

A G E N D A
JAMES CITY COUNTY BOARD OF SUPERVISORS
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185
April 9, 2019
5:00 PM

A. CALL TO ORDER

B. ROLL CALL

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE

1. Pledge Leader - Finley Hooker-Tidwell, a 7th grade student at James Blair Middle School and a resident of the Stonehouse District

E. PRESENTATIONS

1. Retiree Recognition - Suzanne R. Mellen

F. PUBLIC COMMENT

G. CONSENT CALENDAR

1. Minutes Adoption
2. Dedication of the Streets in Section 4 of the White Hall Subdivision

H. PUBLIC HEARING(S)

1. FY 2020 County Budget
2. An Ordinance to Vacate a Portion of Unimproved Right-of-Way in the Williamsburg West Subdivision
3. An Ordinance to Amend Section 2-15.1 of the County Code, Authority to obtain criminal history record information for employees
4. SUP-19-0004, JCSA College Creek Pipeline Project
5. Ordinance to Amend Sections 10-4 and 10-5 of the County Code, Maintenance of premises and Recourse of county upon failure to maintain
6. AFD-02-86-2-2018. 4450 Ware Creek Road Croaker Addition
7. AFD-18-0016. 365, 358, and 382 Ivy Hill Road Mill Creek Addition
8. AFD-18-0017. 9888 Sycamore Landing Road Croaker Addition
9. AFD-18-0019. 4928 Fenton Mill Road Croaker Addition
10. AFD-18-0020. 8328 Diascund Road Mill Creek AFD Addition
11. An Ordinance to Enact a User Fee for Curbside Recycling Collection Service

I. BOARD CONSIDERATION(S)

1. C-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD
2. Initiating Resolution to Consider Amendments to County Code Section 24-16

J. BOARD REQUESTS AND DIRECTIVES

K. REPORTS OF THE COUNTY ADMINISTRATOR

L. CLOSED SESSION

1. 2.2-3711.A(8), Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel; in particular, a right-of-way known as a portion of Overlook Drive in the Kingspoint subdivision.

M. ADJOURNMENT

1. Continue until 6:30 p.m. on April 11, 2019 for the Community Budget Forum at the James City County Recreation Center

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Teresa J. Fellows, Deputy Clerk

SUBJECT: Pledge Leader - Finley Hooker-Tidwell, a 7th grade student at James Blair Middle School and a resident of the Stonehouse District

REVIEWERS:

Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 4:18 PM

ITEM SUMMARY

DATE: 4/9/2019
TO: The Board of Supervisors
FROM: Scott Stevens, County Administrator
SUBJECT: Retiree Recognition - Suzanne R. Mellen

REVIEWERS:

Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 3:15 PM

ITEM SUMMARY

DATE: 4/9/2019
TO: The Board of Supervisors
FROM: Teresa J. Fellows, Deputy Clerk
SUBJECT: Minutes Adoption

- February 26, 2019 Work Session
- March 12, 2019 Regular Meeting
- March 26, 2019 Work Session

ATTACHMENTS:

	Description	Type
☐	022619 Work Session	Minutes
☐	031219 Regular Meeting	Minutes
☐	032619 Work Session	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 3:01 PM

MINUTES
JAMES CITY COUNTY BOARD OF SUPERVISORS
WORK SESSION
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185
February 26, 2019
4:00 PM

A. CALL TO ORDER

B. ROLL CALL

Michael J. Hipple, Vice Chairman, Powhatan District
Ruth M. Larson, Berkeley District
P. Sue Sadler, Stonehouse District
John J. McGlennon, Roberts District
James O. Icenhour, Jr., Chairman, Jamestown District

Scott A. Stevens, County Administrator
Adam R. Kinsman, County Attorney

C. BOARD DISCUSSIONS

1. Case Nos. Rezoning-18-0004/Height Limitation Waiver-18-0002. Oakland Pointe

A motion to Approve was made by Michael Hipple, the motion result was Passed.
AYES: 4 NAYS: 1 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon
Nays: Sadler

Mr. McGlennon referenced the last Board of Supervisors meeting and noted information was provided by the developer stating his company had been involved in a number of projects that were at the scale or larger than the proposed development. He commented that looking at the company website he could not find evidence of that statement and inquired if an explanation could be provided.

Mr. Kevin Connelly, Connelly Development, LLC, approached the Board and stated at the last meeting when the question was asked, he did not realize the Board was referencing items on the Connelly Development website. He further stated properties on the website were smaller in size and noted the website was not as up-to-date as preferred. He commented most of the properties on the website were the construction and development side and those properties were developed in North Carolina and South Carolina. He further commented each state had different plan requirements with different scoring criteria; therefore, those referenced had been smaller developments. He noted in Virginia they had built for other developers and those development sizes were significantly larger, with four out of six being well over 100 units in each development.

Mr. McGlennon inquired if those were through the tax credit program.

Mr. Connelly replied absolutely.

Mr. McGlennon stated the website appeared to be referring to both the projects Connelly

Development constructed and were responsible for operating.

Mr. Connelly replied yes. He stated the website needed to be updated and noted a lot of properties built were not on the website.

General discussion ensued regarding this topic.

Mr. McGlennon stated in reviewing the projects which had been approved by the Virginia Housing Agency, it appeared points bear little relationship to the size proposed. He further stated they were told the number of units was integral to the approval of the project for tax credits. He inquired how that could be squared with the actual performance of the Housing Authority in terms of allocating those credits.

Mr. Connelly replied that was perhaps more difficult to explain in a brief work session. He noted he had given the Board a low-income housing tax credit manual and highlighted the sections that related to scoring. He briefly discussed this synopsis.

Mr. McGlennon stated the relationship appeared more complex because a number of the projects received over 600 points and were significantly smaller. He further stated either the total number of units was essential for the approval or it was not.

Mr. Connelly replied it was essential for this project but every project was different. He stated they had done the best job possible with the tools provided to present to the Board a well-balanced project.

Mr. McGlennon stated the Board was also trying to deal with the tools in front of it, which were very limited in scope, and tried to determine the relationship between project size and competitiveness for the tax credits. He thanked Mr. Connelly for the information and hoped he appreciated the spirit in which those questions were being addressed.

Mr. Connelly replied yes he did. He stated it was easy to talk about the units in an abstract way and noted this project was designed to address a very stated and important goal for the County, which was to address the deficit of affordable quality in affordable housing. He commented each unit represented a family who could be served by this project.

Mr. McGlennon replied that was true and the Board's responsibility was to try to address that problem as well as possible and understand the implications of that decision on others in the community who may be affected.

Mr. Icenhour inquired to Mr. Kinsman regarding a document received that listed the existing tax credit properties.

Mr. Kinsman asked if it was the list from the Virginia Department of Housing.

Mr. Icenhour replied that was correct and asked what timeframe it covered.

Mr. Kinsman replied that he pulled it from the Virginia Department of Housing website.

Mr. Timothy Trant, Kaufman & Canoles P.C., replied he believed it represented all of the projects currently under the tax credit program in Virginia.

Mr. Icenhour noted there were 1,254 properties on the list and 75% of them were 119 units or smaller. He stated he understood the intricacies of the scoring system might be beyond comprehension in the short time period; however, looking at the existence of the program it was obvious smaller places competed fairly well.

Mr. Kinsman stated the earliest date was 1990.

Mr. Icenhour expressed his thanks and stated the information was helpful. He asked if there were any other questions and looked to the Board for discussion.

Ms. Sadler expressed her thanks to everyone who participated in the process of this application. She stated school numbers were a huge concern. She referenced a list of Oakland Pointe projections, Village at Candle Station, Station at Norge, and the proposed Walnut Grove. She discussed the number of currently enrolled and projected students for the schools. She quoted a citizen comment, "James City County needed to be more proactive rather than reactive." She expressed hope that someday there would be a full public facility master plan which would gauge what was being done long-term, rather than reacting to each development that arose. She felt the timing of this project was a huge problem due to the amount of current school enrollments.

Mr. McGlennon stated everyone understood there was a need to provide a wider range of housing choices at affordable price points. He expressed his support and discussed a variety of methods for finding those means. He further stated he liked the concept of this project and it was in the Primary Service Area, but there were still things which made him pause. He remarked those items included the disproportionate impact this particular project would have on schools and the amount of traffic generated by this particular scale of development. He further remarked that could have a negative consequence for citizens trying to utilize the Oakland Drive access to the project or to Richmond Road. He expressed concern regarding the lack of recreational facilities and commented this would produce a significant number of middle and high school age young people and noted there was no amenity to provide for recreation. He stated the height of the project was out of scale of local community surroundings. He further stated neighbors may have come to some conclusion this project served a good purpose, but a significant number had indicated the scale of the project was still too great to feel a level of comfort. He commented no project was going to solve the problem and this project did relatively little for what might be described as the "homeless population of James City County." He noted this project had limited impact on those who earned a minimum wage salary; however, there were others who would benefit from this program. He further commented a more manageable scale sets a better example and there were more opportunities to move ahead and asked his Board colleagues to consider the possibility there were more modest scales of development that would be appropriate for this particular parcel.

Ms. Larson inquired what Mr. McGlennon was proposing.

Mr. McGlennon replied projects the applicant dealt with and projects that appeared to be able to achieve success in the grant or tax credit program had generally been in the \$70,000-\$85,000 range. He considered a figure around 80 units would allow for providing additional inventory and be of a scale that would reduce the impact on adjacent areas. He clarified these numbers were just his suggestions.

Mr. Hipple referenced the comment from Mr. McGlennon regarding the project had little impact on the homeless population, the workforce, or people who could afford to live in James City County. He stated that if it was made smaller, even less would be received, which seemed to be going backward. He suggested looking at more density in an effort to help more people, not to take away more to help less people.

General discussion ensued regarding this topic.

Mr. Hipple stated this project had been looked at by the Board several different ways, considering if it would take care of the homeless or the workforce and concluded it would not.

He further stated it was not going to totally take care of anything; however, he felt this was a start and not a completion. He noted that most, if not all, Board members had previously sat on the Workforce Housing Development Task Force and remarked these were things needed for the community and this project could be a start. He discussed the frequently used comment "Not in my backyard" did not represent James City County as this was a County that loved each other. He further stated he heard the comment "How far can we take it down" and "Was the project going to make money." He discussed this was the private sector area of expertise and he did not help any developer to make money. He discussed projects were coming before the Board, which had been asked for, and now the response was "No, never mind." He stated he had heard "proactive" and noted it was a good word to use when not getting your way on something. He discussed the Board was very proactive on trying to move things forward and noted the Strategic Plan, the Workforce Housing Development, and looking out for neighbors who may need a handout. He referenced a Bert Geddy project in Toano approximately 40 years ago and remarked it served a need in the Toano area and was a good project. He stated the Oakland Pointe project was needed in James City County and would like to see another similar project in a different part of the County in an effort to fill those needs. He briefly discussed various types of homes and emphasized this project reflected the look, build, and structure for James City County.

Mr. Icenhour stated this project was needed in the community; however, it came with a cost to taxpayers and made wrestling with this decision difficult. He further stated looking at the big picture there currently were approximately 32,000 houses in James City County and school enrollments were approximately over 10,000 students. He noted there were approximately 15,000 additional homes that could be built by-right without any legislative action by the Board. He commented there was no idea when or if these homes would be built; however, it would add approximately an additional 5,000 students to the school system. He further stated the Board needed to look at something longer term in the future. He remarked regarding figures which determined 450 children in the community and school system who were technically homeless and commented that should not be allowed to continue. He briefly discussed the need to look at affordable housing purchases or rentals in the community and the need to look long term. He emphasized starting with a comprehensive plan, how to designate property, and looking closely at rental housing.

General discussion ensued.

Mr. McGlennon asked for a short recess.

At approximately 4:35 p.m., the Board went into a five-minute recess and reconvened at approximately 4:43 p.m.

Mr. Icenhour asked Mr. Trant if he had anything additional to add to the conversation.

Mr. Trant replied yes. He stated they had made a good faith effort to try and squeeze the economics of the project to find the lowest density that would achieve a financially feasible project which could also compete and score highly enough to be awarded the tax credit. He further stated efforts put forth to try and strike the best balance of what the Board was seeking and briefly discussed the \$119,000 units compared to less feasible model units considered. He referenced rehab and new construction project costs, parcel sizes and cost, projects with other efficiencies, and entitled projects not requiring the rezoning process. He briefly discussed various costs imposed on a rezoning project.

Mr. Connelly expressed his appreciation to the Board for its struggle with this item. He stated each development was unique. He discussed the process of considering the dynamics of a project in order to see if it was a deal that would work and score enough to win. He stated this was the only development he ever had with this much improvement in infrastructure that

was requested. He discussed traffic, sight distance, turn lanes, and property acreage with this project. He further stated as a business professional who developed over 40 of these and built thousands of units, this was what it would take to get it awarded. He briefly discussed similar issues regarding affordability within other municipalities, existing resident wants, traffic concerns, and a population need that was huge.

Mr. McGlennon requested clarification on the number of units.

Mr. Hipple replied 119 units.

At approximately 4:53 p.m., the Board went into recess to relocate from the Board Room into the Work Session Room and reconvened at approximately 4:58 p.m.

2. Hampton Roads Planning District Commission (HRPDC) Demographics Presentation

Mr. Greg Grootendorst, Chief Economist at HRPDC, gave an overview of the following 2019 Regional Economic Forecast slide headings:

- U.S. Gross Domestic Product
- U.S. Non-Farm Civilian Employment
- U.S. Unemployment Rate
- S&P 500 Stock Market Index
- Employment Decline and Recovery
- Hampton Roads Gross Product
- Annualized Growth in Gross Product
- Hampton Roads Employment Change
- Non-Farm Civilian Employment (Jobs) in Hampton Roads
- Unemployment Rates
- Labor Force in Hampton Roads
- Unemployed in Hampton Roads
- Hampton Roads Labor Force
- Income in Hampton Roads Compared to the United States
- Median Family Incomes
- Annualized Real Defense Outlays
- Military Personnel in Hampton Roads and the U.S.
- Military Personnel and Income as a Share of the Hampton Roads Economy
- Defense Contracts in Hampton Roads
- CBO Projected Defense Outlays, Statutory Budget Caps
- General Cargo in Hampton Roads
- Tourism Expenditures in Hampton Roads
- Hampton Roads Retail Sales
- FHFA Home Price Index Growth in Hampton Roads, Virginia, and the U.S.
- Hampton Roads Housing Market Settled Sales
- Average "Sold" Market Time
- Housing Permits in Hampton Roads
- Zillow Foreclosure for MSAs
- Hampton Roads Population
- Hampton Roads Population Histogram
- Comparative Population Growth Rates
- James City County Population Histogram
- The Year Ahead
- U.S. Civilian Employment
- Forecast of U.S. Gross Domestic Product
- Federal Budget Deficits

· HRPDC Forecast for 2019

The Board expressed its gratitude to Regional Economic Forecast for coming every year to present its information.

Ms. Larson inquired about receiving a copy of the presentation.

Mr. Grootendorst replied absolutely.

3. Preparation for Review of the County's 2015 Adopted Comprehensive Plan, Toward 2035: Leading the Way

Ms. Tammy Rosario, Principal Planner, gave an overview of a memorandum included in the Agenda Packet and relayed information regarding the history of the survey and the role it played in this effort.

Ms. Rosario asked Dr. Thomas Guterbock, Director, and Dr. Kate Wood, Senior Project Director, Weldon Cooper Center for Public Service Center for Survey Research, to walk the Board through the proposed survey.

Dr. Guterbock commended the Board on providing a survey to its citizens and gave an overview of a slide presentation included in the Agenda Packet. He stated throughout his career he was involved in approximately 600 paid survey projects for the Center as well as others that were never funded. Drs. Guterbock and Wood gave an overview of such topics as:

- Scope of Work for James City County
- Survey Method
- Survey Method: Why Mail
- Survey Method: Why Online Option
- Timeline

Mr. Hipple stated that perhaps a question similar to “What district in James City County do you live in” could be included in an effort to know if a district would need its representative to go out and motivate its citizens to complete the survey.

Dr. Wood replied that had been done with a few previous Boards; however, be aware that complications could result if one district was a little less happy than another district.

Dr. Guterbock stated presently sampling was done by current addresses which allowed for geo coordinates and therefore supervisory districts would be known. He briefly discussed district sizes.

General discussion ensued regarding this item.

Mr. Hipple suggested including a question on the survey regarding if the participant was born in James City County. He explained this would allow a measurement to reflect the number of people born and remaining in the County or if that number was dwindling down.

Dr. Wood stated citizens had to be at least 18 years old or older to participate in the survey.

Ms. Larson stated she felt the survey was not very realistic and mentioned questions asked if the resident wanted various amenities, but did not inquire if they were willing to pay higher taxes to obtain such conveniences. She referenced a question concerning schools and noted there was no question that asked if the resident supported more schools for more students.

She mentioned important questions regarding purchasing property development rights being asked; however, there would be costs involved. She noted these costs would be passed along to citizens and felt a question was needed which asked if they were willing to pay for those costs.

General discussion ensued regarding this topic.

Mr. Paul Holt, Director of Community Development, discussed strategies involved regarding other series of public engagement pieces designed to be a bridge between the Comprehensive Plan, which was a 20-year vision, and operating budget. He noted the Strategic Plan regarded things the Board should be looking to find within the next five years. He briefly discussed this synopsis.

Ms. Larson inquired about the time period between another survey being released and did not feel that realistically the same response would be possible.

Mr. Stevens referenced the survey and discussed that an effort had been made to limit the number of questions. He stated there was talk about another survey coming out within six months that would try to have broader-based questions and address more to what Ms. Larson was referring. He noted some households might not necessarily be surveyed and any returned data may be helpful when finalizing questions in future surveys.

Mr. McGlennon inquired about the sample size.

Dr. Guterbock replied the mailing was approximately 3,000.

General discussion ensued regarding this item.

Mr. McGlennon referenced individual districts regarding solid waste and recycling services. He inquired if those questions would be on either survey.

Mr. Stevens replied he felt they would be on the Strategic Plan Survey, which got more into recreation, property development, and services provided.

General discussion ensued.

Mr. Hipple stated a similar type of survey would be helpful for schools in conjunction with surveys the County was utilizing.

Dr. Guterbock suggested future surveys whereby the citizen judged which two pairs of things listed were more important. He stated the computer rotated questions allowing everyone to look at approximately 15 pairs of items. He further stated with many respondents the result would be a clear rank order priority in the community.

Mr. Holt briefly discussed the possibility of an opportunity to swap out question B7 that reads "How important do you think it is for the County to create more career and technical education opportunities for youths that would prepare them for the workforce rather than just for college?" which would open a slot for another question for schools.

General discussion ensued regarding this possibility.

Ms. Sadler stated she wanted to make certain people understood what they were being asked to respond to in the survey.

Dr. Wood emphasized this was a draft of the survey; however, it was not formatted the way it

would be when sent out. She noted this was the point in the process where it was made certain that instructions were clear and further noted color and shading would be included in the format. She briefly discussed details regarding the B1 and B2 grids in the survey.

General discussion ensued regarding this issue.

Mr. Hipple inquired about the 3,000 surveys to be sent out and asked if they could be divided geographically into each district. He referenced diversity within communities and commented citizens from rural and urban areas commonly held different viewpoints.

Dr. Guterbock stated if that were an important goal a larger survey would be needed. He further stated a more robust statistical analysis of area-by-area would require a bigger end than what was being provided. He noted this survey was budgeted within the perimeters of previous surveys.

General discussion ensued regarding this topic.

Mr. Icenhour expressed his appreciation for the summary comparison to previous surveys and noted trend lines on surveys were very important. He briefly discussed important issues encountered while working on the Comprehensive Plan. He mentioned a possible question be included that would ask, "How satisfied are you that your elected officials are listening to you on this?".

General discussion ensued regarding inclusion of this type of question and things that were out of the Board's control.

Mr. Hipple briefly discussed his desire to have the districts equally covered, even if it required sending out more surveys.

Mr. McGlennon expressed his concern regarding putting too much connection between the survey and individuals on the Board.

General discussion ensued regarding determination of individuals residing in either urban or rural areas within the community and incorporating that information into the survey.

Mr. McGlennon inquired if HRPDC did this for other Virginia localities.

Dr. Guterbock replied that it had previously; however, it became too expensive and therefore counties moved away from citizen satisfaction surveys and moved toward more citizen engagement surveys and Comprehensive Plans. He gave a brief syllabus of counties that it had worked with in the past.

Dr. Wood stated the downturn in local government businesses paralleled with the recession and crunch in tax dollars and commented things are easing up a little. She briefly discussed tax money being a bit looser and less expensive competitors some localities chose which did not produce the information sought.

