light industrial development.

(b) Residential. Residential dwelling units are permitted in the urban/residential core area, as delineated on the master plan, which shall not exceed ten (10) percent of the total developable master planned economic opportunity area. The number of dwelling units which may be constructed in any the urban/residential core as indicated on the master plan shall be determined by the number of acres of the economic opportunity master plan area and the use proposed. The maximum densities of dwelling units per acre which may be constructed are:

<i>Dwelling Type</i>	<i>Maximum Density</i>
<i>Multi-Family structures (attached housing)</i>	<i>7</i>
<i>Apartments</i>	<i>10</i>

(1) In the economic opportunity district, only developable area shall be used for the purposes of calculating density.

Sec. 24-536.4. Use list.

In economic opportunity districts, all structures to be erected or land to be used shall be for one or more of the following uses:

<i>Use Category</i>	<i>Use List</i>	<i>Permitted Uses</i>	<i>Special Permit Uses</i>
<i>Residential Uses</i>	<i>Accessory structures, as defined in section 24-2</i>	<i>P</i>	
	<i>Apartments</i>		<i>SUP</i>
	<i>Multiple-family dwellings</i>		<i>SUP</i>
	<i>Group quarters</i>		<i>SUP</i>
	<i>Nursing homes</i>		<i>SUP</i>
<i>Commercial Uses</i>	<i>Accessory structures, as defined in section 24-2</i>	<i>P</i>	
	<i>Adult day care centers</i>	<i>P</i>	
	<i>Automobile rental</i>	<i>P</i>	
	<i>Automobile repair and service including tire, transmission, glass, body and fender, and other automotive product sales (new and/or rebuilt) and service with major repair under cover and storage of parts and vehicle storage screened from adjacent property by landscaping and fencing</i>	<i>P</i>	
	<i>Automobile service stations; if fuel is sold, then in accordance with section 24-38</i>	<i>P</i>	
	<i>Banks and other similar financial institutions</i>	<i>P</i>	
	<i>Barber and beauty shops</i>	<i>P</i>	
	<i>Business, professional and governmental offices</i>	<i>P</i>	
	<i>Child day care centers</i>	<i>P</i>	
	<i>Clubs, public or private, civic or service clubs, county clubs, lodges and fraternal organizations</i>	<i>P</i>	
	<i>Community recreation facilities, public or private, including parks, playgrounds, clubhouses, boating facilities, swimming pools, ball fields, tennis courts and other similar recreation facilities</i>	<i>P</i>	
	<i>Contractor offices, equipment storage yards, shops and warehouses with storage under cover or</i>	<i>P</i>	

	<i>screened with landscaping and fencing from adjacent property</i>		
	<i>Convenience stores; if fuel is sold, then in accordance with section 24-38</i>	<i>P</i>	
	<i>Corporate offices</i>	<i>P</i>	
	<i>Courier services</i>	<i>P</i>	
	<i>Data processing centers</i>	<i>P</i>	
	<i>Drug stores</i>	<i>P</i>	
	<i>Dry cleaners and laundries</i>	<i>P</i>	
	<i>Employment services or agencies</i>	<i>P</i>	
	<i>Farmer's markets</i>	<i>P</i>	
	<i>Fast food restaurants</i>		<i>SUP</i>
	<i>Feed, seed and farm supply stores</i>	<i>P</i>	
	<i>Fire stations</i>	<i>P</i>	
	<i>Fish farming</i>	<i>P</i>	
	<i>Gift stores</i>	<i>P</i>	
	<i>Greenhouses and nurseries</i>	<i>P</i>	
	<i>Health clubs, exercise clubs and fitness centers</i>	<i>P</i>	
	<i>Home occupations as defined</i>	<i>P</i>	
	<i>Hotels, motels, tourist homes and convention centers</i>	<i>P</i>	
	<i>Indoor sport facilities</i>	<i>P</i>	
	<i>Indoor theaters</i>	<i>P</i>	
	<i>Janitorial service establishments</i>	<i>P</i>	
	<i>Limousine service</i>	<i>P</i>	
	<i>Lumber and building supply with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property</i>	<i>P</i>	
	<i>Marinas, docks, piers, yacht clubs, boat basins, boat storage and servicing, repair and sale facilities for the same; if fuel is sold, then in accordance with section 24-38</i>		<i>SUP</i>
	<i>Marine or waterfront businesses to include the receipt, storage and transshipment of waterborne commerce, or seafood receiving, packaging or distribution under cover or screened with landscaping and fencing from adjacent property</i>		<i>SUP</i>
	<i>Off-street parking as required by section 24-53</i>	<i>P</i>	
	<i>Office supply stores, secretarial and duplicating services</i>	<i>P</i>	
	<i>Parking lots and garages</i>	<i>P</i>	
	<i>Photographer, picture, artist and sculptor stores and studios</i>	<i>P</i>	
	<i>Plumbing and electrical supply with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property</i>	<i>P</i>	

	<i>Printing and publication establishments</i>	<i>P</i>	
	<i>Property maintenance facilities, sheds or garages</i>	<i>P</i>	
	<i>Public billiard parlors, arcades, pool rooms, bowling alleys, dance halls and other indoor centers of amusement</i>	<i>P</i>	
	<i>Rental of rooms to a maximum of three rooms</i>	<i>P</i>	
	<i>Restaurants, tea rooms and taverns</i>	<i>P</i>	
	<i>Retail and service stores, including the following stores: books, cabinet, candy, carpet, coin, department, dressmaking, florist, furniture, furrier, garden supply, greeting card, gunsmith (excluding shooting ranges), hardware, home appliance sales and service, ice cream, jewelry sales and service, locksmith, music and records, paint, pet, picture framing, plan supply, shoe, sporting goods, stamp, tailor, tobacco and pipes, toys, travel bureau, upholstery, wearing apparel, and yard goods</i>	<i>P</i>	
	<i>Retail food stores, bakeries and fish markets</i>	<i>P</i>	
	<i>Security service offices</i>	<i>P</i>	
	<i>Shooting ranges, indoor</i>		<i>SUP</i>
	<i>Taxi services</i>	<i>P</i>	
	<i>Theme parks</i>		<i>SUP</i>
	<i>Truck stop; if fuel is sold, then in accordance with section 24-38</i>		<i>SUP</i>
	<i>Truck terminals; if fuel is sold, then in accordance with section 24-38</i>		<i>SUP</i>
	<i>Vehicle and trailer sales and service (with major repair limited to a fully enclosed building)</i>	<i>P</i>	
	<i>Veterinary hospitals</i>	<i>P</i>	
	<i>Water well drilling establishments</i>	<i>P</i>	
<i>Civic</i>	<i>Nonemergency medical transport</i>	<i>P</i>	
	<i>Post offices</i>	<i>P</i>	
	<i>Water impoundments, new or expansion of</i>	<i>P</i>	
<i>Utility</i>	<i>Electrical generation facilities, public or private, electrical substations with a capacity of 5,000 kilovolt amperes or more and electrical transmission lines capable of transmitting 69 kilovolts or more</i>		<i>SUP</i>
	<i>Radio stations, television stations, transmission relay stations and communication towers</i>		<i>SUP</i>
	<i>Railroad facilities including tracks, bridges and stations. However, spur lines which are to serve and are accessory to existing or proposed development adjacent to existing railroad right-of-ways and track and safety improvements in existing railroad right-of-ways are permitted generally and</i>		<i>SUP</i>

	<i>shall not require a special use permit</i>		
	<i>Telephone exchanges and telephone switching stations</i>	<i>P</i>	
	<i>Tower mounted wireless communication facilities in accordance with division 6, Wireless Communication Facilities</i>		<i>SUP</i>
	<i>Transmission pipelines (public or private), including pumping stations and accessory storage, for natural gas, propane gas, petroleum products, chemicals, slurry coal and any other gases, liquids or solids. However, extensions for private connections to existing pipelines, which are intended to serve an individual residential or commercial customer and which are accessory to existing or proposed development, are permitted generally and shall not require a special use permit</i>		<i>SUP</i>
	<i>Wireless communications facilities that utilize alternative mounting structures, or are building mounted, or area camouflaged, and comply with division 6, Wireless Communications Facilities</i>	<i>P</i>	
	<i>Water facilities (public or private), and sewer facilities (public), including, but not limited to, treatment plants, pumping stations, storage facilities and transmission mains, wells and associated equipment such as pumps to be owned and operated by political jurisdictions. However, the following are permitted generally and shall not require a special use permit:</i> <i>(a) Private connections to existing mains that are intended to serve an individual customer and that are accessory to existing or proposed development, with no additional connections to be made to the line; and</i> <i>(b) Distribution lines and local facilities within a development, including pump stations</i>		<i>SUP</i>
<i>Open</i>	<i>Timbering</i>	<i>P</i>	
	<i>Wineries</i>	<i>P</i>	
<i>Industrial Uses</i>	<i>Food processing and storage, but not the slaughter of animals</i>	<i>P</i>	
	<i>Heavy equipment sales and service, with major repair under cover or screened with landscaping and fencing from adjacent property</i>		<i>SUP</i>
	<i>Heliports, helistops</i>		<i>SUP</i>
	<i>Hospital</i>		<i>SUP</i>
	<i>Industrial and technical training schools</i>	<i>P</i>	
	<i>Laser technology production</i>	<i>P</i>	

<i>Machinery sales and service with major repair under cover</i>		<i>SUP</i>
<i>Manufacture and assembly of musical instruments, toys, novelties and rubber and metal stamps</i>	<i>P</i>	
<i>Manufacture and bottling of soft drinks and wine</i>	<i>P</i>	
<i>Manufacture and processing of textiles and textile products in structures not more than 10,000 square feet</i>	<i>P</i>	
<i>Manufacture and processing of textiles and textile products in structures more than 10,000 square feet</i>		<i>SUP</i>
<i>Manufacture, compounding, assembly or treatment of products made from previously prepared paper, plastic, metal, textiles, tobacco, wood, paint, fiber glass, glass, rubber, leather, cellophane, canvas, felt, fur, horn, wax, hair, and yarn</i>	<i>P</i>	
<i>Manufacture, compounding, processing or packaging of cosmetic, toiletry and pharmaceutical products</i>	<i>P</i>	
<i>Manufacture of carpets and carpet yarns in structures of not more than 10,000 square feet</i>	<i>P</i>	
<i>Manufactured home or mobile home sales</i>	<i>P</i>	
<i>Manufacture of pottery and ceramic products, using kilns fired only by gas or electricity</i>	<i>P</i>	
<i>Manufacture or assembly of appliances, tools, firearms, hardware products and heating, cooling or ventilating equipment</i>	<i>P</i>	
<i>Manufacture or assembly of electronic instruments, electronic devices or electronic components</i>	<i>P</i>	
<i>Manufacture or assembly of medical, drafting, metering, marine, photographic and mechanical instruments</i>	<i>P</i>	
<i>Petroleum storage</i>		<i>SUP</i>
<i>Private streets within "qualifying industrial parks" in accordance with section 24-55</i>	<i>P</i>	
<i>Processing, assembly and manufacture of light industrial products or components, with all storage, processing, assembly and manufacture conducted indoors and under cover, with no dust, noise, odor or other objectionable effect</i>	<i>P</i>	
<i>Research, development and design facilities or laboratories</i>	<i>P</i>	
<i>Warehouse, storage and distribution centers with storage under cover or screened with landscaping and fencing from adjacent property</i>	<i>P</i>	
<i>Welding and machine shops with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property</i>	<i>P</i>	

Sec. 24-536.5. Requirements for improvements and design.

(a) Complementary design. Economic opportunity districts are intended to have an integrated character with strong unifying design elements meeting the following standards:

(1) Unified building design. Building design, in the urban/residential core as designated on the master plan, should be coordinated with regard to color, materials, architectural form and detailing to achieve design harmony, continuity, and horizontal and vertical relief and interest.

The urban/residential core shall focus on pedestrian-scaled design, a mixing of uses within buildings, and general design standards (such as landscaping, road design, etc.) that may be different from the design of the primary uses within an economic opportunity area.

(2) Unified open space. Projects, in the urban/residential core as designated on the master plan, shall include a unifying internal system of pedestrian-oriented paths, open spaces and walkways that function to organize and connect buildings, and provide connections to common origins and destinations (such as transit stops, restaurants, child care facilities and convenience shopping centers). All buildings or building clusters within the development must be connected with linkages other than roads (i.e., sidewalks, bikeways or multi-use paths). The master plan shall utilize open space and natural features that serve as buffers and transitions to adjacent area(s). See section 24-536.8 for more details on open space.

(b) Water and sewer. All structures and uses within an economic opportunity district shall be served by publicly owned and operated water and sewer systems.

(c) Recreation areas. Residential areas and mixed-use structures, within the urban/residential core, shall be provided with a recreation area or areas adequate to meet the needs of the residents. The developer shall provide and install playground equipment, playfields, tennis courts or other recreation facilities in accordance with the guarantees established as part of master plan or final development plan approval. The composition of the facilities to be installed shall be approved by the planning director. Such facilities shall be owned and maintained by the developer or a residents' association.

(d) Parking. Off-street parking facilities, within the urban/residential core, shall be provided in accordance with the off-street parking requirements of section 24-53. The visibility of parking lots or structures shall be minimized by placement to the side or rear of buildings and/or with landscape screening.

(e) Streetlights. Streetlights, within the urban/residential core, shall generally be provided at each intersection and other public areas. The lighting shall be directed so as not to produce objectionable glare on adjacent property or into residences within or near the development.

(f) Signage and entry points. All signs within an economic opportunity district shall comply with article II, division 3 of this chapter.

(g) Traffic circulation in the urban/residential core as designated on the master plan. Vehicular access points and drives shall be designed to encourage smooth traffic flow with controlled turning movements and minimum hazards to pedestrian traffic. Buildings, parking areas and drives shall be arranged in a

manner that encourages pedestrian access and minimizes traffic movement. All streets shall be constructed and designed in accordance with section 24-536.9.

(h) Landscaping. All landscaping and tree preservation shall be undertaken in accordance with section 24-86 and chapter 23 of the County Code, the Chesapeake Bay Preservation Ordinance.

Sec. 24-536.6. Open space.

Development within the urban/residential core of the economic opportunity districts shall provide usable open space area. The amount of open space shall be not less than ten percent of the developable area of the site. Nondevelopable area shall not be counted towards meeting the open space requirement. For areas containing primary workplace uses, outside of the urban/residential core, development is encouraged to incorporate open space design techniques into site design. Examples of this type of design include open space that is interconnected and contiguous and located so as to benefit and be accessible to the maximum number of lots. Open space design could also be prominently located within the development (for example, at the terminus of key views along roads, at the intersection of arterial or collector streets, at topographic high points or centrally located).

For the purposes of this article, open space does not include any landscape area in parking lots or adjacent to structures. The requirements of this section shall supplement the requirements of the county's Chesapeake Bay Ordinance, section 24-86 (landscaping and tree preservation requirements) and other county requirements relating to open space. For the purposes of this article, open space may include, but is not limited to:

(1) Perpetual easement(s) of no less than 50 feet in width dedicated to James City County or another group approved by the county adjoining any road designated as a community character corridor on the Comprehensive Plan.

(2) Buffer area(s) of no less than 50 feet around a non-RPA wetland features (isolated wetlands), intermittent streams, or from floodplain zones A or AE, or from the edge of the RPA buffer.

(3) Preservation of any archaeological site, any landmark registered in the Virginia Landmarks Register, the National Register of Historic Places or National Historic Site register.

(4) Preservation of any developable area demonstrated to be a habitat for any endangered, rare or threatened species of plant or wildlife so designated by the federal government, the State of Virginia (as referenced by the county's Natural Areas Inventory or listed in Virginia's Endangered Species, (Virginia Department of Game and Inland Fisheries, 1991)), where preservation of such area is not required by local, state or federal law.

(5) Bikeways, bike paths, sidewalks, hiking trails, greenways or other similar amenity.

(6) Public or private picnic areas, parks, plazas or other gathering areas.

(7) Public or private community facilities such as swimming pools, tennis courts, and recreation buildings. Golf courses may also be counted as open space for the purpose of meeting the open space requirement to a maximum of 50 percent of the required open space.

Open space area shall be protected by easements, maintenance agreements and/or other assurances satisfactory to the county attorney.

Sec. 24-536.7. Height of structures.

(a) Structures may be erected up to 60 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of the structure and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade.

(b) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank, radio, television and microwave antennas, and towers or other accessory functions, and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of the maximum approved height of the structure to which it is mounted, may be erected only upon the granting of a height limitation waiver by the board of supervisors.

