

A G E N D A
JAMES CITY COUNTY BOARD OF SUPERVISORS
County Government Center Board Room
November 13, 2012
7:00 P.M.

- A. CALL TO ORDER**
- B. ROLL CALL**
- C. MOMENT OF SILENCE**
- D. PLEDGE OF ALLEGIANCE** - Sam Collins, a recent graduate of Jamestown High School
- E. PRESENTATIONS**
 - 1. Resolution of Appreciation - Anheuser-Busch Williamsburg Brewery
 - 2. Resolution of Appreciation - Ball Corporation Williamsburg Plant
 - 3. Resolution of Appreciation - Mr. Dwight R. Dansby
 - 4. Virginia Department of Transportation (VDOT)
- F. PUBLIC COMMENT**
- G. BOARD REQUESTS AND DIRECTIVES**
- H. CONSENT CALENDAR**
 - 1. Minutes –
 - a. October 23, 2012, Work Session
 - b. October 23, 2012, Regular Meeting
 - 2. Contract Award – Phase II, Jamestown Beach Park Shoreline Stabilization and Beach Restoration – \$188,524
 - 3. Grant Appropriation – Clerk of the Circuit Court – \$46,766
 - 4. Funds Transfer – Emergency Solid Waste Disposal Costs – \$14,000
- I. PUBLIC HEARINGS**
 - 1. Case No. SUP-0011-2012. Bernfeld Centerville Road Family Subdivision
 - 2. Case No. SUP-0009-2012. Murphy Family Subdivision
- J. BOARD CONSIDERATION**
 - 1. The Virginia Department of Transportation (VDOT) Revenue Sharing Program Fiscal Year 2014
 - 2. Purchase of Development Rights – Offer to Sell a Conservation Easement - \$1,300,000
- K. PUBLIC COMMENT**
- L. REPORTS OF THE COUNTY ADMINISTRATOR**
- M. BOARD REQUESTS AND DIRECTIVES**
- N. CLOSED SESSION** - None
- O. ADJOURNMENT** – to 4 p.m. on November 27, 2012

MEMORANDUM COVER

Subject: Resolutions of Appreciation to Anheuser-Busch Williamsburg Brewery and the Ball Corporation Williamsburg Plant

Action Requested: Shall the Board approve the resolutions that recognize Anheuser-Busch Williamsburg Brewery's and Ball Corporation Williamsburg Plant's 40th Anniversaries in James City County?

Summary: This past month, Anheuser-Busch Williamsburg and the Ball Corporation Williamsburg Plant celebrated their 40th year anniversaries here in James City County. During this time, both corporations have remained excellent corporate citizens and have contributed greatly to both the economic and employment base of James City County.

Staff recommends that the Board of Supervisors approve the attached Resolutions of Appreciation for Anheuser-Busch Williamsburg Brewery and the Ball Corporation Williamsburg Plant for their 40th Anniversaries in James City County.

Fiscal Impact: There is no fiscal impact to approving these resolutions.

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

- 1. Memorandum
- 2. Resolution-Anheuser-Busch Williamsburg Brewery
- 3. Resolution-Ball Corporation Williamsburg Plant

Agenda Item No.: E-1&2

Date: November 13, 2012

MEMORANDUM

DATE: November 13, 2012

TO: The Board of Supervisors

FROM: Kathryn Sipes, Business Development and Retention Coordinator
Russell C. Seymour, Director, Office of Economic Development

SUBJECT: Resolutions of Appreciation to Anheuser-Busch Williamsburg Brewery and the Ball Corporation Williamsburg Plant

James City County is proud to be considered home for Anheuser-Busch Williamsburg Brewery and the Ball Corporation Williamsburg Plant. This year both companies are celebrating their 40th anniversaries in James City County. Throughout this time, these businesses have continued to grow, providing numerous benefits to our local area, including valuable employment opportunities for our local workforce and contributions to our economic base.

Anheuser-Busch and Ball Corporation represent the advanced manufacturing jobs many communities seek, incorporating high-tech equipment into their processes and offering high-wage employment opportunities. Their presence and success in James City County has directly contributed to the County's economic vitality and quality of life.

Attached for your consideration are Resolutions of Appreciation to both businesses for their long-term and on-going commitments to this community.

Staff recommends approval of the Resolutions of Appreciation to Anheuser-Busch Williamsburg Brewery and the Ball Corporation Williamsburg Plant for their 40th anniversaries in James City County.


Kathryn Sipes


Russell C. Seymour

RCS/KS/nb
ROA-Anheuser-Ball_mem

- Attachments:
1. Resolution-Anheuser-Busch Williamsburg Brewery
 2. Resolution-Ball Corporation Williamsburg Plant

RESOLUTION OF APPRECIATION

ANHEUSER-BUSCH WILLIAMSBURG BREWERY

- WHEREAS, Anheuser-Busch has served as an important industry icon in the United States since the 1860s and has had operations in James City County since December 1971; and
- WHEREAS, the Anheuser-Busch Williamsburg Brewery investment of \$40 million was at the time the largest capital investment by an out-of-state company in Virginia; and
- WHEREAS, Anheuser-Busch Williamsburg Brewery has helped attract other businesses to James City County thereby strengthening and diversifying the area's economic base; and
- WHEREAS, Anheuser-Busch Williamsburg Brewery modernized its facility in 2006, a statement of its continued commitment to its investment in James City County; and
- WHEREAS, Anheuser-Busch Williamsburg Brewery has been an exceptional corporate citizen through numerous sustainability practices and community involvement, including support of State institutions of higher education and social responsibility programs; and
- WHEREAS, Anheuser-Busch Williamsburg Brewery has consistently demonstrated the essential qualities of being a model corporate citizen and has contributed to the economic vitality of James City County for the last 40 years.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby recognizes the past and future successes and the many contributions to the County and its citizenry and hereby extends its appreciation to

ANHEUSER-BUSCH WILLIAMSBURG BREWERY

John J. McGlennon
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 November, 2012.

ROA-Anheuser_res

MEMORANDUM COVER

Subject: Resolutions of Appreciation to Anheuser-Busch Williamsburg Brewery and the Ball Corporation Williamsburg Plant

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Staff recommends that the Board of Supervisors approve the attached Resolutions of Appreciation for Anheuser-Busch Williamsburg Brewery and the Ball Corporation Williamsburg Plant for their 40th Anniversaries in James City County.

Fiscal Impact: There is no fiscal impact to approving these resolutions.

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution-Anheuser-Busch Williamsburg Brewery
3. Resolution-Ball Corporation Williamsburg Plant

Agenda Item No.: E-1&2

Date: November 13, 2012

MEMORANDUM

DATE: November 13, 2012

TO: The Board of Supervisors

FROM: Kathryn Sipes, Business Development and Retention Coordinator
Russell C. Seymour, Director, Office of Economic Development

SUBJECT: Resolutions of Appreciation to Anheuser-Busch Williamsburg Brewery and the Ball Corporation Williamsburg Plant

James City County is proud to be considered home for Anheuser-Busch Williamsburg Brewery and the Ball Corporation Williamsburg Plant. This year both companies are celebrating their 40th anniversaries in James City County. Throughout this time, these businesses have continued to grow, providing numerous benefits to our local area, including valuable employment opportunities for our local workforce and contributions to our economic base.

Anheuser-Busch and Ball Corporation represent the advanced manufacturing jobs many communities seek, incorporating high-tech equipment into their processes and offering high-wage employment opportunities. Their presence and success in James City County has directly contributed to the County's economic vitality and quality of life.

Attached for your consideration are Resolutions of Appreciation to both businesses for their long-term and on-going commitments to this community.

Staff recommends approval of the Resolutions of Appreciation to Anheuser-Busch Williamsburg Brewery and the Ball Corporation Williamsburg Plant for their 40th anniversaries in James City County.


Kathryn Sipes


Russell C. Seymour

RCS/KS/nb
ROA-Anheuser-Ball_mem

- Attachments:
1. Resolution-Anheuser-Busch Williamsburg Brewery
 2. Resolution-Ball Corporation Williamsburg Plant

RESOLUTION OF APPRECIATION

BALL CORPORATION WILLIAMSBURG PLANT

WHEREAS, Ball Corporation invested \$12 million to construct the Williamsburg Can Manufacturing Plant from the ground up in 1972 to support Anheuser-Busch Williamsburg Brewery; and

WHEREAS, Ball Corporation has continued to meet national can production needs for the last 40 years by diversifying its business; and

WHEREAS, Ball Corporation Williamsburg Plant has been a landfill-free facility since 2011, a demonstration of its commitment to sustainability practices; and

WHEREAS, Ball Corporation Williamsburg Plant has demonstrated commitment to community involvement with 100 percent employee participation in United Way and annual corporate donations to over 18 community organizations; and

WHEREAS, throughout the last 40 years of business, Ball Corporation Williamsburg Plant contributed to the economic vitality of James City County and consistently demonstrated the essential qualities of being a model corporate citizen in James City County.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby recognizes the past and future successes and the many contributions to the County and its citizenry and hereby extends its appreciation to

BALL CORPORATION WILLIAMSBURG PLANT

John J. McGlennon
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 November, 2012.

ROA-Ball_res

MEMORANDUM COVER

Subject: Resolution of Appreciation - Mr. Dwight R. Dansby

Action Requested: Shall the Board approve the resolution recognizing Mr. Dwight R. Dansby for his decades of volunteer service to the Peninsula Alcohol Safety Action Program?

Summary: Mr. Dwight R. Dansby served as James City County's representative on the Peninsula Alcohol Safety Action Program Board of Directors for over three decades through June 30, 2012.

Staff recommends approval of the resolution that recognizes Mr. Dansby's service.

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.: E-3

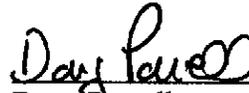
Date: November 13, 2012

MEMORANDUM

DATE: November 13, 2012
TO: The Board of Supervisors
FROM: Doug Powell, Assistant County Administrator
SUBJECT: Resolution of Appreciation – Mr. Dwight R. Dansby

Mr. Dwight Dansby served as James City County's representative on the Peninsula Alcohol Safety Action Program Board of Directors for over three decades through June 30, 2012. He was instrumental in creating the program and held leadership positions in the organization throughout his tenure on the Board of Directors.

Staff recommends approval of the resolution that recognizes Mr. Dansby's service.



Doug Powell

DP/nb
ROA-Dansby_mem

Attachment

RESOLUTION OF APPRECIATION

MR. DWIGHT R. DANSBY

WHEREAS, Mr. Dwight R. Dansby faithfully and with honor, integrity, and great distinction served as the representative of James City County to the Peninsula Alcohol Safety Action Program for several decades; and

WHEREAS, Mr. Dwight R. Dansby has always been mindful of alcohol awareness and safety and he has worked tirelessly to advance the Peninsula Alcohol Safety Action Program; and

WHEREAS, Mr. Dwight R. Dansby has provided outstanding leadership and guidance to the Peninsula Alcohol Safety Action Program; and

WHEREAS, Mr. Dwight R. Dansby served in many officer positions of the Policy Board throughout his years of volunteer service, and most recently served as Chair of the Policy Board during Fiscal Years 2009 and 2010.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby formally acknowledges and extends its profound appreciation to Mr. Dwight R. Dansby for his many years of volunteer service to James City County and to the cause of the Peninsula Alcohol Safety Action Program.

John J. McGlennon
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 November, 2012.

ROA-Dansby_res

AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 23RD DAY OF OCTOBER 2012, 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

John J. McGlennon, Chairman, Roberts District
Mary K. Jones, Vice Chairman, Berkeley District
W. Wilford Kale, Jr., Jamestown District
James G. Kennedy, Stonehouse District (Absent)
James O. Icenhour, Jr., Powhatan District

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

C. BOARD DISCUSSION

Mr. Kale made a motion to go in to Closed Session.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4).
NAY: (0). Absent: Mr. Kennedy (1).

1. Closed Session

- a. Consideration of the purchase of parcel(s) of property for public use and the disposition of public property pursuant to Section 2.2-3711(A)(3) of the Code of Virginia.
- b. Consultation with legal counsel and staff members pertaining to actual or probable litigation, pursuant to Section 2.2-3711(A)(7) of the Code of Virginia.
- c. Consideration of a personnel matter(s), the appointment of individuals to County boards and/or commissions pursuant to Section 2.2-3711 (A)(1) of the Code of Virginia.

Mr. Icenhour made a motion to certify the Closed Session.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4).
NAY: (0). Absent: Mr. Kennedy (1).

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) consideration of the purchase of parcel(s) of property for public use and the disposition of public property pursuant to Section 2.2-3711(A)(3) of the Code of Virginia; ii) consultation with legal counsel and staff members pertaining to actual or probable litigation, pursuant to Section 2.2-3711(A)(7) of the Code of Virginia; and iii) consideration of a personnel matter(s), the appointment of individuals to County boards and/or commissions pursuant to Section 2.2-3711(A)(1) of the Code of Virginia.

D. ADJOURNMENT

Mr. McGlennon recessed the Work Session at 5:30 p.m.

Robert C. Middaugh
Clerk to the Board

AGENDA ITEM NO. H-1b

REGULAR MEETING MINUTES OF THE OCTOBER 23, 2012 BOARD OF SUPERVISORS
MEETING WILL BE DISTRIBUTED UNDER A SEPARATE COVER.