General discussion ensued regarding this matter.

Ms. Rosario briefly discussed that in 2007 a national survey was done. She noted some of the same issues were discussed and conclusions made that money was not well spent. She further noted the Community Participation Team found it hard to extract data to help with the County Comprehensive Plan.

The Board expressed its thanks to everyone who participated in the discussion.

Ms. Rosario gave an overview of a PowerPoint presentation included in the Agenda Packet regarding the Review of James City County's Adopted 2015 Comprehensive Plan.

Mr. Icenhour inquired about steps in the Comprehensive Plan regarding periodic updates for tweaking things.

Ms. Rosario replied there were anticipated check-ins with the Board of Supervisors at milestone points in the process. She stated Mr. Stevens would make them aware of particular interests from the Board and likewise they would ask for a work session if they needed to have a connection point with the Board.

General discussion ensued regarding resources, advancing the effort to incorporate policies into Ordinances, learning from best practices what next levels would need to be reached in order to preserve the community character, and pulling from goals the Board had as part of the Adopted Strategic Plan.

At approximately 6:28 p.m., the Board went into recess and reconvened at approximately 6:33 p.m.

4. Acceptance of Property Donation at 4620 Opportunity Way

A motion to Approve was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Stevens stated Mr. Bill Porter, former Interim County Administrator, had started a conversation with Thomas Nelson Community College approximately one year ago, regarding the location of Fire Station 6 and the opportunity to obtain approximately 20 acres of land located behind the Law Enforcement Center on Opportunity Way. He discussed that the College of William & Mary was inclined to donate the property back to the County and based on its recommendation, the State Board was willing to grant the land back to the County. He further stated they requested a resolution that stated the Board would like to have the land back and noted Mr. Kinsman had prepared such a resolution for the Board to consider.

D. BOARD REQUESTS AND DIRECTIVES

Ms. Larson inquired about staff researching possible developments and the potential projections regarding the amount of additional children who might be brought into the schools.

Mr. Stevens replied staff would research the methodology in regards to the school system, make certain information was as accurate as possible even though they were projections and then regroup with the Board of Supervisors.

Mr. Icenhour referenced enrollment projections for the school and questioned if it had taken into account what had already been approved. He stated the Board was looking at isolation in a particular community. He further stated on the average a particular type of home generated a certain number of children and noted the schools were looking more at long-term enrollment.

Ms. Larson mentioned turnover in older neighborhoods.

E. CLOSED SESSION

1. Consideration of a personnel matter, the appointment of individuals to regional boards and/or commissions pursuant to Section 2.2-3711 (A)(1) of the Code of Virginia and pertaining to the Eastern Virginia Industrial Facility Authority

A motion to Appoint Individuals to Boards and Commissions was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

The Board did not go into Closed Session, but chose to remain in Open Session.

Mr. Icenhour asked Ms. Sadler if she was willing to be the representative for Eastern Virginia Regional Industrial Facility Authority, which met approximately every six months.

Ms. Larson nominated Ms. Sadler and Ms. Robin Bledsoe, Chair of the Economic Development Authority.

Mr. Icenhour questioned if Ms. Larson would be willing to be an alternate.

Ms. Larson confirmed.

F. ADJOURNMENT

1. Adjourn until 5 p.m., on March 12, 2019, for the Regular Meeting

A motion to Adjourn was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

At approximately 6:39 p.m., Mr. Icenhour adjourned the Board of Supervisors.

MINUTES
JAMES CITY COUNTY BOARD OF SUPERVISORS
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185
March 12, 2019
5:00 PM

A. CALL TO ORDER

B. ROLL CALL

Michael J. Hipple, Vice Chairman, Powhatan District
Ruth M. Larson, Berkeley District
P. Sue Sadler, Stonehouse District
John J. McGlennon, Roberts District
James O. Icenhour, Jr., Chairman, Jamestown District

Scott A. Stevens, County Administrator
Adam R. Kinsman, County Attorney

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE

1. Pledge Leader - Valerie Rios, a 4th-grade student at J.B. Blayton Elementary and a resident of the Powhatan District

E. PRESENTATIONS

1. Police Department Retiree Recognition - Officer Sean Gormus

Chief Brad Rinehimer recognized Senior Police Officer Sean Gormus and his various roles with the James City County Police Department in his 31-year career.

Mr. Icenhour presented Officer Gormus with a certificate.

2. Greater Peninsula Workforce Board

Mr. Icenhour welcomed Dr. John Olson, Chair and Mr. Bill Mann, Executive Director, of The Greater Peninsula Workforce Board.

Dr. Olson gave an overview of the Board's work.

Mr. Mann presented the Workforce Board's operations in a PowerPoint presentation. He highlighted the services provided and the overall goal of improving career options for regional workers by utilizing area resources. He noted "ensuring that our region has the workforce that we need for our businesses and industries to be successful in whatever part of the market they happen to be working on." Mr. Mann further noted Share Network Access Points in the

presentation. He also noted funding allocations by sources and services for businesses as well as for job seekers. He cited success stories.

Mr. Hipple addressed Mr. Mann and thanked him for the continued work and support. He questioned if libraries had been considered as an option with the Share Network Access Points.

Mr. Mann replied affirmatively.

Mr. McGlennon noted the work of the Workforce Board and expressed his appreciation to both Dr. Olson and Mr. Mann.

F. PUBLIC COMMENT

Mr. Icenhour reminded speakers of protocol regarding time, name, and address.

1. Ms. Gloria Nelson, 6812 Blakemore Terrace, addressed the Board on community concern regarding dangerous off-leash dogs. She cited personal experiences regarding dog attacks in the Colonial Heritage area and repeat canine offenders. She expressed a need for addressing repeat offenders and the accountability of owners in these situations.

2. Ms. Connie Sullivan, 4214 Candleberry Way, addressed the Board regarding prevention of attacks by aggressive, at-large dogs in the area. She spoke as a member of the Ad Hoc Dog Safety Committee. She thanked the Board for its proactive steps for outdated leash laws, citizen efforts for new laws to the Virginia Code, and additional Animal Control staff. She addressed a local dog attack and the responding Animal Control officer. Ms. Sullivan stressed the need for safety for both citizens and their animal companions, citing enforcement of rules.

3. Ms. Peg Boarman, 17 Settlers Lane, addressed the Board on the four R's: reducing, reusing, repurposing, and recycling. She stressed creative ways to repurpose trash. Ms. Boarman asked that everyone recycle properly. She encouraged people to join the Commission and become educated on trash. She noted the 41st Annual Spring Clean-Up on April 13 and sign-up opportunities.

4. Mr. Jay Everson, 103 Branscome Boulevard, addressed the Board regarding the Capital Improvements Program (CIP) and the school budget as well as enrollment projections. He noted he had presented the Board members with a packet which addressed particular questions on these areas. He further noted the enrollment projections and "believable" numbers in regard to the pattern of population trends as well as reduced high school enrollment in the upcoming years. He cited redistricting for high school and elementary school projections which included Bright Beginnings. Mr. Everson encouraged the Board not to approve the CIP for the \$60 plus million for the new construction citing better alternatives on both fiscal and educational levels.

5. Ms. Sandra Currin, 2313 Harness Court, addressed the Board as a concerned parent of Warhill High School students. She noted ribbon-cutting ceremonies for auxiliary gyms at Lafayette and Jamestown High Schools in past years. She cited one gym was available at Warhill High School and stressed the need for an additional gym. She requested consideration of an auxiliary gym at Warhill High School in the upcoming budget.

6. Ms. Lisa Rochard, 8409 Glisan Court, addressed the Board regarding the inadequate space of Warhill High School's gym. She cited significant issues regarding the lack of additional space for extracurricular programs. She noted the gym space was in use from early morning to late night with the school's 22 sports teams.

7. Ms. Stacey Cottrell, 3100 Hollow Oak Drive, addressed the Board noting she was the Vice President of the Warhill High School Athletic Boosters. She requested the Board's support of full funding of the School Board's budget. She presented data for support of the auxiliary gym.

G. CONSENT CALENDAR

A motion to Approve was made by Michael Hipple, the motion result was Passed.
AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

1. Minutes Adoption
2. Revised Purchasing Policy and Procedures, Manual, and PCard/Surplus
3. Scattered Site Housing Rehabilitation - Community Development Block Grant (CDBG) Application

H. PUBLIC HEARING(S)

1. Case No. SUP-18-0027. 121 Leisure Road, Luxterra Electric Inc.

A motion to Approve was made by Sue Sadler, the motion result was Passed.
AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Scott Whyte, Senior Landscape Planner, addressed the Board regarding the Special Use Permit (SUP) requested by Mr. Cliff Martin on behalf of Luxterra Electric, Inc. He highlighted the details of the property with zoning, dwellings, and staff findings. He noted staff recommended the Board approve this SUP application.

Mr. Rich Krapf, Planning Commission, noted unanimous approval of the application.

Mr. McGlennon asked staff to review the steps regarding this particular SUP and the history of the property. He noted the unusual nature of this case as the proposal to do something different on the site was not the issue, but rather it focused on a business in operation for 30 years that had opened without obtaining a required SUP. Mr. McGlennon noted Mr. Martin was working to bring this application into compliance.

Mr. Whyte noted the business had been in operation for 30 years. At the time of the original owner's death, Mr. Martin had inherited the business. Mr. Whyte explained that when Mr. Martin prepared to sell the business to Luxterra Electric, these issues regarding the SUP were evident. Mr. Whyte noted Mr. Martin had been proactive in obtaining the SUP application and resolving any issues.

Ms. Larson asked about cross-checking business licenses and SUPs.

Mr. Whyte confirmed the Zoning staff had realized when Luxterra took over the property that an SUP was required.

Ms. Larson asked if there were random audits of business licenses to review on an annual

basis.

Mr. Paul Holt, Director of Community Development, noted initially there were checks on new business licenses, though not an annual check on renewals and he noted this particular business had been under constant ownership until recently. He commended the new owner for addressing the issues.

Ms. Larson expressed concerns about avoiding this type of situation in the future.

Mr. Stevens noted staff would review and evaluate a proactive percentage of licenses to review. He further noted he would get back with the Board on that point.

Mr. Hipple noted this was a case where the business owners thought they had followed the proper procedures and over time procedures had changed. He also thanked Mr. Stevens and staff for their assistance in resolving the issues.

Mr. Icenhour opened the Public Hearing.

As there were no speakers, Mr. Icenhour closed the Public Hearing.

2. Case No. SUP-18-0030. 6446 Richmond Road Convenience Store with Gas Pumps (Wawa)

A motion to Approve w/ Conditions was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Alex Baruch, Senior Planner, addressed the Board noting Mr. Tim Trant of Kaufman & Canoles had applied for an SUP for a Wawa at 6446 Richmond Road. He detailed the zoning restrictions and highlighted staff's recommendations.

Ms. Sadler asked if this was considered a revitalization of that corner.

Mr. Baruch noted they are redeveloping the site.

Mr. Krapf addressed the Board and noted the Planning Commission voted 5-2 to recommend denial of the original application. He further noted the financial and aesthetic benefits and the Richmond Road entrances as favorable factors. Mr. Krapf also noted there were traffic concerns with additional vehicle trips at the facility.

Mr. McGlennon asked if the Planning Commission felt resolution of these issues had been achieved.

Mr. Krapf noted he had not seen the revised Master Plan, but understood the traffic issues still remained as concerns with the Planning Commission.

Mr. Hipple asked about the traffic and more turn-ins.

Mr. Krapf noted existing traffic had not previously been turning into this site. He further noted concerns about potential backups.

Ms. Sadler asked about the store's location in York County while the parking lot was in James City County.

Mr. Baruch noted most of the parking lot was in York County. He further noted part of the gas canopy and one gas pump were in James City County. He added the front landscaping strip was also in the County as well a sidewalk that started in the County and connected in York County.

Ms. Sadler asked Mr. Trant about the proposed changes the applicant was willing to make.

Mr. Icenhour opened the Public Comment at Mr. Kinsman's suggestion.

Mr. Trant requested deferment on the specifics until later in his presentation.

Ms. Sadler agreed.

1. Mr. Trant addressed the Board on behalf of the applicant and noted the project team members in attendance. He highlighted the site history and attributes of Wawa as a business partner in a PowerPoint presentation. His presentation addressed different plans (landscaping and elevation) and noted the changes. Mr. Trant noted the involvement of both counties in this project. He cited the bicycle lane and modifications to its design as a multi-use path as a proposed revision to Condition No. 5. He also highlighted other revisions in his presentation and noted the project benefits.

Ms. Larson asked if a car was traveling eastbound was a U-turn allowed to travel westbound.

Mr. Holt confirmed yes.

Mr. McGlennon asked how the sales tax revenue would be allocated across two jurisdictions.

Mr. Trant noted an existing statute that stated whenever a facility had its place of business located in more than one jurisdiction, the sales and use tax revenue was split evenly between the two localities. He noted this was the Tax Commissioner's ruling which determined the place of business included ancillary uses and "not just the location of the cash register." Mr. Trant further noted the Tax Commissioner's ruling was that revenues were evenly split, regardless of the proportionality.

2. Mr. Jack Fowler, 109 Wilderness Lane, addressed the Board regarding Lightfoot Road and traffic concerns. He cited the development in the area and noted the benefits of the store to York County, but the traffic concerns to James City County. He questioned what benefits came from this project for James City County.

Mr. Icenhour closed the Public Hearing as there were no additional speakers. He looked to the Board for discussion.

Mr. Hipple noted a repurpose of the site was needed, but further noted the traffic concerns. He added that the traffic also represented revenue to that area. Mr. Hipple addressed the changes to the turn lanes and acknowledged the modifications were needed for travel. He endorsed the conditions of Item No. 5 and the modifications to the bike lane as a multi-purpose lane. He noted Wawa's impact on area businesses as enhancement to appearances. Mr. Hipple further noted this project was a boost to the Lightfoot area. He stated his inclination to support the project with the proposed Condition No. 5 revision.

Ms. Larson inquired with the U-turn allowance, if traffic became an issue, would the Virginia Department of Transportation (VDOT) get involved.

Mr. Stevens noted VDOT evaluation would occur if traffic problems were presented at the

project. He further noted VDOT involvement at any problem traffic intersection in the County as needed and relayed to them.

Discussion ensued on options.

Ms. Sadler supported the project and the proposed Condition No. 5 revision. She appreciated the changes made.

Mr. McGlennon noted traffic concerns in the area, but further noted the need to redevelop this area. He recognized the opportunity to reevaluate the traffic pattern in regards to the U-turn if needed. He offered his support to the project.

Mr. Icenhour noted his appreciation of the applicant to revise the plans. He supported the project with the proposed Condition No. 5 revision.

At approximately 6:39 p.m., Mr. Icenhour recessed the Board for a short break.

At approximately 6:45 p.m., the Board reconvened.

3. Case No. SUP-18-0031. 115 Constance Lane Detached Accessory Apartment

A motion to Approve was made by Ruth Larson, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Ms. Tori Haynes, Planner, addressed the Board regarding the applicants for SUP-18-0031 and the request for a detached accessory apartment. She highlighted the zoning details. She noted the Planning Commission voted 7-0 recommendation in favor of the SUP. Ms. Haynes noted staff recommended the Board's approval subject to the proposed condition.

Mr. Krapf addressed the Board noting the Planning Commission's unanimous vote and further noted the recommendation of the extension to the Certificate of Occupancy from 24 to 36 months.

As the Board had no questions, Mr. Icenhour opened the Public Hearing. He also noted the applicant was available if questions arose.

As there were no questions or discussion, Mr. Icenhour closed the Public Hearing.

4. Case No. SUP-18-0032. 3020 Ironbound Road Rental of Rooms

A motion to Approve was made by Ruth Larson, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Ms. Haynes addressed the Board regarding the applicant, Mr. Ryan Newsome, and his SUP request and the zoning details. She noted the Planning Commission's 7-0 vote and further noted staff's recommendation for approval of the SUP.

Mr. McGlennon asked about clarification on the accessory apartment and the required number of bedrooms for rental.

Discussion ensued.

Mr. Krapf noted the unanimous vote from the Planning Commission, but further noted there had been no discussion on the accessory apartment and no speakers for or against the project had presented at the Public Hearing.

Mr. Icenhour opened the Public Hearing.

As there were no speakers, Mr. Icenhour closed the Public Hearing and looked to the Board for discussion.

5. Case No. Z-18-0006. Ironbound Crossing Rezoning

A motion to Approve was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Tom Leininger, Planner, addressed the Board regarding the applicants, Mr. Mark Rinaldi and Mr. Vernon Geddy, and the request to rezone portions of Ironbound Road. He detailed the zoning changes in his PowerPoint presentation as well as noting the Planning Commission's 7-0 approval.

Mr. McGlennon asked for clarification about the reduction of the buffer on Route 199.

Mr. Leininger noted the 35-foot buffer was all around the property except where it butted to the James City Service Authority property.

Mr. McGlennon asked if this was sufficient buffering for screening traffic and construction.

Mr. Leininger commented it was in accordance with design guidelines as in other projects like New Town and Courthouse Commons.

Mr. Icenhour noted he exchanged emails with Mr. Holt about the master plan with an envelope plan. He questioned the future development plan for the property. He asked what could be built by-right on the property that would not come before the Board. Mr. Icenhour inquired about the density and comparison to other similar areas in the New Town area.

Mr. Holt commented the master plan provided an envelope plan, but noted landscape buffering. He noted some protections remained both in the limitations and the master plan, as well as zoning issues. He further noted proffers for the remaining uses and indicated those uses would be inline with existing ones on that corridor.

Mr. Krapf noted this rezoning would allow a stagnant lot to be productively used as a lower intensity area. He further noted the compatibility with the New Town and Courthouse Commons developments.

Mr. Icenhour opened the Public Hearing.

1. Mr. Geddy, 1177 Jamestown Road, addressed the Board and noted various members of the project team in attendance. He highlighted the G-Square project in his PowerPoint presentation. The presentation highlighted the various proffers provided by the applicants. Mr. Geddy also noted, on behalf of Mount Pleasant Church, that the church expressed its support of this project.

Mr. McGlennon asked the limit of pedestrian access.

Mr. Geddy highlighted on the map where pedestrian access would be available.

As there were no additional speakers, Mr. Icenhour closed the Public Hearing.

6. Case No. Z-19-0001. Powhatan Terrace Proffer Amendment

A motion to Approve was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Ms. Haynes, addressed the Board regarding the applicant, Mr. Tom Tingle, and his request for the Powhatan Terrace Proffer amendment. She highlighted housing developments and requirements per the Low-Income Housing Tax Credit (LIHTC) program.

Mr. McGlennon noted several citizens had questioned the watershed impact.

Ms. Haynes noted it would have to be in compliance with current environmental regulations.

Mr. McGlennon asked Mr. Tingle about what the intentions were versus what the proffers stated. He noted Mr. Tingle's intention to apply for the LIHTC.

Mr. Tingle indicated the proffer amendment was intended for LIHTC this year.

Mr. Icenhour opened the Public Hearing at Mr. Kinsman's suggestion.

1. Mr. Tom Tingle, Guernsey Tingle Architects, 316 The Maine West, addressed the Board. He cited the history on the property, its proffers and the LIHTC program and future plans if needed to continue with the project.

Mr. McGlennon asked about the successfulness of the LIHTC process and questioned what would happen to the project if unsuccessful.

Mr. Tingle noted the change in number of units could be an advantage now as opposed to 10 years ago. He further noted nonprofits did not compete with profit groups.

Mr. McGlennon asked what Mr. Tingle's consultant was advising on the odds.

Mr. Tingle said he did not know, but noted there was a whole team to advise on all the steps involved. He said there was a significant amount of work with this project and noted coordinating with Housing Partnerships.

Discussion ensued.

Mr. Hipple asked if this type of project had been done elsewhere in the County.

Mr. Tingle confirmed yes, but noted he could not think of one at the moment.

Ms. Larson expressed concern for a well-managed development and who would manage the upkeep of the property.

Mr. Tingle noted there was funding in place, the establishment of an ownership as a limited liability corporation, and identified it as a long-term real estate holding.

2. Ms. Judy Wertman, 112 Southern Hills, encouraged the Board to support the proposed

Powhatan Terrace Proffer amendment. She cited this project would further housing partnerships and LIHTC applications. She cited a shortage of low-income rental units as well as concerns for Americans with Disabilities Act issues. Ms. Wertman noted Housing Partnerships had been helping in the community for 35 years by providing essential home rehabilitation services. She further noted the opportunity to speak in favor of affordable housing.

Mr. Icenhour noted he had skipped Mr. Krapf and the Planning Commission's review.