(c) Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

(1) Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;

(2) Such structure is part of a Transit Oriented Development that utilizes a mass transit system, or is a primary economic opportunity use as determined by the county administrator and is of substantial fiscal benefit to the county;

(3) Such structure will not obstruct light from adjacent property;

(4) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;

(5) Such structure will not impair property values in the surrounding area;

(6) Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the structure is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and

(7) Such structure would not be contrary to the public health, safety or general welfare.

Sec. 24-536.8. Setback and buffer requirements.

(a) Location of structures. Structures shall be located 25 feet or more from any external existing or planned public road right-of-way, or any internal arterial road right-of-way, which is 50 feet or greater in width. Where the external existing or planned public road right-of-way, or the internal arterial road right-of-way, is less than 50 feet in width, structures shall be located 45 feet or more from the centerline of the external existing or planned or internal arterial public road. Structures shall be located a minimum of 50 feet or more from any community character corridor.

(b) Required buffers from economic opportunity districts. A buffer of 25 feet shall be maintained from the perimeter of an economic opportunity district. The buffer in an economic opportunity district shall be increased to 100 feet where adjoining property is designated low-density residential or rural lands on the Comprehensive Plan. In addition, the buffer shall also be increased to 100 feet where an economic opportunity district adjoins property in a community character area, except where those properties are included in the economic opportunity master plan.

The buffer shall be left in its natural undisturbed state and/or planted with additional or new landscape trees, shrubs and other vegetative cover such that the setback serves to minimize the visual intrusion and other negative impacts of new development or redevelopment on adjacent development.

(c) Setback and/or buffer modifications; criteria for determination. Reduction of the width of the setbacks and/or buffers specified in subsections (a) and (b) above may be approved for an economic opportunity zoning district upon demonstration that the proposed setback and/or buffer, by substitution of technique or design, will achieve results which clearly satisfy the overall purposes and intent of the setback and/or buffer requirement of this section and the intent of section 24-86 (Landscaping and Tree Preservation Requirements), shall have no additional adverse impact on adjacent properties or public areas, and will not result in detrimental impacts to the orderly development or character of the area, the environment, sound engineering or planning practice, or the goals, objectives, strategies and policies of the Comprehensive Plan. In addition, a request for a setback and/or buffer modification must meet one or more of the following criteria:

(1) The proposed setback and/or buffer is for the purpose of integrating proposed economic opportunity development with adjacent development, and if located in a community character area, compliments the character of the existing structures;

(2) The proposed setback and/or buffer substantially preserves, enhances, integrates and complements existing trees and topography;

(3) The proposed setback and/or buffer is due to unusual size, topography, shape or location of the property, or other unusual conditions, excluding the proprietary interests of the developer.

(d) Requests for modifications. Requests for modifications pursuant to subsection (c) above shall be filed in writing with the planning director and shall identify the reasons for such requests together with the proposed alternative. The planning director shall approve, deny or conditionally approve the request and shall include a written statement certifying that one or more of the above criteria are met.

(e) No minimum lot size or yard requirements. Except for required setbacks specified in (a) and (b) above, there shall be no minimum lot size nor minimum front, side or rear yard requirements for any lot within a economic opportunity district other than as specified in approved final plans.

(f) Uses prohibited. Setbacks shall not be used for streets or for parking except for entrances and driveways which may penetrate the setback.

Sec. 24-536.9. Street improvements.

(a) All dedicated public streets shown on the development plan shall meet the design and construction requirements of the Virginia Department of Transportation's standards. Such public streets shall be coordinated with the major transportation network shown in the county Comprehensive Plan.

(b) Private streets may be permitted upon the approval of the board of supervisors and shall be coordinated with existing or planned streets of both the master plan and the county Comprehensive Plan. Private streets shown on the development plan shall meet the requirements of the Virginia Department of Transportation, except as specified in paragraph (d) below.

The construction of streets, whether public or private, shall be guaranteed by appropriate surety, letter of credit, cash escrow or other form of guarantee approved by the county attorney and development manager or designee.

(c) To the extent streets are private rather than public, the applicant must also submit assurances satisfactory to the planning commission that a property owner's community association or similar organization has been legally established under which the lots within the area of the development plan will be assessed for the cost of maintaining private streets and that such assessments shall constitute a pro rata lien upon the individual lots shown on the development plan.

(d) The uniqueness of each proposal for an economic opportunity development requires that the specifications for the width, surfacing, construction and geometric design of streets with associated drainage and the specifications for curbs and gutters be subject to modification from the specifications established in chapter 19. The development manager or designee may, therefore, within the limits hereinafter specified, waive or modify the specifications otherwise applicable for these facilities where the development manager or designee finds that such specifications are not required in the interests of the residents and property owners of the economic opportunity development and that the modifications of such specifications are not inconsistent with the interests of the entire county.

It shall be the responsibility of the applicant to demonstrate to the satisfaction of the development manager or designee with respect to any requested waiver or modification:

(1) That the waiver or modification will result in design and construction that is in accordance with accepted engineering standards;

(2) That the waiver or modification is reasonable because of the uniqueness of the economic opportunity development or because of the large area of the economic opportunity development, within which the nature and excellence of design and construction will be coordinated, preplanned and controlled;

(3) That any waiver or modification as to streets is reasonable with respect to the generation of vehicular traffic that is estimated will occur with the area of the master plan;

(4) That traffic lanes of streets are sufficiently wide enough to carry the anticipated volume and speed of traffic and in no case less than ten feet wide; and

(5) That waivers or modifications as to base and surface construction of streets and as to the condition of ditches or drainage ways be based upon the soil tests for California Bearing Ratio value and erosion characteristics of the particular subgrade support soils in the area.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th Day of September, 2011.

ZO-03-11EODist_ord2

UNAPPROVED MINUTES OF THE
AUGUST 3, 2011 PLANNING COMMISSION MEETING

ZO-0003-2011 ECONOMIC OPPORTUNITY DISTRICT

Mr. Jason Purse stated that staff is presenting the final draft ordinance to the Commission. The Economic Opportunity District is designed to facilitate economic development, diversify the tax base, and create jobs. Staff has made two changes to the packets delivered to Commission members. First, in the definition of residential unit types, staff recommends removal of the terms 'two family dwelling' and 'townhouse' from the use list since those items are included in the definitions section. Staff had also calculated density based on developable area, so a reference to 'gross area' on page 4 will be edited to 'developable area'. Construction phasing policy language was forwarded to Commission members earlier in the week to reference that policy in the Zoning Ordinance. Staff recommends approval of draft ordinance.

Mr. Fraley opened the public comment period.

Mr. Mac Mestayer, 105 Gilley Drive, stated he was concerned with preserving zoning to maintain the county's quality of life and the large amount of free upzoning. He stated the Transfer of Development Rights (TDR) process should be used, with half of the district used as a sending area to maintain open space while making the other half a receiving area.

Mr. Jim Brown, 4 Longleaf Circle, stated he was opposed to the Economic Opportunity District concept. He stated he was against the district due to a struggling economy, partially empty shopping centers, environmental loss, increased traffic, possible large-scale industries, the objections of nearby residents, and concerns over the placement of a new road near Skimino Creek and Lightfoot Road.

Mr. Craig Metcalfe, 4435 Landfall Drive, representing James City County Citizen's Coalition (J4C), stated EO storm water requirements need to be master planned and clearly defined. He stated the ordinance lacks provisions for green building design and that the county's 60% impervious cover rule should be upheld. The EO ordinance should be postponed until all other ordinance updates have been made. He questioned why the ordinance was moving ahead so quickly.

Mr. Wayne Moyer, 268 Peach Street, stated he owns 32 acres across EO-designated land and plans to preserve his property through a conservation easement. He stated he was concerned with the loss of natural environment. The EO industrial park could integrate business and nature, using walking and biking trails, retaining agricultural land, vegetation, open space, and wildlife habitat, and a single parking garage instead of parking lots.

Mr. Dick Schreiber, president of the Greater Williamsburg Chamber and Tourism Alliance, stated his members primary concern is continued quality of life. He stated that balanced growth can be achieved in ways consistent with maintaining current quality of life.

Balanced growth includes determining the quantity, type, and location of growth, as well as master planning.

Ms. Susan Gaston, representing the Williamsburg Area Association of Realtors, stated her organization supports the EO district. The EO district represents increased quality of life, including increased jobs, more diversified businesses, and reducing the 'brain drain' of college graduates leaving the community. Increased business opportunities will help retain this group.

Mr. Tom Tingle, chair of the James City County Economic Development Authority (EDA), stated the EDA identified areas throughout the county favorable for commercial development over the next generation. He stated of these areas, the Lightfoot-Croaker proved most attractive due to 500 acres of developable acreage, well-suited transportation infrastructure and the opportunity for regional cooperation with York County. A County-commissioned traffic study found a built-out EO zone increased County population 1% while increasing employment 14% and decreasing traffic improvement costs by 8%. The EO zone can attract businesses that attract and create high-paying jobs and allows increased long-range planning. The EDA requests approval of the EO ordinance.

Mr. Fraley closed the public hearing.

Mr. Fraley stated in response to citizen concerns regarding the timing of the ordinance, the Board voted for five ordinance update priorities for the Commission and staff. These priorities included EO, commercial districts, cumulative impacts, development standards, and a sustainability audit. The Board wants to review these priorities by November.

Mr. Poole asked if the Virginia Enterprise Zone designation was still in place for James River Commerce Center, GreenMount, and the south end of the county and if that zone still provides opportunity for predictability and business enhancements.

Mr. Purse stated the Enterprise Zone designations are still in effect. He stated the Board has included additional properties in the Hankins Industrial and Stonehouse Commerce parks into that designation. The EO zone is not in an Enterprise Zone, but will allow longer range planning after the Enterprise Zones expire in 2015.

Mr. Russell Seymour stated the state program expires in 2015. He stated the county is limited to 3800 acres it can designate Enterprise Zone.

Mr. Poole asked how businesses respond to Enterprise Zone incentives. He asked how it relates to Economic Opportunity zone predictability.

Mr. Seymour stated businesses are referred to the program through the State's economic development organization, the Hampton Roads Economic Development Association, or through Economic Development contacts. He stated the Enterprise Zone is a focal point for a certain type of business. Economic Development seeks large-scale, industrial-type businesses. There is no mechanism for the Enterprise Zone to cater to smaller-scale businesses.

Mr. Mike Maddocks asked if the Commission's approval for the ordinance would speed any development or compromise the planning process.

Mr. Purse stated that was not correct. He stated the ordinance adoption was the second step of a long-term planning process. He stated the third step would be presentation of a master plan and rezoning application to the County.

Mr. Maddocks asked whether any potential development would still be required to go through stringent oversight.

Mr. Purse stated that was correct.

Mr. Krapf stated he voted for the Economic Opportunity designation on the Comprehensive Plan while on the Steering Committee. He stated developing an EO ordinance is the next logical step. He stated the EO zone will give the county a new tool for developing a future vision. It provides additional revenue streams, since the County cannot rely on its traditional residential, retail, and manufacturing tax base, while attracting the best and the brightest. EO development will proceed at a measured pace and not outstrip infrastructure. The EO zone also provides an affordable/workforce housing component, and helps relieve development pressure on the rural lands. The new tool will still require safeguards, including the legislative process and site plan review.

Mr. Fraley stated the ordinance, if approved by the Board, provides several environmental protection 'firsts' for the county, including a pre-environmental inventory, density based on developable acreage, limits on clear cutting, construction phasing, tree preservation plan, view shed protections, green building standards, and transfer of development rights. The EO zone represents sound long-term planning. He has heard citizen concerns regarding the area turning into a New Town or the Marquis, but that is not consistent with the EO concept. The EO district is intended as an employment center for county residents that creates a positive fiscal impact, with intense commercial and office uses that use available transportation infrastructure. Residential units should be clustered near transit nodes while retail should primarily support industrial employees. Grid-like streets will provide connectivity, including pedestrian and bike access to employment areas. Parking should be limited, preserving land for more productive uses. The potential for commuter light rail should be reviewed. Sensitive environmental features and surrounding properties should be protected through view shed protection, integrated open space, building location and scale, mass, and architectural design, construction phasing, and tree preservation.

Mr. Poole stated that he supported the EO concept during the Comprehensive Plan. He stated there were unclear aspects of the ordinance and he had multiple concerns. The ordinance lacks open space design guidelines and has a large number of non-commercial by-right uses. The ordinance has been moved too quickly through the process, especially with the number of other ordinances under review and with half-empty empty shopping centers in the area. He stated he would prefer to wait on the EO ordinance, since the one presented does not match his vision in the Comprehensive Plan.

Mr. Tim O'Connor stated that given the economic climate, he can see owners and developers jumping on any economic opportunity that comes along. Delaying the ordinance would only increase the chances of ad hoc development.

Mr. Poole stated Anheuser-Busch's move to the county in the late sixties represented a golden goose to the community through its mix of commercial, industrial, residential, and entertainment uses. He stated he was unsure if the county had zoning in place at that time. The county should not feel threatened by what may or may not be developed in the area in order to rush the ordinance through. Anheuser-Busch taught this community it can have it all without trying to be prescriptive. Neither zoning nor a comprehensive plan would have been able to allow a development of that quality.

Mr. Al Woods stated staff does not support defining or adding open space language to the ordinance. He stated that he would like to see open space illustrations added to the ordinance before it is presented to the Board.

Mr. Fraley stated he had raised his concerns about the open space language with staff, but that language is not in the ordinance presented tonight.

Mr. Poole stated the Commission clearly expressed its desire at the July Committee meeting to include open space guidelines. He stated staff did not mention that intent in the evening's staff report, and he was concerned staff may not present open space language to the Board.

Mr. Fraley asked Mr. Purse how the Chesapeake Bay Preservation ordinance would apply to the EO zone.

Mr. Purse stated there are percentage limits to impervious cover, tree preservation language, and provisions for open space in the Chesapeake Bay ordinance.

Mr. Maddocks stated he remembered Anheuser Busch moving to the county in the late sixties. He stated the County seized an opportunity that has since fueled the county's economic growth. Although he understands concerns about the ordinance moving too quickly, he is unsure what stopping, depriving the county of this tool, would accomplish. Staff crafted the ordinance with all appropriate restrictions and guidelines. He stated, as a banker he does not expect any projects to move into the county with lightning speed. He stated he would support the ordinance.

Mr. Fraley asked Mr. Purse to review the ordinance's time line.

Mr. Purse stated the Board approved the zoning ordinance update methodology in May 2010, which included EO as a priority item. Staff brought an EO ordinance framework to the Policy Committee in November 2010. After receiving feedback, staff brought the framework to a January 2011 Board worksession. Staff brought a draft ordinance, based on feedback from the two groups, to the Committee in April. Staff received additional feedback from citizens and the Committee. Staff presented the reworked ordinance at a June Board work session. Based on Board feedback, staff brought the ordinance back to the Committee in July, with the entire

Commission present.

Mr. Krapf asked if the chair wanted to revisit open space design principles.

Mr. Fraley said yes. He asked Mr. Murphy how the Commission could address open space guidelines.

Mr. Murphy stated open space design guidelines language could be included as part of the Commission's motion.

Mr. Woods asked if the Commission would have an opportunity to review the language prior to submittal to the Board.

Mr. Murphy stated the Commission's recommendation would go the Board. He stated staff would probably rely on Board direction. If the Board asks staff to include open space language, staff will share it with the Commission.

Mr. Krapf moved to recommend approval of the EO ordinance with language added for open space design guidelines.

In a roll call vote, the Commission recommended approval, with language added for open space design guidelines. (4-2; Yes: O'Connor, Maddocks, Krapf, Fraley; No: Woods, Poole).

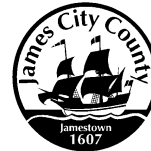
Hill Pleasant Farm, Inc
7152 Richmond Road
Williamsburg, Virginia 23188

Board of Supervisors
James City County

I am unable to address you in person so I would like to enter this into the record.

I realize that the EO zone is just the first step towards development of the Hill Pleasant corridor and I also realize that this process is ongoing and will be under intense scrutiny by the citizens of James City County. I want to plan for the future and after years of service on the planning commission I believe I am qualified to make some assessments as to where the county is going. Roads will need to be upgraded. Population will increase. Demand for services will increase. The need to pay for the upgrades will become the main issue in the political forum of the future. We cannot expect to meet these goals if we bury our heads in the sand. I submit that now is the time to accept that this change is coming. We can talk about green space and green energy and open space but the bottom line is we have to accommodate more people more cars and smart placement of new roads. We will have to take care of a graying population as well as providing new jobs for are children. I think that EO could be a positive step in that direction. No growth is a short sighted, naive approach to dealing with the future of James City County. I will continue to be involved in this process.

Respectfully submitted,
Donald Hunt
President Hill Pleasant Farm, Inc.