MEMORANDUM COVER

Subject: Contract Award – Phase II, Jamestown Beach Park Shoreline Stabilization and Beach Restoration – \$188,524

Action Requested: Shall the Board approve the contract to Henry S. Branscome, LLC in the amount of \$188,524 for the Jamestown Beach Park Shoreline Stabilization and Beach Restoration?

Summary: At its October 23, 2012, meeting, the Board of Supervisors accepted a \$152,049 Land and Water Conservation grant from The Department of Conservation and Recreation for the Phase II beach stabilization, parking, restrooms, and an Americans with Disabilities (ADA) accessible trail at Jamestown Beach Park. In addition to the grant, the Phase II project is funded by the County's cash match of \$152,049 from the Maintenance Equipment Jamestown Beach Account and in-kind labor for a total budget of \$304,098.

The work for Phase II consists of 450 linear feet of shoreline stabilization and includes the installation of one 150-foot offshore breakwater constructed using recycled and resized concrete rubble that already exists on-site. Sand-fill beach nourishment will follow the installation of the breakwater and includes the placement and grading of approximately 3,000 cubic yards of sandfill. .

A two-step Invitation for Bids was publicly advertised and Henry S. Branscome, LLC submitted the lowest responsive and responsible bid. County staff negotiated a final bid of \$188,524.

Sufficient funds will remain to construct the trail, parking, and restrooms that will be completed under a separate contract.

Staff recommends approval of the attached resolution.

Fiscal Impact: Funded through a Land and Water Conservation grant and the Maintenance Equipment Jamestown Beach Account.

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell OP

County Administrator

Robert C. Middaugh 

Attachments:

- 1. Memorandum
- 2. Resolution

Agenda Item No: H-2

Date: November 13, 2012

MEMORANDUM

DATE: November 13, 2012

TO: The Board of Supervisors

FROM: John H. Carnifax, Jr., Director of Parks and Recreation

SUBJECT: Contract Award – Phase II, Jamestown Beach Park Shoreline Stabilization and Beach Restoration – \$188,524

At its October 23, 2012, meeting, the Board of Supervisors accepted a \$152,049 Land and Water Conservation grant from The Department of Conservation and Recreation for beach stabilization, parking, restroom facilities, and an Americans with Disabilities (ADA) accessible trail at Jamestown Beach Park. In addition to the grant, the Phase II project is funded by the County’s cash match of \$152,049 from the Maintenance Equipment Jamestown Beach Account and in-kind labor for a total budget of \$304,098. Sufficient funds will remain to construct the parking, trail, and restroom facilities that will be completed under a separate contract.

Over the years, this popular shoreline segment has been adversely impacted by wave attack and major storm events that have resulted in a loss of usable beach frontage. This project directly supports the “Shaping Our Shores” Master Plan for Jamestown Beach by “re-nourishing it and providing a stable shoreline and predominant beach amenity for the park.”

The work for Phase II consists of 450 linear feet of shoreline stabilization and includes the installation of one 150-foot offshore breakwater constructed using recycled and resized concrete rubble that already exists on-site. Sand-fill beach nourishment will follow the installation of the breakwater and includes the placement and grading of approximately 3,000 cubic yards of sandfill.

A two-step Invitation for Bids for Jamestown Beach Park Shoreline Stabilization and Beach Restoration was publicly advertised. All bidders submitted a Technical Bid Form and a Bid Price Form in two separate sealed envelopes. On the Technical Bid Form, bidders had to document adequate experience, sufficient equipment, financial (including surety), and personnel resources to complete the job. Bidders were required to have completed a minimum of three shoreline stabilization jobs of similar size and type. The Technical Bid Forms were opened first and the qualifications were evaluated without pricing to determine if the bidder had the required experience and resources. The Technical Bid Forms were evaluated by the County’s Project Managers and Purchasing staff. If the bidder met the requirements, the Bid Price Form was opened. If the bidder did not meet the requirements, the Bid Price Form was returned to the bidder unopened.

Four firms submitted a Technical Bid Form and a Bid Price Form. Two firms did not meet the experience requirements: Carolina Marine Structures and Howard Brothers Contractor, Inc. One firm, David Nice Builders did not submit a Technical Bid Form. Two firms met the requirements and their bids are listed below:

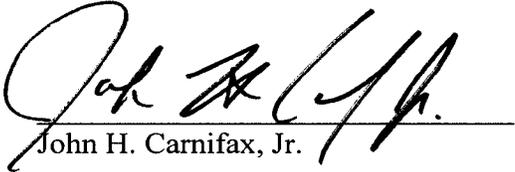
<u>Firm</u>	<u>Amount</u>
Henry S. Branscome, LLC	\$202,627
Water’s Edge Construction	\$216,713

Contract Award – Phase II, Jamestown Beach Park Shoreline Stabilization and Beach Restoration –
\$188,524
November 13, 2012
Page 2

Henry S. Branscome, LLC has done satisfactory work for the County and James City Service Authority and has been determined to be the lowest responsive and responsible bidder. The County negotiated a final bid amount of \$188,524, which is consistent with the project estimate and funds are available as described above for this award.

Attached is a resolution authorizing the contract award to Henry S. Branscome, LLC for Jamestown Beach Park Shoreline Stabilization and Beach Restoration.

Staff recommends approval of the attached resolution.



John H. Carnifax, Jr.

JHC/nb
CA_JamstnBRest_mem

Attachment

RESOLUTION

CONTRACT AWARD – PHASE II, JAMESTOWN BEACH PARK SHORELINE

STABILIZATION AND BEACH RESTORATION – \$188,524

WHEREAS, funds are available in the Special Projects/Grants fund and the Maintenance Equipment Jamestown Beach Account; and

HEREAS, two bids were considered for award and Henry S. Branscome, LLC was the lowest responsive and responsible bidder.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the contract for Phase II Jamestown Beach Park Shoreline Stabilization and Beach Restoration to Henry S. Branscome, LLC in the amount of \$188,524.

John J. McGlennon
Chairman, Board of Supervisors

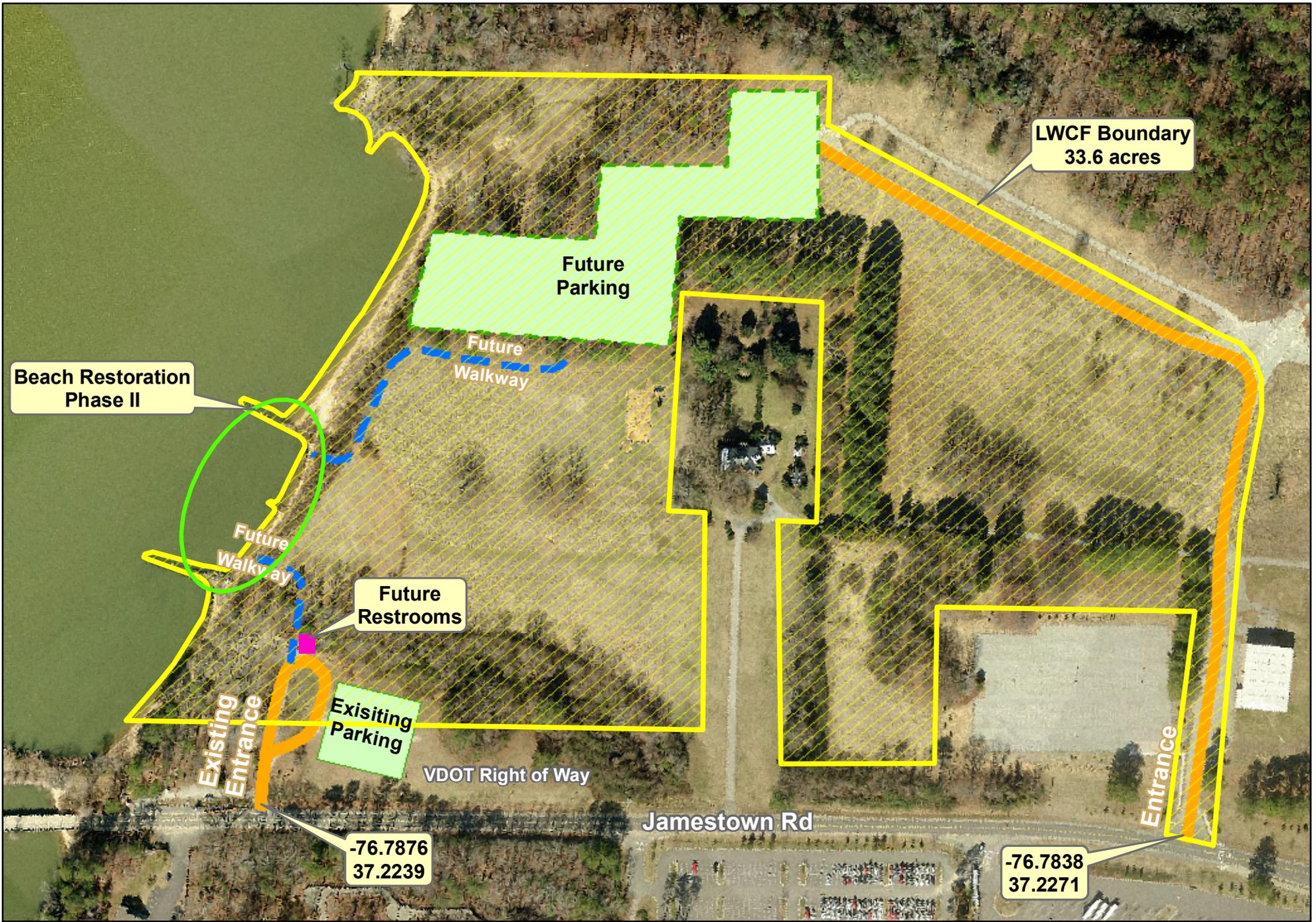
ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of November, 2012.

CA_JamstnBRest_res

Jamestown Beach



LWCF Boundary
33.6 acres

Beach Restoration
Phase II

Future
Parking

Future
Walkway

Future
Walkway

Future
Restrooms

Existing
Parking

Existing
Entrance

VDOT Right of Way

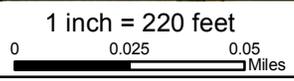
Jamestown Rd

Entrance

-76.7876
37.2239

-76.7838
37.2271

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.



MEMORANDUM COVER

Subject: Grant Appropriation – Clerk of the Circuit Court – \$46,766

Action Requested: Shall the Board approve the resolution that accepts the State Compensation Board’s Technology Trust Fund grant award?

Summary: The Clerk of the Circuit Court has been awarded a grant from the State Compensation Board’s Technology Trust Fund totaling \$46,766. This grant requires no local match. This grant will be used for the replacement of computer equipment and its maintenance, as well as converting records, such as deeds, to a digital format. The State determines the equipment replacement schedule and reimburses the County for the full cost. These funds may not supplant local operations.

Staff recommends approval of the attached resolution authorizing a budget appropriation of \$46,766 to the Special Projects/Grants Fund.

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: November 13, 2012

MEMORANDUM

DATE: November 13, 2012
TO: The Board of Supervisors
FROM: Suzanne R. Mellen, Assistant Director of Financial and Management Services
SUBJECT: Grant Appropriation – Clerk of the Circuit Court – \$46,766

The Clerk of the Circuit Court has been awarded a grant from the State Compensation Board’s Technology Trust Fund totaling \$46,766. This grant requires no local match. This grant will be used for the replacement of computer equipment and its maintenance, as well as converting records to digital format. The State determines the equipment replacement schedule and reimburses the County for the full cost. These funds may not supplant local operations.

Staff recommends approval of the attached resolution authorizing a budget appropriation of \$46,766 to the Special Projects/Grant Fund.

Suzanne R. Mellen

SRM/nb
GA_ClerkCCrt_mem

Attachment

RESOLUTION

GRANT APPROPRIATION – CLERK OF THE CIRCUIT COURT – \$46,766

WHEREAS, the State Compensation Board has awarded a Technology Trust Fund grant to the Clerk of the Circuit Court totaling \$46,766; and

WHEREAS, the grant will be used for the replacement of computer equipment and records modernization; and

WHEREAS, no local match is required for this grant.

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

Revenue:

Revenue from the Commonwealth	<u>\$46,766</u>
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Expenditure:

Clerk of the Circuit Court	<u>\$46,766</u>
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John J. McGlennon
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 November, 2012.

GA_ClerkCCrt_res

MEMORANDUM COVER

Subject: Funds Transfer - Emergency Solid Waste Disposal Costs - \$14,000

Action Requested: Shall the Board of Supervisors approve the transfer of Operating Contingency funds to reimburse the Solid Waste budget for costs incurred for a recent storm emergency?

Summary: In July 2012 a windstorm caused damage in a number of County neighborhoods. To provide assistance to residents, disposal fees were waived. Disposal costs incurred by the Solid Waste Division were not included in the FY 13 budget. This action would transfer \$14,000 from Operating Contingency to Solid Waste to reimburse accounts for these unbudgeted expenditures.

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

Agenda Item No.: H-4

Date: November 13, 2012

MEMORANDUM

DATE: November 13, 2012
TO: The Board of Supervisors
FROM: John T.P. Horne, General Services Director
SUBJECT: Funds Transfer - Emergency Solid Waste Disposal Costs - \$14,000

In July 2012 a windstorm caused considerable damage in a number of areas of the County, with the most severe damage centered in the Chickahominy Haven neighborhood. Assistance to County residents was provided by waiving disposal fees for vegetative debris brought to the Jolly Pond Convenience Center for residents for several weeks.