Mr. Krapf addressed the Board noting the Planning Commission's unanimous recommendation for approval. He highlighted two issues; one he noted the applicant addressed. The second issue concerned apartment flooding from stormwater runoff. Mr. Krapf further noted over 50% of the property was not developable so the units would be on the front of the property, which the Planning Commission felt the distance was not an issue.

3. Mr. Steve Kast, 11820 Fountain Way, President of the United Way of the Virginia Peninsula, expressed support of the Powhatan Terrace Proffer amendment. He noted Housing Partnerships' goals aligned with the United Way's goals.

4. Ms. Charvalla West, 206 Louise Lane, thanked the Board for growth in the County and particularly in regards to affordable housing. She encouraged the Board to "stay the course" and noted this project had the potential to make a difference to many people in the County. She cited rising costs for affordable housing and diverse options for housing. Ms. West noted "this matters" and the attention and consideration of this project.

As there were no additional speakers, Mr. Icenhour closed the Public Hearing.

7. Disposition of James City County Property for the Construction of a Turn Lane on Olde Towne Road

A motion to Approve was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Holt addressed the Board citing a 2015 Board of Supervisors authorization for the County to participate in VDOT's Revenue Sharing Program to fund improvements at the Longhill Road and Olde Towne Road intersection. He cited the history of this work and VDOT's participation in this project. Mr. Holt noted staff's recommendation to adopt the resolution as found in the Board's Agenda Packet. He also noted this would grant authorization to the County Administrator to proceed with the agreements with VDOT and the utility easement.

Mr. Icenhour opened the Public Hearing.

As there were no speakers, Mr. Icenhour closed the Public Hearing.

8. Case No. ORD-18-0007. Consideration of a Zoning Ordinance Amendment to Authorize the Board of Zoning Appeals to Grant a Reasonable Modification in Accordance with the Americans with Disabilities Act or State and Federal Fair Housing Laws, as Applicable

A motion to Approve was made by John McGlennon, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Ms. Christy Parrish, Zoning Administrator, addressed the Board regarding a 2018 General Assembly amendment with regard to the Code of Virginia and its empowerment to the Board of Zoning Appeals pertaining to the Americans with Disabilities Act and Fair Housing Laws. She noted staff recommended Section 24-650 be modified to adopt the powers granted by the Code of Virginia. Ms. Parrish noted the Planning Commission voted 7-0 to recommend this amendment to the Board of Supervisors and that staff recommended the Board approve the amendments to the Zoning Ordinance.

Mr. Krapf noted the Planning Commission was in favor of the Ordinance amendment.

Mr. Icenhour opened the Public Hearing.

As there were no speakers, Mr. Icenhour closed the Public Hearing.

9. Case Nos. ORD-18-0010 and ORD-18-0011. Amendments to Address a Code of Virginia Change Prohibiting Mandatory Conceptual Plans

A motion to Approve was made by Sue Sadler, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Jose Ribeiro, Senior Planner, addressed the Board noting 2018 changes to the Code of Virginia regarding mandatory conceptual plans. He further noted the existing language was not in compliance with the recent changes to the Code. He stated staff recommended amendments to address the changes.

Mr. Krapf noted the Planning Commission voted in favor and remarked it was a legislative action. He further noted optional conceptual plans were still allowed and proved helpful with applicants as well as the Planning Commission and the Development Review Committee.

Mr. Icenhour opened the Public Hearing.

As there were no speakers, Mr. Icenhour closed the Public Hearing.

Ms. Larson noted as this was a legislative action, the Board needed to be aware to treat all applicants fairly regarding the optional conceptual plan as some applicants would provide it and others may not.

Mr. McGlennon noted it would provide a challenge. He further noted the transparency and impact on a proposal.

10. Ordinance Amendment Chapter 16 Section 16-12 Control of Animals

A motion to Approve was made by John McGlennon, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. John Carnifax, Director of Parks and Recreation, addressed the Board citing over 1,600 dogs resided in the County. He cited historical information on the one dog park shared with the City of Williamsburg. He noted it was time to review other options and try off-leash areas in designated parks as listed in the Agenda Packet, but that required amending an existing Ordinance. Mr. Carnifax asked the Board to consider the change as he wanted to try this option for this season (May-October) and then evaluate from there. He noted Animal Control

was in support of the proposed change.

Mr. Hipple asked if each park participating would have a designated area.

Mr. Carnifax indicated the areas would not be fully fenced and the dogs would be off-leash.

Ms. Larson noted she was a dog lover and appreciated the actions being considered, but further noted her concerns with the areas not being fenced, particularly in light of earlier comments. She asked why so many parks were needed to “roll out” this option and instead just try it in one park. Ms. Larson asked if Animal Control was fully staffed and this was a concern for her as well as the implementation at numerous parks.

Discussion ensued.

Mr. Carnifax noted the community’s request for off-leash areas over the past several years. He further noted the details of the off-leash areas in terms of dimensions and layout. He stated the area had four visible corners with partial fencing midway down the area to “delineate, but not to contain.”

Mr. Icenhour urged consideration for at least one park to be contained and fully fenced.

Discussion ensued.

Mr. Carnifax noted one park could be considered for the trial option per the request of the Board. He further noted determining what park would be chosen and cited staff concerns such as location.

Discussion ensued.

Mr. Icenhour opened the Public Hearing.

As there were no speakers, Mr. Icenhour closed the Public Hearing.

I. BOARD CONSIDERATION(S)

1. Amend Adopted Board Calendar to Add the Joint Meeting with the Williamsburg-James City County (WJCC) School Board at 9 a.m. on March 15, 2019, at the WJCC Schools Central Office and Community Budget Forum at 6:30 p.m. on April 11, 2019, at the James City County Recreation Center

A motion to Approve was made by Ruth Larson, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. McGlennon requested if there were prepared materials to be presented at the meeting, copies of those materials be given to the Board members in advance of the meeting preferably or at least at the meeting. He also requested materials from the previous meeting which were not provided.

Mr. Stevens confirmed yes.

2. Old Ironbound Road Cul-de-sac Abandonment

A motion to Approve was made by Michael Hipple, the motion result was Passed.
AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Kinsman addressed the Board regarding previously approved action on Public Hearing No. 5 and noted G-Square, Inc. had requested the County abandon its interest in the underlying property, which was the right of public passage.

3. James River Heritage Trail

A motion to Approve was made by John McGlennon, the motion result was Passed.
AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Alister Perkinson, Parks Administrator, addressed the Board regarding a resolution to support the James River Heritage Trail. He detailed the trail network along the entire James River watershed and its promotional benefits. He noted staff recommended approval of the resolution.

Mr. McGlennon welcomed Mr. Perkinson to his new position. He supported the resolution and noted the County was a leader in the process of encouraging people to take advantage of the proximity to the James River. Mr. McGlennon encouraged other counties with significant shoreline to also provide opportunities for people to walk, ride, and use the trails.

Ms. Larson echoed those comments.

4. Case No. C-18-0123. Hampton Roads Sanitation District Treatment Plant Expansion within Carter's Grove Agricultural and Forestal District - Applicant Deferral until April 9, 2019

Mr. Icenhour noted the applicant's deferral.

J. BOARD REQUESTS AND DIRECTIVES

Mr. Hipple noted it had been a busy week with Hampton Roads Transportation Accountability Commission (HRTAC) meetings. He provided an HRTAC update on the Hampton Roads Bridge Tunnel project.

Ms. Larson noted her Chamber Board meeting was upcoming. She further noted updates with bylaw finalization for the Business Council and the Tourism Council's hiring of an Executive Director. She addressed the development fund and maintenance of effort money from each locality, as well as funding for marketing with the sales tax.

Ms. Sadler noted her attendance at the Chickahominy Community Action Agency meeting. She also noted an upcoming meeting for the Eastern Virginia Regional Industrial Facility Authority with County Administrator and staff.

Mr. McGlennon addressed the U.S. District Court decision on Dominion Energy's towers across the James River and attention to existing federal laws. He attended the dedication of the Prescription Shoppe opening. He noted Board members and their attendance at area events. He referenced his participation in the celebration of the life of Ms. Evelyn Odell Frink, widow of former Board member Mr. Abram Frink.

Mr. Icenhour commended staff for their work on the Black History Event on February 22. He said it was "awesome" and noted how enjoyable the program had been. He visited

Stonehouse Elementary School with the Read Across America program. Mr. Icenhour noted his attendance at the Virginia Peninsula Clean Business Forum and the Arbor Day ceremony in Yorktown. He further noted he would join Mr. Hipple at the HRTAC meeting.

K. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Stevens addressed the Board and noted the County was hosting a Neighborhood Forum on March 14 at 6:30 p.m. to discuss the budget process. He noted hosting a Career Expo on March 18, 5-7 p.m., at the James City County Recreation Center. Mr. Stevens further noted the upcoming events: 22nd Annual Candlelight Ceremony in honor of Child Abuse Prevention Month at James Blair Middle School on March 28 at 6 p.m.; the Vietnam Veteran Ceremony held by the Williamsburg Chapter of Vietnam Veterans of America at Veterans Park on March 29 at 11 a.m.; James City County Police VIN Etching and Child Safety Seat Inspection event on April 11, 10 a.m.-2 p.m. at the 4630 Monticello Avenue Target location in the parking lot. The event was free of charge.

L. CLOSED SESSION

A motion to Enter a Closed Session was made by Ruth Larson, the motion result was Passed.
AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

At approximately 8:18 p.m., the Board entered Closed Session.

At approximately 8:23 p.m., Mr. Icenhour reconvened the Board of Supervisors.

1. Closed Session Certification

A motion to Certify the Closed Session was made by John McGlennon, the motion result was Passed.
AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

2. Recommendation for Appointment to the Board of Zoning Appeals

A motion to Appoint Individuals to Boards and Commissions was made by John McGlennon, the motion result was Passed.
AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. McGlennon noted Mr. Rodgers' appointment as a recommendation to The Honorable Judge Michael McGinty.

3. Appointment to the Board of Adjustment and Appeals

A motion to Appoint Individuals to Boards and Commissions was made by John McGlennon, the motion result was Passed.
AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

The appointment of Mr. Mel Spruell to the Board of Adjustment and Appeals was made by John McGlennon.

4. Appointments to the Colonial Community Criminal Justice Board

A motion to Appoint Individuals to Boards and Commissions was made by John McGlennon, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. McGlennon recommended the reappointments of The Honorable Judge Wade Bowie and Mr. Kinsman.

M. ADJOURNMENT

1. Adjourn until 9 a.m. on March 15, 2019, for the Joint Meeting with the Williamsburg-James City County School Board

A motion to Adjourn was made by Ruth Larson, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

At approximately 8:24 p.m., Mr. Icenhour adjourned the Board of Supervisors.

MINUTES
JAMES CITY COUNTY BOARD OF SUPERVISORS
WORK SESSION
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185
March 26, 2019
4:00 PM

A. CALL TO ORDER

B. ROLL CALL

Michael J. Hipple, Vice Chairman, Powhatan District
Ruth M. Larson, Berkeley District
P. Sue Sadler, Stonehouse District
John J. McGlennon, Roberts District
James O. Icenhour, Jr., Chairman, Jamestown District

Scott A. Stevens, County Administrator
Adam R. Kinsman, County Attorney

C. BOARD DISCUSSIONS

1. Recycling Update

Ms. Grace Boone, Director of General Services, introduced Ms. Dawn Oleksy, Environmental Coordinator, to the Board for a recycling update. She cited the funding, costs, and global impact with highlighted key points in a PowerPoint presentation. She noted the County was committed to sustainability. Ms. Boone noted a team comprised of various County departments, along with York County and Virginia Peninsulas Public Service Authority (VPPSA) representatives, had reviewed billing options and costs. She noted that the team met with York County and TFC Recycling (TFC) and chose an opt-out option. Ms. Boone highlighted the key points of this option with a voluntary “fee for service” system and a possible discount for participating homeowners associations (HOAs). She also noted staff was working with VPPSA to ensure participants knew the changes and the billing costs.

Ms. Larson asked if the billing was annual.

Ms. Boone noted it was quarterly.

Mr. Stevens further noted that the bill could be paid in advance for the year, but the bill would reflect a credit for the quarters.

Mr. Icenhour questioned the billing schedule, noting customers would receive bills on August 15, with payment due on September 15 with the recycling service to begin October 1, 2019.

Ms. Boone confirmed that point.

Mr. Icenhour asked about the pickup of carts and new carts for customers.

Ms. Boone noted County Waste would pick up their carts and TFC would provide new carts.

Ms. Larson asked about the cart size.

Ms. Oleksy noted the cart size was 96 gallons unless a customer was specifically designated for the 35-gallon cart. She further noted in those cases, the customer would retain the 35-gallon cart usage.

Ms. Larson inquired about the schedule of every other week.

Ms. Boone and Ms. Oleksy confirmed that point.

Mr. McGlennon asked if the billing would be handled by the Treasurer's Office or the County.

Ms. Boone confirmed the Treasurer's Office would handle the billing.

Mr. McGlennon asked if optional payments, i.e., bank draft, credit cards, and other options were in process for the change.

Ms. Boone confirmed that point.

Mr. McGlennon asked about the comparison per household versus the new fee.

Discussion ensued.

Mr. McGlennon asked about the discount for HOAs.

Ms. Boone noted a direct single bill to the specific HOAs and further noted she was working with Ms. Sharon Day, Assistant Director of Financial and Management Services, on numbers regarding possible discounts.

Mr. McGlennon noted some older neighborhoods did not have HOAs. He also asked about the billing and incorporating it into personal property bills.

Discussion ensued.

Mr. McGlennon noted County Waste charged \$1 extra for printed bills in an effort to have customers use electronic payment. He inquired if that option had been considered by staff.

Ms. Boone said that had not been discussed, but she would follow up and inquire.

Ms. Larson asked if County Waste and TFC had been able to reach a deal on the use of recycling bins.

Ms. Boone noted no deal had been reached.

Ms. Sadler asked about notification for removal of the old carts.

Ms. Boone noted that communication was part of Community Outreach and that information would be going out to customers.

Ms. Oleksy noted County Waste would pick up carts at the end of its contract date. She further noted that she was meeting every two weeks with her counterparts from Poquoson, the City of Williamsburg, VPPSA, and York County to monitor that information.

Ms. Boone noted that if the Board wanted staff to answer questions at Public Hearings, then that was an option to further communicate the changes.

Ms. Larson asked if there was a period when there would be no recycling.

Ms. Boone and Ms. Oleksy noted recycling would continue. Ms. Boone noted funding from the General Fund would cover July-September for recycling needs.

Discussion ensued.

Mr. Hipple noted the program had a five-year contract. He further noted he had asked the County Administrator to review during those five years if recycling and trash pickup on a county-wide basis was an area for more involvement. He addressed the pros and cons of that review as well as education and assistance to maintain smaller companies as businesses.

Ms. Larson noted county-wide alternatives for trash services over time.

Discussion ensued.

2. Virginia Department of Transportation (VDOT) Quarterly Update

Mr. Rossie Carroll, VDOT Williamsburg Residency Administrator, addressed the Board noting an 85% completion rate for maintenance work orders in the quarter. He noted of the outstanding projects, most were stormwater issues and the rainy weather had been a factor on the drainage projects. Mr. Carroll highlighted the accomplishments of the quarter in a PowerPoint presentation. He stated mowing projects would begin in April and provided highway updates.

Mr. McGlennon asked about the bridges and traffic capacity on Route 199 during these projects.

Mr. Carroll noted there would be two lanes open for traffic on each side. He further noted demolition of the existing bridge and then construction of the new bridge which would have three lanes and a shoulder on each side.

Ms. Sadler asked about the medians in the Lightfoot area. She said she had received comments about the spindly trees and concerns for downed trees.

Mr. Carroll noted most of the trees will be removed and replanting will be done.

Ms. Larson asked about comments on the “red wall.”

Mr. Carroll indicated the segments and said local input had determined the color.

Mr. Icenhour asked about Segment Two and the rough surface.

Mr. Carroll noted it was still under construction and that paving would be completed with “surface mix.” He further noted a “ride quality” in place during the milling and resurfacing processes. Mr. Carroll addressed cameras in use at Innovation and Technology Transportation Funded Projects (ITTF) signs to gather data for signals as needed. He noted the use of the ITTF system to alert drivers to potential road changes or accidents.

Mr. Icenhour asked about the cameras and the integration into the 511 system.

Mr. Carroll replied yes. He continued with discussion on ferry work. He also highlighted asphalt projects in the report.

Mr. McGlennon asked about the subdivision resurfacing projects for 2019.

Mr. Carroll confirmed the subdivisions listed were scheduled for 2019. He noted load review had aided VDOT with paving projects and prioritization. He further noted VDOT conducted yearly road reviews throughout the state.

Discussion ensued.

Mr. Carroll also addressed FYA or Flashing Yellow Arrow, which he noted are permissive lefts and the review of those areas. He continued highlighting VDOT area projects and addressed upcoming projects in the secondary six-year plan.

Discussion ensued.

Mr. Carroll addressed Roadway Safety Analysis (RSA) and the intersections under review for accidents and traffic capacity. He noted the end of April was his target date for completion of the RSA. He further noted VDOT was compiling additional data for traffic counts. He highlighted emergency response during inclement weather in his presentation.

Ms. Sadler presented photos of potholes and asked Mr. Carroll if that area with the potholes near the Croaker Road 7-Eleven was a VDOT issue.

Mr. Carroll noted it was not a VDOT issue, but he suggested a No Parking sign be located there. He did address adding some "crush and run" on the VDOT road footage.

Ms. Sadler asked when Elmwood residents would have their roads look like those in Glenwood.

Mr. Carroll noted funding would determine the timeframe and 2021 was more likely. He further noted the criteria that determined the priority and how the funding was allocated based on the annual assessment of the roads.

Ms. Sadler asked about the stoplight at Rochambeau Drive in the Stonehouse District near the school.

Mr. Carroll noted the light was not in the plans, but a speed study could be done.

Discussion ensued.

Ms. Larson thanked Mr. Carroll for his participation at the community meeting. She noted the options being reviewed at Greensprings Road. She mentioned the beaver issue on Route 5 and the ditch cleaning and the National Park Service property. Ms. Larson asked about the Fernbrook concerns.

Mr. Carroll noted he had contacted the HOA there and addressed concerns. He noted corrective actions and maintenance.

Ms. Larson asked about the stakeholders' meeting with VDOT and the National Park Service.

Mr. Carroll noted good communication had come from the meeting. He further noted the Service had been involved in the RSA.

Mr. Hipple asked about adjustment to the stop bar at Centerville and Jolly Pond Roads. He

noted blind spots on both sides.

Mr. Carroll noted the area would be reviewed.

Mr. Hipple asked about gas connections in the community and the appearance. He asked about VDOT's right-of-way and future plans.

Mr. Carroll indicated plans in the works are available to VDOT, but some utilities have to be relocated at a later time as needed.

Mr. Hipple asked about litter pickup and available data per area.

Mr. Carroll noted area data was available, but it did not include volume for the area.

Discussion ensued.

Mr. Hipple thanked Mr. Carroll for his quick response to calls and emails regarding road and traffic concerns.

The Board thanked Mr. Carroll for the updates and information.

3. Sandy Bay Shoal

Mr. John Carnifax, Director of Parks and Recreation, addressed the Board and provided history on the Coast Guard's public hearings 18 months prior. He noted the Coast Guard's hearings focused on removal of several buoys in the Sandy Bay area. Mr. Carnifax further noted buoy removal in secondary channels by the Coast Guard throughout the East Coast. He said public feedback had been received including the James River Association. He added that he had received feedback on both sides of the issue that the County should not be responsible for warning signs and buoys, while others think it should be the County's responsibility. He highlighted on the map in the PowerPoint presentation a potential area of concern for inexperienced boaters at the "Hole in the Wall." Mr. Carnifax said some private people had installed some pvc pipes to indicate the area. He said the Honorable Congressman Robert J. Whitman and the James River Association had met and detailed the Coast Guard's withdrawal from marking the secondary channels to citizens. He noted private groups or Counties could apply to erect the markers or buoys. Mr. Carnifax stated the process was in place and Matthews County had applied and placed markers in two creeks in that county. He noted this would be a Board decision and addressed any potential risks or concerns regarding signage.

Ms. Larson asked about the liability of warning signs versus buoys. She also asked about the private installation of pvc pipes.

Mr. Carnifax noted Mr. Kinsman could address the first point, but he noted the County was not liable for the private installation as it did not "own the waterways." He noted the Coast Guard or the Department of Inland Game and Fisheries could enforce concerns on the water and that private boaters have used pvc pipes for various markings over the years.