MEMORANDUM COVER

Subject: Authorization to Execute a Lease for Operation and Management of the Jamestown Yacht Basin

Action Requested: Shall the Board approve the lease to Eco Discovery Park, Inc. for the operation and management of the Jamestown Yacht Basin (JYB)?

Summary: In order to encourage competition and investigate available options for the management and operation of the Jamestown Yacht Basin (JYB), a competitive sealed Request for Proposals (RFP) was issued in March 2011.

Two proposals were received from Chesapeake Mastercraft, Ltd., dba Master Marine and Eco Discovery Park, Inc. The Evaluation Committee composed of staff members from General Services, Financial and Management Services, Parks and Recreation, and Purchasing reviewed the proposals. Based on the evaluation criteria listed in the RFP (overall approach to managing the JYB and quality of proposal, experience and knowledge of managing marinas similar in size and scope, professional experience of personnel who will work at the JYB, quality of proposed management and financial systems, proposed cost for services and financial stability of contractor, and ability to complete the lease negotiations and begin operations in keeping with the RFP timelines), the Evaluation Committee determined that Eco Discovery Park, Inc. was the most fully qualified firm and its proposal best suited the County's needs as defined in the RFP. A lease was negotiated with Eco Discovery Park, Inc.

Staff recommends approval of the attached resolution.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

- Attachments:**
- 1. Memorandum
 - 2. Resolution
 - 3. Exhibit 1 - Lease Agreement
 - 4. Exhibit 2 – Proposal for Operations of the JYB

Agenda Item No.: I-3

Date: September 13, 2011

MEMORANDUM

DATE: September 13, 2011

TO: The Board of Supervisors

FROM: John E. McDonald, Manager of Financial and Management Services

SUBJECT: Authorization to Execute a Lease for Operation and Management of the Jamestown Yacht Basin

James City County purchased the Jamestown Yacht Basin (JYB) and former Jamestown Beach Campground (JBC) in December 2006 to preserve greenspace, protect environmental and cultural resources, and provide increased waterfront access and recreational opportunities for citizens and visitors. The Shaping Our Shores Master Plan adopted by the Board of Supervisors in June 2009, outlined the long-range physical development, use, and stewardship of the JYB, JBC, and Chickahominy Riverfront Park.

Since the adoption of the Master Plan, the County has made infrastructure upgrades to the electrical system, water system, buildings, docks, bulkheads, and slips at the JYB to address health and safety concerns. A sewage pump-out and dump station funded primarily by a Virginia Department of Health Clean Vessel Act grant was installed last year.

The JYB offers slip rentals, boat ramp access, boat service, and fuel/marine retail sales, and serves smaller boats generally less than 30 feet in length, due to the low Colonial Parkway bridge, the bridge to Jamestown Island (Hole in the Wall), and the shallow Powhatan Creek channel and marina basin.

Following a competitive sealed Request for Proposals (RFP) process in 2006, the County entered into the current lease with Chesapeake Mastercraft, Ltd., dba Master Marine in January 2007 to operate the marina. The current lease has been renewed several times and expires December 31, 2011.

In order to encourage competition and investigate available options for the management and operation of the JYB, a competitive sealed RFP was issued in March 2011. Vendor suggestions were solicited from the Virginia Department of Health, Marina Program staff, and members of the Virginia Association of Governmental Purchasing. The RFP was publicly advertised and directly emailed to all members of the Virginia Marine Trades Association, various marine trade publications, and marina management firms including the vendors currently providing management services for the slips at the Yorktown Riverwalk and the Hampton City docks.

Offerors were encouraged to make recommendations and submit operational and development plans that would improve the operation of the JYB as a community asset in keeping with the Shaping Our Shores Master Plan goals. The scope of work will require the successful offeror to offer slip rentals, boat ramp access, boat repair services, and fuel/marine supply retail sales. The Scope of Work will also require the successful offeror to develop an annual management/operational plan for marina operation, employ staff sufficient to manage daily operations, collect and properly account for all fees, provide daily safety and maintenance inspections and repair, and assist the County in obtaining the Virginia Department of Environmental Quality (DEQ) Clean Marina designation.

Two proposals were received from Chesapeake Mastercraft, Ltd., dba Master Marine and Eco Discovery Park, Inc. The Evaluation Committee composed of staff members from General Services, Financial and Management Services, Parks and Recreation, and Purchasing reviewed the proposals. Based on the evaluation criteria listed in the RFP (overall approach to managing the JYB and quality of proposal, experience, and

knowledge of managing marinas similar in size and scope, professional experience of personnel who will work at the JYB, quality of proposed management and financial systems, proposed cost for services and financial stability of contractor, and ability to complete the lease negotiations and begin operations in keeping with the RFP timelines), the Evaluation Committee determined Eco Discovery Park, Inc. was the most fully qualified firm and its proposal best suited the County's needs as defined in the RFP.

The Evaluation Committee focused on both basic marina operations and on the elements of the Board's adopted Master Plan. That Master Plan defines JYB as a community asset that needs to be developed for the benefit of both residents and visitors. The Evaluation Committee determined that Eco Discovery Park, Inc. has the potential to provide a significantly better standard of care for JYB in terms of cleanliness, routine maintenance, facility care, and debris removal. These have been concerns in the past, but the Eco Discovery Park, Inc. proposal and business plan are dependent on an attractive well-maintained marina. The JYB benchmarks shown in Exhibit A of the proposed lease agreement focus on the minimum requirements relating to the marina operator. These include a minimum boating slip occupancy, certification as a Virginia Clean Marina, boat repair and service during regular business hours, an annual customer satisfaction survey, and satisfactory completion of both routine maintenance and capital improvements done in partnership with the County. The Committee expects that Eco Discovery Park, Inc. will meet the minimum requirements and exceed those that focus on maintenance. A lease was negotiated with Eco Discovery Park, Inc. and is included as Exhibit 1.

Normal yacht basin operations, slip rentals, marine fuel dispensing, and boat repair and servicing consistent with the JYB's current use shall be permitted along with the Eco Discovery Park uses as described in Eco Discovery Park, Inc.'s proposal. Exhibit 2 contains the portions of the proposal describing the Eco Discovery Park uses, a schematic map showing a potential layout and letters of support from community members and potential partners such as the City of Williamsburg, College of William and Mary, Colonial Williamsburg, Greater Williamsburg Chamber and Tourism Alliance, Virginia Clean Marina Program, Jamestown 4-H Educational Center, Williamsburg Land Conservancy, Virginia Living Museum, and the Virginia Capital Trail Foundation.

The Eco Discovery Park, Inc. business strategy approaches the development and management of the JYB as a community asset that offers eco-tourism and recreational opportunities in addition to traditional marina services. Features will include a store, café, exhibits, structures, and trails emphasizing environmental awareness and green technologies. The paid admission exhibit portions of the Park would be located behind the current main marina operations building and the current plan intends to offer free admission to citizens of the Historic Triangle communities. No new admission fees would be charged to access the marina portions of the property. Fees would continue to be charged for services such as boat ramp access and the sewage pump-out and dump station.

The initial lease term is three years with a two-year renewal term. Subsequent renewals may be for an additional five years or other mutually agreeable term. Benchmarks for the initial term have been developed for both the Eco Discovery Park and the JYB and appear as Exhibit A in the draft lease. The purpose of the benchmarks is to measure actual versus estimated progress and inform the County's renewal decision.

Monthly lease payments for the first (\$3,500) and second years (\$4,000) are initially lower than the current rent payment (\$4,867.20) to allow for capital investment. Payments increase for the third through fifth years as follows: \$5,000, \$6,000, and \$6,500. The average monthly rent payment over five years is \$5,000.

The attached resolution authorizes execution of a lease for the management and operation of the Jamestown Yacht Basin after the Board of Supervisors conducts a public hearing

Staff recommends approval of the attached resolution.

John E. McDonald

JEM/nb
JYPLeaseApp_mem

Attachments

RESOLUTION

AUTHORIZATION TO EXECUTE A LEASE FOR OPERATION AND MANAGEMENT OF THE

JAMESTOWN YACHT BASIN

WHEREAS, a request for proposals for the operation and management of the Jamestown Yacht Basin was advertised; two interested firms submitted proposals; and

WHEREAS, staff reviewed the proposals, selected Eco Discovery Park, Inc. as the most fully qualified and best suited to the County's needs as defined in the Request for Proposals, and negotiated a lease for the operation and management of the Yacht Basin; and

WHEREAS, after a public hearing, the Board of Supervisors is of the opinion that the County should lease the operation and management of the Jamestown Yacht Basin to Eco Discovery Park, Inc. under the terms and conditions of the lease agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute a lease with Eco Discovery Park, Inc. for the operation and management of the Jamestown Yacht Basin.

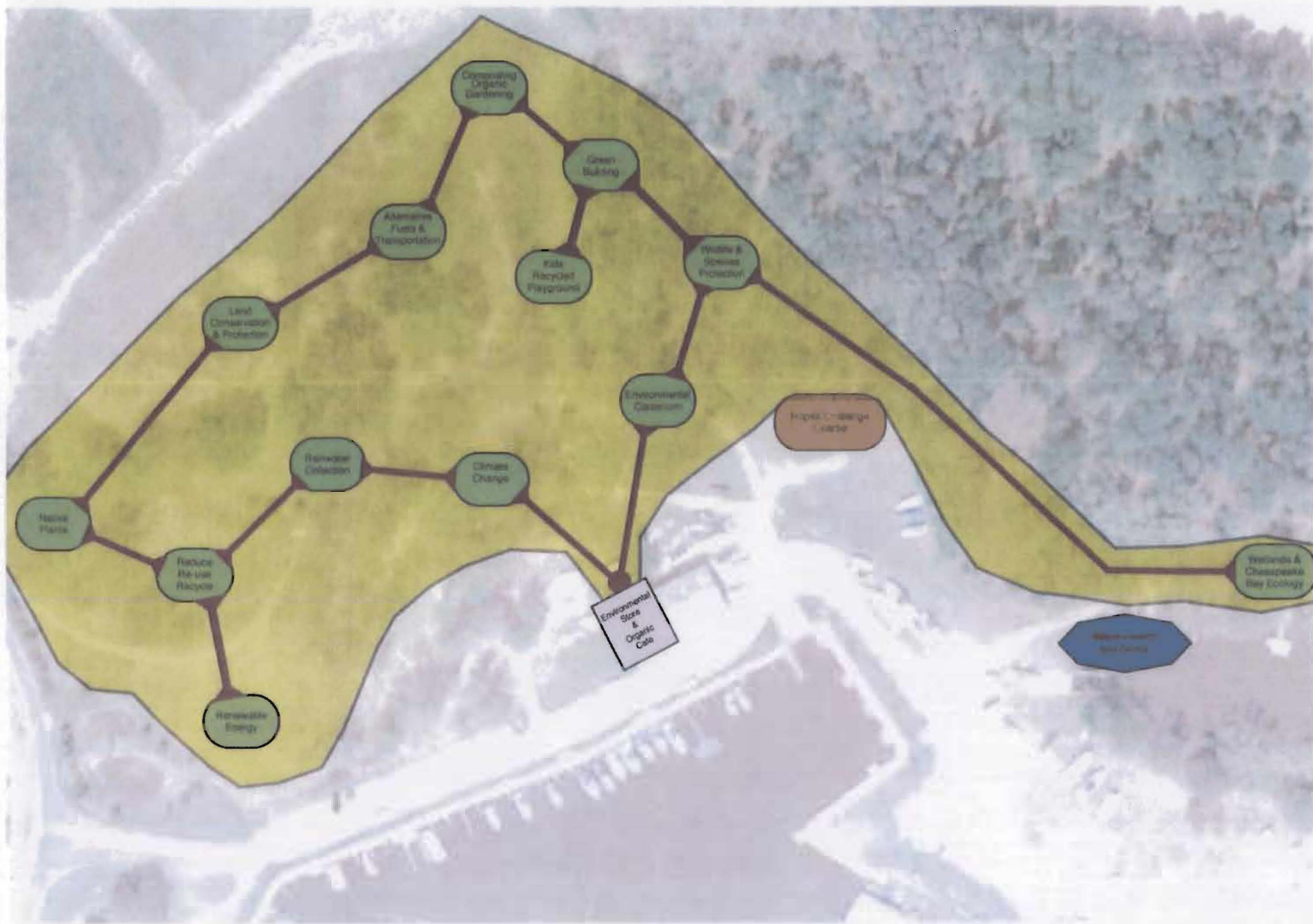
Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of September, 2011.

JYPLeaseApp_res



Proposal for Operations of the Jamestown Yacht Basin

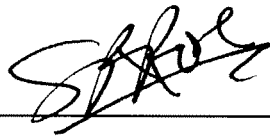
Submitted by Eco Discovery Park

~A comprehensive plan for managing this important public asset to its full potential~

Eco Discovery Park presents a truly unique opportunity for James City County to increase the appeal of our area for our citizens, students, institutions, and visitors from around the country and the world. By virtue of its location, Jamestown Yacht Basin represents an outstanding community asset with options for recreation, education, and cultural and environmental preservation. To date, the use of this public space has been restricted to a small fraction of our population and its potential appeal hampered by lack of investment, poor upkeep, and narrow focus. With this proposal, Eco Discovery Park presents a comprehensive theme and operating plan that will leverage the principals' history of successful business, community engagement, partnership development, and environmental vision to unlock the potential of the entire property.

We enthusiastically present this proposal and look forward to working with James City County to create an asset that will be a source of community pride.

Respectfully Submitted,



Steve Rose, Chairman, Eco Discovery Park, Inc.

Executive Summary

Eco Discovery Park: Environmental education and recreation at the birthplace of our nation.

We would like to share our vision with you: Upon exiting from the Colonial Parkway Access road, you enter a site that has been improved in an integrated manner to serve boaters, kayakers, bikers, hungry tourists, and environmentally conscious visitors. To your right, recreational water craft are docked at the well maintained, full service marina. Up ahead, renovated buildings invite visitors to rent kayaks and bikes, have a bite to eat, or sit on a second floor veranda overlooking Powhatan Creek. On your left is the entrance to the Park itself--an exhibit oriented attraction that informs and inspires visitors in a fun and interactive way.

The realization of this vision will require the best elements of a public-private partnership to be deployed. By approaching the development and management of Jamestown Yacht Basin (JYB) not just as a marina but as a community asset with broad appeal, Eco Discovery Park will deliver on the aims of the Shaping Our Shores Master Plan and go further to serve as an exciting eco-tourism destination, addressing a stated priority for James City County (JCC) in the upcoming annual budget.

Eco Discovery Park, registered as a nonprofit organization but operated by a well-known, successful local entrepreneur, has access to the entire range of funding opportunities. We believe that a combination of grants, institutional donations, debt financing, and strategic partnerships will allow Eco Discovery Park to raise the utility and value proposition of the entire JYB property. Unlike other bidders, our vision goes far beyond an improved marina to deliver a multifaceted experience to a wide range of visitors. As the attached supporting letters indicate, many key stakeholders share this vision, support our aims as presented in this proposal, and look forward to partnering with us as we develop Eco Discovery Park.

Our plan, pursues the vision expressed by the JCC Board of Supervisors and other stakeholders in the Shaping Our Shores Master Plan by meeting a significant number of the Plan's goals:

1. Upgrades to the infrastructure and operations of the existing use of the site
2. Preservation of green space
3. Providing increased waterfront access and recreational opportunities for all JCC citizens
4. Wetlands interpretation and education

5. Kayak rentals and guided tours, highlighting the Captain John Smith Chesapeake National Historic Trail
6. Trailhead facilities for the multi-use Virginia Capital Trail, including bike rentals, tours, and restrooms

Along with meeting these specific objectives of the Master Plan, Eco Discovery Park plans to create and operate an educational park on 10-12 acres of the wooded section of the property. These improvements will ensure the preservation of the site and protect it against intensive development, further accommodating an overriding long-term objective of the Master Plan.

Together with our strategic partners, we will develop a facility that will offer interactive exhibits on green technologies, environmental education, and practical demonstrations for living in a way that involves less impact on the environment and protects it for future generations.

Part 3

Eco Discovery Park

Eco Discovery Park is the featured asset of our proposal for the full development and operation of the JYB property. This concept, endorsed by many local and strategic stakeholders (please see letters of support attached) will leverage the location, cultural significance, and environmental importance of the property to offer a unique experience for a wide range of visitors. Eco-tourism is now a well-known growth area of the tourism industry, and one that JCC has identified as an area of focus. Together with the enhanced waterfront activities already discussed, Eco Discovery Park will offer an important contribution to the overall appeal of the Historic Triangle as a tourist destination. Our vision for this phase of the JYB development is outlined below.

Mission

Eco Discovery Park seeks to inspire people, organizations, businesses, and government to make the health of our environment a priority in our actions.