Certain unbudgeted costs were incurred during the provision of these services. The costs were to pay for disposal costs at the Jolly Pond Transfer Station and the Virginia Peninsula Public Service Authority (VPPSA) Composting Facility. The fees were paid from the Solid Waste budget in General Services, but the accounts used will not have sufficient funds to complete the fiscal year without reimbursement.

The attached resolution authorizes the transfer of \$14,000 from Operating Contingency to Solid Waste to reimburse the operating budget for these unbudgeted expenses. If the Board approves this transfer, \$715,000 would still remain in Contingency. Staff recommends adoption of the attached resolution.


John T.P. Horne

JTPH/gb
EmerDispFunds_mem

Attachment

RESOLUTION

FUNDS TRANSFER - EMERGENCY SOLID WASTE DISPOSAL COSTS - \$14,000

WHEREAS, in July 2012 a windstorm cause damage in various neighborhoods in James City County;
and

WHEREAS, disposal fees for residents of the storm were waived to provide assistance to residents; and

WHEREAS, these disposal costs were incurred by the Solid Waste Division and paid from accounts for which there were not sufficient funds for such emergency costs.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia,
hereby approves the transfer of \$14,000 from Operating Contingency to Solid Waste.

John J. McGlennon
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
November, 2012.

EmerDispFunds_res

MEMORANDUM COVER

Subject: Case No. SUP-0011-2012. Bernfeld Centerville Road Family Subdivision

Action Requested: Shall the Board approve the family subdivision proposed for 6120 Centerville Road?

Summary: Ms. Mariann Bernfeld has applied for a Special Use Permit (SUP) to allow a family subdivision on an approximately 7.8-acre piece of property which is zoned A-1, General Agriculture. The proposal is to create three lots, which would be given to Ms. Bernfeld's son and two daughters. An SUP is required because lots will be less than three acres, but greater than one acre.

Staff recommends approval of this SUP subject to the conditions listed in the attached resolution. The family subdivision is consistent with the 2009 Comprehensive Plan and compatible with surrounding zoning and development.

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. Plan
 - 5. Affidavits

Agenda Item No.: I-1

Date: November 13, 2012

**SPECIAL USE PERMIT-0011-2012. Bernfeld Centerville Road Family Subdivision.
Staff Report for the November 13, 2012, 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

Building F Board Room; County Government Complex

Planning Commission:

Not required

Board of Supervisors:

November 13, 2012, 7:00 p.m.

SUMMARY FACTS

Applicant:

Ms. Mariann Bernfeld

Land Owner:

Mariann and Howard Bernfeld

Proposal:

Family subdivision to create three new lots and leave one parent parcel. The proposed subdivision will create lots less than three acres, but no lots will be smaller than one acre.

Location:

6120 Centerville Road

Tax Map/Parcel No.:

3110100025

Parcel Size:

7.8 acres

Zoning:

A-1, General Agriculture

Comprehensive Plan:

Low Density Residential

Primary Service Area:

Inside, but site is only served by public water.

STAFF RECOMMENDATION

Staff recommends that the Board of Supervisors approve this Special Use Permit (SUP) subject to the conditions listed in the attached resolution. The family subdivision is consistent with the 2009 Comprehensive Plan and compatible with surrounding zoning and development.

Staff Contact:

Leanne Reidenbach

Phone: 253-6876

PLANNING COMMISSION RECOMMENDATION

This application did not require Planning Commission review since it is a family subdivision.

PROJECT DESCRIPTION

Ms. Mariann Bernfeld has applied for an SUP to allow a family subdivision on an approximately 7.8-acre piece of property which is zoned A-1, General Agriculture. The proposal is to create up to three lots which would be given to Ms. Bernfeld's son and two daughters (see attached affidavits). An SUP is required because the proposed lots will be less than three acres, but greater than one acre. A final survey of the property and proposed lot lines have not been completed, but the applicant has indicated that the three proposed lots would ideally each be about one acre in size leaving a remainder lot of about 4.8 acres. If, due to the environmental or soil constraints explained below, fewer than three lots can be created, then more of the lots will be closer to three acres in size.

The SUP conditions are designed to allow for the creation of up to a maximum of four total lots. A four-lot cap is given, as opposed to a more definitive number, for the following reasons:

1. The applicant has three children over age 18 to whom she wishes to convey lots.
2. A soil survey has not been completed for the property. As a result, the Health Department cannot determine that there are acceptable primary and reserve drainfield locations for each lot.
3. The Resource Protection Area (RPA) on the eastern portion of the lot is not shown on the preliminary plat.

Given the costs of conducting soil surveys and RPA delineations together with the discretionary nature of the SUP process, staff frequently does not require this information to be submitted at this stage in the process for family subdivisions. This information will be required with the subdivision plat should the Board approve the SUP. The applicant has been made aware that the number of lots that can be created and their specific shapes and sizes will be subject to a review of this additional information.

Surrounding Zoning and Land Use

The property is surrounded by A-1, General Agriculture, property that is designated Low Density Residential on the 2009 Comprehensive Plan. Existing uses are residential or vacant parcels ranging in size from a little less than an acre to about nine acres. The parcel is in the vicinity of the intersection of Jolly Pond and Centerville Roads.

PUBLIC IMPACTS

Environmental Impacts

Watershed: Powhatan Creek

Engineering and Resource Protection Staff Comments: The Engineering and Resource Protection Division has reviewed the proposal and determined that a perennial stream study submitted in 2006 shows some RPA and wetland area on the eastern portion of the property. The RPA was not shown on the submitted plat, so it is difficult to tell whether there is adequate buildable area on the eastern-most lot.

Division reviewers have indicated their comfort with requiring that the RPA be shown on future plats and that a determination of the number of lots that can be created can be determined at that time.

Utilities

The site is located inside the Primary Service Area (PSA), but only receives public water from a line located along Centerville Road. The proposed lots would be served by private septic drainfields as the nearest sewer line is more than 1,000 feet from the site; however, James City Service Authority (JCSA) has indicated that the owner can pay to extend the sewer line to serve her property if she chooses.

JCSA Staff Comments: The JCSA has reviewed the proposed subdivision plan and has requested that a condition requiring water conservation guidelines is included.

Virginia Department of Health Comments: The Virginia Department of Health has reviewed the subdivision; however, a soil survey for this site has not yet been completed. Soils information will be required at the subdivision plat stage and at that point, the Health Department will be able to determine the final number of lots that can be created.

Traffic

The proposed use did not trigger the requirement for a traffic study.

2007 Annual Average Daily Traffic Volume (Centerville Road): From Jolly Pond Road to Longhill Road the daily volume was 11,507 vehicles.

2035 Volume Projected: From Jolly Pond Road to Longhill Road there is the projection of 21,629 Annual Average Daily Traffic (AADT). This portion of Centerville Road is listed in the “Recommended for Improvement” category.

Staff Comments: The lots in this subdivision will be required to share one driveway with access to Centerville Road. This is specified in Condition No. 2 on the attached resolution. The area of Centerville Road immediately in front of this site was recently improved and associated with work at the intersection of Centerville and Jolly Pond Roads.

VDOT Comments: The shared driveway will be required to meet the specifications for a Low Volume Commercial Entrance if it serves more than two residences. The driveway will also have to meet other site distance requirements. The final driveway location and design can be determined at subdivision plat stage.

COMPREHENSIVE PLAN

The 2009 James City County Comprehensive Plan Land Use Map designates this property as Low Density Residential. Low Density Residential areas are located where public services and utilities exist or are expected to be expanded and have natural characteristics that are suitable for residential development. Recommended density is up to one dwelling unit per acre depending on the site characteristics and surrounding uses. Appropriate recommended uses include single-family homes, duplexes, accessory units, cluster housing, and recreation areas. New development should be compatible with the character of adjoining uses and the impact of development proposals on overall mobility and traffic safety should be minimized by limiting access points on major roads. LU 6.2.4 also discusses amending the subdivision ordinance to place appropriate restrictions, such as a minimum number of years of property ownership, on family subdivisions.

Staff Comments: A family subdivision in this area is consistent with the 2009 Comprehensive Plan. Particularly, the Low Density Residential designation of the parcel indicates that smaller lot size (in this case between one and three acres) is appropriate where it can be supported by water and sewer utilities. As previously stated, the site is located near existing residential development with a similar range of lot sizes. Access to Centerville Road for the new lots will also be through a shared driveway. Finally, the amendments to the subdivision ordinance, which were reviewed by the Planning Commission on November 7, include a five-year minimum ownership requirement for family subdivisions. According to County property information, Ms. Bernfeld has owned this property since 2002.

RECOMMENDATION

Staff recommends that the Board of Supervisors approve this SUP subject to the conditions listed in the attached resolution. The family subdivision is consistent with the 2009 Comprehensive Plan and compatible with surrounding zoning and development.


Leanne Reidenbach

CONCUR:

Allen J. Murphy, Jr.

LR/nb
Sup11-12Bernfeld.doc

ATTACHMENTS:

1. Resolution
2. Location Map
3. Plan
4. Affidavits

RESOLUTION

CASE NO. SUP-0011-2012. BERNFELD CENTERVILLE ROAD FAMILY SUBDIVISION

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, Ms. Mariann Bernfeld has requested an SUP to allow for a family subdivision with lots less than three acres in size in an A-1, General Agricultural, District, located at 6120 Centerville Road, further identified as James City County Real Estate Tax Map Parcel No. 3110100025; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. SUP-0011-2012; and

WHEREAS, the Board of Supervisors is of the opinion that the SUP to allow for the above-mentioned family subdivision should be approved.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. SUP-0011-2012, as described herein, pursuant to the following conditions:

1. **Plan.** This SUP is valid for a family subdivision for the creation of no more than three new lots and one parent lot with each lot being no less than one acre in size as generally shown on the plan drawn by L.V. Woodson and Associates, Inc., titled "A Survey for Conveyance to Robert H. Yancey, Lot 5 Deed of Partition, John Jones Estate," and dated June 1, 1993. The final number of lots shall be determined by the Director of Planning subject to a review of septic drainfield information and evaluation of Resource Protection Areas on the property.
2. **Access.** Only one entrance serving all lots through a shared driveway shall be allowed onto Centerville Road. The entrance shall meet all appropriate Virginia Department of Transportation (VDOT) requirements.
3. **Water Conservation Guidelines.** The applicant shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority prior to final subdivision plat approval. The standards shall address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources.
4. **Commencement.** Final subdivision approval must be received from the County within 12 months from the issuance of this SUP or the permit shall become void.
5. **Severance Clause.** The SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

John J. McGlennon
Chairman, Board of Supervisors

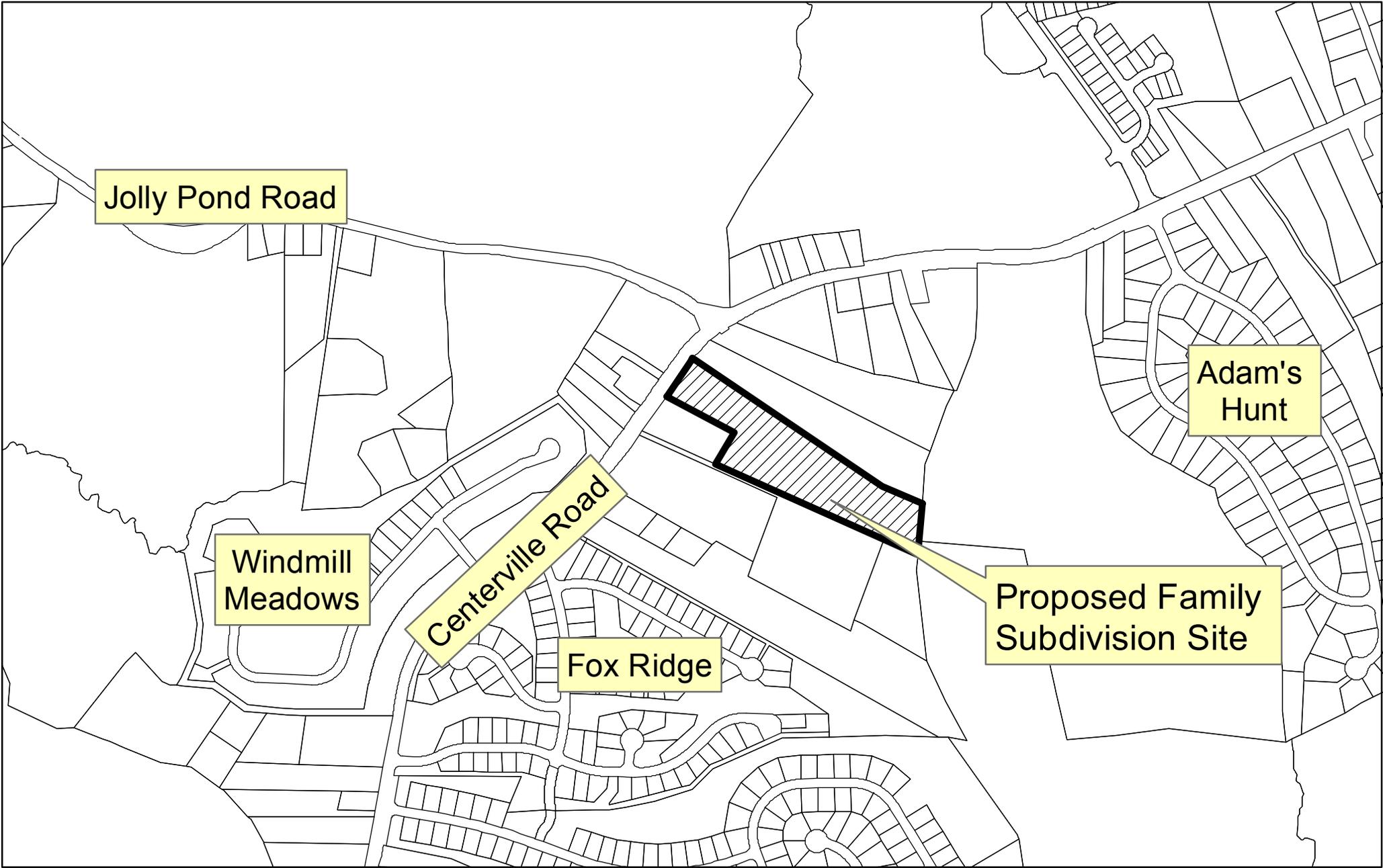
ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of
November, 2012.