Ms. Larson asked about the James River Association and its willingness to apply.

Mr. Carnifax said there had been some discussion, but no decision at this time. He noted the Auxiliary Coast Guard had discussed it also.

Ms. Larson inquired about the warning sign versus the buoy.

Mr. Kinsman expressed concerns over either option. He noted “anytime something is put out there that someone is going to rely upon” there was some liability since “someone is relying on something you put out there”. He also mentioned limitations on staff and Marine patrol for monitoring the area.

Ms. Larson questioned posting a warning sign at the marina to indicate unmarked channels.

Mr. Kinsman said that had less liability.

Mr. Hipple noted signs would need to be located throughout other areas in the County. He said that as a boater “you know what’s under you.” He agreed with a sign at the marina.

Ms. Larson asked for collaboration on signs.

Mr. Carnifax noted he would work with Mr. Kinsman for literature and signage for boaters.

Discussion ensued.

Ms. Larson asked Mr. Carnifax to reach out to the James River Association on a follow-up.

D. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon noted the blue pinwheels on the table. He further noted the pinwheels designate Child Abuse Prevention Month and their display throughout County locations was to draw importance to the healthy futures for children. He stated the blue ribbons served as memorials to the victims of Child Abuse. Mr. McGlennon noted a memorial service on March 28 at 6 p.m. at James Blair Middle School.

Mr. Hipple encouraged Board members to take pinwheels and put them out in the County.

Ms. Larson again thanked VDOT and staff for help with the community meeting. She noted there was movement from that meeting. She further noted she and Mr. McGlennon attended the Williamsburg-James City County Schools Foundation Innovative Grants program. She noted she participated in the bus tour where checks totaling \$35,000 in grant money were distributed. She asked Mr. Kinsman about the time period for construction projects, in particular commercial ones.

Mr. Kinsman noted some provisions exist in the Uniform Statewide Building Code that addressed building official and moving the project along, but noted he was not sure if it applied to commercial.

Ms. Larson appreciated the recycling update and hoped the cost would not deter participation.

Mr. Icenhour noted “the need to do a little bit more of a Board retreat than earlier” and the possibility of an off-site Board retreat. He further noted the Board process and consensus on some strategic issues, including economic development. He asked for input on other issues. Mr. Icenhour also mentioned a work session in late April or May and asked what times worked best for the Board. He noted he would ask staff to find several available locations.

Mr. Hipple noted time during the week worked best for him.

Mr. McGlennon noted late April or May was difficult for his schedule.

Mr. Icenhour noted he would review several dates for late May and have staff find locations and he would present that information to the Board for addition to its calendar. He also noted the VACo Region 2 meeting on April 23, 7-9 p.m. in Yorktown and encouraged Board members to attend.

Mr. McGlennon noted he would be attending the meeting.

Mr. Icenhour thanked him for Board representation at that meeting. He noted meeting with Mr. Stevens and Ms. Rebecca Vinroot, Director of Social Services, after the Oakland Pointe and Powhatan Terrace discussion. He further noted “how little he knew” about low-income tax housing, what was in the community, and how Social Service dealt with people in need in the community. Mr. Icenhour noted an in-depth review would be presented at the May work session. He asked for questions and input be sent to Mr. Stevens to incorporate into the review for that meeting.

Mr. McGlennon asked about the Workforce Housing Task Force report availability.

Mr. Stevens noted he would check the schedule and have it available for that meeting.

Mr. McGlennon also noted two significant studies on the Workforce Housing website which would also be beneficial to incorporate into the review.

Mr. Icenhour noted his thank you gift from Ms. Payne’s 4th-grade class when he participated in the Read Across America program. He showed his book with thank you comments from the students.

Ms. Larson echoed the sentiment noting she recently read to Ms. Armbruster’s class at Matthew Whaley Elementary School.

Ms. Sadler provided an update on the court case regarding the dog attacks at Colonial Heritage. Ms. Sadler acknowledged citizens’ appreciation of Mr. Kinsman’s work on the bill that was presented to the General Assembly and passed.

E. CLOSED SESSION

Mr. Icenhour noted there was no Closed Session.

F. ADJOURNMENT

1. Adjourn until 5 p.m. on April 9, 2019, for the Regular Meeting

A motion to Adjourn was made by Michael Hipple, the motion result was Passed.
AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

At approximately 6:09 p.m., Mr. Icenhour adjourned the Board of Supervisors.

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Toni E. Small, Director of Stormwater and Resource Protection

SUBJECT: Dedication of the Streets in Section 4 of the White Hall Subdivision

ATTACHMENTS:

	Description	Type
☐	Memorandum	Cover Memo
☐	Resolution	Resolution
☐	Map	Exhibit
☐	AM-4.3	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Engineering & Resource Protection	Cook, Darryl	Approved	3/27/2019 - 10:22 AM
Development Management	Holt, Paul	Approved	3/27/2019 - 10:57 AM
Publication Management	Daniel, Martha	Approved	3/27/2019 - 11:31 AM
Legal Review	Kinsman, Adam	Approved	3/27/2019 - 5:01 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 11:59 AM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 1:52 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 1:59 PM

MEMORANDUM

DATE: April 9, 2019
TO: The Board of Supervisors
FROM: Toni E. Small, Director of Stormwater and Resource Protection
SUBJECT: Dedication of the Streets in Section 4 of the White Hall Subdivision

Attached is a resolution requesting acceptance of the streets in Section 4 in the White Hall subdivision which are proposed as public right-of-ways into the State Secondary Highway System. The streets proposed for acceptance are extensions of Leighton Boulevard, Hickory Neck Boulevard, Addison Terrace, and Gayle Lane and are shown in red on the attached map. The streets have been inspected and approved by representatives of the Virginia Department of Transportation (VDOT) as meeting the minimum requirements for secondary roadways.

VDOT's Secondary Street Requirements (SSR), effective January 2005, outline processes on how streets are designed, constructed and officially accepted for maintenance as part of the secondary system of state highways. Upon the satisfactory completion of construction of streets, VDOT advises and coordinates with the local governing body of the street's readiness for acceptance through the use of VDOT's Form AM-4.3. As part of the initial acceptance process, the County Board of Supervisors must request, by resolution, that VDOT accept the street for maintenance as part of the secondary system of state highways. Administrative procedures outlined in the SSR/24VAC31-90-10 lists criteria for street acceptance and what information is required on the local resolution. Once the resolution is approved, the signed Form AM-4.3 and the resolution are then returned to VDOT. VDOT then officially notifies the locality of the street's acceptance into the secondary system of state highways and the effective date of such action. This notification serves as the start of VDOT maintenance responsibility. As part of the process, the County will hold an appropriate amount of subdivision or public improvement surety for the roadway, as required by local Ordinances, until the acceptance process is complete. Also, within 30 days of the local governing body's request (resolution), VDOT requires a maintenance surety to be posted by the developer to guarantee performance of the street for one year from the date of acceptance.

Staff recommends the adoption of the attached resolution.

TES/md
WhHallSec4StDed-mem

Attachments:

1. Resolution
2. AM-4.3
3. Map

RESOLUTION

DEDICATION OF THE STREETS IN SECTION 4 OF THE WHITE HALL SUBDIVISION

WHEREAS, the streets described on the attached AM-4.3, fully incorporated herein by reference, is shown on plats recorded in the Clerk’s Office of the Circuit Court of James City County, Virginia; and

WHEREAS, the Residency Administrator for the Virginia Department of Transportation (VDOT) advised the Board that the streets meet the requirements established by the Subdivision Street Requirements of VDOT; and

WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on July 1, 1994, for comprehensive stormwater detention which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests VDOT to add the streets described in the attached Additions Form AM-4.3 to the secondary system of state highways, pursuant to § 33.2-705 of the Code of Virginia, and the Department’s Subdivision Street Requirements.

BE IT FURTHER RESOLVED, the Board guarantees a clear and unrestricted right-of-way, as described and any necessary easements for cuts, fills, and drainage.

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Residency Administrator for the Virginia Department of Transportation.

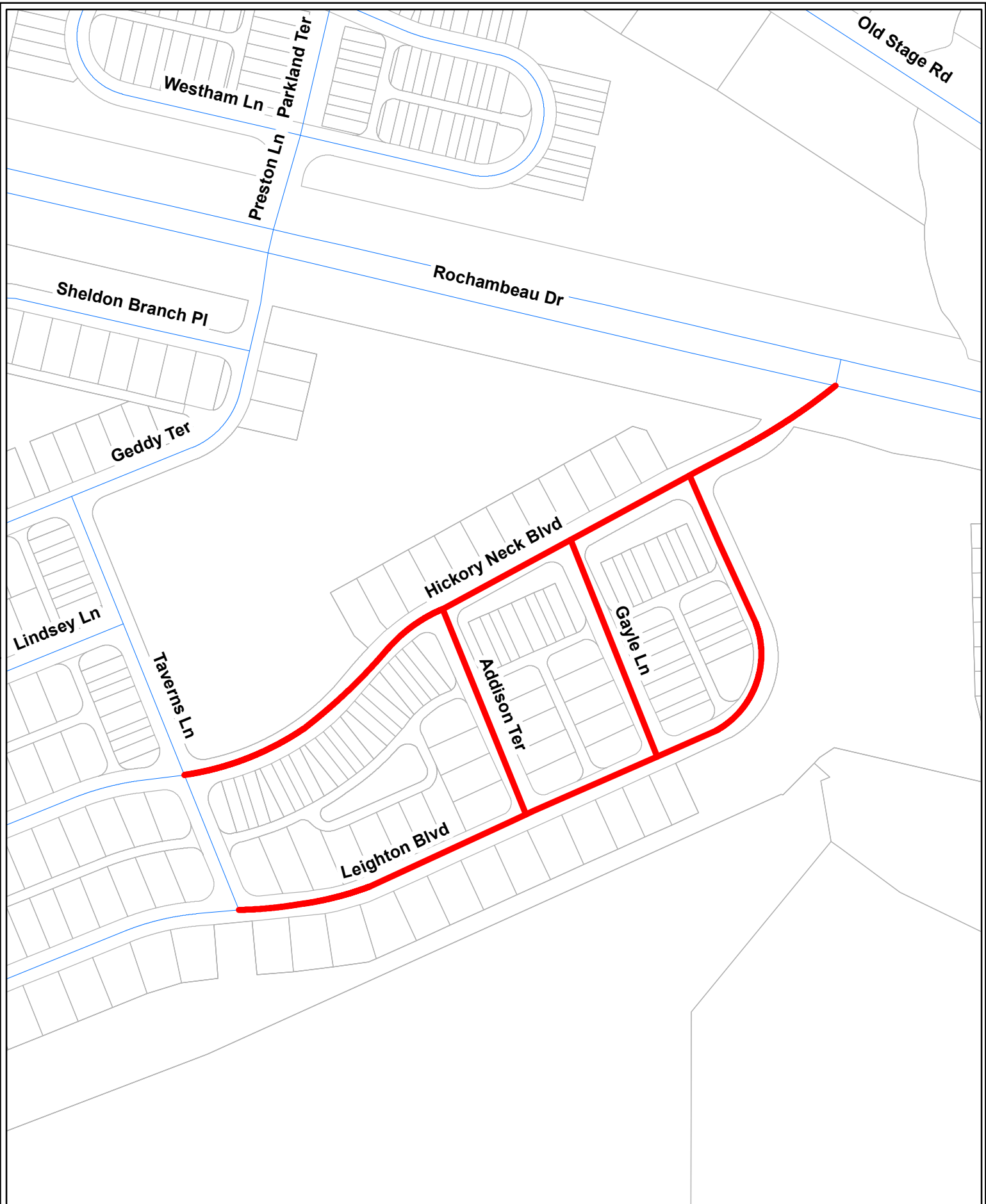
James O. Icenhour, Jr.
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Deputy Clerk to the Board


	<u>VOTES</u>		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
HIPPLE	_____	_____	_____
LARSON	_____	_____	_____
SADLER	_____	_____	_____
MCGLENNON	_____	_____	_____
ICENHOUR	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April, 2019.



**DEDICATION OF THE STREETS
IN SECTION 4 OF THE
WHITE HALL SUBDIVISION**

Legend

 Streets to be Dedicated

1 inch = 250 feet



In the County of James City

By resolution of the governing body adopted April 9, 2019

The following VDOT Form AM-4.3 is hereby attached and incorporated as part of the governing body's resolution for changes in the secondary system of state highways.

A Copy Testee

Signed (County Official): _____

Report of Changes in the Secondary System of State Highways

Project/Subdivision White Hall Section 4

Type Change to the Secondary System of State Highways: Addition

The following additions to the Secondary System of State Highways, pursuant to the statutory provision or provisions cited, are hereby requested; the right of way for which, including additional easements for cuts, fills and drainage, as required, is hereby guaranteed:

Reason for Change: New subdivision street

Pursuant to Code of Virginia Statute: §33.2-705

Street Name and/or Route Number

Hickory Neck Boulevard, State Route Number 1813

Old Route Number: 0

- From: Rochambeau Drive (Route 30)
To: Leighton Boulevard (Route 1816), a distance of: 0.06 miles.

Recordation Reference: Inst. 160014811

Right of Way width (feet) = 60

Street Name and/or Route Number

Addison Terrace, State Route Number 1827

Old Route Number: 0

- From: Hickory Neck Boulevard (Route 1813)
To: Leighton Boulevard (Route 1816), a distance of: 0.09 miles.

Recordation Reference: Inst. 160014811

Right of Way width (feet) = 50

Street Name and/or Route Number

Hickory Neck Boulevard, State Route Number 1813

Old Route Number: 0

- From: Addison Terrace (Route 1827)
To: Taverns Lane (Route 1817), a distance of: 0.12 miles.

Recordation Reference: Inst. 160014811

Right of Way width (feet) = 50

Street Name and/or Route Number

◆ **Leighton Boulevard, State Route Number 1816**

Old Route Number: 0

-
- From: Hickory Neck Boulevard (Route 1813)
To: Gayle Lane (Route 1826), a distance of: 0.14 miles.

Recordation Reference: Inst. 160014811

Right of Way width (feet) = 50

Street Name and/or Route Number

◆ **Leighton Boulevard, State Route Number 1816**

Old Route Number: 0

-
- From: Addison Terrace (Route 1827)
To: Taverns Lane (Route 1817), a distance of: 0.12 miles.

Recordation Reference: Inst. 160014811

Right of Way width (feet) = 50

Street Name and/or Route Number

◆ **Hickory Neck Boulevard, State Route Number 1813**

Old Route Number: 0

-
- From: Gayle Lane (Route 1826)
To: Addison Terrace (Route 1827), a distance of: 0.05 miles.

Recordation Reference: Inst. 160014811

Right of Way width (feet) = 50

Street Name and/or Route Number

◆ **Gayle Lane, State Route Number 1826**

Old Route Number: 0

-
- From: Hickory Neck Boulevard (Route 1813)
To: Leighton Boulevard (Route 1816), a distance of: 0.09 miles.

Recordation Reference: Inst. 160014811

Right of Way width (feet) = 50

Street Name and/or Route Number

◆ **Hickory Neck Boulevard, State Route Number 1813**

Old Route Number: 0

-
- From: Leighton Boulevard (Route 1816)
To: Gayle Lane (Route 1826), a distance of: 0.05 miles.

Recordation Reference: Inst. 160014811

Right of Way width (feet) = 60

Street Name and/or Route Number

◆ **Leighton Boulevard, State Route Number 1816**

Old Route Number: 0

-
- From: Gayle Lane (Route 1826)
To: Addison Terrace (Route 1827), a distance of: 0.05 miles.

Recordation Reference: Inst. 160014811

Right of Way width (feet) = 50

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Sharon B. Day, Assistant Director, Financial and Management Services

SUBJECT: FY 2020 County Budget

ATTACHMENTS:

	Description	Type
☐	Memorandum	Cover Memo
☐	Budget Message	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 2:35 PM

MEMORANDUM

DATE: April 9, 2019
TO: The Board of Supervisors
FROM: Sharon B. Day, Assistant Director, Financial and Management Services
SUBJECT: FY 2020 County Budget

The purpose of the Public Hearing is to invite public comment on any aspect of the proposed FY 2020 Budget, with the expectation that those public comments would become part of the agenda for the upcoming budget work sessions.

No action is expected of the Board at this meeting, but any questions would be helpful as we prepare for the budget work sessions. The budget neighborhood forum is scheduled for Thursday, April 11, 2019 at 6:30pm at the James City County Recreation Center. The budget work sessions are scheduled for Tuesday, April 23, 2019, at 4 p.m. and Tuesday, April 30, 2019, at 4 p.m. Staff expects to ask the Board to adopt the budget, as amended during the budget work sessions, at its meeting on Tuesday, May 14, 2019.

The proposed budget may be found on the County's [website](#).

SBD/nb
FY20CountyBudget-mem

Budget Message

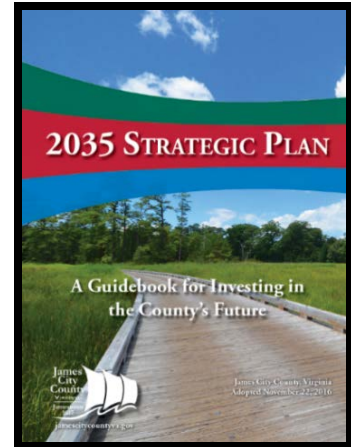
Overview

We are pleased to present the fiscal year 2020 Proposed Budget, which is the second year of the biennial FY19-20 budget. The County has a two-year budget process that allows the Board of Supervisors to adopt a budget for immediate implementation, as well as provide a plan for the second year. The second year of a biennial budget allows for changes to be made to the plan for unforeseen developments.

This budget continues to support our unique qualities and is the County's mechanism for implementing strategic planning efforts. This document solidifies the operating initiatives and capital costs and puts them into action. This is only the second year that the County has been able to specifically tie these initiatives and projects to the Strategic Plan.

The Strategic Plan was adopted by the Board of Supervisors in November 2016 and it serves as a bridge between the budget and the long-range plans adopted by the County. It allows the Board of Supervisors to prioritize initiatives, plan for the future and allocate resources through the budget process accordingly.

The Strategic Plan was developed to reinforce the policy direction set out in other County plans. The goals and actions were identified as capital and operational initiatives set to short-, medium-, and long-term project timeframes. Staff recognizes that not all of these initiatives can be met given limited resources, and departments evaluate their most pressing needs and most impactful services in a way that can benefit the overall community.



Staff has taken a measured approach to this budget and focused on keeping to the plan that was included in the FY19-20 biennial budget. The major differences from FY19 to FY20 include:

- ❖ Adding 14 positions to our staff (6 firefighters, 3 police officers, 4 in General Services/Purchasing and 1 in the Treasurer's Office)
- ❖ Enhancing the retirement benefit offered to hazardous duty positions
- ❖ Sharing in the increased cost of health insurance coverage offered to our employees
- ❖ Inclusion of the Compensation Study results performed in fiscal year 2018 (phased in over a two year period, fiscal years 2019 and 2020)
- ❖ A cost of living and market adjustment up to 3%
- ❖ Technology upgrades
- ❖ Transitioning to a fee-for-service based recycling program

The compensation adjustments noted above enables the County to continue to offer a comprehensive compensation package that will allow us to remain competitive in the marketplace.



Transitioning to a fee for service based recycling program was not anticipated until the fall of 2019. As a result of changes in the international trade market on recyclables, the net cost of the program has increased drastically to the contractors providing pick up services. The County is changing recycling contractors effective July 1, 2019 and proposes to transition to a fee for service effective October 1, 2019. During the transition period, the County will pay for the recycling costs while the County prepares for the change, which will include community outreach and education, software programming and billing and collection. Beginning October 1, 2019, those residents that wish to have curbside recycling will pay a monthly fee. This monthly fee is recommended at \$7.00.

This budget includes the addition of \$1.4 million in revenue with an offsetting cost, which includes positions for customer service in the General Services department and billing and collection in the Treasurer's office.

The FY20 budget continues to incorporate State legislation (Senate Bill 942) that increased the state sales tax for the localities in the Historic Triangle, which includes the Counties of James City and York and the City of Williamsburg, from 6% to 7%, excluding groceries as of July 1, 2018.



The legislation was introduced and ultimately passed as a means to boost and provide additional funding for tourism marketing. Senate Bill (SB) 942 requires that 50% of the additional 1% tax be retained by the Tourism Council and be used for tourism purposes and the remaining 50% is distributed to the locality of origination. The incremental sales tax revenue to be distributed back to James City County is estimated at \$4.6 million and is reflected in the FY20 budget.