Goals

- * To create an environmental learning center for residents and visitors.
- * To demonstrate alternative technologies and sustainable living practices.
- * To promote adventure and recreation that appreciates our natural world.
- * To engage community members in environmental planning and programs.
- * To encourage eco-tourism in our region.

Components of the Park

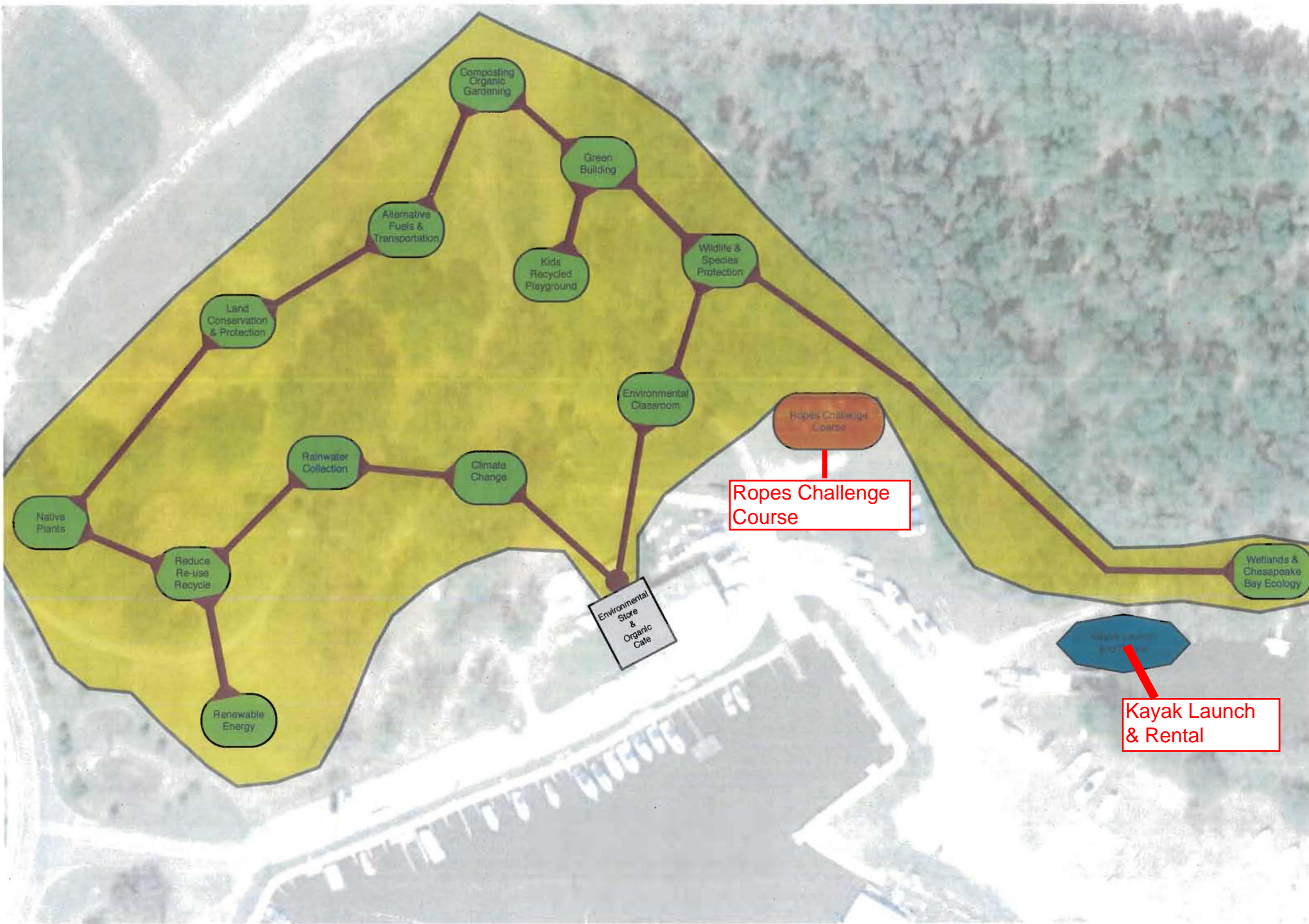
- * Center with offices, meeting area, green goods store, organic cafe.
- * Solar panels and wind turbines to achieve net zero energy status on site.
- * Zero impact in building phase through best available green practices and offsets.
- * Temporary exhibits displaying energy efficient small houses from biannual Solar Decathlon in Washington, D.C.
- * Exhibit kiosks.
- * Rustic moveable structures for classes and workshops.
- * Yurt village for student interns to live and work on site.
- * Cisterns for rainwater collection.
- * Nature trails linking learning modules.
- * Children's playground built from recycled materials with educational elements.
- * Solar powered water feature for summer fountain and winter ice rink.

Anticipated Visitors

- * Day visitors from the Hampton Roads and Richmond regions.
- * Students from elementary to college levels.
- * Teachers who want training in environmental concepts and projects.
- * Environmentalists meeting to discuss local and regional issues.
- * Group tours of all ages who may already be visiting the Historic Triangle.
- * Participants in classes and workshops.
- * Interns and volunteers.
- * Participants in area conferences and conventions.

Potential Partners

- The College of William and Mary
- Williamsburg Climate Action Network
- Virginia Institute of Marine Science
- The Williamsburg Land Conservancy
- Thomas Nelson Community College
- WJCC School System
- York County School System
- Daysprings Farm
- James River Association
- Virginia Native Plant Society
- The Chesapeake Bay Foundation
- The Chesapeake Conservancy
- The Williamsburg Botanical Garden
- The Virginia Living Museum
- City of Williamsburg
- York County
- Colonial Williamsburg Foundation
- James City County
- Jamestown 4-H Center
- Historic Jamestowne
- Jamestown-Yorktown Foundation
- Busch Gardens & Water Country USA
- Greater Williamsburg Chamber and Tourism Alliance
- Williamsburg Hotel/Motel Association
- Williamsburg Area Destination Marketing Committee (WADMAC)
- The Alliance for the Chesapeake Bay
- Virginia Chapter of the Sierra Club
- The Williamsburg Bird Club
- Virginia Capital Trail Foundation



Composting Organic Gardening

Green Building

Alternative Fuels & Transportation

Kids Recycled Playground

Wildlife & Species Protection

Land Conservation & Protection

Environmental Classroom

Hops Challenge Course

Ropes Challenge Course

Climate Change

Rainwater Collection

Native Plants

Reduce Re-use Recycle

Wetlands & Chesapeake Bay Ecology

Renewable Energy

Environmental Store & Organic Cafe

Kayak Launch & Rental

Kayak Launch & Rental

Virginia Institute of Marine Science
School of Marine Science

Marine Advisory Program

Ms. Stephanie Luton, CPPO, VCO
Purchasing Director
James City County Purchasing Office
101-F Mounts Bay Road, Suite 300
Williamsburg, Virginia 23185

Dear Ms. Luton,

On behalf of the Virginia Clean Marina Program, I would like to formally express my support for the Eco Discovery Park project. I believe that the project and activities proposed by Eco Discovery Park will make important contributions to our community while ensuring the sustainable low impact development of the Jamestown Yacht Basin site, an important public resource.

The Parks proposed programs will serve to enlighten residents and visitors about the importance of making the health of our environment a priority in our actions. Its combination of education, demonstration, and recreation activities will engage a broad range of people and establish the Jamestown Yacht Basin site as a resource with something for everyone.

I believe that the mission of Eco Discovery Park can be closely tied to the Virginia Clean Marina Program's goal of promoting environmental best management practices and educating people young and old about the importance of nature and protecting our sensitive marine environment for future generations.

I also have great confidence in Steve Rose's ability to implement these activities and achieve the proposal's objectives. Mr. Rose has been an active member of the community for 15 years and his organizational skills and energy are well known to everyone he serves.

Finally, as the coordinator for the Virginia Clean Marina Program, I look forward to working with and supporting Mr. Rose and his team as they work towards Clean Marina Certification for the Jamestown Yacht Basin. Please do not hesitate to contact me at (804) 684-7768, or annesmith@vims.edu, if you have any questions.

Sincerely,



Anne L. Smith
Virginia Clean Marina Program
Virginia Institute of Marine Science
P.O. Box 1346, Route 1208 Greate Road
Gloucester Point, Virginia 23062



JAMESTOWN 4-H EDUCATIONAL CENTER

3751 4-H Club Road Williamsburg, VA 23185
(757) 253-4931 Fax: (757) 253-7231
www.jamestown4hcenter.org



March 7, 2011

**2010-2011
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Anthony Lea

Advisors

Associate Director, 4-H
Dr. Cathy Sutphin

Southeast District Director
Lonnie L. Johnson Jr.

To Whom It May Concern,

On behalf of Jamestown 4-H Educational Center, I would like to express our support for the Eco Discovery Park concept. The 4-H Center feels that the activities proposed by Eco Discovery Park can make important contributions to our community while ensuring the sustainable low impact development of the Jamestown Marina site, an important public resource.

The Park's proposed programs will serve to enlighten residents and visitors about the importance of making the health of our environment a priority in our actions. Its combination of education, demonstration, and recreation activities will engage a broad range of people and establish the Jamestown Marina site as a resource with something for everyone.

The 4-H Center foresees that the Eco Discovery Park mission is compatible to our mission of education, particularly educating visitors the importance of environmental stewardship for this and future generations.

We also have confidence in Steve Rose's intentions and his ability to implement these activities and achieve the proposal's objectives while partnering with local organizations. Mr. Rose has been an active member of the community for 15 years and his organizational skills and energy are well known to everyone he serves.

We look forward to developing a partnership with Mr. Rose and his team for the Eco Discovery Park.

Yours respectfully,


Tony Lea



Founded 1928

Jamestown 4-H Educational Center, Inc. fosters change in the lives of youth and adults by building character, values and esteem through hands-on training, camping and conferences.

The Jamestown 4-H Center programs and employment are open to all regardless of race, color, religion, gender, age, veteran status, national origin, disability or political affiliation. An equal opportunity/affirmative action employer.



WILLIAMSBURG LAND CONSERVANCY

It's your view - help protect it.

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Judy Knudson

Kimber Smith

Michael Whittaker

Executive Director

Caren Schumacher

April 11, 2011

To Whom It May Concern:

The Williamsburg Land Conservancy, an organization focused on protecting and preserving natural, scenic, agricultural and historic land in the James and York River watersheds, supports the concept of an Eco Discovery Park project. Providing our residents and visitors with educational opportunities that will make them better stewards of our environment is critical to preserving our natural resources for the generations to come.

We applaud Steve Rose's proposed efforts to combine hands-on educational opportunities and the increased enjoyment of and respect for our beautiful waterways, and surrounding historically and naturally rich lands.

Sincerely,

Caren R. Schumacher
Executive Director

Conserving and Stewarding Our Land Resources for Future Generations



March 17, 2011

To Whom It May Concern:

On behalf of the Virginia Living Museum (VLM), I would like to express our support for the Eco Discovery Park project. The project and activities proposed by Eco Discovery Park will make important contributions to our community while ensuring the sustainable low impact development of the Jamestown Marina site, an important public resource.

The Parks proposed programs will serve to enlighten residents and visitors about the importance of making the health of our environment a priority in our actions. Its combination of education, demonstration, and recreation activities will engage a broad range of people and establish the Jamestown Marina site as a resource with something for everyone.

The VLM believes that the mission of Eco Discovery Park can be closely tied to our mission of educating visitors young and old about the importance of nature and our environment and protecting our sensitive environment for future generations.

We also have confidence in Steve Rose's ability to implement these activities and achieve the proposal's objectives. Mr. Rose has been an active member of the community for 15 years and his organizational skills have enriched the area through various service projects.

We look forward to supporting Mr. Rose and his team as Eco Discovery Park progresses.

Sincerely,


Page Hayhurs
Executive Director



P.O. Box 17966 • Richmond, VA 23226
www.virginiacapitaltrail.org

April 4, 2011

Mr. Steye Rose
Eco Discovery Park
C/O Williamsburg Event Rentals
4403 Ironbound Road
Williamsburg, VA 23188

Dear Mr. Rose,

We are enthusiastic about your plans and fully endorse your efforts to offer bike rentals and kayaking at the marina near the trailhead of the Virginia Capital Trail.

Relative to promoting other amenities available to trail users from Virginia and beyond, we're excited about the convenience of bike rentals and kayaking activities located so close to one of our trailhead facilities.

On behalf of the Virginia Capital Trail Foundation, we wish you success and look forward to many years of partnering with your organization.

Sincerely,

A handwritten signature in cursive script that reads "Beth Weisbrod".

Beth Weisbrod
Executive Director
Virginia Capital Trail Foundation



CITY OF WILLIAMSBURG

Office of the Mayor and City Council

March 28, 2011

Mr. Steve Rose, Founder
Eco Discovery Park
4403 Ironbound Road
Williamsburg, VA 23188

Dear Mr. Rose:

It is with great enthusiasm that I provide this letter of support for your Eco Discovery Park proposal for the Jamestown Yacht basin property in James City County. Your proposal will benefit citizens of the Greater Williamsburg area and will provide another great eco-tourism attraction to our destination for visitors to experience and enjoy.

Your proposed park amenities such as a learning center with educational opportunities on green technologies and sustainable living practices, and adventure and recreation opportunities that promote eco-tourism support the City of Williamsburg's Environmental Sustainability goal included in our Goals, Initiatives and Outcomes for the 2011 and 2012 Biennium. Overall, I believe that the Eco Discovery Park would be a great asset to our region.

I wish you success with your proposal and hope that the Eco Discovery Park will one day be a reality.

Sincerely,

A handwritten signature in black ink that reads "Clyde A. Haulman". The signature is written in a cursive style.

Clyde Haulman
Mayor



Greater Williamsburg
CHAMBER & TOURISM ALLIANCESM

April 7, 2011

Mr. Steve Rose
4403 Ironbound Road
Williamsburg, VA 23188

Dear Steve:

I am pleased to support your application to bring important ecotourism activity to the Jamestown Yacht Basin area. Your thorough proposal includes initiatives that have been of interest to the Alliance for some years now. Specifically, your plan to conduct kayak tours and bike rental programs are very much in line with the marketing publications we have been providing for the last three years: Williamsburg Biking Trails and Williamsburg Ecotourism.

Our Biking brochure delineates a number of bike trails throughout the Historic Triangle. Your effort will give life to this appeal of the Historic Triangle and will offer yet another reason for prospective visitors to come to our area. It will also provide those already here with another activity to cause them to increase the length of their stay. The same is true for kayaking.

Additionally, your vision for the Eco Discovery Park would add a dimension to our area's tourism programs that could be very beneficial.

Your plans are very much in line with the Alliance vision for tourism in the Historic Triangle and I am happy to support them.

Sincerely,

Richard A. Schreiber
President & CEO



CHARTERED 1693

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA
OFFICE OF THE PRESIDENT
P.O. BOX 8795
WILLIAMSBURG, VIRGINIA 23187-8795
757/221-1693, FAX 757/221-1259

February 25, 2011

To Whom it May Concern,

On behalf of The College of William & Mary, I would like to express support for the concept of an Eco Discovery Park. Such a park would benefit the William & Mary community through opportunities for exercise and learning as well as possibly attract visitors to Williamsburg.

Steve Rose, an active member of the community for 15 years, has championed this concept for some time now. The College has worked closely with his company, Williamsburg Event Rentals LLC, on many events over the years. Steve's organization and enthusiasm are well known. He would undoubtedly bring the same traits to the Eco Discovery Park.

I do hope his proposal receives strong consideration. The Park's combination of educational and recreational activities would greatly benefit the Williamsburg community.

Sincerely,

Michael J. Fox
Chief of Staff
and Secretary to the Board of Visitors



The Colonial Williamsburg Foundation

OFFICE OF THE PRESIDENT

February 25, 2011

To Whom It May Concern:

I am delighted to express my support for the proposed Eco Discovery Park project. The project and activities proposed promise to make important contributions to our community, while ensuring the sustainable low impact development of the Jamestown Marina site, as an invaluable public resource.

The Park's proposed programs will help residents and visitors understand better the importance of making the health of our environment a priority. Its combination of educational and recreational activities will engage a broad range of people and establish the Jamestown Marina site as a resource with something for everyone.

I am confident that the mission of Eco Discovery Park can be closely tied to our objectives at Colonial Williamsburg of promoting tourism and education within the Historic Triangle area and protecting the invaluable assets of the region for the benefit of future generations.

I have great confidence in Steve Rose's ability to implement these activities and achieve the proposal's objectives. Mr. Rose has been an active member of this community for 15 years and his organizational skills and energy are well known to everyone with whom he has worked.