Sup11-12Bernfeld_res

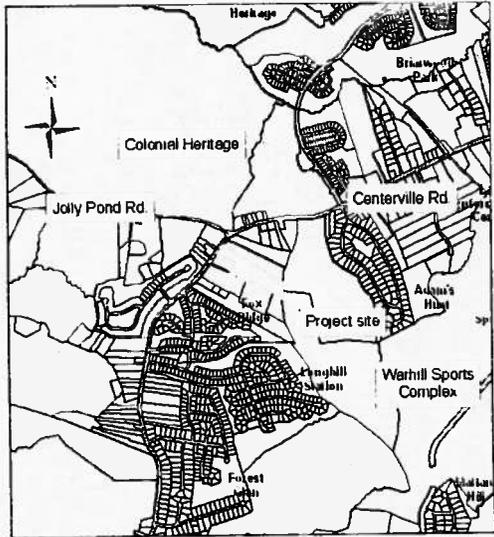
SUP-0011-2012 Bernfeld Family Subdivision



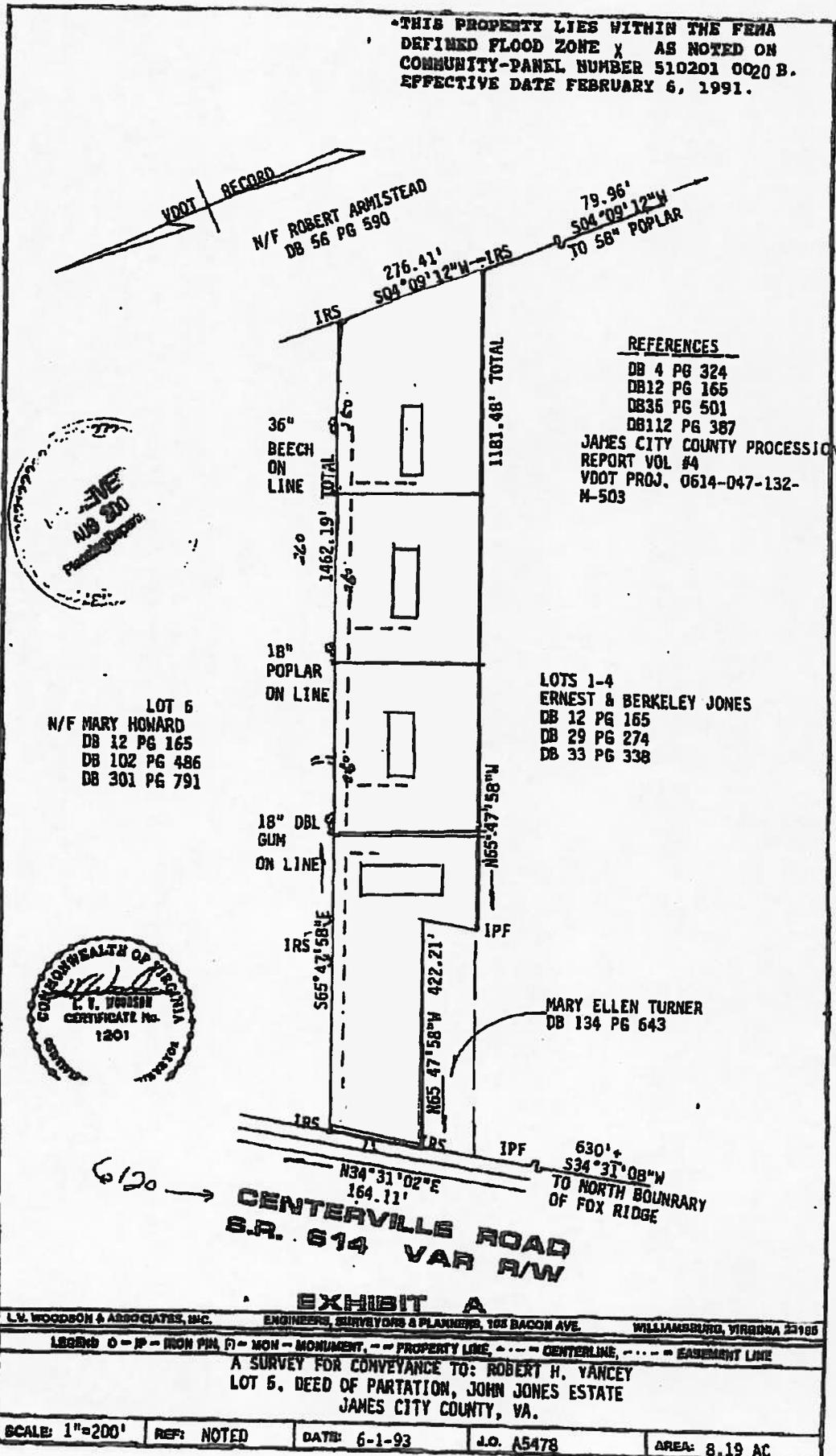
SUP-0011-2012, Bernfeld Centerville Rd. Family Subdivision

Site Information:

Address: 6120 Centerville Road
 Tax Map #: 3110100025
 Owners: Mariann and Howard Bernfeld
 140 King Henry Way
 Williamsburg, VA 23188
 Parcel Size: 7.8 acres
 Zoning: A-1, General Agriculture
 Proposal: Family subdivision creating 3 new lots and 1 remaining parent parcel. All lots to be greater than 1 acre in size.



Not to scale



COUNTY OF JAMES CITY, VIRGINIA
FAMILY SUBDIVISION AFFIDAVIT

October 6, 2012

I/we, Miriam Bernfeld, own a parcel of property consisting of 8.19 acres and located at 6120 Centerville Rd and further identified as James City County Real Estate Tax Map No. 3110100025 (the "Property"). I/we hereby request that James City County, Virginia, approve a family subdivision of the Property into a total of 4 parcel(s), in the specific location and sizes as shown on a plat entitled

"A Survey for Conveyance to Robert H. Nancy Lot 5 Deed Partition John Jones Estate"
made by L. J. Hodson and Associates, LLC
and dated 10.1.93 (the "Family Subdivision Plat").

This family subdivision is being made for the purpose of transferring a lot by sale or gift to:

Robert Bernfeld, who is my owner don, and is not made for the purpose of circumventing any of the provisions of the Code of the County of James City, Virginia. It is my/our intention that the deed(s) of transfer will be drawn and duly recorded as soon as reasonably possible subsequent to the approval of the Family Subdivision Plat.

Miriam Bernfeld
Owner

Owner

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY of JAMES CITY, to-wit:

The foregoing Affidavit was acknowledged before me this 6th day of OCTOBER, 2012, by MICHAEL LEE SEALS.

My Commission expires: 6/30/2014

[Signature]
Notary Public

Notary No. 7037505

Michael Lee Seals
NOTARY PUBLIC
Registration # 7037505
Commonwealth of Virginia
My Commission Expires 06/30/14

Prepared by and return to:

Name: _____

Address: _____

Telephone: _____

COUNTY OF JAMES CITY, VIRGINIA
FAMILY SUBDIVISION AFFIDAVIT

October 6, 2012

I/we, Mariann Bernfeld, own a parcel of property consisting of 8.119 acres and located at 6120 Centerville Rd and further identified as James City County Real Estate Tax Map No. 3110100025 (the "Property"). I/we hereby request that James City County, Virginia, approve a family subdivision of the Property into a total of 4 parcel(s), in the specific location and sizes as shown on a plat entitled

"A Survey for Conveyance to Robert H Yancey Lot 5 of Eedog Partiton, John Jones &
made by L V Woodson and Associates, Inc
and dated 6.1.93 (the "Family Subdivision Plat").

This family subdivision is being made for the purpose of transferring a lot, by sale or gift to: Kristine Patterson, who is my our daughter, and is not made for the purpose of circumventing any of the provisions of the Code of the County of James City, Virginia. It is my/our intention that the deed(s) of transfer will be drawn and duly recorded as soon as reasonably possible subsequent to the approval of the Family Subdivision Plat.

Mariann Bernfeld
Owner

Owner

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY of JAMES CITY, to-wit:

The foregoing Affidavit was acknowledged before me this 6th day of OCTOBER, 2012, by MICHAEL LEE SEALS.

My Commission expires: 6/30/2014

[Signature]
Notary Public

Notary No. 7037505

Michael Lee Seals
NOTARY PUBLIC
Registration # 7037505
Commonwealth of Virginia
My Commission Expires 06/30/14

Prepared by and return to:
Name: _____
Address: _____
Telephone: _____

COUNTY OF JAMES CITY, VIRGINIA
FAMILY SUBDIVISION AFFIDAVIT

October 6, 2012

I/we, Marian Bernfeld, own a parcel of property consisting of 8.19 acres and located at 6120 Centerville Rd and further identified as James City County Real Estate Tax Map No. 3116100025 (the "Property"). I/we hereby request that James City County, Virginia, approve a family subdivision of the Property into a total of 4 parcel(s), in the specific location and sizes as shown on a plat entitled

"A Survey for Conveyance to Robert H Yancey Lot 5 Neel Partition of John Jones Estate"
made by L V Hodson and Associates, Inc
and dated 6.1.93 (the "Family Subdivision Plat").

This family subdivision is being made for the purpose of transferring a lot by sale or gift to: Mirian Nijtjens, who is my/our daughter, and is not made for the purpose of circumventing any of the provisions of the Code of the County of James City, Virginia. It is my/our intention that the deed(s) of transfer will be drawn and duly recorded as soon as reasonably possible subsequent to the approval of the Family Subdivision Plat.

Marian Bernfeld
Owner

Owner

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY of JAMES CITY, to-wit:

The foregoing Affidavit was acknowledged before me this 6th day of OCTOBER, 2012, by MICHAEL LEE SEALS.

My Commission expires: 6/30/2014

[Signature]
Notary Public

Notary No. 7037505

Michael Lee Seals
NOTARY PUBLIC
Registration # 7037505
Commonwealth of Virginia
My Commission Expires 06/30/14

Prepared by and return to:
Name: _____
Address: _____

Telephone: _____

MEMORANDUM COVER

Subject: Case No. SUP-0009-2012. Murphy Family Subdivision

Action Requested: Shall the Board approve a family subdivision less than three acres in size?

Summary: Mr. William Holt has applied on behalf of Thomas and Elea Murphy for a Special Use Permit (SUP) to allow a family subdivision resulting in lots less than three acres in size at 10100 Sycamore Landing Road.

Staff recommends approval of this SUP with the conditions listed in 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. Family Subdivision Plat Exhibit
5. Family Subdivision Affidavit
6. BZA Variance Approval Letter

Agenda Item No.: I-2

Date: November 13, 2012

**SPECIAL USE PERMIT-0009-2012. Murphy Family Subdivision
Staff Report for the November 13, 2012, 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

Board of Supervisors:

Building F Board Room; County Government Complex

November 13, 2012, 7:00 p.m.

SUMMARY FACTS

Applicant: William Holt, Kaufman & Canoles

Land Owner: Thomas and Elea Murphy

Proposal: Family subdivision resulting in lots that are less than three acres in size.

Location: 10100 Sycamore Landing Road

Tax Map/Parcel No.: 0720300001

Parcels Size: Current lot size: \pm 2.44 acres
Proposed Parcel A: 1.24 acres
Proposed Parcel B: 1.20 acres

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

STAFF RECOMMENDATION

Staff finds the proposal to be consistent with the surrounding development and Section 19-17 of the Subdivision Ordinance. Staff recommends the Board of Supervisors approve this Special Use Permit (SUP) with the conditions listed in the attached resolution.

Staff Contact: Luke Vinciguerra, Planner I Phone: 253-6783

PROJECT DESCRIPTION

Mr. William Holt has applied on behalf of Thomas and Elea Murphy for an SUP to allow a family subdivision resulting in lots less than three acres in size. An SUP is required because the proposed lots will be less than three acres, but greater than one acre. The proposal is to subdivide a 2.4-acre parcel into two lots and transfer the property with the existing house to the Murphy's daughter. A new handicapped accessible house would be built on the smaller lot to meet the Murphy's changing needs. The Murphys have owned this property for 40 years.