All Funds

The FY20 Proposed Budget combined total for all County Funds and the James City County Service Authority is \$247.0 million, reflecting an increase of \$8.9 million (3.5%) above FY19.

Below is a breakdown of the total by fund and excluding interfund transfers.

Fund	FY19 Adopted (in millions)	FY20 Plan (in millions)	FY20 Proposed (in millions)
General Fund	\$ 205.9	\$ 209.1	\$ 211.8
Capital Projects Fund	30.4	12.6	15.7
Debt Service Fund	20.7	20.1	19.8
VA Public Assistance Fund	5.5	5.5	5.7
Housing & Neighborhood Development Fund	2.5	2.5	2.7
Colonial Community Corrections Fund	1.1	1.2	1.2
Special Projects/Grants Fund	3.1	3.1	2.5
Tourism Investment Fund	3.9	2.6	2.6
James City Service Authority (Water/Sewer)	21.4	22.0	21.3
Less: Interfund Transfers	(38.6)	(36.6)	(36.3)
Total	\$ 255.9	\$ 242.1	\$ 247.0

General Fund

The General Fund is the County's primary operating fund and the FY20 Proposed Budget is \$211.8 million, which is \$6.0 million (2.9%) above FY19, and \$2.7 million above FY20 plan.

General Fund Revenues

Revenue Source	FY19 Adopted (in millions)	FY20 Plan (in millions)	FY20 Proposed (in millions)
General Property Taxes	\$ 133.3	\$ 135.8	\$ 137.1
Other Local Taxes	28.4	28.5	28.1
Licenses, Permits and Fees	9.5	9.6	9.4
State (Commonwealth)	27.8	28.1	28.6
Other	6.9	7.1	8.6
Total	\$ 205.9	\$ 209.1	\$ 211.8

Other than the inclusion of \$1.4 million for the recycling fee, revenue estimates are tracking as planned. Fiscal year 2020 is a non-reassessment year for real estate. The \$3.8 million (2.9%) increase in total general property taxes (real estate and personal property) is due to anticipated growth in the County, as well as an increase in delinquent collections as a result of collection efforts implemented by the Treasurer's office.

The State has amended its Sales Tax for Education estimate, resulting in an increase of \$667,000 above the FY20 plan. Sales tax, including the additional 1% from SB 942 is included in Other Local Taxes and estimated to be \$100,000 higher than the FY19 budget. Similar to FY19 and because this additional sales tax is still a new funding source for the County, the majority of the revenue has been allocated to non-recurring expenditures to minimize the impact on recurring services until trend data on this new revenue source is available and reliable. The allocation of the additional sales tax is as follows:

Strategic Plan Goal	Amount
High Quality Education •Operations •Capital	\$1,510,000
Modern Infrastructure, Facilities & Technology Systems •Facility Master Plan Study •Building Security Improvements •Building Maintenance •Outfitting JCC Recreation Center Expansion •Courthouse Fence/Gate Replacement •Grounds Fence/Gate Replacement •Land/Facilities	\$1,973,000
Exceptional Public Services •One-time costs for new police officers •Police vehicle replacements •Replacement of emergency radio system	\$955,000
Protected Community Character & an Enhanced Built Environment •Project Mgmt. for Surety Bonds •Pictometry	\$162,000
Additional 1% Sales Tax	\$4,600,000

** See [Section B](#) for more discussion on the County's General Fund revenues.

General Fund Expenditures

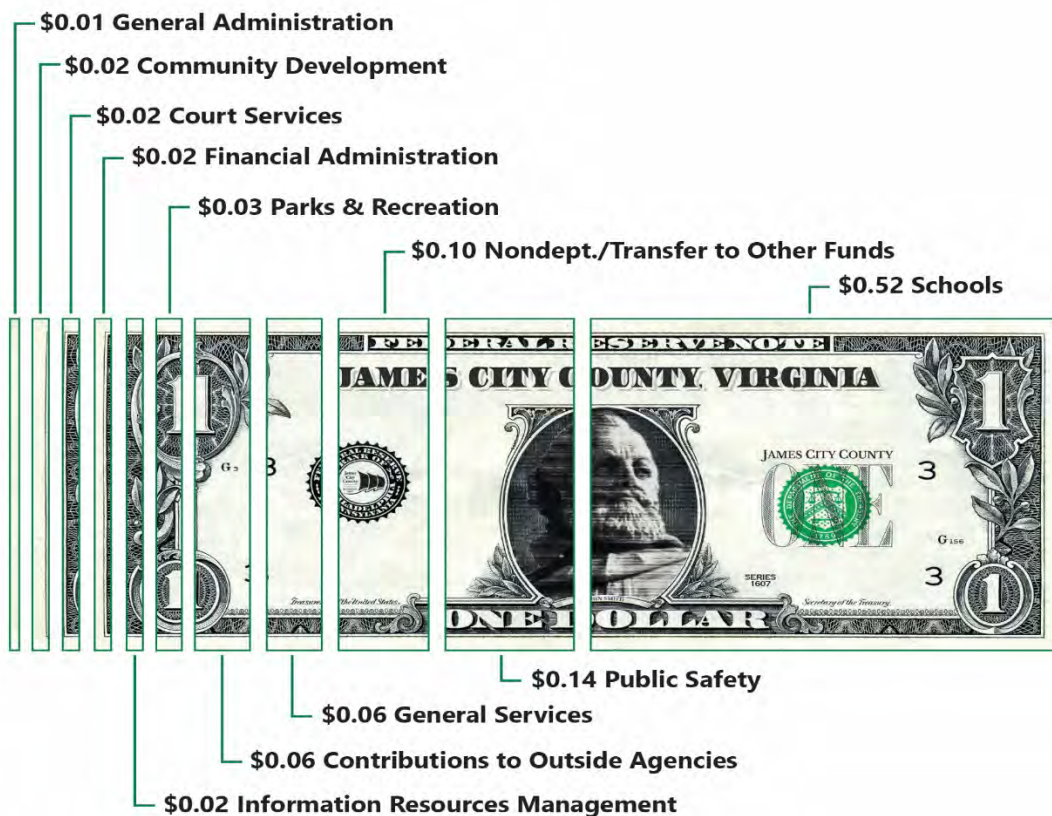
Function	FY19 Adopted (in millions)	FY20 Plan (in millions)	FY20 Proposed (in millions)
General Administration	\$ 2.8	\$ 2.8	\$ 2.8
Financial Administration	4.6	4.7	4.9
Court Services	4.1	4.0	4.2
Public Safety	26.6	27.9	29.0
Information Resources Management	4.2	4.3	4.4
Community Development	3.3	3.0	3.1
General Services	11.6	11.7	13.0
Parks & Recreation	6.4	6.4	6.6
WJCC School Contribution	108.2	109.9	110.5
Contributions to Outside Agencies	11.9	12.1	12.2
Nondept./Transfers to Other Funds	22.2	22.3	21.1
Total	\$ 205.9	\$ 209.1	\$ 211.8

As the above chart demonstrates, the School Division and Public Safety receive the greatest portion of General Fund dollars, representing 52.2% and 13.6%, respectively of the FY20 budget. Funding for the School Division represents a \$2.3 million increase from the FY19 budget. The projected increase in the Sales Tax for Education revenue has been passed onto the School Division.

Of the \$211.8 million General Fund budget, only \$67.9 million (32.1%) is allocated to County departmental spending. Of this \$67.9 million, \$52.8 million is for personnel and \$15.1 million is for non-personnel expenditures. The remaining \$143.9 million (67.9%) of the General Fund budget funds School operations and debt service, contributions to outside agencies and transfers to other funds.

The FY20 budget increases full-time positions by a net total of 14, allocated as follows: 2 for the recycling program, 6 firefighters, 3 police officers, 1 capital project inspector, 1 spray technician and 2 positions transferred mid-year (.50 FTE each) from the James City Service Authority (JCSA), with an offsetting revenue from JCSA to cover the costs of those positions.

Where does your money go?



The County provides funding to several outside agencies, such as the Virginia Peninsula Regional Jail and Colonial Behavioral Health, as well as the Constitutional Officers and General Registrar. The services provided by these entities and offices are mandated by the state and are state-supported however, local tax dollars augment these services because the state has not allocated sufficient funding to adequately provide the necessary level of services. Funding to these agencies continues to be borne by the localities who are constantly challenged to be able to afford providing quality public services.

WHAT THE AVERAGE HOMEOWNER PAYS						
DATE	CHECK NUMBER	DESCRIPTION	YEARLY	MONTHLY	%	BALANCE
		Contribution to WJCC Schools	\$1,441.44	\$120.12	52%	
		Public Safety	\$388.08	\$32.34	14%	
		Contributions to Other Agencies	\$166.32	\$13.86	6%	
		Contributions to Other Funds	\$249.48	\$20.79	9%	
		County Departments	\$415.80	\$34.65	15%	
		Nondepartmental	\$27.72	\$2.31	1%	
		Constitutional Officers	\$83.16	\$6.93	3%	
		Total:	\$2,772.00	\$231.00	100%	

To show the budget another way, the annual James City County real estate tax on the average assessed home valued at \$330,000 is \$2,772, or \$231 per month.

This graphic shows the expenditure breakdown of those funds, with the largest portion, \$120.12 (52%) going to fund the schools.

While overall County demands continue to grow, staff has found creative ways to do more with less and organize in the most efficient way possible.

** See [Section C](#) for more discussion on the County's General Fund expenditures.

Capital Projects Fund

The County utilizes a five-year Capital Improvement Plan (CIP) and the FY20 budget appropriates funding for the first of those years. The total CIP budget for FY20 is \$15.7 million.

County Projects (\$12.8 million)

Funding in FY20 has been provided for the following major County projects:

- ❖ Stormwater projects in Grove and Toano
- ❖ Church Lane stream restoration
- ❖ Ware Creek watershed projects
- ❖ Phase 4 and 5 of the James Terrace project
- ❖ Mill Creek watershed projects
- ❖ Financial software replacement
- ❖ Building maintenance
- ❖ Design for a new solid waste convenience center in Grove
- ❖ Design for a new fire station (#6)
- ❖ Fire apparatus replacements
- ❖ Improvements to Jamestown Marina, Jamestown Beach and the Amblers House
- ❖ Improvements to Chickahominy Riverfront Park
- ❖ Land/Facilities (from additional 1% sales tax allocation)

School Projects (\$2.9 million)

Funding in FY20 has been provided for the following major school projects:

- ❖ Designs for the expansion of Warhill high school and the addition of an auxiliary gym
- ❖ Partial interior refurbishments at Norge, James River and Stonehouse elementary schools
- ❖ Roof repairs at Stonehouse and Matoaka elementary schools
- ❖ HVAC replacement at Berkeley middle school
- ❖ Window replacement at Toano middle school
- ❖ Replacement of cafeteria equipment and a generator at Jamestown high school
- ❖ Parking lot repairs
- ❖ Playground equipment replacement

** See [Section D](#) for more discussion on the County's and School Division's capital projects.

Debt Service Fund

The County's utilizes a Debt Service Fund to account for the repayment of its outstanding debt obligations, which were used to provide funding for projects in previous years' capital budgets.

To assist with the funding of several projects in the FY21-24 CIP, the following borrowings have been programmed in the Debt Service Fund:

- ❖ A \$22.0 million bond issuance in FY21 to provide funding for a 6th fire station and for various school capital projects
- ❖ A \$47.4 million bond issuance in FY23 for a new elementary school and for high school expansions

** See [Section F](#) for more details on the County's debt service obligations for the County and School Division.

Other Funds

The County's other funds consist of the following:

- ❖ Virginia Public Assistance Fund (Social Services)
- ❖ Housing and Neighborhood Development Fund
- ❖ Colonial Community Corrections Fund
- ❖ Special Projects/Grants Fund
- ❖ Tourism Investment Fund

There are no new major initiatives planned for FY20 for these funds.

The Tourism Investment Fund includes the \$2 (Per Night Room) transient occupancy tax. With the passage of Senate Bill 942, the revenue generated from the \$2 Per Night Room Tax is allocated as follows: 50% goes to the Tourism Council and 50% is retained by the locality in which the tax is imposed.

** See [Section F](#) for more details on the County's other funds.

James City Service Authority (JCSA)

JCSA is a separate legal entity responsible for the County's water and sewer operations and capital projects. The primary funding source for JCSA is user fees.

** See [Section E](#) for more details on the JCSA's budget.

Strategic Plan

The County's FY20 budget fully integrates the Strategic Plan. The following discussion provides the linkage of the goals contained in the Strategic Plan to the allocation of resources in the budget.



Goal: Modern Infrastructure, Facilities and Technology Systems

Modernization of our County facilities will be an overarching task. Facilities including buildings, roads, stormwater rehabilitation and construction projects, technology improvements and business process enhancements will affect each resident and business owner in our great County. Rapid growth requires us to pay attention to our infrastructure as numerous stormwater projects are planned over the next five years in addition to enhancing technology platforms to handle steady growth.

As we continue to address our changing population as well as improve our prospects for growing our business community, investments to our infrastructure are needed. Funding has been identified while using sustainable approaches that maintains the County's fiscal health.

Stormwater infrastructure remains as a focal point of the County's CIP funding. Over \$2.8 million is dedicated to projects in Grove, Toano, Church Lane, Ware Creek, James Terrace and Mill Creek over the next fiscal year.



The County's technology infrastructure has seen dramatic improvements over the past year. Extensive work was done to implement software systems for Community Development, the Commissioner of Revenue and the Treasurer. In FY19, implementation of a new asset management for General Services is expected before the end of the fiscal year.

The new Community Development software implemented in FY19 allows for cross-referencing between divisions for building permits as well as site plans and zoning permits. Developers are able to access case information in real time from the field to monitor their projects.

The new business analytic software has afforded the County the ability to post an online "checkbook" for citizens, and will ultimately lead to a much more trackable and searchable financial tool.

Funding for the maintenance of these systems has been included in the FY20 operating budget.

Work has also begun to replace the 20+ year financial software. A continuation of funding for this project is included in the FY20 CIP budget. A new system will allow for a much needed streamlining of information between divisions, which will allow data analysis to ultimately present information that is more meaningful and improves transparency.



Included in Parks and Recreation budget is \$75,000 for the replacement of existing fitness machines as well as new supplies and equipment to outfit the expanded space previously occupied by Sentara Physical Therapy.

A facility master plans study for \$250,000 will assess County facilities and needs over the next several years. Also, as part of an initial screening of facilities, the Police Department evaluated each building for recommended safety improvements and \$50,000 has been allocated toward this program. Funding of \$52,000 for a grounds fence and gate replacement and \$56,000 for a courthouse lot gate are included in the FY20 budget.



Goal: Protected Community Character and an Enhanced Built Environment

This goal is far-reaching in that it looks at the County's historical significance, growth potential and maintenance of a quality of life for residents in James City County. It incorporates many tenets of the current Comprehensive Plan with the purpose to maintain our community charm coupled with our continued growth. With the potential for more than 15,000 dwelling units within James City County's Primary Service Area (PSA), the Board of Supervisors understands the need to protect our community character while planning for strategic growth.

Transportation planning has allowed the County to secure over \$100 million in funding for County projects. A continuation of funding (\$1.5 million) is included in the FY20 budget.



Another major concern for the County is the number of developments with outstanding performance bonds for the completion of public improvements. These improvements include roads, stormwater infrastructure and other plan related items that developers agreed to install in individual neighborhoods. Developers provide the County with surety or letters of credit to ensure the completion of these items, but there is very little the County can do to ensure the timeliness of these improvements. There has been an increase in the number of neighborhoods where, because of phasing, residents move in prior to completion of all the work. The County is not in the development business and does not have the expertise to manage residential construction projects. Project management becomes important for these developments, and consequently \$110,000 has been allocated for instances where the County is required to pull surety.

In FY19, the County began its every 5 year review of the Comprehensive Plan, which establishes the 20 year master plan development of the County. The County will be getting further underway with the Comprehensive Plan update by forming the Community Participation Team to oversee community engagement efforts. This will overlap with the start of consultant work on cumulative impact modeling, scenario planning and revisions to the fiscal impact model, utilizing recent updates to the fiscal impact worksheet completed by the Planning Division and the Financial and Management Services department.



Goal: Expanding and Diversifying Local Economy

This goal is a particular challenge for all localities. James City County is competing with numerous jurisdictions who have significant incentives to offer prospects. The current plans are to identify sites and understand the market factors that would most benefit our community. This budget will focus on opening areas for economic growth by funding roads and infrastructure that encourage strategic development.

Tourism is a major focus at both the state and local levels. The increased state sales tax legislation is directly related to the perceived need to expand tourism marketing funding at the regional level. James City County is focused on improvements to County facilities used to generate tourism to the area.

The CIP includes \$185,100 for utility improvements to the Ambler House at the Jamestown Beach site. These improvements will afford the County the opportunity to solicit a public/private partnership to attract additional visitors to the park property.



Planning for improvements to the James City County Marina property has been a County priority for the past few years. There are basic improvements that need to be made to improve the safety of the boat facilities and shoreline. CIP funding of \$1.7 million has been included in FY20 to achieve these objectives. Complementing the brewery operation with additional uses of a similar size and scale will only continue to make the Marina one of James City County's most unique destinations.

Partially funded by a portion of the County's tourism revenue, this budget includes \$333,000 for improvements to Jamestown Beach.



Goal: Exceptional Public Services

Excellent services are a requirement for a great and ever-changing community such as James City County. Resident calls for service are up significantly as are response times to high priority calls. In particular, calls in 2 of the 5 police zones are almost double that of other zones causing a disparity that needs to be addressed. During fiscal year 2020, the budget allows for the County to continue to move forward on two important public safety initiatives. The budget includes funding for 3 new Police Officers that when combined with the 3 new Police Officers programmed in the FY19 budget, will provide for a total 6 new positions. Adding 6 patrol officers will help address the demand and eliminate the disparity by creating a sixth police zone for better call/response/workload management. The new positions are also expected to help increase self-initiated activity by patrol officers (traffic citations, service of warrants, DUI arrests, etc.) that has slowed in conjunction with the increase in call volume.



Similarly, the Fire Department has experienced increased call volumes in multiple locations throughout the County. These areas are generating 365 or more emergency incidents per year and are located outside of our six-minute response time radius. Funding for a sixth fire station is included in the five-year CIP plan, with design money allocated in the FY20 budget.

In order for the station to be fully staffed once constructed, it requires the phasing in of 18 new firefighters over multiple fiscal years. Six positions were added in FY19 and an additional 6 are included in the FY20 budget.

Also included in the CIP is \$600,000 for the continuation of funding for the replacement of the County's emergency portable radios. Members of our public safety staff carry radios to communicate with each other and as well as dispatch. These radios need to be compatible with each other and require periodic replacement.



Goal: High Quality Education

James City County supports high quality education by primarily focusing on its core fiscal responsibility to fund our excellent public school system. There are many facets of education that play a significant role to maintain a healthy community from education for youth to continued education for those in the current and future workforce.

As with other areas that rely on state funding, education needs that aren't met by those funds must be carried by the County. For FY20, the total County investment in education exceeds \$110.5 million, including debt service payments and transfers to the school division for operations. **This results in a \$2.4 million increase in operational funding (debt service remains level with the FY19 budget).**

Of the \$2.9 million that the County will provide for school capital projects in FY20, approximately \$800,000 is for the designs to expand Warhill High School and to add an auxiliary gym. Also included in the overall funding are the partial interior refurbishments at Norge, James River and Stonehouse elementary schools; roof repair at Stonehouse and Matoaka elementary schools; the start of HVAC replacement at Berkeley middle school; window replacement at Toano middle school; replacement of cafeteria equipment and a generator at Jamestown high school; parking lot repair and the replacement of playground equipment. Funding is included in future years for expansion at all three high schools. The addition of an elementary school is new to the plan and funding is set to begin in FY23.



Goal: Fiscally Efficient Government

The County continues to strive to find innovative approaches in fiscal efficiency. A significant Strategic Plan initiative undertaken in FY18 was job classification and compensation study. During the recession, many of our salary ranges dipped below the market average. A consulting firm was hired to re-benchmark the County's positions against similar jobs in other jurisdictions. The firm also assisted with updating job descriptions and matching our compensation plan to those job duties.



The results of the classification and compensation study recommended that 585 positions be adjusted for an approximate total of \$1.2 million. The vast majority of these adjustments are jobs in lower salary ranges. In addition, public safety positions account for 231 or 40% of the adjustments. The implementation strategy for the study's results was a two-year phased-in approach. In FY19, the salary range for all positions impacted by the study were brought up to the minimum amount in the new salary range and any move towards the market was capped at \$750. The remaining "move to market" impact of the study is included in the FY20 budget. This study will help the County remain competitive in hiring new employees, as well as retain our existing outstanding work force.