I look forward to supporting Mr. Rose and his team as Eco Discovery Park moves forward.

Sincerely,

Colin G. Campbell

"THAT THE FUTURE MAY LEARN FROM THE PAST"

Post Office Box 1776, Williamsburg, Virginia 23187-1776, Telephone: (757) 220-7200

JAMESTOWN YACHT BASIN LEASE AGREEMENT

THIS LEASE AGREEMENT, entered into this _____ day of _____, 2011, by and between the County of James City, Virginia, a political subdivision of the Commonwealth of Virginia (the "County"), and Eco Discovery Park, Inc., (the "Tenant").

WITNESSETH:

WHEREAS, on or about March 14, 2011, the County advertised a Request for Proposal (Request for Proposal RFP 11-4435) (the "RFP") for the management and operation of the Jamestown Yacht Basin. The Tenant submitted a proposal dated April 11, 2011 (the "Proposal"). The RFP and Proposal are incorporated herein by reference.

WHEREAS, on or about June 13, 2011, the County determined that the Proposal was responsive to the RFP and further determined that the Proposal was acceptable; and

WHEREAS, following proper advertisement, on _____, 2011, the James City County Board of Supervisors held a public hearing and, by a ___ to ___ vote, adopted a resolution authorizing the County Administrator to execute this Lease Agreement with the Tenant.

NOW, THEREFORE, in consideration of the below stated rent and other terms and conditions stipulated in this Lease Agreement, hereinafter referred to as the "Lease", the County does hereby lease to Tenant, and Tenant does hereby rent from the County, the following described lots, pieces or parcels of land, together with all improvements thereon (the said land and improvements thereon collectively referred to as the "Marina") to-wit:

Tax Map Parcel #(46-4)(1-12);
and the non-marsh portion of Tax Map Parcel #(46-4)(1-13);

TO HAVE AND TO HOLD said land and improvements thereon and the privileges and appurtenances thereunto belonging unto the Tenant, its permitted successors and assigns, for the term hereinafter provided, and upon all of the following terms and conditions, to which the parties mutually covenant and agree:

1. TERM

a. The initial term of this Lease shall be for THREE (3) year(s) (the "Term") and shall commence as hereafter defined. If the County, for any reason whatsoever, cannot deliver possession of the Marina to Tenant on the Commencement Date, then this Lease shall not be affected or impaired in any way except as herein expressly provided and the County shall not be liable to the Tenant for any loss or damage resulting therefrom or caused thereby. In such event the rent reserved herein shall not become due and payable until the date on which the County gives Tenant written notice that the Tenant can take possession of the Marina. Unless expressly otherwise provided herein rent shall commence on the earlier of: (i) occupancy of the Marina by Tenant; (ii) the date the County has the Marina ready for occupancy by the Tenant provided the Tenant has been given at least fourteen (14) days' notice of same; or (iii) the date the County

could have had the Marina ready had there been no Delays attributable to the Tenant (the “Commencement Date”).

b. If the Expiration Date, as determined herein, does not occur on the last day of a calendar month, then the County, at its option, may extend the Term by the number of days necessary to cause the Expiration Date to occur on the last day of the last calendar month of the Term. The Tenant shall pay Rent for such additional days at the same rate, payable for the portion of the last calendar month immediately preceding such extension. The Commencement Date, Term and Expiration Date shall be set forth in a commencement letter (the “Commencement Letter”), prepared by the County and executed by the Tenant.

c. Benchmarks for the initial THREE (3) year term have been developed for both the Eco-Discovery Park (EDP) and the Jamestown Yacht Basin (JYB). These benchmarks appear in Exhibit A to this Agreement. The primary purpose of the EDP benchmarks will be to measure actual versus estimated progress and establish realistic benchmarks for the first potential renewal term. The primary purpose of the JYB benchmarks will be to inform the County's renewal decision. Failure to achieve individual benchmarks will not be considered a breach of the lease. If this Lease is renewed, the benchmarks will be updated.

d. Prior to the expiration of this Lease, the parties may, renew the Lease for an additional TWO (2) year Term. Prior to the expiration of the TWO (2) year renewal Term, the parties may, upon mutual written agreement, extend the Lease for an additional Five (5) Year or other mutually agreeable Term. Subsequent renewals are permitted upon mutual written agreement between the parties.

2. RENT

During the first year of the original term of this Lease, Tenant covenants to pay a base annual rental to the County equal to Forty Two Thousand Dollars (\$42,000) (“Rent”), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Three Thousand Five Hundred Dollars (\$3,500.00). The Rent for the second and third years of the original term shall be \$48,000 (\$4,000 monthly) and \$60,000 (\$5,000 monthly) respectively. If the initial Two (2) year renewal is granted, the Rent for the fourth and fifth years shall be \$72,000 (\$6,000 monthly) and \$78,000 (\$6,500 monthly) respectively. Rent for any additional Terms shall be as mutually agreed upon by the parties.

The Tenant shall pay to the County Rent, on or before the first day of each calendar month during the Term, without previous demand or notice therefore by the County and without set off or deduction; provided, however, if the Term commences on a day other than the first day of a calendar month, then Rent for such month shall be (i) prorated for the period between the Commencement Date and the last day of the month in which the Commencement Date falls, and (ii) due and payable on the Commencement Date. Notwithstanding anything contained herein to the contrary, the Tenant’s obligation to pay Rent under this Lease is completely separate and independent from any of the County’s obligations under this Lease. For each monthly Rent payment the County receives after the tenth (10th) day of the month, the County shall be entitled to, in addition to all other remedies provided in this Lease, a late charge in the amount of five percent (5%) of all Rent due for such month.

3. TAXES AND ASSESSMENTS

Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof, excepting only real property. In the event any or all of the taxes for which Tenant is responsible shall be assessed and taxed with the real property, the Tenant shall pay to the County its share of such taxes within ten (10) days after delivery to the Tenant by the County of a statement in writing setting forth the amount of such taxes applicable to the Tenant.

4. USE AND NAME OF MARINA

a. Use. The Tenant shall be permitted to use the Marina for marine slip rentals, marine fuel dispensing, and boat repair and servicing consistent with the Marina's current use, to include additional Marina uses and the Eco-Discovery Park uses as described in the Proposal (the "Current Use"). The Tenant must obtain the County's permission prior to any proposed change in the size or scope of the Current Use or prior to establishing any new use at the Marina. The Tenant shall never make any use of the Marina which is in violation of any federal, state, or County laws, rules and regulations, whether now existing or hereafter enacted or as may be developed or modified from time to time by the County effective as of the day delivered to the Tenant or posted on the Marina providing such rules do not unreasonably interfere with the conduct of the Tenant's business. The Tenant may not make any use that is or may be a nuisance or trespass or makes such insurance unavailable to the County on the Marina.

b. Name. The County shall have the exclusive right to name and/or rename the Marina (the "County Marina Name"). The Tenant shall use and promote only the County Marina Name. The use of any name for the Marina other than the County Marina Name, if any, shall be prohibited. If the County confers a County Marina Name, the Tenant shall only use the County Marina Name in connection with the operation of the Marina. The County shall retain any and all rights to the County Marina Name upon termination of this Lease for whatever reason. The Tenant may use the name "Eco Discovery Park" as the primary name for all activities within the Marina boundaries. The County Marina Name shall be used for Marina uses.

5. CONDITION OF THE MARINA

a. The Tenant's occupancy and use of the Marina shall be the Tenant's representation to the County that the Tenant has examined and inspected the same, finds the Marina to be satisfactory for the Tenant's intended use, and constitutes the Tenant's acceptance "as is". The Tenant shall deliver at the end of this Lease each and every part of the Marina in good repair and condition, ordinary wear and tear and damage by insured casualty excepted. The delivery of a key or other such tender of possession of the Marina to the County or to an employee of the County prior to the expiration of the Term shall not operate as a termination of this Lease or a surrender of the Marina except upon written notice by the County in accordance with the terms hereof. The Tenant shall: (i) keep the Marina in good order; (ii) make repairs and replacements to the Marina and premises as needed because of the Tenant's, employees', or invitees' misuse or primary negligence; (iii) repair and replace special equipment or decorative treatments installed by the Tenant, except if this Lease is ended because of casualty loss or condemnation; and (iv) not commit waste. The Tenant, however, shall make no structural or other alterations of the Marina other than routine maintenance without first obtaining written permission from the County. "Routine Maintenance" shall be performed by the Tenant and shall include minor, usual repairs

and upkeep (e.g., replacement of light bulbs, fixtures, wood planks on piers, roof patches, etc.) and including, but not limited to, the following:

1. **Grass Maintenance.** Mowing of all grass areas between all buildings including the dockmaster's house and parking areas and the marina basin once per week during the growing season. Mowing of all other grass areas on the property around all developed areas of the property once per month during the growing season.
2. **Wood Deck Maintenance.** Replacement of all missing deck boards on the walking surface of all decks within 24 hours of condition developing or first notification of condition. The County will provide appropriate lumber and fasteners for use by the tenant to expedite these repairs. Tenant shall contact the County's Facilities Superintendent to coordinate delivery of these supplies. If, due to unusual conditions, replacement cannot be done within 24 hours, the Tenant will close that portion of the deck to pedestrian traffic until replacement is completed.
3. **Drainage.** All drainage pipes and ditches shall be cleared of any debris, grass clippings, or soil that may be causing malfunction of the facility or diversion of waters in a way that causes damage to other portions of the property. This is particularly important for the drains along the front parking lot **which shall be cleared immediately after every mowing or trimming operation.**
4. **Vehicle Parking.** Placement and maintenance of measures as deemed appropriate by the County to prevent parking on turf areas adjacent to the marina basin in any areas.
5. **Building and Covered Dock Maintenance.** Replacement of broken or missing light bulbs, outlet covers, and fixtures. Cleaning and painting of interior areas of all buildings as necessary. Cleaning of the restrooms shall be done once per day. Minor repairs to plumbing components of fixtures such as sinks, hose equipment, or toilets. Any spills of petroleum based products or other products that may cause contamination of building or grounds areas shall be promptly cleaned up and disposed of appropriately. This paragraph includes all buildings on the premises including the dockmaster's house.
6. **Equipment Maintenance.** Repair of any outdoor equipment in place at the time of the lease execution used in the operation of the marina such as fuel facilities and boat lifts. **Outdoor water fixtures shall be inspected on a daily basis for proper functioning and operation.**
7. **General Cleaning of Grounds and Buildings.** Litter pickup once daily to include the watermen's area and emptying of dumpsters and trash containers on a regular basis to include the watermen's area.
8. **Monitoring and Restricting Access to Areas Behind Buildings and in northerly direction to property line parallel with Jamestown Road.** Tenant shall monitor and restrict access to the rear portions of the property. Activities shall include, but are not limited to, maintaining the chain across the gravel road and posting "No Trespassing" signs at appropriate intervals to discourage foot and vehicle traffic.

9. **Stormwater and Pollution Management Tasks.** The Tenant's employees will attend any County-offered and County- required training for County employees on pollution prevention measures. The Tenant will develop and implement standard operating procedures for spill prevention, mitigation and control for both interior and exterior operations. The Tenant will document a formal operation and maintenance plan for any stormwater facilities, including inlets, road ditches, BMPs, etc.

The County shall immediately notify the Tenant in writing of any observed site deficiencies. The Tenant shall have 10 calendar days from the day of receipt of written notification to correct the deficiency. Email shall constitute "written notification. If the deficiency is not corrected within this time period, the County may procure the required goods or services from other sources and hold the Tenant responsible for any resulting additional purchase, staff and administrative costs. This remedy shall be in addition to other remedies which the County may have.

If the Tenant desires alterations other than Routine Maintenance (e.g., replacement of entire pier structure, enclosure of dock slips, enlargement of structure, etc.), the Tenant shall make such request in accordance with section 8 of this Lease Agreement.

b. Upon termination of this Lease or vacation of the Marina by the Tenant, the Tenant shall restore the Marina, at Tenant's sole expense, to the same condition as existed at the Commencement Date; ordinary wear and tear, alterations approved pursuant to section 8 of this Lease Agreement, and damage by insured casualty only excepted. The County, however, may elect to require the Tenant to leave alterations performed by or for the Tenant unless at the time of such alterations the County agreed in writing that such alterations could be removed on the Expiration Date, upon the termination of this Lease or upon Tenant's vacation of the Marina.

c. The Tenant shall keep the Marina free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of the Tenant. Should any claim of lien or other lien be filed against the Marina by reason of any act or omission of the Tenant or any of the Tenant's agents, employees, contractors, or representatives, then the Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after the filing thereof. Should the Tenant fail to discharge such lien within such ten (10) day period, then the County may discharge the same, in which event the Tenant shall reimburse the County, on demand,, the amount of the lien or the amount of the bond, if greater, plus all reasonable administrative costs incurred by the County in connection therewith. The remedies provided herein shall be in addition to the other remedies available to the County under this Lease or otherwise. The Tenant shall have no power to do any act or make any contract that may create or be the foundation of any lien, mortgage or other encumbrance upon the reversionary or other estate of the County, or any interest of the County in the Marina. **NO CONSTRUCTION LIENS OR OTHER LIENS FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED TO THE MARINA SHALL ATTACH TO OR AFFECT THE INTEREST OF COUNTY IN AND TO THE MARINA.**

6. ASSIGNMENT, SUBLETTING AND MORTGAGING

The Tenant shall not assign this Lease or sublet or place any mortgage upon the Marina, in whole or in part, without the County's prior written consent. If consent to assign or sublease is obtained, no such assignment or sublease shall in any way release or relieve the Tenant from any of its covenants or undertakings contained in this Lease, and in all cases under this paragraph, the Tenant shall remain liable on this Lease during the original and all renewal terms. The Tenant's request for consent to any subletting or assignment of this Lease shall be accompanied by a written statement setting forth the details of the proposed sublease or assignment and any other information the County deems relevant. The County shall have the right to (a) withhold consent; (b) grant consent; or (c) terminate this Lease as of the effective date of such sublease or assignment. After ten days written notice to Tenant of the County's intention to terminate, Tenant may withdraw its request for consent and the lease shall continue with its terms. In the event Tenant does not withdraw its request for consent to sublet or assign, the County may elect to enter into a direct lease with the proposed assignee or subtenant. The Tenant shall be liable for reasonable fees incurred by the County in connection with an assignment, subletting, or mortgage of the Marina.

7. UTILITIES

During the term of this Lease, the Tenant shall promptly pay all fuel, water, gas, electricity, sewerage, telephone, and other utility bills, as the same become due, it being understood and agreed that the Tenant shall promptly make all required deposits for meters and utilities service. The County shall not be liable for any interruption or failure in the supply of any utility to the Marina and no abatement of Rent shall be allowed to the Tenant as a result thereof, unless such interruption is prolonged and is a result of the County's negligence, nor shall the Lease or any of the County's obligations be in any way affected thereby.

8. REPAIRS AND ALTERATIONS

a. The Tenant shall, at its sole expense, perform or contract to have performed all Routine Maintenance that it deems necessary about the Marina. The Tenant shall not be reimbursed for any Routine Maintenance unless otherwise agreed to in writing by the County.

b. The Tenant may make improvements to the Marina using its own resources. Other than Routine Maintenance, the Tenant shall not make any alterations of, additions to, or changes ("Improvement") to the Marina without the prior written consent of the County, such consent not to be unreasonably withheld. All such Improvements shall meet local, state and Federal requirements and avoid adverse impacts to cultural and environmental resources. The Tenant shall provide construction drawings to the County for each proposed Improvement and shall provide the County with a cost estimate for each. The County shall consider each such proposed Improvement and may, at its sole discretion, approve, conditionally approve, or deny each such proposed Improvement or any portion thereof. All proposed Improvements shall be classified as either "infrastructure solely dedicated to the Eco Discovery Park and not required for marina operations" or "other." These two classifications shall determine which improvements are eligible for removal upon Termination of this Lease pursuant to paragraph 8(c). It is understood between the parties that all buildings on the property as of the date of this Agreement are considered required for marina operations. Upon completion of the Improvement, the Tenant shall provide the County with a set of as-built construction plans and a complete accounting for

the County's review and approval. If the County approves the accounting and as-built construction plans, the Improvement shall be deemed an "Approved Improvement".

c. Improvements specific to infrastructure solely dedicated to the Eco Discovery Park and not required for marina operations and Exhibits funded by EDP can be removed at a mutually-agreeable date and time upon termination of this Lease. All Improvements and Approved Improvements classified as "other" as described in paragraph 8.b. above shall, upon the termination of the Lease for whatever reason, become the County's property.

d. A marina capital improvement plan for this Approved Improvements classified as "other" shall be developed by the parties as of September 30 for each subsequent year of the Lease. Projects under \$1,000 require one fair and reasonable quote. Projects from \$1,000-\$30,000 require 3 quotes. Projects over \$30,000 require a sealed bid or proposal.

e. Upon termination of the Lease, the County shall reimburse the Tenant for any Approved Improvement (the "Approved Improvement Reimbursement"). The Approved Improvement Reimbursement shall be calculated according to the following formula: Cost of the Approved Improvement minus a mutually agreed upon a rate of depreciation (which shall be consistent with generally accepted accounting principles) for each month following completion of the Approved Improvement. The date of completion shall be the date a temporary or final Certificate of Occupancy was obtained for the Approved Improvement. If no temporary or final Certificate of Occupancy was obtained for the Approved Improvement, the completion date shall be determined by the County.

f. Upon expiration or earlier termination of this Lease, the Tenant's leasehold interest in the Marina shall terminate and title to the Improvements and Approved Improvements thereon, except as provided for in paragraph 8(c), shall automatically pass to, vest, belong to, and become the property of the County. The Tenant shall, if the County shall deem it appropriate, execute any further documents to confirm this transfer of title to the County with cost of charge to the County. The Tenant shall be responsible for the removal of its personal property and/or Approved Improvements described in paragraph 8(c), upon expiration or earlier termination of this Lease, provided that the Tenant shall be responsible for the cost of repair of any damage caused by the removal.

g. The Tenant shall, on the last day of the term, or upon the sooner termination of this Lease, peaceably and quietly surrender the Marina and equipment to the County, broom-clean, including all Improvements, Approved Improvements, un-removed Improvements as described in paragraph 8 (c), alterations, rebuildings, replacements, changes or additions placed by the Tenant thereon, in as good condition and repair as the same were in at the commencement of the original term, normal wear and tear excepted.