At 335 feet wide at the setback line and with roughly half the property in the Resource Protection Area (RPA), the proposed larger lot could not meet minimum lot width requirements. Additionally, the smaller parcel could not meet front setback requirements. On June 7, 2012, the Board of Zoning Appeals (BZA) issued a variance reducing the minimum lot width at the setback line for proposed Parcel A and the front setback for proposed Parcel B as shown on Attachment No. 3 subject to Board approval of the Family Subdivision. With this variance, staff finds the proposed new lot large enough to accommodate the proposed handicapped accessible house. The existing barn on this property would be razed to accommodate the new dwelling.

Surrounding Zoning and Land Use

The property is surrounded by A-1, General Agriculture, land that is designated Rural Lands on the 2009 Comprehensive Plan. Existing uses are residential or vacant parcels ranging in size from a half-acre to about three acres in size.

PUBLIC UTILITIES

Environmental

Watershed: York River

Engineering and Resource Protection Staff Comments: The Engineering and Resource Protection Division has reviewed the proposal and has no comments at this time.

Virginia Department of Health Comments: Both properties will be served by private well and septic. The Virginia Department of Health has reviewed the subdivision along with soil surveys and has offered a positive recommendation.

COMPREHENSIVE PLAN

The site is located outside the Primary Service Area (PSA) and is designated as Rural Lands on the 2009 Comprehensive Plan Land Use Map. Recommended primary uses in the Rural Lands include agricultural and forestal activities and public or semi-public institutions that require a spacious site. Recommended residential uses include single-family developments at a low density and small-scale rural clusters. Such developments should be compatible with the natural and rural character of the area and be in accordance with the Rural Lands Development Standards provided in the Comprehensive Plan.

Staff Comments: The creation of the additional lot is not in conflict with the rural character of the area, is compatible with surrounding lot sizes and land uses and is compatible with other family subdivisions approved by the Board of Supervisors. The proposed family subdivision does not represent a large-scale residential development and will not negatively impact any agricultural or forestal uses.

RECOMMENDATION

Staff finds the proposal to be consistent with the surrounding zoning and development and with the 2009 Comprehensive Plan. Staff recommends the Board of Supervisors approve this SUP with the conditions listed in the attached resolution.

Luke Vinciguerra

CONCUR:

Allen J. Murphy, Jr.

LV/nb
Sup09-12Murphy.doc

ATTACHMENTS:

1. Resolution
2. Location Map
3. Family Subdivision Plat Exhibit
4. Family Subdivision Affidavit
5. BZA Variance Approval Letter

RESOLUTION

CASE NO. SUP-0009-2012. MURPHY FAMILY SUBDIVISION

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, the applicant has requested an SUP to allow for a family subdivision with lots less than three acres in size in an A-1, General Agricultural, District, located at 10100 Sycamore Landing Road and further identified as James City County Real Estate Tax Map No. 0720300001; and

WHEREAS, the Board of Supervisors, following a public hearing, is of the opinion that the SUP to allow for the above-mentioned family subdivision should be approved.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Case No. SUP-0009-2012 as described herein with the following conditions:

1. This SUP is valid for a family subdivision for the creation of a lot approximately 1.2 acres in size with the remaining parcel approximately 1.24 acres in size as generally shown on the plan titled "Exhibit Showing Well And Drainfield Locations for Murphy Family Subdivision 10100 Sycamore Landing Road," prepared by AES Consulting Engineers, and dated September 4, 2012.
2. Final subdivision approval must be received from the County within 12 months from the issuance of this SUP or the SUP shall become void.
3. The SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

John J. McGlennon
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 November, 2012.

Sup09-12Murphy_res

SUP-00009-2012

Murphy Family Subdivision





County of James City, Virginia - Family Subdivision Affidavit

October 23, 2012

I/we, Thomas & Eleanor S. Murphy, own a parcel of property consisting of 2.44 acres and located at 10100 Sycamore Landing Road, Williamsburg, VA 23188 and further identified as James City County Real Estate Tax Map No. 0720300001 (the "Property"). I/we hereby request that James City County, Virginia, approve a family subdivision of the Property into a total of two (2) parcel(s), in the specific location and sizes as shown on a plat entitled "EXHIBIT SHOWING WELL AND DRAINFIELD LOCATIONS FOR MURPHY FAMILY SUBDIVISION 10100 SYCAMORE LANDING ROAD", made by AES CONSULTING ENGINEERS, and dated September 4, 2012 (the "Family Subdivision Plat").

This family subdivision is being made for the purpose of transferring a lot by sale or gift to: Emily Bartolotta, who is my/our daughter, and is not made for the purpose of circumventing any of the provisions of the Code of the County of James City, Virginia. It is my/our intention that the deed(s) of transfer will be drawn and duly recorded as soon as reasonably possible subsequent to the approval of the Family Subdivision Plat.

Thomas E. Murphy
Owner
Eleanor S. Murphy
Owner

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY of JAMES CITY COUNTY, to-wit:

The foregoing Affidavit was acknowledged before me this 25th day of OCTOBER, 2012 by, THOMAS & ELEANOR S. MURPHY, owner(s).

My Commission expires: 6/30/2015

Anna M. Gallo
Notary Public

Notary No. 7146383



Prepared by and return to:
Name: William L. Holt, Esq. (VSB# 76857)
Address: Kaufman & Canoles, 4801 Courthouse Street, Suite 300
Williamsburg, VA 23188
Telephone: (757) 259-3800



Development Management
601 A Mounts Bay Road
P.O. Box 6734
Williamsburg, VA 23187-8734
P: 757-253-6671
F: 757-253-6822
levman@james-city.va.us
jamescitycountyva.gov

Building Safety and Permits
757-253-6620

Engineering and Resource Protection
757-253-6670

Planning
757-253-6685

Zoning Enforcement
757-253-6671

June 11, 2012

Mr. Greg Davis
Kaufman & Canoles
4801 Courthouse Street, Suite 300
Williamsburg, VA 23188

RE: Case No. ZA-0001-2012-10100 Sycamore Landing Road

Dear Mr. Davis:

At the June 7, 2012 meeting of the James City County Board of Zoning Appeals, your request for the following variances were approved:

1. A variance to Section 24-216 (c) which reduces the required 150 feet minimum lot width and frontage of lots of one acre or more but less than three acres to 130 feet for the proposed "Parcel A."
2. A variance to Section 24-215 (a) which reduces the required 50 foot setback from any street right-of-way which is 50 feet or greater in width to 35 feet from Sycamore Landing Road for the proposed single story dwelling on the proposed "Parcel B."

This approval comes with the condition that the application for a Special Use Permit for the proposed "family subdivision" be approved by the James City County Board of Supervisors. This parcel is currently zoned A-1, General Agriculture and can be further identified as James City County Real Estate Tax Map Number (0720300001).

If you have any questions please feel free to contact John Rogerson at (757) 253-6718.

Sincerely,

Christy Parrish, CZA
Acting Zoning Administrator

CHP/jer

MEMORANDUM COVER

Subject: The Virginia Department of Transportation (VDOT) Revenue Sharing Program-Fiscal Year 2014

Action Requested: Shall the Board give authorization to apply for FY 2014 Revenue Sharing Funds?

Summary: Each year the Virginia Department of Transportation (VDOT) invites localities to participate in the Revenue Sharing Program which provides jurisdictions an additional funding option to construct or improve the highway system. The program will match local dollars on a one-to-one basis up to \$10 million. This year staff recommends the following revenue sharing projects:

- Right-in/right-out barrier at the entrance to 7-Eleven on Longhill Road; and,
- Reconstruction of Williamsburg West subdivision roads for eligibility into the VDOT system; and,
- Bike/pedestrian access to the Capital Trail from the Monticello Avenue/John Tyler Highway intersection.

The three projects combined would require a total County match of up to \$255,000.

Staff recommends adoption of the attached resolutions which authorize the County's intent to participate in the FY 2014 Revenue Sharing Program.

Fiscal Impact: \$255,000 from the FY 2014 budget. These funds are not currently allocated in the FY 2014 budget and will need to be identified in the upcoming budget deliberations.

FMS Approval, if Applicable: Yes No

Required County match is \$255,000. Funding would be provided from the General Fund.

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution (7-Eleven Entrance Channelization Island)
3. Resolution (Reconstruction of Williamsburg West Subdivision Streets)
4. Resolution (Bike/Pedestrian Access to the Capital Trail)
5. 7-Eleven Entrance Channelization Island Project Map
6. Williamsburg West Subdivision Streets Project Map
7. Bike/Pedestrian Access to the Capital Trail Access Project Map

Agenda Item No.: J-1

Date: November 13, 2012

M E M O R A N D U M

DATE: November 13, 2012

TO: The Board of Supervisors

FROM: Tamara A. M. Rosario, Principal Planner
Allen J. Murphy, Manager of Development Management

SUBJECT: The Virginia Department of Transportation (VDOT) Revenue Sharing Program-Fiscal Year 2014

Each year the Virginia Department of Transportation (VDOT) invites localities to participate in the Revenue Sharing Program, which provides jurisdictions an additional funding option to construct or improve the highway system. The program will match local dollars on a one-to-one basis up to \$10 million. As a competitive program, VDOT prioritizes eligible projects into the following categories:

- Priority 1 - Construction projects that accelerate a project in the Six Year Plan or in a locality's capital plan.
- Priority 2 - Maintenance projects for poor surface quality roads as determined by VDOT's road condition indexes.
- Priority 3 - Construction and maintenance projects that do not meet the above priority criteria.

Due to the high upfront cost, the County typically uses revenue sharing to provide funding for small projects, immediately needed improvements, or to supplement existing projects with minimal remaining balances. Below are staff's top three proposed projects that staff finds would likely be competitive in the selection process:

1. **Install a right-in/right-out commercial entrance channelization island at the 7-Eleven at 4840 Longhill Road** (Attachment No. 4). VDOT has identified left-turn movements in and out of the 7-11 at the intersection of Longhill Road and Olde Towne Road as a high-crash area that could benefit from safety improvements. To improve safety, this proposed project would install a permanent concrete barrier at the 7-Eleven entrance to force right-in/right-out movements. Due to the urgency of this safety issue, VDOT may temporarily install orange bollards in the centerline of Longhill Road to prohibit left turning movements. This revenue sharing project would be a more permanent solution that is more in context with this Community Character Corridor. The proposal would have a negligible impact on any future road widening. The total cost of this Priority 1 project is estimated to be \$60,000.
2. **Reconstruct Lexington Drive, Country Club Court, and Country Club Drive in Williamsburg West subdivision for eligibility in the VDOT system** (Attachment No. 5). Several roads within Williamsburg West are in need of significant maintenance. It is the County's policy to discourage private streets, as unaddressed maintenance problems can be detrimental to the welfare and safety of County residents. Staff estimates that for a total cost of \$400,000, these three roads could be rehabilitated to a condition that would be eligible for inclusion in the State system. This would be classified as a Priority 2 project.
3. **Bike/pedestrian access to the Capital Trail from the Monticello Avenue (Route 321)/John Tyler Highway (Route 5) intersection** (Attachment No. 6). This project would provide paved paths at the Monticello Avenue and John Tyler Highway intersection to provide access to the Capital Trail. The Historic Triangle Bicycle Advisory Committee (HTBAC) has recommended this project as there is currently not a way to access the trail from John Tyler Highway without riding over an unlevel grass ditch. Staff concurs with HTBAC's recommendation of trail access at this intersection. This Priority 3 project is estimated to cost less than \$50,000.

At a total cost of \$510,000, the County's maximum contribution for all three projects is \$255,000. These funds are not currently allocated in the FY 2014 budget and will need to be identified in the upcoming budget deliberations. Staff recommends that the Board of Supervisors adopt the attached resolutions, which authorize the County's intent to participate in the FY 2014 Revenue Sharing Program. Resolutions have been provided for each individual project should the Board decide not to support all three recommendations.



Tamara A.M. Rosario

CONCUR:

Allen J. Murphy, Jr.

AJM/nb

RevSharPr2014_mem

Attachments

1. Resolution (7-Eleven Entrance Channelization Island)
2. Resolution (Reconstruction of Williamsburg West Subdivision Streets)
3. Resolution (Bike/Pedestrian Access to the Capital Trail)
4. 7-Eleven Entrance Channelization Island Project Map
5. Williamsburg West Subdivision Street Project Map
6. Bike/Pedestrian Access to the Capital Trail Access Project Map

RESOLUTION

REVENUE SHARING PROGRAM-FISCAL YEAR 2014

7-ELEVEN ENTRANCE CHANNELIZATION ISLAND – \$30,000

WHEREAS, the Board of Supervisors of James City County desires to submit an application requesting \$30,000 of Revenue Sharing Funds through the Virginia Department of Transportation (VDOT) Fiscal Year 2014 Revenue Sharing Program; and

WHEREAS, the County will allocate \$30,000 to match Revenue Sharing Program funds; and

WHEREAS, the combined County and State funding totaling \$60,000 is requested to fund the entrance channelization island at the 7-Eleven at 4840 Longhill Road.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby supports this application for an allocation of \$30,000 through the VDOT Revenue Sharing Program and further approves a County contribution up to \$30,000 toward this project.