It is important to note that not all of the County's positions are affected by the study and in order to not immediately fall behind the market again, the budget includes an average 3% raise effective October 1, 2019. Funding has also been included in the FY20 budget to share in the increased cost of health insurance coverage offered to our employees.



Goal: Sustainable Long-term Water Supply

The James City Service Authority (the Authority) was established on in 1969 as a legally separate entity to provide water and sewer service to County residents as permitted under the Code of Virginia (1950), as amended (the Enabling Act). The Enabling Act authorizes the Authority, among other things, to: a) acquire, construct, improve, extend, operate, and maintain any water, sewer, sewage disposal, or garbage/refuse collection and disposal system; b) issue revenue bonds of the Authority, payable solely from revenues, to pay all or any part of the cost of such systems; c) fix, revise, charge, and collect rates, fees, and charges for the use of and for the services furnished or to be furnished by any system operated by the Authority; and d) enter into contracts with the Commonwealth of Virginia, or with any municipality, county, corporation, individual, or any public authority or unit thereof, relating to the services and facilities of any such system of the Authority.

The Enabling Act provides that the Authority is subject in all respects to the jurisdiction of the Department of Environmental Quality – Water Division (DEQ). Although legally separate, the Authority's governing body is appointed by the County's Board of Supervisors.

The James City Service Authority continues to monitor our long-range water supply needs. JCSA's Virginia Department of Environmental Quality (DEQ) 10-year groundwater withdrawal permit was renewed in February 2017. While the permit accommodates JCSA's current withdrawal of approximately 5.4 million gallons per day (MGD), the permit terms also require JCSA to pursue alternative sources to groundwater. JCSA is committed to fully evaluating all options the Board of Directors may consider to meet the community's future water needs.



Maintaining existing infrastructure is another key strategic planning initiative addressed in this budget. JCSEA will continue to evaluate and update its asset management plan, which will identify potential replacement/maintenance needs of water and sewer infrastructure. Projects will be identified to establish what infrastructure should be replaced through preventative maintenance versus which infrastructure should be replaced at the end of its useful life.

JCSEA will continue to replace residential water meters at an accelerated pace, and change to a monthly (from bi-monthly) billing process. Aging infrastructure will be upgraded for the White Oaks Area Water Main Replacement project.

Summary

Strategic planning is a major component of a government's success and the County's commitment to forward thinking and financial planning has provided us with a solid foundation as we face the opportunities and challenges of tomorrow.

It is my pleasure to submit the FY20 Proposed Budget. I wish to express my sincere gratitude to the budget staff in Financial and Management Services, and to the County's Executive Leadership Team and in particular, Jason Purse, Assistant County Administrator and Sue Mellen, Director of Financial and Management Services, for their efforts and expertise during the process.

Respectfully,



Scott A. Stevens
County Administrator



ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Elizabeth Parman, Assistant County Attorney

SUBJECT: An Ordinance to Vacate a Portion of Unimproved Right-of-Way in the Williamsburg West Subdivision

ATTACHMENTS:

	Description	Type
☐	Memo	Cover Memo
☐	Exhibit	Exhibit
☐	Ordinance	Ordinance

REVIEWERS:

Department	Reviewer	Action	Date
Attorney	Kinsman, Adam	Approved	3/8/2019 - 11:58 AM
Publication Management	Daniel, Martha	Approved	3/8/2019 - 12:14 PM
Legal Review	Kinsman, Adam	Approved	3/12/2019 - 5:58 PM
Board Secretary	Fellows, Teresa	Approved	3/19/2019 - 8:35 AM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 1:51 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 1:58 PM

MEMORANDUM

DATE: April 9, 2019

TO: The Board of Supervisors

FROM: Elizabeth Parman, Assistant County Attorney

SUBJECT: An Ordinance to Vacate a Portion of that Certain Plat Entitled "Plat of Parcel A, Old R/W & Parcel B, Old R/W Williamsburg West Section One-A James City County, Virginia."

Brian and Frances Saxton and Zachary Miller (the "Applicants"), owners of property located at 104 Lexington Drive and 102 Lexington Drive, are requesting a vacation of a 0.1825-acre portion of unimproved right-of-way between their two properties. The unimproved right-of-way is more particularly described on that plat entitled "Plat of Parcel A, Old R/W & Parcel B, Old R/W Williamsburg West Section One-A James City County, Virginia" dated January 12, 2019 (the "Plat"). The Board of Supervisors may consider this request and vacate the 0.1825-acre portion of right-of-way pursuant to Code of Virginia § 15.2-2006 et seq.

This portion of right-of-way has not been improved and has not been accepted into the secondary state highway system by the Virginia Department of Transportation. James City County Planning reviewed the request and does not believe that any inconvenience will result if the 0.1825-acre portion of right-of-way is vacated.

The Applicants wish to purchase the unimproved right-of-way pursuant to Code of Virginia § 15.2-2008. Staff recommends a purchase price of \$1,500 which is 25% of the assessed value of the right-of-way and is in conformance with the September 14, 1987 Board Resolution establishing a purchase price for vacated right-of-ways.

The attached Ordinance vacates that 0.1825-acre portion of right-of-way on the Plat and transfers ownership of the vacated right-of-way to the Applicants conditioned on payment of \$1,500 to the James City County Treasurer.

EAP/md
ROW-WbgWest-mem

Attachment

Document prepared by:
Brian Thomas Saxton

After recording, Return to:
Brian Saxton
104 Lexington Dr.
Williamsburg VA 23188

Plat Affidavit

Name of owner(s): Brian T. & Frances Isabel Saxton (lot 36, 104 Lexington Dr.)
Zachary J. Miller (lot 35, 104 Lexington Dr.)

Name of surveyor: Randall R. Parker L.S. / Parker Surveying Inc.
Tax Map # 3231000036 & 3810200035

The attached plat, courses, and distance descriptions made by the above-listed surveyor for the land of the above-listed owner(s), dated 1-12, 2019 for the land located in the () City of Williamsburg or (X) County of James City in the _____ District of, Virginia, described as: (legal description of plat)

Plat of parcel A, Old R/W & Parcel B, Old R/W in Williamsburg West subdivision, Section one-A, Between lots 35 & 36 ~~35 & 36~~ Between addresses 102 & 104 Lexington Dr.

And being the same land acquired by owners by deed dated 9/24/18 (104 Lexington) X _____ (102 Lexington) and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia in Deed Book and Page Number P.B. 26, Pg. 2 & 3 or _____

Instrument number _____, is hereby confirmed and submitted for record in the aforesaid Clerk's Office. 102 Lexington, P.B. 26, Pg. 2 & 3
704 Lexington 180015226 102 Lexington 110007296

Given under my/our hand(s) this 22 day of February, 2019.

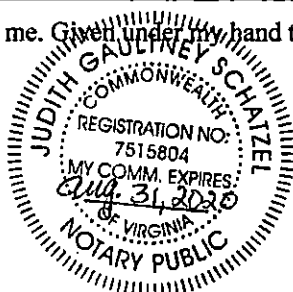
B. T. Saxton
OWNER
Brian T. Saxton
OWNER

ACKNOWLEDGEMENT

Commonwealth of Virginia, WILLIAMSBURG CITY, To-wit:

I, JUDITH GAULTNEY SCHATZEL, a Notary Public in the jurisdiction aforesaid, State of Virginia, do hereby certify that FRANCES ISABEL SAXTON BRIAN THOMAS SAXTON, whose name(s) is/are signed to the aforesaid affidavit have

acknowledged the same before me. Given under my hand this 22nd day of February, 2019.



Judith Gaultney Schatzel
NOTARY PUBLIC

102 Lexington, Lot 35

Given under my/our hand(s) this 27TH day of FEBRUARY, 20 19.

ZACHARY MILLER

OWNER

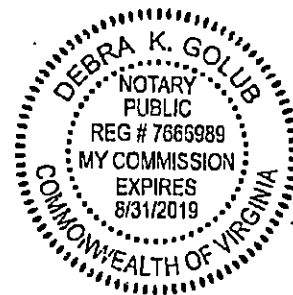
OWNER

ACKNOWLEDGEMENT

Commonwealth of Virginia, James City County, To-wit:

I, Debra K. Golub, a Notary Public in the jurisdiction aforesaid, State of Virginia, do hereby certify that Zachary Miller, whose name(s) is/are signed to the aforesaid affidavit have acknowledged the same before me. Given under my hand this 27th day of February, 20 19.

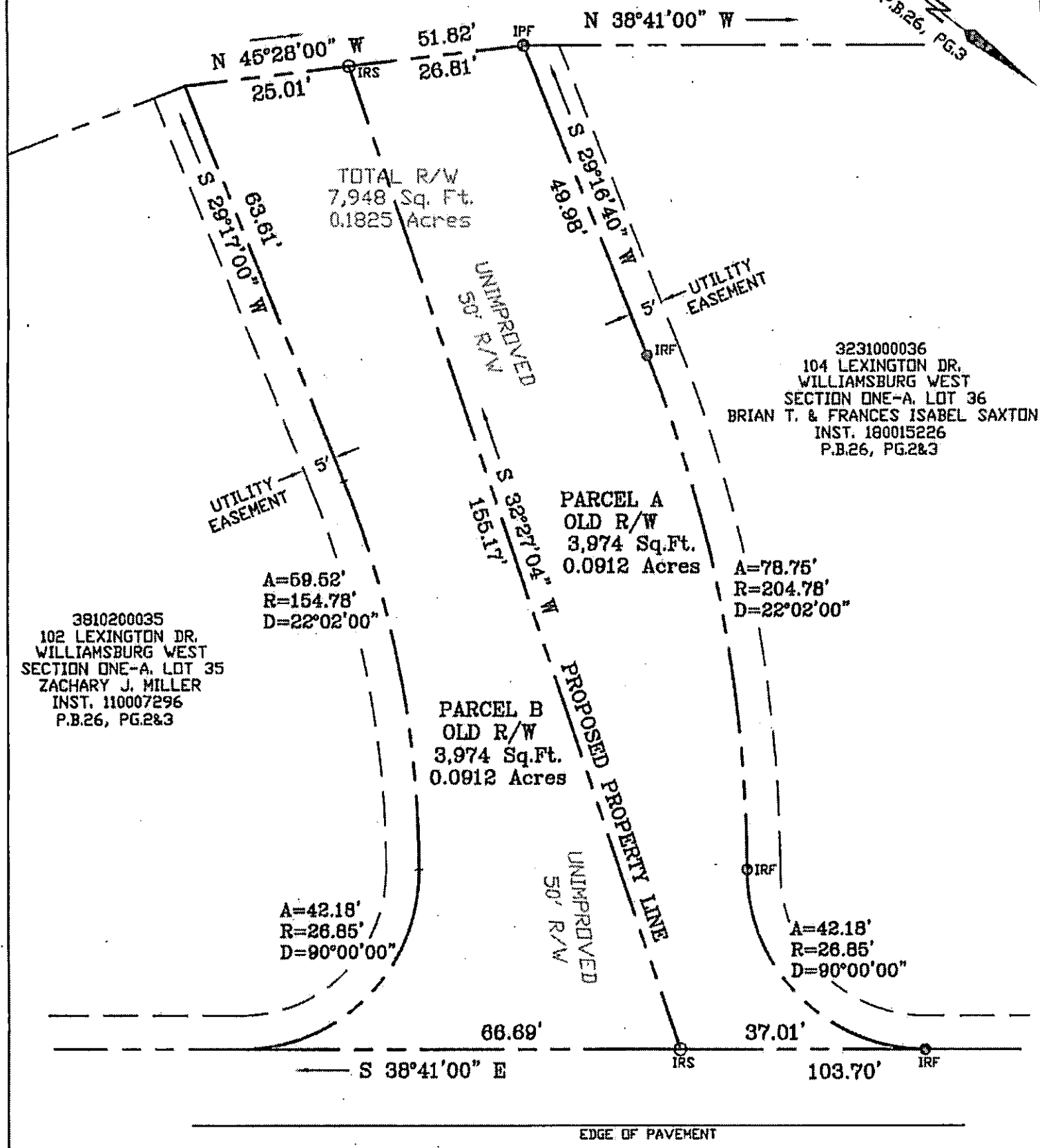
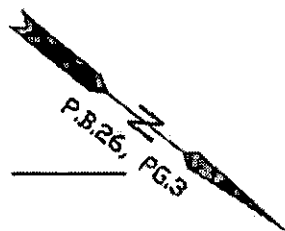
Debra K. Golub
NOTARY PUBLIC



PLAT ATTACHED

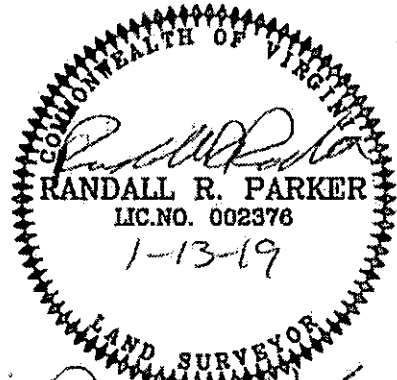
INSTRUMENT 190002868
RECORDED IN THE CLERK'S OFFICE OF
WMSBG/JAMES CITY CIRCUIT ON
FEBRUARY 27, 2019 AT 12:29 PM
MONA A. FOLEY, CLERK
RECORDED BY: JLZ

FORDS COLONY
SECTION XV
GREENWAY / COMMON AREA



3231000036
104 LEXINGTON DR,
WILLIAMSBURG WEST
SECTION ONE-A, LOT 36
BRIAN T. & FRANCES ISABEL SAXTON
INST. 180015226
P.B.26, PG.2&3

3810200035
102 LEXINGTON DR,
WILLIAMSBURG WEST
SECTION ONE-A, LOT 35
ZACHARY J. MILLER
INST. 110007296
P.B.26, PG.2&3



PURPOSE OF PLAT
BRIAN T. & FRANCES ISABEL SAXTON
AND ZACHARY J. MILLER WISH TO PURCHASE
PARCEL A, OLD R/W & PARCEL B, OLD R/W, ADJACENT
TO THEIR PROPERTIES FROM JAMES CITY COUNTY

BETWEEN 102 & 104 LEXINGTON DRIVE

PLAT OF
PARCEL A, OLD R/W & PARCEL B, OLD R/W
WILLIAMSBURG WEST
SECTION ONE-A
JAMES CITY COUNTY, VIRGINIA

I, RANDALL R. PARKER, LAND SURVEYOR, HEREBY CERTIFY THAT THE PROPERTY SHOWN ON THIS PLAT WAS SURVEYED ON THIS DATE AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.
THERE ARE NO ENCROACHMENTS OF OTHER BUILDINGS EXCEPT AS SHOWN.

PARKER SURVEYING, INC.
6858 MICHAEL LANE
HAYES, VIRGINIA 23072
PHONE: 804-884-0800

JOB #: 18-175	DRAWN: RRP	F.B.-PG: 58-59	TO: SAXTON	SCALE: 1"= 20'	DATE: 1-12-19
------------------	---------------	-------------------	---------------	-------------------	------------------

ORDINANCE NO. _____

AN ORDINANCE TO VACATE A PORTION OF THAT CERTAIN PLAT ENTITLED "PLAT OF PARCEL A, OLD R/W & PARCEL B, OLD R/W WILLIAMSBURG WEST SECTION ONE-A JAMES CITY COUNTY, VIRGINIA" DATED 1-12-19.

WHEREAS, application has been made by Brian and Frances Saxton and Zachary Miller (the "Applicants"), owners of property located at 104 Lexington Drive and 102 Lexington Drive, to vacate certain lines, words, numbers, and symbols on a plat more particularly described below so as to discontinue an unimproved 0.1825-acre portion of right-of-way; and

WHEREAS, pursuant to Section 15.2-2008 of the Code of Virginia, 1950, as amended (the "Virginia Code"), the Applicants wish to purchase the proposed vacated portion of right-of-way; and

WHEREAS, the Applicants have agreed to a purchase price of \$1,500 which is 25% of the assessed value of the property in conformance with the September 14, 1987 Board Resolution; and

WHEREAS, notice that the Board of Supervisors (the "Board") of James City County would consider such application has been given pursuant to Section 15.2-2006 of the Virginia Code; and

WHEREAS, the Board held a public meeting and did consider such application on the 9th day of April 2019 and the Board was of the opinion that such vacation would not result in any inconvenience.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia that:

1. A portion of that certain plat entitled "Plat of Parcel A, Old R/W & Parcel B, Old R/W Williamsburg West Section One-A James City County, Virginia" and recorded as instrument number 190002868 in the Clerk's Office of the Circuit Court of James City County, Virginia, is so vacated thereby discontinuing that "Total R/W 7,948 Sq. Ft. 0.1825 Acres," and transferring ownership of "Parcel A Old R/W 3,974 Sq. Ft. 0.0912 Acres" to Brian T. and Frances Isabel Saxton and transferring ownership of "Parcel B Old R/W 3,974 Sq. Ft. 0.0912 Acres" to Zachary J. Miller.
2. This Ordinance of vacation is conditioned on the Applicants delivering payment in the amount of \$1,500 to the James City County Treasurer within one year from the date of adoption.
3. Pursuant to Section 15.2-2006 of the Virginia Code, a certified copy of this Ordinance of vacation shall be recorded as deeds are recorded and indexed in the name of the locality once said condition is fulfilled.

James O. Icenhour, Jr.
Chairman, Board of Supervisors

VOTES
AYE NAY
ABSTAIN

ATTEST:

HIPPLE	_____	_____	_____
LARSON	_____	_____	_____
SADLER	_____	_____	_____
MCGLENNON	_____	_____	_____
ICENHOUR	_____	_____	_____

Teresa J. Fellows
Deputy Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April, 2019.

ROW-WbgWest-ord

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Elizabeth Parman, Assistant County Attorney

SUBJECT: An Ordinance to Amend Section 2-15.1 of the County Code, Authority to obtain criminal history record information for employees

ATTACHMENTS:

	Description	Type
☐	Memo	Cover Memo
☐	Ordinance	Ordinance
☐	Final Ordinance	Ordinance

REVIEWERS:

Department	Reviewer	Action	Date
Attorney	Kinsman, Adam	Approved	3/18/2019 - 3:06 PM
Publication Management	Burcham, Nan	Approved	3/18/2019 - 3:13 PM
Legal Review	Kinsman, Adam	Approved	3/18/2019 - 3:16 PM
Board Secretary	Fellows, Teresa	Approved	3/19/2019 - 8:35 AM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 1:51 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 1:58 PM

MEMORANDUM

DATE: April 9, 2019

TO: The Board of Supervisors

FROM: Elizabeth Parman, Assistant County Attorney

SUBJECT: Ordinance to Amend and Reordain Chapter 2, Administration, Article IV, Officers and Employees, Section 2-15.1, Authority to Obtain Criminal History Record Information for Employees, etc.

Section 2-15.1 of the James City County Code currently authorizes the County Administrator or his designees to obtain criminal history record information from the Virginia Central Criminal Records Exchange on County employees, applicants, and volunteers. This section, in its current form, does not require submittal of fingerprints and personal descriptive information for the purpose of obtaining criminal history record information as described in Sections 15.2-1503.1 and 15.2-1505.1 of the Code of Virginia. Because employees are not required by Ordinance to supply the aforementioned information, the County cannot get needed criminal history information in a timely manner. The absence of this requirement has created unnecessary administrative hurdles for the James City County Fire Department when requesting criminal history information for applicants. Amending this section of the Code will eliminate unnecessary hurdles.

I recommend that Section 2-15.1 of the James City County Code be amended to allow the County Administrator or his designee to require employees, applicants, and volunteers to submit to fingerprinting and provide personal descriptive information for the purpose of obtaining criminal history record information.

EP/md
Sec2-15.1CrimRec-mem

Attachment

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 2, ADMINISTRATION, ARTICLE IV, OFFICERS AND EMPLOYEES, SECTION 2-15.1, AUTHORITY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION FOR EMPLOYEES, ETC.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 2, Administration, is hereby amended and reordained by amending Section 2-15.1, Authority to obtain criminal history record information for employees, etc.

Chapter 2. Administration

Section 2-15.1. Authority to obtain criminal history record information for employees, etc.

- a) The county administrator or his designees, *is are* authorized, *in the interest of public welfare and safety*, to *require fingerprinting and to obtain and access state and national* criminal history record information ~~from the Virginia Central Criminal Records Exchange of the Department of State Police on~~ *in regards* to county employees and any applicant for employment, applicant for volunteer position, *and applicant for a* permit or a license with the county to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, volunteer position, permit, or license.
- b) *Any employee, applicant, or volunteer described in this section shall, if required, submit to fingerprinting and provide personal descriptive information and any other necessary paperwork to be forwarded with the fingerprints through the Virginia State Police Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining state and national criminal history record information regarding such applicant, employee, or volunteer.* Applicants for employment shall be required to pay the cost of fingerprinting and criminal history records check or both. The cost shall be set by the county budget document each year.