9. EMINENT DOMAIN

If all of the Marina, or such part thereof as will make the same unusable for the purposes contemplated by this Lease, be taken under the power of eminent domain (or a conveyance in lieu thereof), then this Lease shall terminate as of the date possession is taken by the condemnor, and Rent shall be adjusted between the County and the Tenant as of such date. If only a portion of the Marina is taken and the Tenant can continue use of the remainder, than this Lease will not

terminate, but Rent shall abate in a just and proportionate amount to the loss of use occasioned by the taking. The County shall be entitled to receive and retain the entire award for the affected portion of the Marina. The Tenant shall have no right or claim to advance any claim against the County for any part of any award made to or received by the County for any taking and no right or claim for any alleged value of the unexpired portion of this Lease, or its leasehold estate, or for costs of removal, relocation, business interruption expense or any other damages arising out of such taking.

10. INSPECTION BY THE COUNTY

The Tenant shall permit the County, its agents, or its employees to inspect the Marina and all parts thereof, during business hours and to enforce and carry out any provision of this Lease and for the further purpose of showing the Marina to prospective tenants and purchasers and representatives of lending institutions. The County shall at all times have the right to place signs in conspicuous places about the Marina and to otherwise advertise the Marina for sale or rent, in addition to having the rights of entry and inspection set forth herein.

11. DEFAULT BY THE TENANT

a. The happening of any of the following enumerated events shall constitute a default for which the County, in addition to other rights or remedies it may have, shall have the immediate right of re-entry without service of notice or resort to legal process for (a) failure of the Tenant to pay any rent due hereunder within ten (10) days after written notice to the Tenant of such failure; (b) vacation of the Marina by the Tenant or advertising by the Tenant in any manner that would indicate or lead the public to believe that the Tenant was going out of business or intending to vacate the Marina; (c) the filing by, on behalf of or against the Tenant, of any petition or pleading to declare the Tenant insolvent, (d) the inability of the Tenant to pay its debts or meet its obligations under the laws of the United States or any state; or a receiver of the property of the Tenant is appointed; or the levy of execution or other taking of property, assets or the leasehold interest of the Tenant by process of law or otherwise in satisfaction of any judgment, debt or claim against the Tenant; or (e) failure of the Tenant to perform any of the other terms, conditions or covenants of this Lease.

b. Should the County elect to re-enter and terminate the Tenant's use of the Marina as herein provided, or should the County take possession pursuant to legal proceedings or pursuant to any provisions under law, the County may either terminate this Lease or it may from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to relet or sell the Marina or any part thereof for such term or terms (which may be for a term extending beyond the original or renewal terms of this Lease) and at such rent and upon such other terms and conditions as County, in its sole discretion may deem advisable. Upon each such reletting all rent received by County from such reletting shall be applied, first, to the payment of any indebtedness other than rent due hereunder from the Tenant to the County; second, to the payment of any costs and expenses for such repossession and reletting, including brokerage fees and attorney's fees and costs of alterations and/or repairs; third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by the County and applied in payment of future rent as the same may become due and payable hereunder. If the Marina is not relet or sold as aforesaid, or if the rent received for such reletting during any month be less than that to be

paid during the month by the Tenant to the County hereunder, the Tenant shall promptly pay the rental due hereunder or any such deficiency as the case may be to the County. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Marina by the County shall be construed as an election on its part to terminate this Lease unless a written notice of such election be given to the Tenant or unless the termination be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, the County may at any time thereafter elect to terminate this Lease for such previous breach. The Tenant will pay to the County all expenditures incurred by them in any enforcement of the provisions of this Lease, including reasonable fees of attorneys and others employed by the County.

c. Except as expressly herein provided to the contrary, any amount due to the County not paid when due shall bear simple interest at the legal judgment rate.

d. All of the foregoing remedies shall be in addition to any other rights the County may have at law or in equity, and waiver of one default shall not be deemed to be a waiver of any subsequent default.

12. INDEMNIFICATION OF COUNTY

a. The County shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Marina or the appurtenances thereto, or for any injury or damage to the Marina, or to any property, whether belonging to the Tenant or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Marina or from steam, gas, electricity, water, rain or snow that may leak into, issue or flow from any part of the Marina from the drains, pipes or plumbing work of the same, or from the street, subsurface or any place or quarter, or due to the use, misuse or abuse of any or all of the hatches, openings, installations, or hallways of any kind whatsoever, or from any kind of injury which may arise from any other cause whatsoever on the Marina, including defects in construction, latent or otherwise; provided, however, that the Tenant shall not be responsible for clean up of any Hazardous Substances (as defined herein), to the extent that such Hazardous Substances were introduced to the Marina i) by the County; or ii) prior to the Commencement Date and not the result of actions by the Tenant or its agents, employees, or independent contractors. The provisions of this Lease permitting the County, after notice, to enter and inspect the Marina are made for the purpose of enabling the County to become informed as to whether the Tenant is complying with the agreements, terms, covenants and conditions thereof, but the County is under no obligation to perform such acts as the Tenant shall fail to perform.

b. The Tenant shall indemnify and hold the County harmless from and against any and all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including attorneys' fees, or injury to person or property arising out of, by reason of, or in account of:

1. Any material breach, violation or nonperformance of any covenant, condition, provision or agreement in this Lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed and performed, and
2. Claims of every kind or nature, arising out of the use and occupancy of the Marina by the Tenant, including without limitation, any damage to property occasioned or arising

out of the use and occupancy thereof by the Tenant, or any injury to any person, including death resulting at any time therefrom, occurring in or about the Marina.

13. HAZARDOUS SUBSTANCE

a. The Tenant shall not knowingly cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Marina by the Tenant, the Tenant's agents, employees, or contractors or invitees without the prior express written consent of the County.

b. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive or corrosive and that is or becomes regulated by any local government, the Commonwealth of Virginia or the United States Government. "Hazardous Substance" also includes any and all materials or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or County law or becomes regulated by any federal, state or County authority. "Hazardous Substance" includes, but is not restricted to, asbestos, polychlorinated biphenyl's (PCB's), solvents, printing inks, pesticides, solvents, and leads. "Hazardous Substance" excludes petroleum products when said petroleum products are stored and dispensed in accordance with all federal, state, and County laws and regulations.

c. The Tenant shall provide the County, in a timely manner, a Material Safety Data Sheet ("MSDS") upon the County's request. Said MSDS shall describe the chemical properties of any hazardous substances which may be used, stored, generated, or disposed of on or in the Marina.

14. LIMITATION OF COUNTY'S OBLIGATION

The County shall have no liability to the Tenant by reason of any inconvenience, annoyance, or injury to business arising from the County or its agents in their activities, making repairs, alterations, additions or improvements in or to a portion of the Marina except by reason of the negligence of the County or its agents. As a material part of the consideration to the County, the Tenant further assumes all risk of damage to property or injury to persons in or about the Marina arising from any cause and the Tenant hereby waives all claims in respect thereof against the County.

15. INSURANCE

a. At all times during the Lease, at its own cost and expense, the Tenant shall keep or cause to be kept on the Marina, and all equipment, fixtures, motors, and machinery owned or leased by the Tenant and installed in or used in connection with the Marina, including all alterations, renovations, replacements, substitutions, changes, and additions thereto, insured against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered) and such other hazards, casualties, risks, and contingencies now covered by or that may hereafter be considered, as included within the standard form extended coverage endorsement, in an amount equal to the actual replacement cost (the "Full Insurable Value"). Such Full Insurable Value shall be determined from time to time at the request of the County (no more often than once every year) but at the expense of the Tenant by the fire insurance company carrying the highest amount of fire insurance on the Marina or its agent, or by an appraiser selected by the Tenant that is experienced in insurance appraisals who is approved in writing by the County which approval shall not be unreasonably withheld. The failure of the County to request such appraisal shall not

release the Tenant from its obligations hereunder.

b. At all times during the Lease, at its own cost and expense, the Tenant shall provide and keep in force comprehensive general liability insurance in standard form, protecting the Tenant, the County, and the James City Service Authority as an additional insured, on a primary basis with no participation required by the County's liability policy, against personal injury, including without limitation, bodily injury, death, or property damage and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than One Million Dollars (\$1,000,000) per occurrence. The County reserves the right to amend these limits from time to time during the course of the Lease. All such policies shall cover the entire Marina and any improvements thereon, including parking, common areas, means of access, and roadways therein, and streets and sidewalks adjacent thereto.

c. At all times during the Lease when the Tenant is engaged in the construction or reconstruction of any Improvement, or repairs thereof, at its own cost and expense, the Tenant shall provide and keep in force for the benefit of the County and the Tenant, "all risk" builders risk insurance on the Marina and all Improvement(s) under construction.

d. At all times during the Lease, at its own cost and expense, the Tenant shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of the Tenant in strict compliance with the laws of the Commonwealth of Virginia in the following minimum amounts: Coverage A – Statutory, Coverage B - \$100,000/\$100,000/\$500,000.

e. At all times during the Lease, at its own cost and expense, the Tenant shall purchase and keep in force commercial auto liability including hired and non-owned car liability coverage in the amount of not less than One Million Dollars (\$1,000,000) per occurrence.

f. At all times during the Lease, at its own cost and expense, the Tenant shall purchase and keep in force general liability covering marine operations in the amount of not less than Two Million Dollars (\$2,000,000) per occurrence.

g. All of the policies of insurance required by this Lease shall be i) in form and substance as reasonably approved by the County; ii) underwritten only by companies licensed in the Commonwealth of Virginia which have a then current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of A or better (or the equivalent thereof) and a financial rating of VII or better (or the equivalent thereof); iii) accompanied by evidence of payment of premiums thereon to the insurance companies or their agents, including evidence of current annual payment, if on an installment payment basis; iv) contain standard waiver of subrogation clauses; and v) provide that they may not be canceled by the insurer for non-payment of premiums or otherwise until at least thirty (30) days after a receipt of the proposed cancellation, and in any event, shall not be invalidated, as to the interests of the Tenant therein, by any act, omission or neglect of the Tenant (other than nonpayment of premiums), which might otherwise result in a forfeiture or suspension of such insurance, including without limitation, the occupation or use of the Marina for purposes more hazardous than those permitted by the terms of the policy, any foreclosure of any leasehold deed of trust and any change in title or ownership of the Marina. If requested by the County, copies of all insurance policies required by this Lease shall be delivered by the Tenant to the County. All insurance policies shall be renewed by the Tenant and proof of such renewals, accompanied by evidence of the payments of the premiums thereon to the insurance companies or their agents,

shall be delivered to the County, at least twenty (20) days prior to their respective expiration dates. All self insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by the James City County Risk Management Director.

16. RESERVED RIGHTS

The County explicitly reserves the following rights in addition to any other rights otherwise granted or reserved in this Lease Agreement:

a. To name and/or change the name or street address of the Marina without liability of the County to the Tenant;

b. To enter during the last ninety (90) days of the Term, provided the Tenant shall have removed all or substantially all of the Tenant's property from the Marina, for the purpose of altering, renovating, remodeling, repairing, or otherwise preparing the Marina for re-occupancy;

c. To enter the Marina, for the making of inspections, repairs, alterations, improvements or additions at or to the Marina as the County may deem necessary or desirable, and for any purpose whatsoever related to the safety, protection, preservation, or improvement of the Marina or of the County's interest in the Marina;

d. At any time or times, the County, either voluntarily or pursuant to governmental requirement, may, at the County's own expense make repairs, alterations, or improvements in or to the Marina or any part thereof, and during operations, may close entrances, doors, corridors, or other facilities provided the Tenant shall have access to the Marina, unless there is an unforeseen emergency or the nature of the repair, alteration or improvement makes such temporary closure before 5:00 p.m. necessary;

e. To do anything that is appropriate or desirable to maintain, develop, market, or provide access to the Marina, including without limitation selling or developing all or portions of the Marina or to grant easements thereon, provided any such activity does not interfere with practices indicated in the Lease.

f. To provide for public access to the Marina including without limitation parking, boat launching, recreation, and other public activities at the County's discretion.

The County may exercise any or all of the foregoing rights hereby reserved by the County without being deemed guilty of an eviction or disturbance of the Tenant's use and possession and without being liable in any manner to the Tenant and without elimination or abatement of rent, unless such interruption is prolonged and is a result of the County's negligence, or other compensation, and such acts shall have no effect upon this Lease.

17. MISCELLANEOUS

a. The failure of the County to enforce in any one or more instances any term, condition, rule, regulation or covenant as to which the Tenant shall be guilty of a breach or be in default, shall not be deemed to waive the right of the County to enforce the same or any subsequent breach or default notwithstanding the County had knowledge of such breach or default at the time of the receipt of any rent or other sums by the County, whether the same be that originally

reserved or that which may be payable under any of the covenants or agreements herein contained, or any portion thereof. The acceptance by the County of checks or cash from persons other than the Tenant shall in no event evidence consent of the County to any assignment or sublease by the Tenant. No waiver or modification of neither this Lease nor any release or surrender of the same shall be claimed by the Tenant unless such waiver or modification or release or surrender be in writing and signed by the County.

b. Each provision hereof shall bind and inure to the benefit of the County and the Tenant and as the case may be: if the Tenant is an individual, the Tenant's legatees, executors, and administrators; the County's successors and assigns; if the Tenant is a corporation, its successors; and in the event that County consents to the assignments of this Lease notwithstanding the terms hereof, the Tenant's assigns.

c. The parties hereto agree that whenever the word "Tenant" and/or "party" is used herein it shall be construed to mean Tenants and/or parties, if there be more than one, and generally, feminine or neuter pronouns shall be substituted for those of the masculine form, and vice versa, and the plural is to be substituted for the singular number in any place herein in which the context shall require such substitution.

d. Paragraph headings for this Lease are used for convenience only, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provision to which they refer.