John J. McGlennon
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 November, 2012.

RevSharPr2014_res-1

RESOLUTION

REVENUE SHARING PROGRAM-FISCAL YEAR 2014

WILLIAMSBURG WEST SUBDIVISION STREET RECONSTRUCTION – \$200,000

WHEREAS, the Board of Supervisors of James City County desires to submit an application requesting \$200,000 of Revenue Sharing Funds through the Virginia Department of Transportation (VDOT) Fiscal Year 2014 Revenue Sharing Program; and

WHEREAS, the County will allocate \$200,000 to match Revenue Sharing Program funds; and

WHEREAS, the combined County and State funding totaling \$400,000 is requested to fund the reconstruction of Williamsburg West subdivision roads.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby supports this application for an allocation of \$200,000 through the VDOT Revenue Sharing Program and further approves a County contribution up to \$200,000 toward this project.

John J. McGlennon
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 November, 2012.

RevSharPr2014_res-2

RESOLUTION

REVENUE SHARING PROGRAM-FISCAL YEAR 2014

BIKE/PEDESTRIAN CAPITAL TRAIL ACCESS – \$25,000

WHEREAS, the Board of Supervisors of James City County desires to submit an application requesting \$25,000 of Revenue Sharing Funds through the Virginia Department of Transportation (VDOT) Fiscal Year 2014 Revenue Sharing Program; and

WHEREAS, the County will allocate \$25,000 to match Revenue Sharing Program funds; and

WHEREAS, the combined County and State funding totaling \$50,000 is requested to fund bike-pedestrian access connections at the Monticello Avenue (Route 321)/John Tyler Highway (Route 5) intersection.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby supports this application for an allocation of \$25,000 through the VDOT Revenue Sharing Program and further approves a County contribution up to \$25,000 toward this project.

John J. McGlennon
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 November, 2012.

RevSharPr2014_res-3

7-11 Entrance Channelization Island Project Map



Proposed right in/right out
entrance channelization

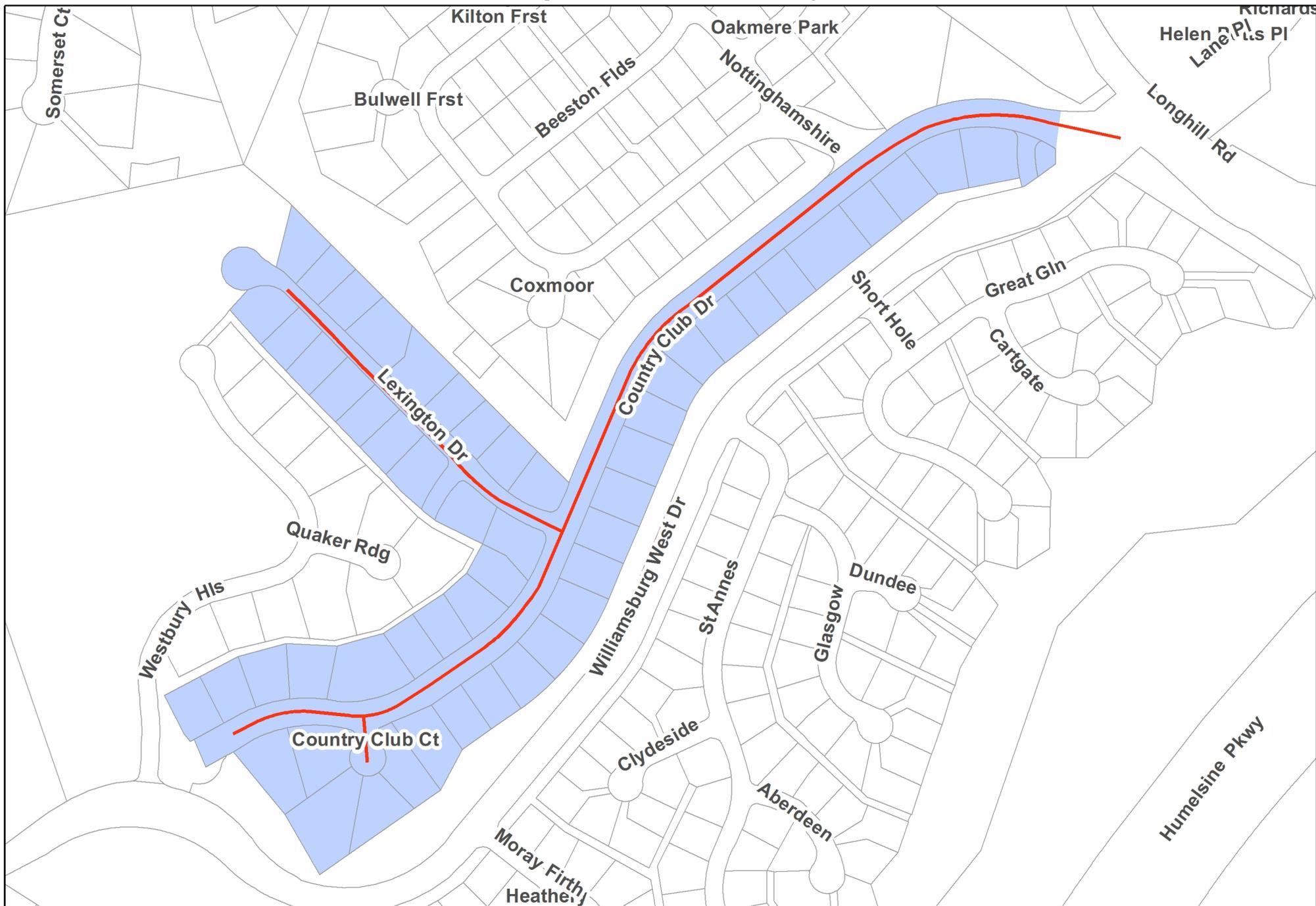
This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be. If discrepancies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

1 inch = 40 feet

0 0.004 0.008 Miles



Williamsburg West Subdivision Project Map



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.

1 inch = 350 feet



Bike/Pedestrian Access to the Capital Trail Access Project Map



Proposed access site

Proposed access site

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.

1 inch = 170 feet



MEMORANDUM COVER

Subject: Purchase of Development Rights (PDR) - Offer to Sell a Conservation Easement - \$1,300,000

Action Requested: Shall the Board approve the acquisition of a Purchase of Development Rights (PDR) easement on 158 acres at 2001 Bush Neck Road in the amount of \$1,300,000?

Summary: David H. and Stephanie M. Allen have agreed upon terms for a perpetual conservation easement on property consisting of 158 acres at 2001 Bush Neck Road. The easement was appraised for \$1,300,000.

The PDR Committee recommends that the Board acquire the easement for the appraised value of \$1,300,000.

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. Offer Letter
- 4. Deed of Easement

Agenda Item No.: J-2

Date: November 13, 2012

MEMORANDUM

DATE: November 13, 2012

TO: The Board of Supervisors

FROM: Robert C. Middaugh, County Administrator

SUBJECT: Purchase of Development Rights (PDR) - Offer to Sell a Conservation Easement - \$1,300,000

David H. and Stephanie M. Allen have agreed upon terms for a perpetual conservation easement on their property consisting of 158 acres located at 2001 Bush Neck Road. The appraisal report prepared by Simerlein Appraisals, Ltd., established a baseline easement value of \$1,300,000, which was presented to the Purchase of Development Rights (PDR) Committee for consideration. The PDR Committee recommends acquisition of the easement for the appraised value of \$1,300,000.

This application received the second highest ranking ever in the PDR program. The PDR Committee recommendation to protect this parcel was influenced by many factors:

- Amount of open land
- Size of the parcel
- The parcel is actively farmed with 114 acres of prime soils
- Environmental resources and sensitivity
- Extensive frontage on Nettles Creek and marshland
- Scenic Views
- Potential for development

Following a review of the Allen PDR application and the PDR Committee recommendation to protect, the Board authorized me to enter into negotiations for a conservation easement on the property. Subsequent negotiations finalized the terms of agreement for a deed of easement.

In accordance with the PDR ordinance, I have invited the landowners to sell to the County a conservation easement on their property. The landowner signed and returned an offer letter that offers to sell a conservation easement on the property for the assessed value of \$1,300,000 subject to the terms and conditions set forth in the proposed deed of easement.

The PDR ordinance states that an offer to sell a conservation easement shall be accepted by the Board in writing, following an action by the Board authorizing acceptance. If the Board accepts the offer, final closing documents, including the deed of easement will be prepared and approved by the staff and County Attorney. If the Board accepts this offer a balance of \$637,156 will remain in the PDR account.

Robert C. Middaugh

RCM/nb
AllenPDR_mem

Attachment

RESOLUTION

PURCHASE OF DEVELOPMENT RIGHTS (PDR) - OFFER TO SELL A

CONSERVATION EASEMENT - \$1,300,000

WHEREAS, the County has received an offer to sell a conservation easement under the Purchase of Development Rights (PDR) Program from David H. and Stephanie M. Allen, owners of the property known as 2001 Bush Neck Road; and

WHEREAS, the owner offered to sell a conservation easement on the property for a purchase price of \$1,300,000 subject to the conditions set forth in the proposed deed of easement referenced in the County's invitation of offer.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby accepts the offer to sell a conservation easement described above, or as modified by the County Attorney and authorizes the County Administrator to execute all documents necessary for completing the acquisition.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby directs the PDR Administrator to send a copy of this resolution to the owner of the property identified herein.

John J. McGlennon
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 November, 2012.

AllenPDR_res



Administration
101-D Mounts Bay Road
P.O. Box 8784
Williamsburg, VA 23185-8784
P: 757-253-6728
jamescitycountyva.gov

October 31, 2012

Mr. and Mrs. David H. Allen
2001 Bush Neck Road
Williamsburg, VA 23188

RE: PDR Program: Invitation to Offer to Sell A Conservation Easement

Dear Mr. and Mrs. Allen:

I invite you to offer to sell to the County of James City, a perpetual conservation easement on your 158 acre parcel located at 2001 Bush Neck Road, also identified as Tax Map Numbers 342010002, 3420200001, 3420100002, 3420200003, and 3420200004, for the purchase price of One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000). Please find enclosed a copy of the proposed deed of easement.

If you elect to sell the conservation easement to the County, your offer must be received by me by Friday, November 9. An offer form has been enclosed.

If you have any questions, please contact me.

Sincerely,

Robert C. Middaugh
County Administrator

**Mr. and Mrs. David H. Allen
2001 Bush Neck Road
Williamsburg, VA 23188**

November 1, 2012

Robert C. Middaugh
County Administrator
James City County
101 D Mounts Bay Road
Williamsburg, VA 23185

Re: PDR Program: An Offer to Sell a Conservation Easement

Dear Mr. Middaugh:

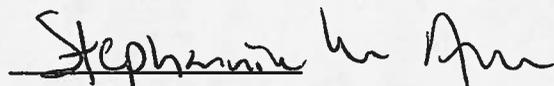
We voluntarily offer to sell a perpetual conservation easement to the County of James City, Virginia for the sum of One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000) on our 158 acre parcel located at 2001 Bush Neck Road, also identified as Tax Map Numbers 342010002, 3420200001, 3420100002, 3420200003, and 3420200004, subject to the terms and conditions set forth in the proposed deed of easement referenced in the invitation to submit an offer to sell.

Sincerely,



David H. Allen

Date: 11-6-2012



Stephanie M. Allen

Date: 11-6-2012

JCC TAX ID: # 3420100002, 3420200001, 3420200002, 3420200003 and 3420200004
CONSIDERATION: \$ _____

THIS DEED IS EXEMPT FROM TAXATION UNDER VIRGINIA CODE
§§ 58.1-811 (A)(3) and 58.1-811(C)(4)

DEED OF EASEMENT

THIS DEED OF EASEMENT, made as of _____, 2012, by and between DAVID H. ALLEN and STEPHANIE M. ALLEN, husband and wife, whose address is 2001 Bush Neck Road, Williamsburg, Virginia 23188 (the "Grantors"), and the COUNTY OF JAMES CITY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, (the "County" or the "Grantee" and, together with the Grantors, the "Parties").

WITNESSETH:

WHEREAS, Grantors are the owners in fee simple of five (5) parcels of property containing one hundred fifty-eight (158) acres, more or less, located at 2001 Bush Neck Road, James City County, Virginia and further identified as James City County Real Estate Tax Parcel Numbers 3420100002, 3420200001, 3420200002, 3420200003 and 3420200004 as more particularly described in Exhibit A (the "Property").

WHEREAS, under the County's Purchase of Development Rights ("PDR") Program, codified as Chapter 16A in the Code of James City County, as amended (the "County Code"), the County is authorized to acquire conservation easements over qualifying properties in order to accomplish the purposes of the PDR Program and the Open-Space Land Act (§§ 10.1-1700 et seq. of the Code of Virginia, 1950, as amended (the "Virginia Code")); and

WHEREAS, the Grantors have voluntarily agreed to subject the Property to the terms of this conservation easement; and

WHEREAS, the County's acquisition of the conservation easement identified herein furthers the purposes of the PDR Program in that such acquisition, among other things, assures that the County's resources are protected and efficiently used, establishes and preserves open space, and furthers the goals of the County's Comprehensive Plan by protecting the County's natural and scenic resources, conserving wildlife habitat, preserving agricultural and silvicultural land and resources, and protecting the quality of the County's surface water and groundwater resources (collectively, the "conservation purposes of this Deed of Easement"); and

WHEREAS, the Grantors have offered to sell a conservation easement and the County has agreed to pay the Grantors the sum of _____ and 00/100

Dollars (\$_____00) (the "Purchase Price") for this conservation easement, such sum being based upon the fair market value of the easement, as determined by a qualified appraiser; and

WHEREAS, the Grantee acknowledges that Grantor may submit an application to add the four (4) smaller parcels (Tax Parcel Numbers 3420200001, 3420200002, 3420200003 and 3420200004) back into the Gordon Creek AFD (Agriculture Forestal District) which already currently includes all of the remainder of the Property.