State Law reference - Background checks required for certain employees and licensees, Code of Va. § 15.2-1503.1; Applicant preemployment information - Code of Va. § 15.2-1505.1; *Dissemination of criminal history record information - Code of Va. § 19.2-389.*

James O. Icenhour, Jr.
Chairman, Board of Supervisors

ATTEST:

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
HIPPLE	_____	_____	_____
LARSON	_____	_____	_____
SADLER	_____	_____	_____
MCGLENNON	_____	_____	_____
ICENHOUR	_____	_____	_____

Teresa J. Fellows
Deputy Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April,
2019.

Sec2-15.1CrimRec-ord

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 2, ADMINISTRATION, ARTICLE IV, OFFICERS AND EMPLOYEES, SECTION 2-15.1, AUTHORITY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION FOR EMPLOYEES, ETC.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 2, Administration, is hereby amended and reordained by amending Section 2-15.1, Authority to obtain criminal history record information for employees, etc.

Chapter 2. Administration

Section 2-15.1. Authority to obtain criminal history record information for employees, etc.

- a) The county administrator or his designees, are authorized, in the interest of public welfare and safety, to require fingerprinting and to obtain and access state and national criminal history record information in regards to county employees and any applicant for employment, applicant for volunteer position, and applicant for a permit or a license with the county to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, volunteer position, permit, or license.
- b) Any employee, applicant, or volunteer described in this section shall, if required, submit to fingerprinting and provide personal descriptive information and any other necessary paperwork to be forwarded with the fingerprints through the Virginia State Police Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining state and national criminal history record information regarding such applicant, employee, or volunteer. Applicants for employment shall be required to pay the cost of fingerprinting and criminal history records check or both. The cost shall be set by the county budget document each year.

State Law reference - Background checks required for certain employees and licensees, Code of Va. § 15.2-1503.1; Applicant preemployment information - Code of Va. § 15.2-1505.1; Dissemination of criminal history record information - Code of Va. § 19.2-389.

Sec2-15.1CrimRec-ord-final

ITEM SUMMARY

DATE: 4/9/2019

TO: Board of Supervisors

FROM: Terry Costello, Deputy Zoning Administrator

SUBJECT: SUP-19-0004, JCSA College Creek Pipeline Project

ATTACHMENTS:

	Description	Type
☐	Staff Report	Staff Report
☐	Resolution	Resolution
☐	Location Map	Backup Material
☐	Master Plan	Backup Material
☐	Environmental Inventory and Constraints	Backup Material
☐	Unapproved Minutes of the March 6, 2019 Planning Commission Meeting	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	4/2/2019 - 2:11 PM
Development Management	Holt, Paul	Approved	4/2/2019 - 2:11 PM
Publication Management	Daniel, Martha	Approved	4/2/2019 - 2:19 PM
Legal Review	Kinsman, Adam	Approved	4/2/2019 - 4:17 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 4:17 PM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 4:19 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 4:35 PM

SPECIAL USE PERMIT-19-0004. James City Service Authority College Creek Pipeline Project

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

SUMMARY FACTS

Applicant: Mr. Mike Gaffney, of Rummel, Klepper, & Kahl (RK&K)

Land Owner: Virginia Department of Transportation (VDOT)

Proposal: To allow for the installation of +/- 1,100 linear feet of a 14-inch water main

Location: Under College Creek, along the south side of the Humelsine Parkway (State Route 199) eastbound bridge.

Tax Map/Parcel Nos.: Bounded by Humelsine Parkway, 4920100002 and 49103A0002

Project Acreage: +/- .95 acres

Zoning: R-5, Multifamily Residential, R-8, Rural Residential, and R-1, Limited Residential

Comprehensive Plan: Low Density Residential

Primary Service Area: Inside

Staff Contact: Terry Costello, Deputy Zoning Administrator

PUBLIC HEARING DATES

Planning Commission: March 6, 2019, 6:00 p.m.
Board of Supervisors: April 9, 2019, 5:00 p.m.

FACTORS FAVORABLE

1. With the recommended conditions, the proposal is compatible with surrounding zoning and would not impact surrounding development.
2. The proposal promotes public health and safety by providing reliable and efficient water service.
3. There will be limited land disturbance due to using the trenchless horizontal directional drilling method for installation.
4. The proposal also includes the co-location of fiber optics, which will add support to the County’s commitment to provide a cost-effective high-speed information service.

FACTORS UNFAVORABLE

1. With the attached Special Use Permit (SUP) conditions staff finds that there are no unfavorable factors.

SUMMARY STAFF RECOMMENDATION

Approval of this application, subject to the attached conditions.

PLANNING COMMISSION RECOMMENDATIONS

At its March 6, 2019 meeting, the Planning Commission recommended approval of this application by a vote of 6-0. (Leverenz absent)

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.

SPECIAL USE PERMIT-19-0004. James City Service Authority College Creek Pipeline Project

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

PROPOSED CHANGES MADE SINCE THE PLANNING COMMISSION MEETING

None.

PROJECT DESCRIPTION

Mr. Mike Gaffney of RK&K has applied on behalf of the James City Service Authority (JCSA) to permit the installation of approximately 1,100 linear feet of a 14-inch water main underneath College Creek, along the south side of the Humelsine Parkway (State Route 199) eastbound bridge. The property is currently VDOT right-of-way, generally bounded by the Humelsine Parkway and Tax Map Parcel Nos. 4820100002 and 49103A0002.

In order to improve local infrastructure and to mitigate the risk of future failures, a new water main is required. The current water main is located along the north side of Humelsine Parkway westbound bridge and is attached to the bridge itself. This waterline was installed in 1976 and is in need of major repair and rehabilitation.

Horizontal Directional Drilling under College Creek is expected to be the method of construction. The length of the pipeline would be approximately 1,100 feet from the entry and exit points. The entry point is proposed to be approximately 200-feet west and 50-feet south of the western end of the eastbound bridge. The exit point is proposed to be approximately 200-feet east and 50-feet south of the eastern end of the bridge.

Simultaneously, the County will also be co-locating a fiber optic cable. This project will enhance the County’s communication system and will also serve the Williamsburg-James City County School Division.

The work will take place within VDOT’s right-of-way and within the JCSA easement on the east end (at the exit point) of the bridge. Land disturbance would be limited to clearing of staging areas as needed. Agency permits will be required from the United States Army Corps of Engineers, Virginia Marine Resources Commission, and the Virginia Department of Environmental Quality. Condition No. 3 will ensure that disturbed areas are replanted.

PLANNING AND ZONING HISTORY

- The current water main is located on the north side of Humelsine Parkway eastbound bridge. This existing water line was installed in 1976 when water lines were a permitted use in accordance with the issuance of a conditional use permit. However, staff was unable to locate a conditional use permit in County records.
- In 1979, the Zoning Ordinance was changed to require an SUP for water lines that were located outside a subdivision or other approved development.
- The proposed line will be installed under College Creek and will handle a larger capacity of water than what is currently in use. Therefore, an SUP is required.

SURROUNDING ZONING AND DEVELOPMENT

- The location of the project is under College Creek, along the south side of the Humelsine Parkway eastbound bridge. It is bordered on the west by the Williamsburg Landing Development, south by College Creek, and east by undeveloped land owned by College Creek Estates. Property to the north of the site is located in the City of Williamsburg.

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.

SPECIAL USE PERMIT-19-0004. James City Service Authority College Creek Pipeline Project

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

- Surrounding Zoning Designations Include:
 - R-5, Multifamily Residential to the west (Williamsburg Landing), R-8, Rural Residential to the south (College Creek), and R-1, Limited Residential to the west (College Creek Estates).
 - The two properties in the City of Williamsburg are zoned RS-1, Single-Family Residential.

COMPREHENSIVE PLAN

- The properties are designated Low Density Residential on the 2035 Comprehensive Plan Land Use Map.
- Principal suggested uses include single-family and multifamily units, accessory units, cluster housing, and recreation areas.
- Although water facilities are not a suggested principal use, staff finds that this proposal is consistent with Comprehensive Plan as it promotes public health and safety, as well as supporting the County’s commitment to a high speed information service.
- Surrounding Comprehensive Plan Designations Include:
 - Low Density Residential to the east, south, and west.

PUBLIC IMPACTS

1. Anticipated Impact on Public Facilities and Services:
 - a. *Traffic.* Impacts to traffic will be temporary. Access to the site will be through the right-of-way on the west side of the bridge at College Creek. There may be times where one lane may be closed to accommodate equipment moving to and from the

site. JCSA has estimated that this project should take 2-3 weeks and will take place in the fall or winter months to avoid summer traffic.

- b. *Schools/Fire/Utilities.* No impacts anticipated. JCSA and the Fire Department have reviewed the proposals and have no comments.
2. Environmental: There is a Resource Protection Area (RPA) located in the project area. It will be necessary to obtain an approval from the Chesapeake Bay Board for activities in the RPA. The proposal is located in a special flood hazard area. All activities shall comply with the Floodplain Area Regulations of the Zoning Ordinance.
 3. Nearby and Surrounding Properties:
 - a. *Visual Impacts:* Access to the site will be off Humelsine Parkway on the eastbound side of the bridge. During the installation of the water main, equipment, and construction trucks may be visible from Humelsine Parkway. There will be no equipment permanently stored on-site. No permanent access is required once the water main is installed.
 - b. *Noise and Other Impacts:* Noise associated with the project will be limited, with the volume anticipated to similar to that produced by a generator. The directional drilling process does not produce vibrations.

PROPOSED CONDITIONS

- The full text of the proposed conditions is attached.

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.

SPECIAL USE PERMIT-19-0004. James City Service Authority College Creek Pipeline Project

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

STAFF RECOMMENDATION

Staff recommends approval, subject to the attached conditions.

TC/nb
SUP19-04JCSACollegeCr

Attachments:

1. Resolution SUP-19-0004
2. Location Map
3. Master Plan “Water Main Layout Plan” dated February 2019
4. Environmental Inventory and Constraints
5. Unapproved Minutes of the March 6, 2019, Planning Commission Meeting

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.

RESOLUTION

CASE NO. SUP-19-0004. JAMES CITY SERVICE AUTHORITY

COLLEGE CREEK PIPELINE PROJECT

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

WHEREAS, the James City Service Authority has applied for an SUP to allow for the installation of +/- 1,100 linear feet of a 14-inch water main under College Creek along the south side of the Humelsine Parkway (State Route 199) eastbound bridge (the “Project”); and

WHEREAS, the Project is depicted on the plan prepared by Rummel, Klepper, & Kahl titled “College Creek Water Main Crossing” and dated February 2019; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. SUP-19-0004; and

WHEREAS, the Planning Commission, following its public hearing on March 6, 2019, recommended approval of this application by a vote of 6-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after consideration of the factors in Section 24-9 of the James City County Code, does hereby approve the issuance of Case No. SUP-19-0004 as described herein with the following conditions:

1. Master Plan: The SUP shall only be valid for a water transmission main of +/- 1,100 linear feet (the “Project”). Development of the Project shall be generally in accordance with the master plan titled “College Creek Water Main Crossing” dated February 2019, with any deviations considered pursuant to Section 24-23(a)(2) of the County Code, as amended.
2. Construction Hours: The hours of construction of the Project shall be limited to daylight hours, Monday through Friday. Limited night and weekend work may be approved by the Director of Planning if requested in advance and it is determined that such work will not negatively affect surrounding properties.
3. Replanting: Prior to issuance of a land disturbing permit, a plan addressing the replanting of disturbed vegetation within the right-of-way and utility easement shall be submitted and approved by the Director of Planning or his designee. The intent of the plan is to restore the area to pre-land disturbing conditions.
4. Lighting: There shall be no new permanent lighting associated with the Project.

- 5. Construction: Construction of the Project shall commence within 24 months from the date of issuance of the SUP, or the SUP shall become void. Construction shall be defined as clearing, grading, and drilling necessary for the Project.
- 6. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

James O. Icenhour, Jr.
 Chairman, Board of Supervisors

ATTEST:

VOTES

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
--	------------	------------	----------------

HIPPLE	_____	_____	_____
LARSON	_____	_____	_____
SADLER	_____	_____	_____
MCGLENNON	_____	_____	_____
ICENHOUR	_____	_____	_____

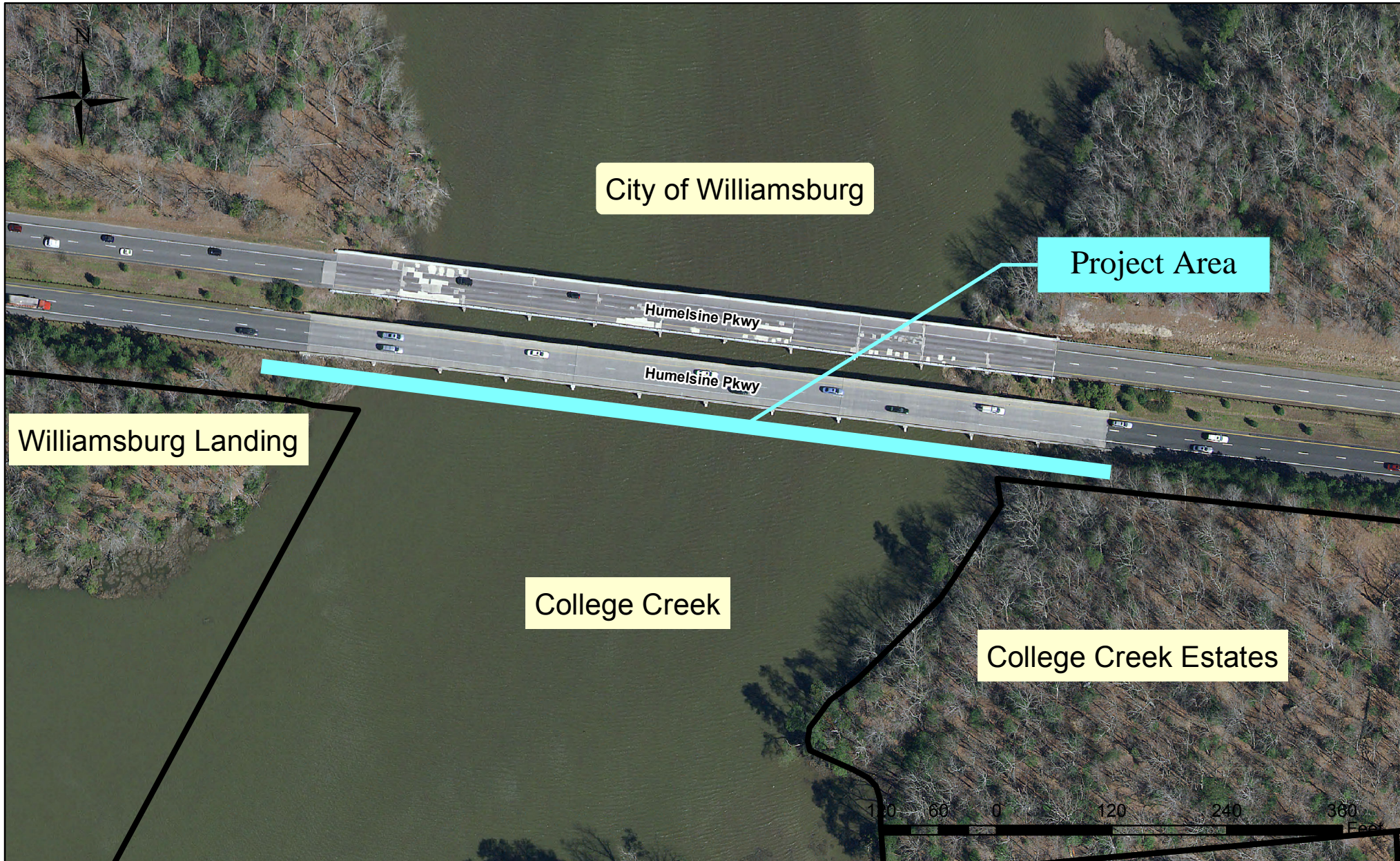
Teresa J. Fellows
 Deputy Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April, 2019.

SUP19-04JCSACollegeCr-res

SUP-19-0004

JCSA College Creek Pipeline Project

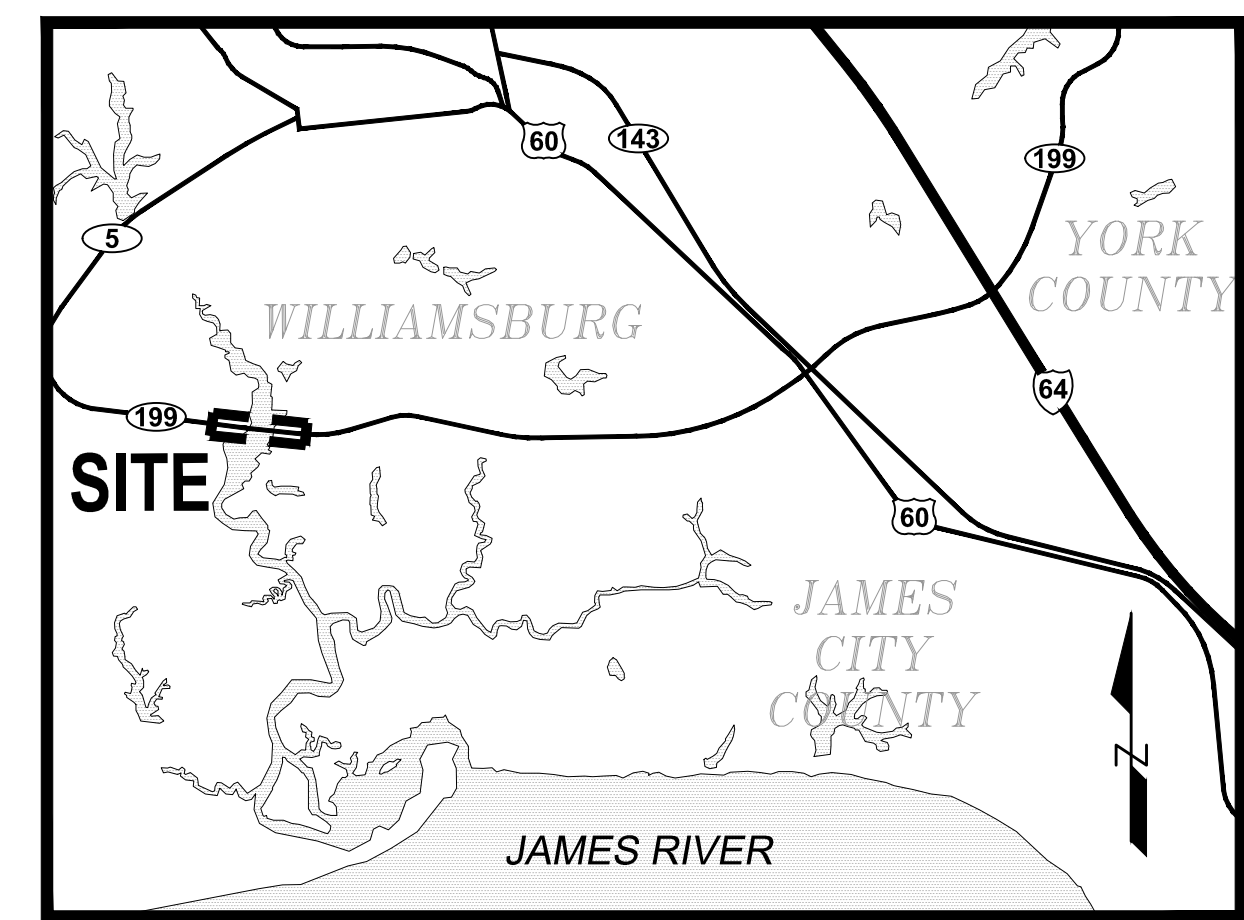
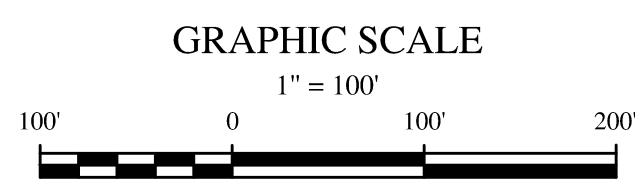




COLLEGE CREEK WATER MAIN LAYOUT PLAN
 SCALE: 1" = 100'

- NOTES:**
1. HDPE PIPE LAYOUT SHALL BE COORDINATED WITH INGRESS/EGRESS REQUIREMENTS.
 2. RPA AND WETLAND LIMITS SHOWN AS DELINEATED BY RK&K PENDING JURISDICTIONAL DETERMINATION.
 3. CONTRACTOR SHALL INCLUDE TWO 2-INCH CONDUITS OF EQUAL LENGTH FOR PULL BACK WITH THE 14-INCH HDPE WATER MAIN.
 4. 2-INCH CONDUIT SHALL BE LEFT ABOVE GROUND FULL LENGTH FOR RETRIEVAL AND INSTALLATION OF FIBER OPTIC CABLE BY OTHERS.