18. DAMAGE TO BUILDING

a. Partial Casualty. If the Marina shall be partially damaged by fire or other casualty insured under the County's insurance policies, and if the County's lender(s) shall permit insurance proceeds paid as a result thereof to be so used, then upon receipt of the insurance proceeds, the County shall, except as otherwise provided herein, repair and restore the same (exclusively of improvements made by the Tenant, the Tenant's trade fixtures, decorations, signs, and contents) substantially to the condition thereof immediately prior to such damage or destruction; limited, however, to the extent of the insurance proceeds received by County. If, by reason of such occurrence: (a) the Marina is rendered wholly untenable; (b) the Marina is damaged in whole or in part as a result of a risk which is not covered by the County's insurance policies; (c) the County's lender does not permit a sufficient amount of the insurance proceeds to be used for restoration purposes; (d) the Marina is damaged in whole or in part during the last year of the Lease Term; or (e) the Marina is damaged to an extent of twenty five percent (25%) or more of the fair market value thereof, the County may elect either to repair the damage as aforesaid, or to cancel this Lease by written notice of cancellation given to the Tenant within ninety (90) days after the date of such occurrence and thereupon this Lease shall terminate. The Tenant shall vacate and surrender the Marina to the County within fifteen (15) days after receipt of such notice of termination. In addition, the Tenant may also terminate this Lease by written notice given to the County at any time between the one hundred fifty first (151st) and one hundred sixty sixth (166th) day after the occurrence of any such casualty, if the County has failed to restore the damaged portions of the Marina within one hundred fifty (150) days of such casualty or such longer time as the Tenant shall consent, which consent will not be unreasonably withheld. However, if the County is prevented from repairing or restoring the damaged portions of the Marina within the said 150 day period as result of causes beyond its reasonable control (including, without limitation, those encompassed in the meaning of the term "force majeure")

("Delays"), then in that event, the County shall have an additional reasonable period beyond the initial 150 day-period within which to complete the repairs and/or restoration work. The County shall provide the Tenant with a written notice of the causes for such Delays within fifteen (15) days of the occurrence thereof; and, the written notice to the Tenant shall contain an explanation of the reasons for such Delays with a good faith estimate of the reasonable period of delay resulting. The County shall use its best efforts to complete all required repairs and/or restorations within a reasonable time, not to exceed 196 days from the date of the casualty. Provided that the County diligently pursues the completion of such repairs and/or restoration within a reasonable time of such Delays, the Tenant shall not have the right to terminate this Lease until the expiration of such 196 day period. Upon the termination as aforesaid, the Tenant's liability for the Rent and other charges reserved hereunder shall cease as of the effective date of the termination of this Lease, subject however, to the provisions of abatement of Rent hereinafter set forth.

Unless this Lease is terminated as aforesaid, this Lease shall remain in full force and effect and the Tenant shall promptly repair, restore, or replace the Tenant's improvements, trade fixtures, decorations, signs, and contents in and about the Marina in a manner and to at least a condition equal to that existing prior to their damage or destruction, and the proceeds of all insurance carried by the Tenant on said property shall be held in trust by the Tenant for the purposes of such repair, restoration or replacement.

b. Casualty. If, by reason of such fire or other casualty, the Marina is rendered wholly untenable, the Rent and other charges payable by the Tenant shall be fully abated, or if only partially damaged, such rent and other charges shall be abated proportionately as to that portion of the Marina rendered untenable, in either event (unless the Lease is terminated, as aforesaid) from the date of such casualty until (i) occupancy of the Marina by Tenant; (ii) the date the County has the Marina ready for occupancy by the Tenant provided the Tenant has been given at least fourteen (14) days' notice of same, or (iii) the date the County could have had the Marina ready had there been no Delays attributable to the Tenant. The Tenant shall continue the operation of the Tenant's business in the Marina or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management. However, if such damages or other casualty shall be caused by the negligence or other wrongful conduct of the Tenant or of the Tenant's subtenants, licensees, contractors, or invitees, or their respective agents or employees, there shall be no abatement of Rent or other charges. Notwithstanding the foregoing, the Tenant may elect to obtain loss of rents insurance coverage covering a period of no less than twelve (12) months, in which event the preceding sentence stating that there shall be no abatement of rent or other charges shall not be applicable. If the Tenant elects to obtain such insurance coverage, the policy must be issued by an insurance carrier reasonably acceptable to the County, and the Tenant shall deliver to the County a certificate of insurance evidencing the required insurance coverage, which shall be renewed and a renewal certificate provided to the County no later than thirty (30) days prior to the expiration date of such insurance policy. Except for the abatement of the Rent and other charges hereinabove set forth, the Tenant shall not be entitled to, and hereby waives all claims against the County for any compensation or damage for loss of use of the whole or any part of the Marina and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. Notwithstanding the foregoing provisions, if damage or loss occurs to the Marina during the final two (2) years of the Lease Term or loss occurs to the Building during the final two (2) years of the Lease Term, where the costs to repair such damage or loss exceeds twenty-five percent (25%) of the replacement cost of the Marina, then in that event the County and/or

the Tenant may, at its respective election, terminate this Lease upon written notice to the other party within sixty (60) days of the date such damage or loss occurs.

19. SIGNS

The Tenant may not erect, install, or display any sign or other advertising material in or about the Marina without the prior written consent of County.

20. ACCESS TO MARINA

a. County shall have the right, upon twenty four (24) hours prior notice to the Tenant, either itself or through its authorized agents, to enter the Marina (i) to make repairs, alterations or changes as County deems necessary, (ii) to inspect the Marina, and (iii) to show the Marina to prospective lessees, mortgagees, and/or purchasers. The County shall have the right, either itself or through its authorized agents, to enter the Marina at all reasonable times for inspection to show prospective lessees, mortgagees, and/or purchasers if within one hundred eighty (180) days prior to the Expiration Date as extended by any exercised option. The Tenant, its agents, employees, invitees, and guests, shall have the right of ingress and egress to common and public areas of the Marina, provided the County by regulation may control such access, or as needed for making repairs and alterations. The County shall have the right to enter the Marina at any time in the event of any emergency.

b. The County may at no cost and upon twenty four (24) hours notice to the Tenant, use any portion of the Marina for public purposes including, without limitation, County Parks & Recreation activities including summer camp, concerts, parades, plays, speeches, displays, demonstrations, parking, and staging provided that such activity does not unreasonably interfere with Tenant's use of the Marina.

21. RESERVATION OF COVERED BOAT SLIPS

a. The County shall have, without compensation, permanent use of three covered boat slips.

b. Upon twenty four (24) hours notice to Tenant, the County shall be provided, without compensation to the Tenant, temporary use of a boat slip deemed suitable by the County.

22. PROPERTY OF TENANT

The Tenant shall timely pay any and all taxes levied or assessed against or upon the Tenant's equipment, fixtures, furniture, leasehold improvements, and personal property located in the Marina. Provided that the Tenant is not in default hereunder, the Tenant may, prior to the expiration date of the Lease, remove all fixtures and equipment, which it has placed in the Marina; provided, however, that the Tenant shall, at its sole cost and expense, repair all damages caused by such removal. If the Tenant does not remove its property from the Marina upon termination (for whatever cause) of this Lease, such property shall be deemed abandoned by the Tenant; and the County may dispose of the same in whatever manner the County may elect without any liability to the Tenant.

23. HOLDING OVER

If the Tenant shall hold over after the Expiration Date or other termination of this Lease, such holding over shall not be deemed to be a renewal of this Lease but shall be deemed to create a tenancy-at-sufferance and by such holding over, the Tenant shall continue to be bound by all of the terms and conditions of this Lease, except that during such tenancy-at-sufferance, the Tenant shall pay to the County Rent at the rate equal to One Hundred Fifty Percent (150%) of that provided for in the foregoing Section 2. The increased Rent during such holding over is intended to compensate the County partially for losses, damages, and expenses, including frustrating and delaying the County's ability to secure a replacement tenant. If the County loses a prospective tenant or purchaser because the Tenant fails to vacate the Marina on the Expiration Date or any termination of the Lease after notice to do so, then the Tenant will be liable for such damages as the County can prove because of the Tenant's wrongful failure to vacate. The Tenant shall not be responsible for Holdover Rent if the Tenant renews this Lease.

24. SEVERABILITY

The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way effect the validity of any other provision hereof.

25. JOINT VENTURE DISCLAIMER

Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.

26. SUCCESSORS AND ASSIGNS

All parties hereto agree that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns.

27. APPLICABLE LAW, CONSTRUCTION

This Lease shall be construed in accordance with the laws of the Commonwealth of Virginia.

28. NOTICES

Wherever in this Lease it shall be required or permitted that permission, notice, or demand be given or served by either party to this Lease to or on the other, such notices or demands shall be deemed given or served whether actually received or not when deposited in the United States Postal Service, postage pre-paid, certified or registered mail, addressed to parties hereto at the respective addresses set forth below or any other address that may be specified by the parties.

Rent Payment Address:

Legal Notice Address for County:

County Administrator
County of James City
P.O. Box 8784
Williamsburg, VA 23187-8784

With Copy to:

County Attorney

County of James City
P.O. Box 8784
Williamsburg, VA 23187-8784

Tenant: Eco Discovery Park, Inc.
Steve Rose, President
4403 Ironbound Road
Williamsburg, VA 23188

In each case when this Lease calls for an approval by the County, unless otherwise specified herein, such approval may be granted by the County Administrator or his designee and shall not require action by the Board of Supervisors.

29. AUTHORITY OF PARTIES

a. Corporate Authority. If Tenant is a corporation, each individual executing this lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of said corporation or in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

b. Limited Partnerships, LLC, and LLP. If the Landlord herein is a limited partnership, LLC, or LLP, it is understood and agreed that any claims by Tenant on Landlord shall be limited to the assets of the limited partnership, LLC, or LLP, and furthermore, Tenant expressly waives any and all rights to proceed against the individual partners or the officers, directors or shareholders of any corporate partner, except to the extent of their interest in said limited partnership, LLC, or LLP.

30. PROPOSAL AND RFP; RELATIONSHIP TO LEASE AGREEMENT

The Proposal and RFP shall be incorporated herein by reference. Any discrepancies between this Lease Agreement and the Proposal and RFP shall be resolved in favor of the Lease Agreement, the RFP and then the Proposal.

31. SLIP HOLDER LIST AND COMMUNICATIONS WITH SLIP HOLDERS

Tenant shall maintain a list of current slip holders and provide a copy to the County at the beginning of each year of this Agreement. The County may request a copy at any other time and the Tenant must provide a copy within two (2) business days of the request.

Tenant shall provide the County a copy of all communications sent to all current slip holders within two (2) business days of the distribution of the communication.

32. FINAL UNDERSTANDING

This Lease contains all agreements of the parties with respect to any matter mentioned herein.

Signatures begin on the next page.

JAMES CITY COUNTY

By _____
Robert C. Middaugh
County Administrator

APPROVED AS TO FORM:

County Attorney

ECO DISCOVERY PARK, INC.

By _____
Steve Rose
Its: President

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

The foregoing Lease Agreement was acknowledged before me this _____ day of _____, 2011, by Robert C. Middaugh, County Administrator.

NOTARY PUBLIC

My Commission expires: _____
Notary Registration No. _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

The foregoing Lease Agreement was acknowledged before me this _____ day of _____, 2011, by Steve Rose, as President of Eco Discovery Park, Inc.

NOTARY PUBLIC

My Commission expires: _____
Notary Registration No. _____

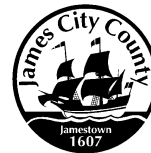
Exhibit A

Eco Discovery Park Benchmarks

1. Park Infrastructure: Trails and core exhibits in place and operational.
2. Active Partnerships and/or joint projects in place and operational with at least Five (5) of the following:
 - a. WJCC Schools
 - b. College of William and Mary
 - c. Colonial Williamsburg
 - d. Jamestown-Yorktown Foundation
 - e. Virginia Living Museum
 - f. Virginia Capital Trail
 - g. James River Association
 - h. Chesapeake Conservancy
 - i. Jamestown 4-H Camp
3. Park Attendance: Paid attendance at 2,000 at the end of year 2 and 3,000 at the end of year 3. Local and student usage will be tracked and reported on a quarterly basis. Other uses (i.e. kayak launches, bike rentals, etc.) would also be tracked and reported with a goal of 3,000 annual visits from County citizens.
4. A positive report from JCC EDA on the impact of the Park on the local economy and JCC's Eco-tourism objectives.
5. Demonstrated success of grant requests, both unilateral and joint/JCC proposals.
6. Established annual, weekend Green festival on the adjacent Jamestown Beach Campsite.

Jamestown Yacht Basin Benchmarks

1. Seasonal boating slip occupancy of 80% (slips rented on a long term basis of at least a month). Number of total actual available seasonal boating slips shall be determined by County inventory performed in cooperation with Tenant.
2. Achieve certification as a Virginia Clean Marina in the Commonwealth of Virginia's Clean Marina Program.
3. Offer boat repair and servicing during regular business hours.
4. Conduct an annual customer satisfaction survey of slip renters and marina patrons.
5. Satisfactory completion of routine maintenance task as defined in lease.
6. Satisfactory completion of mutually agreed upon responsibilities associated with capital improvements.



MEMORANDUM COVER

Subject: Endorsement of SeaWorld Parks & Entertainment dba Busch Gardens Williamsburg Application to Participate in the Virginia Department of Transportation (VDOT) Comprehensive Roadside Management Program

Action Requested: Shall the Board of Supervisors Endorse the SeaWorld Parks & Entertainment dba Busch Gardens Williamsburg Application to Participate in the Virginia Department of Transportation (VDOT) Comprehensive Roadside Management Program?

Summary: Currently under consideration is a multijurisdictional project for the enhancement and beautification of the Route 60 East corridor from its intersection with Page Street, York Street, and Lafayette Street to the I-64 overpass at Busch Gardens.

As part of this project, SeaWorld Parks & Entertainment dba Busch Gardens Williamsburg (Busch Gardens) proposes to landscape and maintain the Grove Interchange which lies within James City County. In order to obtain authorization for the landscaping and maintenance, Busch Gardens must apply to VDOT to participate in the VDOT Comprehensive Roadside Management Program.

Under this proposal, James City County would contribute \$20,000 from the tourism incentive fund for this project, York County would contribute \$5,000, and Busch Gardens would contribute the remainder, estimated to be \$65,000.

VDOT requires that the local government endorse and take administrative and operational responsibility for the project activities. To formalize the project relationship, the County will enter into a Memorandum of Understanding with Busch Gardens to ensure that the plans to install and maintain the project are performed and are in accordance with VDOT standards.

Staff recommends approval of the attached resolution.

Fiscal Impact: None

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:
1. Memorandum
2. Resolution

Agenda Item No.: I-4

Date: September 13, 2011

MEMORANDUM

DATE: September 13, 2011

TO: The Board of Supervisors

FROM: Scott Whyte, Senior Planner

SUBJECT: Endorsement of SeaWorld Parks & Entertainment dba Busch Gardens Williamsburg Application to Participate in the Virginia Department of Transportation (VDOT) Comprehensive Roadside Management Program

Currently under consideration is a multijurisdictional project for the enhancement and beautification of the Route 60 East corridor from its intersection with Page Street, York Street, and Lafayette Street to the I-64 overpass at Busch Gardens. In addition to the three adjacent jurisdictions, several corporate stakeholders along the corridor have offered to participate in the project. As part of this project, SeaWorld Parks & Entertainment dba Busch Gardens Williamsburg (Busch Gardens) proposes to landscape and maintain the Grove Interchange, which lies within James City County.

To obtain the necessary authorization for the landscaping and maintenance, Busch Gardens must apply to the Virginia Department of Transportation (VDOT) to participate in the VDOT Comprehensive Roadside Management Program which allows local governments, communities, businesses, and individuals to participate in the improvement of State-maintained roadsides.

Under this proposal, James City County would contribute \$20,000 from the tourism incentive fund for this project, York County would contribute \$5,000, and Busch Gardens would contribute the remainder, estimated to be \$65,000.


VDOT requires that the local government endorse and take administrative and operational responsibility for the project activities. To formalize the project relationship, the County will enter into a Memorandum of Understanding with Busch Gardens to ensure that the plans to install and maintain the project are performed and are in accordance with VDOT standards.

A formal resolution of endorsement for participation in the Comprehensive Roadside Management Program is required from the local governing body and adopted subsequent to an advertised public hearing as part of the application package.

Staff recommends adoption of the attached resolution.

Scott Whyte

CONCUR:


Steven W. Hicks

SW/nb
BG-VDOTProg_mem

Attachment

RESOLUTION

ENDORSEMENT OF SEAWORLD PARKS & ENTERTAINMENT dba BUSCH GARDENS

WILLIAMSBURG APPLICATION TO PARTICIPATE IN THE VIRGINIA DEPARTMENT OF

TRANSPORTATION COMPREHENSIVE ROADSIDE MANAGEMENT PROGRAM

WHEREAS, a multijurisdictional project for the enhancement and beautification of the Route 60 East corridor is under consideration; and

WHEREAS, SeaWorld Parks & Entertainment dba Busch Gardens Williamsburg (Busch Gardens) proposes to landscape and maintain the Grove Interchange which lies within James City County; and

WHEREAS, to obtain authorization for the landscaping and maintenance, Busch Gardens must apply to the Virginia Department of Transportation (VDOT) to participate in the VDOT Comprehensive Roadside Management Program.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby endorses Busch Gardens' participation in the VDOT Comprehensive Roadside Management Program for the landscaping of the Grove Interchange.

BE IT FURTHER RESOLVED that the Board of Supervisors authorizes the County Administrator to enter into a Memorandum of Understanding with Busch Gardens to formalize the understanding between the parties related to the installation and maintenance of the landscaping under the VDOT Comprehensive Roadside Management Program.

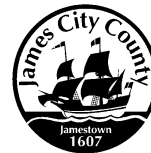
Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of September, 2011.