NOW, THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantors hereby grant, convey, covenant, and agree as follows:

1. GRANT AND CONVEYANCE OF EASEMENT. The Grantors hereby grant and convey to the Grantee and its successors and assigns, with General Warranty and English Covenants of Title, a conservation easement in gross over the Property, restricting in perpetuity the use of the Property in the manner set forth in this Deed of Easement.

2. EXISTING STRUCTURES AND IMPROVEMENTS.

(a). *Residential structures.* One (1) dwelling is currently located on the Property containing approximately one thousand eight hundred (1,800) square feet.

(b). *Non-residential structures.* Currently there are also three (3) barn structures, two (2) run-in sheds, pasture fencing, one (1) boating pier and one (1) boat ramp on the Property.

3. FUTURE BUILDINGS, STRUCTURES AND IMPROVEMENTS. There shall be no construction, placement or maintenance of any buildings, structures or other improvements on the Property unless the building, structure or improvement is authorized as follows:

(a). *Residential structures.* Grantors may construct three (3) additional dwellings on the Property. The total square footage of the one (1) existing dwelling and the three (3) permitted additional dwellings shall not exceed 15,000 square feet of heated living area, and no single dwelling shall exceed 6,000 square feet of heated living area without the prior written consent of the Grantee. Furthermore, the portions of each dwelling that are not heated living area and are outside of the footprint of the heated living area, such as garages, porches or other similar areas, shall not exceed fifty percent (50%) of the dwelling's heated living area.

The parties acknowledge and agree that the third and fourth dwellings shall only be permitted after the Property is subdivided into two (2) parcels as expressly permitted later in this document (the "Permitted Subdivision"); and in no event shall more than two (2) dwellings be permitted on a single parcel. The parties further acknowledge and agree that notwithstanding Section 24-199 of the County Code, two (2) dwellings shall be permitted on a single parcel

provided, that if this Deed of Easement did not exist, the dwellings are located so that such parcel could have been subdivided with one dwelling on each resulting parcel.

(b). *Non-residential structures.*

(1) *Accessory buildings, structures and improvements.* Grantors may construct accessory buildings, structures and improvements that are incidental to a Permitted Use (defined later in this document) conducted on the Property, provided they are otherwise consistent with this Deed of Easement and the PDR program. The permitted accessory buildings, structures and improvements may include, without limitation, garages, barns, stables, storage sheds, winery facilities, driveways, farm roads, riding trails, drainage facilities and other improvements and facilities incidental to a Permitted Use (defined later in this document).

(2) *Structure size and location.* No single non-residential structure on the Property may exceed ten thousand (10,000) square feet without the prior written consent of the Grantee. The total area of all impervious surfaces on the Property shall not exceed ten percent (10%) of the surface area of the Property without prior written consent of the Grantee. No building shall be located within one hundred feet (100') of any public road without the prior written consent of the Grantee.

(3) *Caretaker facility.* Grantors may expand and/or remodel a pre-existing barn structure to provide living quarters for a caretaker or farm manager, provided the living quarters do not exceed one thousand (1,000) square feet and the exterior appearance of the barn remains similar to or consistent with the original barn structure. Only after the Permitted Subdivision, a second caretaker facility may be established on the parcel that does not have such a facility. Such caretaker facilities shall not be considered dwellings for purposes of this Deed of Easement.

(4) *Fencing.* Grantors may enclose any portion of the Property with fencing; provided, however, that such fencing shall not exceed five and one-half (5.5) feet in height. Fencing exceeding five and one-half (5.5) feet in height may be erected upon the prior written consent of the Grantee. All fencing shall be kept in good repair.

(5) *Boating facilities.* One (1) additional boating pier and one (1) additional boat ramp similar in size and equal or better in construction to the existing pier and ramp on Nettles Creek shall be permitted.

(6) *Alternative Energy Structures.* Grantors may construct and use alternative energy structures, equipment or systems of appropriate size and design to provide electrical energy or pump water for Permitted Uses (defined later in this document), including but not limited to, geothermal systems, solar panels, wind turbines and micro-hydro installations. The foregoing provisions shall not be deemed to prohibit the sale of excess power generated incidentally in the operation of such structures and associated equipment; provided, however, all alternative energy structures and associated equipment shall remain subject to the restrictions and limitations set forth in the Future Uses section of this Deed of Easement.

4. FUTURE USES. No use shall be established on the Property except as approved herein.

(a). *Uses permitted by right.* All single family residential, agricultural, silvicultural, and/or aquacultural uses of the Property, as defined by the County Code from time to time, hunting and fishing, as well as uses that are accessory or incidental to such uses, shall be permitted, provided such uses are (i) permitted by County Code, and (ii) otherwise consistent with this Deed of Easement and/or the PDR program (individually a "Permitted Use" and collectively, "Permitted Uses").

(b). *Specially permitted uses.* Grantors may petition the Grantee for approval of a new or additional use of the Property other than a use permitted by right pursuant to the preceding paragraph, provided the proposed use is: (i) not expressly prohibited by this Deed of Easement; (ii) consistent with the conservation purposes of this Deed of Easement, which include the preservation of the Property for use as a working farm, vineyard and/or forestland; and (iii) otherwise permitted on the Property by the County Code. The Grantee's prior written approval pursuant to this section shall be in addition to any use permit, special exception, variance and/or rezoning that may be required by the County Code.

5. CONFIGURATION/PERMITTED SUBDIVISION OF THE PROPERTY. This Property is currently five (5) legal parcels totaling one hundred fifty-eight (158) acres, more or less, described in Exhibit A. Upon recordation of this Deed of Easement and as a part of closing, the interior boundary lines between the five (5) parcels shall be vacated so that the Property will be returned to a single undivided parcel containing one hundred fifty-eight (158) acres, more or less. Notwithstanding the foregoing, at any time the Grantors again may subdivide the Property into a total of two (2) parcels at the discretion of the Grantors; however, in no event shall either resulting parcel be less than twenty five (25) acres.

6. GRADING, EXCAVATION, EARTH REMOVAL, BLASTING, AND MINING. Grading, excavation, plowing, ditching, erosion control, restoration and other land disturbance activities are allowed, but shall not materially alter the topography of the Property. Such activities may include, without limitation, (i) dam construction to create private ponds, (ii) restoration, enhancement or development of wetlands, streams or other ecosystem functions on the Property including, without limitation, stream bank restoration, wetland and stream mitigation, biological carbon sequestration and biodiversity mitigation, (iii) construction of permitted structures or improvements associated with Permitted Uses, and (iv) installation of horse and walking trails and farm roads. Earth removal is prohibited, except for activities incidental to Permitted Uses. Blasting is prohibited. The exploration for, or development and extraction of minerals and hydrocarbons by mining or any other method is prohibited.

7. MANAGEMENT OF RESOURCES.

(a). *Silviculture.* All silvicultural activities on the Property shall be conducted in accordance with or pursuant to a Forest Stewardship Plan (the "Plan"). The Plan shall be prepared by a qualified professional forester. The Plan shall include recommended Forestry Best

Management Practices and other scientifically based recommendations as may be appropriate for protecting the health of the forest, protecting water quality and providing wildlife habitat. The Plan shall be professionally updated no later than every five years. Grantors shall provide the Williamsburg Land Conservancy with a copy of the Plan, including updates. Grantors shall submit to the Williamsburg Land Conservancy written notice not less than forty-five (45) days prior to the anticipated commencement of any commercial timber harvest. If an aspect of the harvest activities is materially inconsistent with one or more purposes of this conservation easement, the Williamsburg Land Conservancy shall have the right to require modifications to the harvest activities that will minimize such impacts. Pursuant to and in compliance with the Plan, Grantors reserve the right to convert forested areas to permitted residential or agricultural use.

(b). *Timber Buffer.* A forest or vegetative buffer of at least fifty (50) feet in width shall be maintained around all forested areas of the Property where such forested or vegetative growth occurs as of the date of this Deed of Easement (see Exhibit C). The function of the buffer area is to protect scenic value, water quality and wildlife habitat. No cutting of timber within the buffer area is permitted except as follows: (i) Dead, diseased, or dying trees and shrubbery, and noxious vegetation may be removed if necessary to maintain forest health, (ii) trees, shrubbery and other vegetation may be cut back if necessary to prevent encroachment upon roads, trails or other cleared or improved areas; (iii) selective harvest in the buffer areas of up to fifty percent (50%) of the basal area or up to fifty percent (50%) of the forest canopy may be allowed if necessary to maintain forest health; and (iv) the use of timber harvesting equipment may be permitted within portions of the timber buffer which are not within a Resource Protection Area as defined by the County Code.

(c). *Agriculture and aquaculture.* All agricultural and aquacultural activities on the Property shall be conducted in accordance with or pursuant to a Stewardship Plan (the "Plan"). The Plan shall be prepared by a qualified agricultural or aquacultural professional, as the case may be. The Plan shall include recommended Best Management Practices and other scientifically based recommendations as may be appropriate for protecting the soil and natural resources, and protecting water quality. The Plan shall be professionally updated no later than every five years. Grantors shall provide the Williamsburg Land Conservancy with a copy of the Plan, including updates. Pursuant to and in compliance with the Plan, Grantors reserve the right to convert agricultural areas to permitted residential or silvicultural use.

8. ACCUMULATION OF WASTE MATERIAL. There shall be no accumulation or dumping of trash, refuse, or junk (e.g., old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material) on the Property. This restriction shall not prohibit management practices which are customary to a Permitted Use, including, but not limited to, establishing brush piles, compost piles, manure piles, or the routine and customary short-term accumulation of household trash.

9. NOTICE AND PERMISSION.

(a). *Notice.* Whenever notice is to be given pursuant to any of the provisions of this Deed of Easement, or where a request for permission is required of the Grantee, or for a change of address, such notice or request for permission shall be in writing and shall be deemed to have been given upon (i) delivery by hand, (ii) upon receipt if deposited in the U.S. mail with postage prepaid, for delivery by certified mail, return receipt requested, or (iii) upon receipt if delivered by a recognized national courier service for overnight delivery to:

If to Grantors:
David H. and Stephanie M. Allen
2001 Bush Neck Road
Williamsburg, Virginia 23188

With a copy to:
Lawrence G. Cumming
Kaufman & Canoles
2236 Cunningham Drive
Hampton, VA 23666

If to County:
County Administrator
101-C Mounts Bay Road
P.O. Box 8784
Williamsburg, VA 23185

With Copy To:
County Attorney
101-C Mounts Bay Road
P.O. Box 8784
Williamsburg, VA 23185

b). *Grantee Approval.* When approval of the Grantee is sought by the Grantors, the Grantors shall submit such request and any supporting documentation in writing to the Grantee. The request for approval shall be considered by the Board of Supervisors at a public meeting within ninety (90) days; and such approval shall not be unreasonable withheld, conditioned or delayed.

10. MISCELLANEOUS PROVISIONS.

(a). *No public right-of-access to Property.* This Deed of Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Property or

any portion thereof, except as Grantors may otherwise allow in a manner consistent with the terms of this Deed of Easement and the PDR Program.

(b). *Continuation.* The covenants, terms, conditions, and restrictions of this Deed of Easement shall apply to the Property as a whole, and shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs, and be considered a servitude running with the land in perpetuity.

(c). *Enforcement.* In addition to any remedy provided by law or equity to enforce the terms of this Deed of Easement, the Parties shall have the following rights and obligations:

(1) *Annual monitoring.* On an annual basis, subject to reasonable prior written notice to the Grantors and arrangement of a mutually agreeable time, employees or agents of Grantee may enter the Property for the purpose of monitoring compliance with the terms of this Deed of Easement. The Grantors shall not unreasonably withhold, condition or delay permission for entry onto the Property.

(2) *Other inspections.* At any time, if the Grantee has reason to believe that the Grantors, their successors or assigns, are in violation or in breach any of the terms, conditions and restrictions herein contained, upon reasonable prior written notice to the Grantors and arrangement of a mutually agreeable time, employees or agents of Grantee may enter the Property for the purpose of inspecting and investigating compliance with the terms of this Deed of Easement. The Grantors shall not unreasonably withhold, condition or delay permission for entry onto the Property.

(3) *Baseline Data.* In order to establish the present condition of the Property, the Grantee has examined the Property and prepared an inventory of relevant features, conditions, and improvements ("Baseline Documentation") which is attached as **Exhibit B** and incorporated by this reference. A copy of the Baseline Documentation has been provided to Grantors, and the original shall be placed and remain on file with Grantee. The Grantors and Grantee agree that the Baseline Documentation is an accurate representation of the Property at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with this Deed of Easement. The Grantors and Grantee further agree that in the event a controversy arises with respect to the condition of the Property or a particular resource thereof, the Grantors and Grantee shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy.

(d). *Action at law inadequate remedy.* The Parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and restrictions herein contained, and therefore, in the event that the Grantors, their successors or assigns, violate or breach any of the terms, conditions and restrictions herein contained, the Grantee, its successors, or assigns, may institute a suit, and shall be entitled, to enjoin by temporary and/or permanent injunction such violation.

(e). *Restoration.* Upon any breach of the terms of this Deed of Easement by Grantors, Grantee may require by written demand to the Grantors that the Property be restored promptly to a condition consistent with the terms of this Deed of Easement. Furthermore, after thirty (30) days' prior written notice to the Grantors, the Grantee retains the right to restore the Property to a condition consistent with the terms of this Deed of Easement and assess the cost of such restoration against the owner of the parcel in violation of this Deed of Easement and as a lien against the Property in violation of this Deed of Easement; provided however, that no such lien shall affect the rights of a subsequent bona fide purchaser or lender unless a memorandum of such lien was recorded among the land records prior to such purchase, and such lien shall be subordinate to any deed of trust recorded prior to the recordation of a memorandum of such lien.

(f). *Failure to enforce does not waive right to enforce.* The failure of Grantee to enforce any term of this Deed of Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantors from complying with any such term.

(g). *Costs of enforcement.* Any reasonable, documented costs and expenses incurred by the Grantee in enforcing the terms of this Deed of Easement against the Grantors, including, without limitation, costs of suit and reasonable attorneys' and expert fees shall be borne by the Grantors. Notwithstanding the foregoing, however, if the Grantors substantially prevail in any claim, litigation, or administrative order or ruling, the Grantee shall not be entitled to recover any of its costs or expenses.

(h). *No right of enforcement by the public.* This Deed of Easement does not create, and shall not be construed to create, any right of the public to maintain a suit for enforcement of this Deed of Easement or for any damages against the Grantors for any violation of this Deed of Easement. The public shall not be considered third party beneficiaries of this Deed of Easement.

(i). *Extinguishment, conversion and diversion.* The Parties intend that this conservation easement be perpetual and not be extinguished, and agree that extinguishment of this conservation easement is not permitted under the Open-Space Land Act, except in conformity with Virginia Code § 10.1-1704. The Parties further agree that the Property shall not be converted or diverted, as the Open-Space Land Act employs those terms, from the uses permitted by this Deed of Easement until and unless: (1) the Commissioner of the Virginia Department of Agriculture and Consumer Services ("VDACS") (or his designee) with the Grantee's concurrence, certifies that such conversion or diversion satisfies the requirements of Virginia Code § 10.1-1704; and (2) twenty-five (25) years have elapsed between the recordation date of this Deed of Easement and the date of the Grantors' petition to the James City County Board of Supervisors for such conversion or diversion, which shall conform to all procedures and requirements set forth in the PDR Ordinance on the recordation date of this Deed of Easement.

(j). *Property right.* Grantors agree that Grantee's purchase of the perpetual conservation restrictions contained in this Deed of Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to _____ % of the value of the Property as a whole (the "Easement Percentage Value) at that time as established by

the appraisal conducted by Simerlein Appraisals, dated _____, 20____. If a subsequent unexpected change in the conditions surrounding the Property makes it impossible or impractical to continue the use of the Property for the conservation purposes specified herein, and the restrictions set forth in this Deed of Easement are extinguished, whether in whole or part, by a judicial proceeding, such extinguishment also shall satisfy the requirements of the Open-Space Land Act and Chapter 16A of the County Code. Upon a sale, exchange or involuntary conversion due to an extinguishment, the Grantee shall be entitled to a portion of any monetary proceeds derived therefrom, which shall be determined by multiplying all the net proceeds by the proportionate value established above. The Grantors and the Grantee agree that, in the event of an extinguishment of the restrictions of this Deed of Easement that results in the receipt of monetary proceeds by the Grantee or an assignee of the Grantee's interest in this conservation easement in compensation for the loss of such property interest, VDACS shall be entitled to a share of those proceeds proportional to VDACS' contribution toward the Grantee's cost of acquiring this conservation easement. All proceeds to which Grantee is thereafter entitled to retain from such sale, exchange or involuntary conversion shall be used by the Grantee in a manner consistent with the original conservation purposes of this Deed of Easement and the Open-Space Land Act.

(k). *Notice of proposed transfer or sale.* The Grantors shall notify the Grantee in writing at the time of closing on any transfer or sale of the Property. In any deed conveying all or any part of the Property, this Deed of Easement shall be referenced by deed book and page number in the deed of conveyance and shall state that this Deed of Easement is binding upon all successors in interest in the Property in perpetuity.

(l). *Relation to applicable laws.* This Deed of Easement does not replace, abrogate, or otherwise supersede any federal, state, or local laws applicable to the Property. Notwithstanding any other provision of this Deed of Easement, the County Code shall apply to the Property. In the event of a conflict between any applicable law and this Deed of Easement, the more restrictive provision shall apply.

(m). *Severability.* If any provision of this Deed of Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Deed of Easement shall not be affected thereby.

(n). *Recordation.* Upon execution by the parties, this Deed of Easement shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia.

(o). *Authority to convey easement.* The Grantors covenant that they are vested with good title to the Property and may convey this Deed of Easement.

(p). *Authority to accept easement.* The Grantee is authorized to accept this Deed of Easement pursuant to Virginia Code § 10.1-1701.

(q). *Proceeds from eminent domain.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Deed of Easement, in whole or part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received. Grantee's share of the balance of the amount received, expressly excluding any portion of the funds received that are attributable to buildings, structures or other improvements, shall be the same Easement Percentage Value set forth earlier in this Deed of Easement. The intent is that the Grantee shall share proportionally with the Grantors only in the funds attributable to the land. Grantee shall have the right to appear as a party in any eminent domain proceeding concerning the Property.

(r). *Transfer of easement by Grantee.* Neither Grantee nor their successors and assigns may convey or lease the conservation easement established and conveyed hereby unless the Grantors are given at least ninety (90) days prior written notice of the proposed transaction and the Grantee conditions the conveyance or lease on the requirements that: (1) the conveyance or lease is subject to contractual arrangements that will assure that the Property is subject to the restrictions and conservation purposes set forth in this Deed of Easement, in perpetuity; (2) the transferee is an organization then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder, or is a public body within the meaning of Virginia Code § 10.1-1700; and (3) Grantors consent to the proposed transaction, which consent shall not be unreasonably withheld, conditioned or delayed.

(s). *Construction.* This Deed of Easement shall be construed to promote the purposes of this Deed of Easement and the PDR Program.

(t). *Liability and indemnification.* Grantors agree that Grantee has no obligations, express or implied, relating to the maintenance or operation of the Property. Grantors agree to indemnify and hold Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accidents, negligence, damage, or any claim relating to the Property. Grantors warrant that they have no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property and agree to hold harmless, indemnify, and defend Grantee from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising from or out of the existence, actual or alleged, of any and all environmentally hazardous or toxic substances or materials on or under the Property.

(u). *Taxes and assessments.* Grantors shall be responsible for paying all taxes, levies, assessments and other governmental charges which, due to the direct action of the Grantors, may become a lien on the Property.

(v). *No warranty as to tax benefits to Grantors.* The Grantors and the Grantee agree and understand that any value of this conservation easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see 26 C.F.R. § 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. Neither the Grantee nor VDACS makes any express or implied warranties regarding whether any tax benefits will be available to the Grantors from the sale of this conservation easement, whether any such tax benefits might be transferable, or whether there will be any market for any tax benefits that might be transferable.

(w). *Appraisal.* Grantee agrees to provide a copy of the appraisal to Grantors.

(x). *Entire agreement.* This instrument sets forth the entire agreement of the Parties with respect to this Deed of Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Deed of Easement, all of which are merged herein.

(y). *Amendments.* This Deed of Easement may be amended only with the mutual written consent of the Grantors, the Grantee and the Commissioner of VDACS (or his designee). Any such amendment shall be duly recorded and shall be consistent with the Open-Space Land Act, Chapter 16A of the County Code, and the overall purposes and intent of this Deed of Easement.

WITNESS the following signatures and seals:

[Counterpart signature pages follow]

GRANTORS:

David H. Allen

Stephanie M. Allen

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

The foregoing Deed of Easement was acknowledged before me this _____ day of _____, 2012, by David H. Allen and Stephanie M. Allen, husband and wife, Grantors, who are personally known to me or who have produced satisfactory evidence of identity.

[SEAL]

Notary Public

Notary Registration No. _____

My Commission Expires: _____

Pursuant to Resolution of the Board of Supervisors of James City County, Virginia, duly adopted on the ____ day of _____, 20____, this conveyance is hereby accepted on behalf of said County.

GRANTEE:
COUNTY OF JAMES CITY, VIRGINIA

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

County Attorney

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

The foregoing Deed of Easement was acknowledged before me this _____ day of _____, 2012, by _____, the _____ of James City County, Virginia, Grantee, for and on behalf of the County. The aforementioned individual is personally known to me or has produced satisfactory evidence of identity.

[SEAL]

Notary Public

Notary Registration No. _____

My Commission Expires: _____

EXHIBIT A - LEGAL DESCRIPTION
EXHIBIT B - BASELINE
EXHIBIT C - CONCEPTUAL PLAN

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David and Stephanie Allen, 2001 Bush Neck Road, Williamsburg, VA

Legal Description
Exhibit "A"

All that certain lot, piece or parcel of land situate, lying and being in James City County, Virginia, known and designated as 186.605 +/- acres on a plat entitled "BOUNDARY SURVEY ON PROPERTY STANDING IN THE NAME OF OLSON, SELBY, AND NICODEMUS CONTAINING 186.605+/- ACRES KNOWN AS INDIAN FIELD AND CLARK LOCATED IN POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA" made by HIS Land Surveying, Inc., P.O. Box 100, Providence Forge, Virginia 23140, dated 6/24/96, revised 11/18/96, which plat is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia, in Plat Book 65, page 58, to which reference is here made.

EXPRESSLY INCLUDING a portion of the above described land which has been subdivided into those certain lots designated and described as Lots 1, 2, 3 and 4, as shown on that certain plat entitled, "PLAT OF SURVEY SHOWING A SUBDIVISION OF THE PROPERTY OF DAVID H. ALLEN & STEPHANIE M. ALLEN, POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA", made by Johnson-Baird and Associates, dated January 23, 2009 and recorded on March 11, 2009 in the aforesaid Clerk's Office as Instrument No. 090007104, to which reference is here made.

TOGETHER WITH all of that certain area of land located in the Powhatan District of James City County, Virginia, designated and described as "22.40 ACRES +/-" as shown on that certain plat entitled, "PLAT OF SURVEY SHOWING A BOUNDARY LINE ADJUSTMENT BETWEEN PROPERTIES OF BUSH NECK FARM, INC. AND DAVID H. ALLEN & STEPHANIE M. ALLEN, POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA", dated May 9, 2003, made by Johnson-Baird and Associates, Civil Engineering and Land Surveying, a copy of which is recorded in the Clerk's Office of the Circuit Court of James City County, Virginia, in Plat/Map Book 91, page 10, to which reference is here made.

LESS AND EXCEPTING all of that certain area of land located in the Powhatan District of James City County, Virginia, designated and described as "33.8 ACRES +/-" as shown on that certain plat entitled, "PLAT OF SURVEY SHOWING A BOUNDARY LINE ADJUSTMENT BETWEEN PROPERTIES OF BUSH NECK FARM, INC. AND DAVID H. ALLEN & STEPHANIE M. ALLEN, POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA", dated May 9, 2003, made by Johnson-Baird and Associates, Civil Engineering and Land Surveying, a copy of which is recorded in the aforesaid Clerk's Office in Plat/Map Book 91, page 10, to which reference is here made.

LESS AND EXCEPTING all of that certain tract or parcel of land located in the Powhatan District of James City County, Virginia, designated and described as "25.02 +/- ACRES", as shown on that certain plat entitled, "PLAT OF SURVEY SHOWING A SUBDIVISION OF THE PROPERTY OF DAVID H. ALLEN & STEPHENIE M. ALLEN", made by Johnson-Baird and Associates, dated December 20, 2004, a copy of which said plat is recorded in the Clerk's Office of the Circuit Court for James City County, Virginia as instrument #050001164, and to which reference is made hereto for a more particular description of the said property, which was conveyed to Matthew C. H. Patrick and Theresa L. Patrick by deed recorded in the Clerk's Office aforesaid as Instrument no. 050005511.

Subject, however, to any and all covenants, restrictions, easements, rights of way, agreements and conditions of record affecting said property.

Being a portion of the property conveyed to David H. Allen and Stephanie M. Allen, husband and wife, by deed from John Wakefield Nicodemus, et ux, et al., dated February 20, 2003, and recorded April 2, 2003 in the Clerk's Office aforesaid as Instrument Number 030009743; and being the property conveyed to David H. Allen and Stephanie M. Allen, husband and wife by deed from Bush Neck Farm, Inc., a Virginia corporation, dated July 2, 2003, and recorded July 23, 2003 in the Clerk's Office aforesaid as Instrument Number 030021759.

The subject property now contains 158 acres, more or less.

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