BG-VDOTProg_res



MEMORANDUM COVER

Subject: County Lease Revenue Financing

Action Requested: Shall the Board approve authorization for the Chairman of the Board and the County Administrator to execute documents with RBC Bank to accept a proposal for a 10-year moral obligation, bank-qualified, \$6.9 million lease financing at an interest rate of 2.18 percent?

Summary: Davenport & Company, the County’s financial advisors, received 13 proposals from five banks to finance \$6.9 million for three Capital Improvements Program (CIP) projects (Fire Station 4, Mid County Park, and Building D). Four of the banks provided three proposals – financing deals of 10, 15, and 20 years. The best proposal received, in the opinion of both Davenport & Company and County staff, was a ten-year financing proposal from RBC Bank at an interest rate of 2.18 percent. This financing is a lease-revenue financing with a moral obligation and includes a lease of the fire station property as security. The rates compare favorably with what might be expected in a public sale, but the projected closing costs are about half of what they would be in a competitive public sale.

The Board is being asked to adopt a resolution prepared by the County’s bond counsel, Stephen Johnson of Troutman Sanders LLP, to accept the RBC Bank proposal. Closing on the bonds is expected before the end of September.

Staff recommends approval of the attached resolution.

Fiscal Impact: The FY 2012 Debt Service budget includes sufficient funds to pay both estimated closing costs of \$75,000 and interest through June 30, 2012, of approximately \$60,000.

Debt service is based on fixed principal payments beginning July 15, 2012, and payments are projected as follows:

FY 2012	\$ 61,035	FY 2018	\$730,237
FY 2013	808,212	FY 2019	715,740
FY 2014	793,606	FY 2020	701,243
FY 2015	779,000	FY 2021	686,746
FY 2016	764,394	FY 2022	672,249
FY 2017	749,788		

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:
1. Memorandum
2. Resolution

Agenda Item No.: J-1
Date: September 13, 2011

MEMORANDUM

DATE: September 13, 2011
TO: The Board of Supervisors
FROM: John E. McDonald, Manager, Financial and Management Services
SUBJECT: County Lease Revenue Financing

County staff has been pursuing options for the financing of three capital projects included in the FY 2012 budget adopted by the Board. Davenport & Company, the County's financial advisors, received 13 proposals from five banks to finance \$6.9 million for these capital items (Fire Station 4, Mid County Park, and Building D). Four of the banks provided three proposals - financing deals of 10, 15, and 20 years. The best proposal received, in the opinion of both Davenport & Company and County staff, was a ten-year financing proposal from RBC Bank at an interest rate of 2.18 percent.

This financing is a lease-revenue financing with a moral obligation and includes a lease of the fire station property as security. The borrowing will actually be executed through the County's Economic Development Authority (EDA), as a conduit. The rates compare favorably with what might be expected in a public sale and the projected closing costs are less. The Board is being asked to adopt a resolution prepared by the County's bond counsel, Stephen Johnson of Troutman Sanders LLP, to accept the RBC Bank proposal. Closing on the bonds, if approved by the Board and by the EDA at its meeting on September 15, is expected before the end of September.

Payments of principal on the bond are proposed to begin on July 15, 2012, which is FY 2013, and continue through July 15, 2021, which is FY 2022. Current fiscal year spending is projected at \$75,000 in estimated closing costs and approximately \$60,000 in interest spending for the remainder of the fiscal year.

Staff recommends approval of the attached resolution.

John E. McDonald

JEM/gb
LeaseRevFin_mem

Attachment

RESOLUTION OF THE BOARD OF SUPERVISORS

OF JAMES CITY COUNTY, VIRGINIA

WHEREAS, James City County, Virginia (the "County") proposes to finance (i) a new fire station (the "Fire Station Project"), (ii) renovations to a building in the County Government Center (the "Government Center Renovation Project"), and (iii) infrastructure improvements at a district park (the "Park Improvements Project" and, together with the Fire Station Project and the Government Center Renovation Project, the "Projects") through the issuance by the Economic Development Authority of James City County, Virginia (the "Authority") of its up to \$6,900,000 Lease Revenue Bond (County Government Projects), Series 2011 (the "Bond"). The County will lease the real estate upon which the Fire Station Project is located to the Authority pursuant to a Ground Lease, dated as of September 1, 2011 (the "Ground Lease"), between the County and the Authority. The Authority will lease such real estate and the Fire Station Project back to the County pursuant to a Lease Agreement, dated as of September 1, 2011 (the "Lease"), between the Authority and the County; and

WHEREAS, the Bond will be payable from revenues derived by the Authority from the "Basic Rent" to be paid by the County pursuant to the Lease, which has been calculated to be sufficient to pay the principal of and interest on the Bond, and from certain "Additional Rent" to be paid by the County pursuant to the Lease for any prepayment premium. The Bond will be issued and sold pursuant to the Bond Purchase Agreement, to be dated the date of the issuance of the Bond (the "Bond Purchase Agreement"), among the Authority, the County and RBC Bank, as the holder of the Bond (the "Bank"). The obligations of the Authority to the Bank will be secured by the Assignment of Rents and Leases, dated as of September 1, 2011 (the "Assignment"), between the Authority and the Bank, and by the Leasehold Deed of Trust, dated as of September 1, 2011 (the "Leasehold Deed of Trust"), from the Authority to the deed of trust trustees named therein for the benefit of the Bank. The obligation of the County to pay Basic Rent and Additional Rent will be subject to appropriation by the County's Board of Supervisors (the "Board"); and

WHEREAS, the Ground Lease, the Lease, the Bond Purchase Agreement, the Assignment and the Leasehold Deed of Trust are referred to in this Resolution as the "Basic Documents."

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia:

1. **Request for and Approval of Financing.** The Board finds and determines that it is in the best interests of the County to proceed with the financing of the Projects. The Board hereby formally selects the commitment letter dated September 1, 2011 of the Bank (the "Commitment Letter") as the winning proposal with respect to the purchase of the Bond. The Chairman and Vice Chairman of the Board and the County Administrator, any of whom may act, are each authorized to execute the Commitment Letter. The Board hereby requests the Authority to assist in the financing of the Projects by issuing the Bond. The Board considers the Projects to be essential public projects. The Board approves the issuance of the Bond and sale thereof to the Bank in a principal amount not to exceed \$6,900,000, bearing interest at the rate of 2.18% per year (but subject to adjustment as provided in the Bond), and maturing on July 15, 2021. The sale price of the Bond to the Bank shall be equal to the principal amount

thereof, and the prepayment provisions and other terms of the Bond shall be as provided for in the form of the Bond.

2. **Authorization of Basic Documents.** The forms of the Bond and the Basic Documents were made available to the members of the Board prior to the adoption of this Resolution. The Bond and the Basic Documents are approved in substantially the forms made available, with such changes, insertions or omissions (including, without limitation, changes of the dates therein and thereof) as may be approved by the Chairman or Vice Chairman of the Board or the County Administrator, any of whom may act, whose approval shall be evidenced conclusively by the execution and delivery of the Basic Documents to which the County is a party. The execution and delivery by the County of, and the performance by the County of its obligations under, the Basic Documents to which it is a party are authorized.
3. **Execution of Documents.** The Chairman and Vice Chairman of the Board, the County Administrator and such other officers, employees and agents of the County as the Chairman and Vice Chairman of the Board and the County Administrator may designate, are authorized and directed to execute and deliver the Basic Documents to which the County is a party and, if required, the Clerk or any Deputy Clerk of the Board is authorized and directed to affix or to cause to be affixed the seal of the County to the Basic Documents to which the County is a party and to attest such seal. Further, the Chairman and Vice Chairman of the Board, the County Administrator and such other officers, employees and agents of the County as the Chairman or Vice Chairman of the Board or the County Administrator may designate, are authorized and directed (A) to execute and deliver and any and all other instruments, certificates and documents required to carry out the purposes of this Resolution, and (B) to do and perform such things and acts, as they shall deem necessary or appropriate to carry out the purposes of this Resolution or contemplated by the Basic Documents, and all of the foregoing, previously done or performed by such officers, employees or agents of the County are in all respects approved, ratified and confirmed.
4. **Nature of Obligations.** The Board hereby agrees, on behalf of the County, to pay to the Authority amounts sufficient to pay the Rental Payments, as defined in the Lease, and any other amounts owed by the County to the Authority pursuant to the Lease, subject to annual appropriation by the Board. The County Administrator is directed to submit for each fiscal year a request to the Board for an appropriation to the Authority separate from all other appropriations to the Authority for an amount equal to the Rental Payments and all other payments coming due under the Lease for the next fiscal year. The County's obligations to make payments to the Authority pursuant to the Lease shall be subject to and dependent upon annual appropriations being made from time to time by the Board for such purpose. Nothing in this Resolution, the Bond or the Lease shall constitute a pledge of the full faith and credit of the County beyond the constitutionally permitted annual appropriations. The Board, while recognizing that it is not empowered to make any binding commitment to make appropriations beyond the current fiscal year, hereby states its intent to make annual appropriations in future fiscal years in amounts sufficient to make all payments under the Lease and hereby recommends that future Boards of Supervisors do likewise during the term of the Lease. If the County exercises its right not to appropriate money for Rental Payments under the Lease, the Bank may terminate the Lease or otherwise exclude the County from possession of the Fire Station Project.

5. **Appointment of Bond Counsel.** The Board hereby selects and designates Troutman Sanders LLP as **Bond** Counsel with respect to the Bond, and the Authority is hereby requested to designate them as such.
6. **Qualified Tax-Exempt Obligation.** The Board requests the Authority's designation of the Bond as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The Board does not reasonably anticipate that the County and any "subordinate entities," together with the Authority, will issue more than \$10,000,000 in qualified tax-exempt obligations during calendar year 2011, and the Board agrees that it will not designate more than \$10,000,000 (including the Bond as designated by the Authority) of qualified tax-exempt obligations in calendar year 2011.
7. **Tax Covenants.** The County covenants that it shall not take or omit to take any action the taking or omission of which will cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, including regulations issued pursuant thereto, or otherwise cause interest on the Bond to be includable in the gross income for federal income tax purposes of the Bank under existing law.
8. **Reimbursement Declaration.** The County hereby adopts this declaration of official intent under Treasury Regulations Section 1.150-2 and declares that the County intends to reimburse itself or the Authority, as appropriate, with the proceeds of the Bond or other indebtedness of the Authority or the County for expenditures made with respect to the Projects on, after or within sixty (60) days prior to the date of the adoption of this Resolution. Further, expenditures made more than sixty (60) days prior to the date of the adoption of this Resolution may be reimbursed as to certain *de minimis* or preliminary expenditures described in Treasury Regulations Section 1.150-2(f) and as to other expenditures permitted under applicable Treasury Regulations.
9. **Effective Date.** This Resolution shall take effect immediately upon its adoption.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of September, 2011.

CERTIFICATION

The undersigned Clerk of the Board of Supervisors of James City County, Virginia hereby certifies that the foregoing constitutes a true, correct and complete copy of a Resolution duly adopted by the Board of Supervisors of James City County, Virginia at a meeting duly called and held on the 13th day of September, 2011, and during which a quorum was present and acting throughout, by the vote set forth below, and that such Resolution has not been repealed, revoked, rescinded or amended:

<u>Board Member</u>	<u>Present/Absent</u>	<u>Vote</u>
Mary K. Jones		
Bruce C. Goodson		
James G. Kennedy		
James O. Icenhour, Jr.		
John J. McGlennon		

WITNESS, my hand and the seal of the Board of Supervisors of James City County, Virginia, this 13 day of September, 2011.

Clerk, Board of Supervisors of
James City County, Virginia

(SEAL)

JCC-Projects_res

James City County
2011 Tax-Exempt, Bank Qualified Lease Revenue Bonds
Summary of Bids Received

AMOUNT	\$6,900,000	\$6,900,000	\$6,900,000	\$6,900,000	\$6,900,000
SECURITY	Moral Obligation Lease of Fire Station Lease of Park	Moral Obligation	Moral Obligation Lease of Fire Station	Moral Obligation Lease of Fire Station	Moral Obligation
TYPE	Fixed Rate	Fixed Rate	Fixed Rate	a) Fixed Rate b) 10-year Put c) 10-year Put	Fixed Rate
TERM / FINAL MATURITY	a) 10 Years b) 15 Years c) 20 Years	a) 10 Years b) 15 Years c) 20 Years	7/15/2021	a) 10 Years b) 15 Years c) 20 Years	a) 10 Years b) 15 Years c) 20 Years
PRINCIPAL PAYMENT	Semiannual	Semiannual	Semiannual	Semiannual	Semiannual
INTEREST PAYMENT	Semiannual	Semiannual	Semiannual	Semiannual	Semiannual
INTEREST RATE	a) 2.43% b) 3.05% c) 3.79%	a) 2.65% b) 3.10% c) 3.95%	2.18%	a) 2.23% b) 2.49% c) 2.59%	a) 3.65% b) 3.85% c) 3.95%
BANK CLOSING COSTS	\$5,750	-	\$6,500	\$6,000	\$10,000
CALL PROVISION	Anytime at 101%	Anytime at 102%	Anytime with Make-Whole	Anytime at Par	After 3 Years at 103%*
NOTIFY BY	-	-	9/7/2011	-	9/6/2011
CLOSE BY	10/16/2011	10/3/2011	9/30/2011	10/14/2011	9/30/2011
NOTES			- County must accept by 9/14/11.		* 102% after 4 Years, 101% after 5 Years

All proposals are subject to the negotiation of mutually satisfactory documentation and final terms between the County and the Bank.

Prepared by Davenport & Company LLC
Thursday, September 01, 2011

James City County
 2011 Tax-Exempt, Bank Qualified Lease Revenue Bonds
 Comparison of Financing Options

PAR AMOUNT	\$6,675,000	\$6,405,000		\$6,675,000	\$6,510,000		\$6,675,000	\$6,550,000	
LENDER	RBC	N/A		BB&T	N/A		BB&T	N/A	
FIXED COST OF ISSUANCE	\$75,000	\$140,000		\$75,000	\$140,000		\$75,000	\$140,000	
UNDERWRITER'S DISCOUNT	N/A	\$32,025		N/A	\$32,550		N/A	\$32,750	
TRUE INTEREST COST	2.18%	1.79%		3.05%	2.49%		3.79%	3.02%	
STRUCTURE	Level Principal	Level Principal		Level Principal	Level Principal		Level Principal	Level Principal	
CALL PROVISION	Anytime with Make Whole	Non-callable		Anytime at 101%	Ten Years at Par		Anytime at 101%	Ten Years at Par	
TOTAL DEBT SERVICE	\$7,462,248	\$7,368,675	\$93,573	\$8,287,300	\$8,037,191	\$250,109	\$9,303,831	\$8,824,505	\$479,326
	DEBT SERVICE			DEBT SERVICE			DEBT SERVICE		
FISCAL YEAR									
2012	\$61,035	\$42,825	\$18,210	\$85,394	\$46,097	\$39,297	\$106,112	\$50,608	\$55,504
2013	808,212	809,850	(1,638)	641,801	615,038	26,764	581,634	529,131	52,503
2014	793,606	792,000	1,606	628,229	606,338	21,891	568,938	522,531	46,406
2015	779,000	777,600	1,400	614,656	596,550	18,106	556,241	515,106	41,135
2016	764,394	761,600	2,794	601,084	585,675	15,409	543,545	506,856	36,688
2017	749,788	744,800	4,988	587,511	574,256	13,255	530,848	498,194	32,654
2018	730,237	726,400	3,837	573,939	561,750	12,189	518,152	488,706	29,445
2019	715,740	707,200	8,540	560,366	548,700	11,666	505,455	478,806	26,649
2020	701,243	688,000	13,243	546,794	535,650	11,144	492,759	468,906	23,852
2021	686,746	668,800	17,946	533,221	522,600	10,621	480,062	459,006	21,056
2022	<u>672,249</u>	<u>649,600</u>	<u>22,649</u>	519,649	509,550	10,099	467,366	449,106	18,259
2023				506,076	496,500	9,576	454,669	434,281	20,388
2024				492,504	483,450	9,054	441,973	424,531	17,441
2025				478,931	465,475	13,456	429,276	414,781	14,495
2026				465,359	452,038	13,321	416,580	404,625	11,955
2027				<u>451,786</u>	<u>437,525</u>	<u>14,261</u>	403,883	393,656	10,227
2028							386,282	382,078	4,203
2029							373,775	370,094	3,681
2030							361,268	357,500	3,768
2031							348,761	344,500	4,261
2032							<u>336,254</u>	<u>331,500</u>	<u>4,754</u>
TOTAL	\$7,462,248	\$7,368,675	\$93,573	\$8,287,300	\$8,037,191	\$250,109	\$9,303,831	\$8,824,505	\$479,326