- SITE DATA:**
1. LAND DISTURBING ACTIVITIES ARE LIMITED TO ZONE 'X' ACCORDING TO FEMA FLOOD MAP #51095C0202D (DATED 12/16/2015) AND IS SUBJECT TO MINIMAL FLOOD HAZARD.
 2. THE TRENCHLESS HORIZONTAL DIRECTIONAL DRILL INSTALLATION WILL CROSS UNDER ZONE 'AE' WITH A FLOOD ELEVATION OF 7.0 ACCORDING TO FEMA FLOOD MAP #51095C0202D (DATED 12/16/2015)



VICINITY MAP
 SCALE: 1" = 3,000'

REVISIONS

DATE

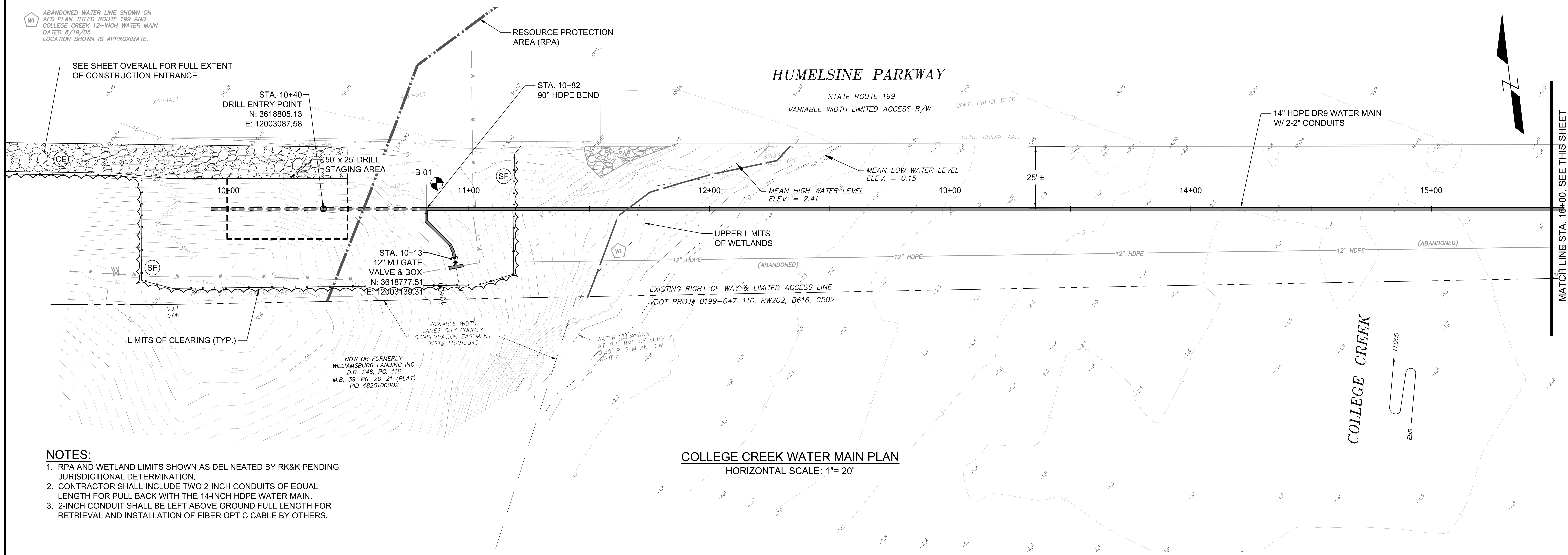
COLLEGE CREEK WATER MAIN CROSSING

WATER MAIN LAYOUT PLAN

DRAWN BY: PCP
 DESIGNED BY: AWP
 DATE: FEBRUARY 2019
 SCALE: AS NOTED

SHEET
OVERALL

ABANDONED WATER LINE SHOWN ON AES PLAN TITLED ROUTE 199 AND COLLEGE CREEK 12-INCH WATER MAIN DATED 8/19/05. LOCATION SHOWN IS APPROXIMATE.



SEE SHEET OVERALL FOR FULL EXTENT OF CONSTRUCTION ENTRANCE

STA. 10+40
DRILL ENTRY POINT
N: 3618805.13
E: 12003087.58

STA. 10+13
12" MJ GATE
VALVE & BOX
N: 3618777.51
E: 12003139.31

STA. 10+82
90° HDPE BEND

HUMELSINE PARKWAY

STATE ROUTE 199
VARIABLE WIDTH LIMITED ACCESS R/W

14" HDPE DR9 WATER MAIN
W/ 2-2" CONDUITS

MEAN HIGH WATER LEVEL
ELEV. = 2.41

MEAN LOW WATER LEVEL
ELEV. = 0.15

UPPER LIMITS
OF WETLANDS

EXISTING RIGHT OF WAY & LIMITED ACCESS LINE
VDOT PROJ# 0199-047-110, RW202, B616, C502

LIMITS OF CLEARING (TYP.)

NOW OR FORMERLY
WILLIAMSBURG LANDING INC
O.B. 246, PG. 116
M.B. 39, PG. 20-21 (PLAT)
PID 4820100002

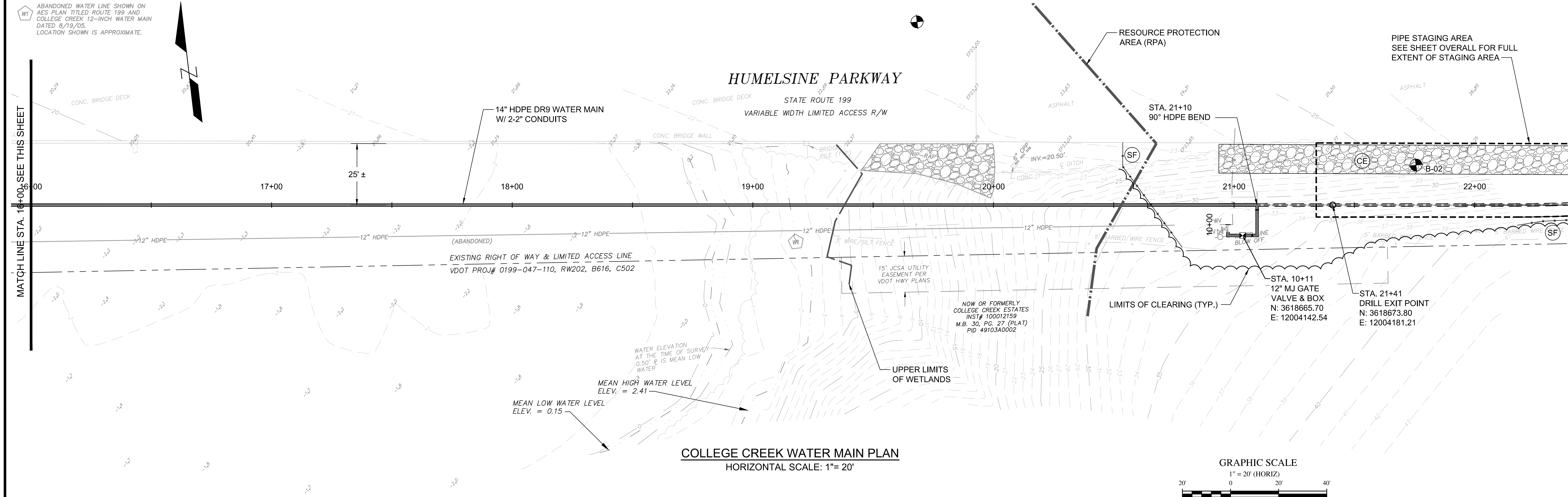
VARIABLE WIDTH
JAMES CITY COUNTY
CONSERVATION EASEMENT
INST# 110015345

WATER ELEVATION
AT THE TIME OF SURVEY
0.50' ± IS MEAN LOW
WATER

COLLEGE CREEK WATER MAIN PLAN
HORIZONTAL SCALE: 1"= 20'

- NOTES:**
1. RPA AND WETLAND LIMITS SHOWN AS DELINEATED BY RK&K PENDING JURISDICTIONAL DETERMINATION.
 2. CONTRACTOR SHALL INCLUDE TWO 2-INCH CONDUITS OF EQUAL LENGTH FOR PULL BACK WITH THE 14-INCH HDPE WATER MAIN.
 3. 2-INCH CONDUIT SHALL BE LEFT ABOVE GROUND FULL LENGTH FOR RETRIEVAL AND INSTALLATION OF FIBER OPTIC CABLE BY OTHERS.

ABANDONED WATER LINE SHOWN ON AES PLAN TITLED ROUTE 199 AND COLLEGE CREEK 12-INCH WATER MAIN DATED 8/19/05. LOCATION SHOWN IS APPROXIMATE.



MATCH LINE STA. 16+00-SEE THIS SHEET

14" HDPE DR9 WATER MAIN
W/ 2-2" CONDUITS

RESOURCE PROTECTION
AREA (RPA)

PIPE STAGING AREA
SEE SHEET OVERALL FOR FULL
EXTENT OF STAGING AREA

HUMELSINE PARKWAY

STATE ROUTE 199
VARIABLE WIDTH LIMITED ACCESS R/W

STA. 21+10
90° HDPE BEND

EXISTING RIGHT OF WAY & LIMITED ACCESS LINE
VDOT PROJ# 0199-047-110, RW202, B616, C502

MEAN HIGH WATER LEVEL
ELEV. = 2.41

MEAN LOW WATER LEVEL
ELEV. = 0.15

UPPER LIMITS
OF WETLANDS

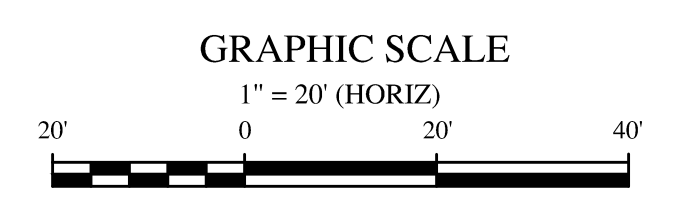
NOW OR FORMERLY
COLLEGE CREEK ESTATES
INST# 10002159
M.B. 30, PG. 27 (PLAT)
PID 49103A0002

STA. 10+11
12" MJ GATE
VALVE & BOX
N: 3618665.70
E: 12004142.54

STA. 21+41
DRILL EXIT POINT
N: 3618673.80
E: 12004181.21

LIMITS OF CLEARING (TYP.)

COLLEGE CREEK WATER MAIN PLAN
HORIZONTAL SCALE: 1"= 20'



James City Service Authority
DEPARTMENT OF ENGINEERING
101 MOUNTAIN BAY ROAD
WILLIAMSBURG, VA 23185

SPECIAL USE PERMITTING SUBMITTAL NOT FOR CONSTRUCTION

REVISIONS	DATE

COLLEGE CREEK WATER MAIN CROSSING
COLLEGE CREEK WATER MAIN PLAN
STA. 10+00 TO STA. 22+25

DRAWN BY: PCP
DESIGNED BY: AWP
DATE: FEBRUARY 2019
SCALE: AS NOTED

SHEET
SITE

FILE NAME: T:\PROJECTS\2018\18240 ColCreek\MA CAD\0218240-C-(SpecialUsePermit).dwg LAYOUT NAME: SHEET PLAN PLOTTED: Monday, February 25, 2019 - 5:56pm



COLLEGE CREEK WATER MAIN CROSSING PROJECT

ENVIRONMENTAL INVENTORY AND CONSTRAINTS

JANUARY 2019

1. INTRODUCTION

The James City Service Authority (JCSA) proposes to provide a new primary supply line across College Creek, along the south side of the Humelsine Parkway (State Route 199) eastbound (EB) bridge, as part of the College Creek Water Main Crossing Project in James City County, Virginia. The Study Area for the project is shown in **Figure 1-1**.

Horizontal Directional Drilling (HDD) under College Creek is expected to be the method of construction for the new pipeline. The length of the pipeline would be approximately 1,062 feet (ft) from the entry and exit points. The entry point is proposed to be approximately 200 ft west and 50 ft south of the western end of the EB bridge. The exit point is proposed to be approximately 200 ft east and 50 ft south of the eastern end of the bridge.

2. PURPOSE

The purpose of this report is to document the existing environmental resources and potential constraints within the Study Area to obtain a Special Use Permit from James City County. JCSA completed the constraints analysis to assist James City County in identifying those key environmental issues that should be given consideration during the planning and design phase of the proposed water main crossing. It is intended to facilitate the project planning process, assist the engineering team in evaluating various alternatives, define a preferred project, and assess potential permitting and mitigation requirements. The resources evaluated herein include water resources, threatened and endangered species and species habitat, forested habitat, soils, floodplains, and topography.

3. METHODS

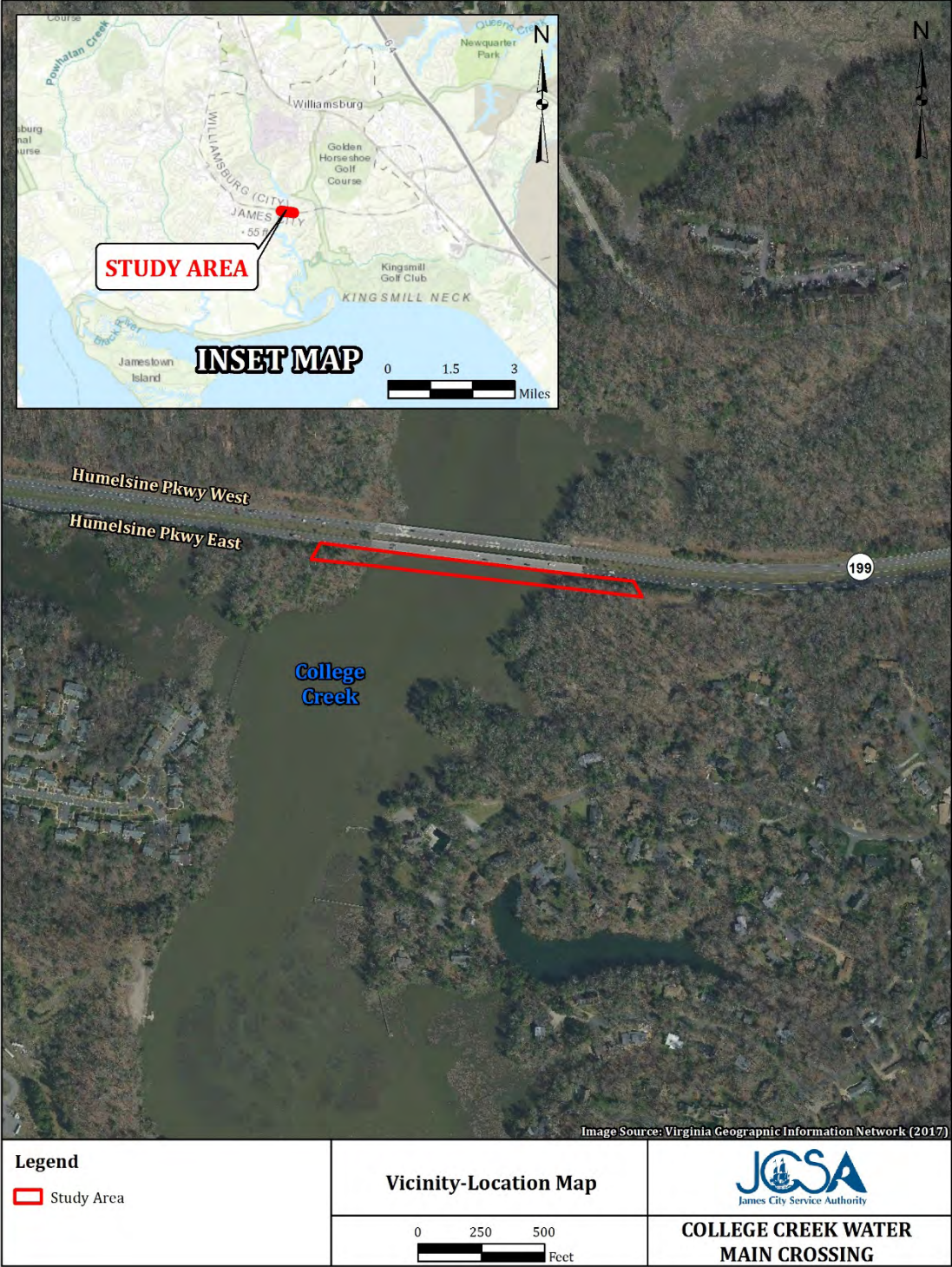
Natural resources in the Study Area were identified based on several sources including: review of existing available literature; Geographic Information System (GIS) databases; and mapping and field reconnaissance of the Study Area which occurred on January 9, 2019. The Study Area was established as an area in which the existing conditions would be assessed using GIS overlays of the Study Area and the geographic limits of the resources being analyzed. Database information was obtained from federal, state, and/or local agencies for each resource assessed in the following sections.

A limit-of-disturbance (LOD) has been developed for the project. The LOD is based on design-level engineering which accommodates potential temporary and permanent impacts, and construction access. The LOD was used to quantify the environmental impacts of the project and is shown on the Master Plan mapping included with the application submittal.

4. ENVIRONMENTAL INVENTORY AND CONSTRAINTS

The following sections provide details on the existing natural resources, and potential constraints, considered in this analysis. Environmental criteria are natural features or areas identified as important habitats that may interact with construction or operational activities of the JCSA College Creek Water Main Crossing Project.

Figure 1-1: Vicinity-Location Map



Water Resources

The river basin including the Study Area was identified through use of the Watershed Boundary Dataset (WBD) maintained by the U.S. Geological Survey (USGS, 2018). The WBD defines the aerial extent of surface water drainage to a point, accounting for all land and surface areas, and identifies hydrologic units representing the watershed boundaries. Each hydrologic unit is given a Hydrologic Unit Code (HUC) as an identifier. According to the data, the Study Area includes a section of College Creek, a tidal tributary of the James River, and occurs entirely within HUC 020802060801 (College Creek).

Navigable waters in the Study Area were identified based on their flow regime (tidal vs. non-tidal), inclusion on the most recent (March 5, 2010) Navigable Waters of the United States (Section 10 of the Rivers and Harbors Act) list produced by the USACE Norfolk District (USACE, 2010a), or inclusion within the Navigable Waterways dataset, as of October 24, 2018, as part of the US Department of Transportation (USDOT)/Bureau of Transportation Statistics' National Transportation Atlas Database (USDOT, 2018).

No waterways within the Study Area are included as navigable waters on the USACE or USDOT lists. However, the USACE, by definition, considers all tidal waters as navigable. Tidal waters in the Study Area include College Creek. Therefore, the total channel length of navigable waters in the Study Area is approximately 63 linear ft.

Waters of the US (WOUS), including wetlands, located within the Study Area were delineated in the field on January 9, 2019 in accordance with the Routine Determination Method as outlined in the *1987 Corps of Engineers Wetland Delineation Manual* (USACE, 1987) and methods described in the *2010 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region* (Version 2.0) (USACE, 2010). Wetland flags were placed in the field at the determined jurisdictional boundaries and sequentially numbered to provide an on-site record of the delineation. The limits of WOUS, including wetlands, were then field located by means of a sub-meter capable GPS unit. Wetland systems were classified in accordance with the USFWS Classification of Wetlands and Deepwater Habitats in the United States (Cowardin et al. 1979).

WOUS, other than wetlands, were investigated in accordance with the limits defined in 33 C.F.R. § 328. The boundaries of non-tidal waters were set at the ordinary high-water mark (OHW). The OHW was determined in the field using physical characteristics established by the fluctuations of water (e.g., change in plant community, changes in the soil character, and shelving), in accordance with the USACE Regulatory Guidance Letter No. 05-05. The boundaries of tidal WOUS, other than wetlands, were set at the high-tide line (HTL); defined in 33 C.F.R. § 328.3(c)(7) as “the line of intersection of the land with the water’s surface at the maximum height reached by a rising tide”. The HTL was determined in the field by locating one or more of the following: the line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, and differences in vegetation.

A total of approximately 0.06 acre of emergent wetlands (PEM), 0.05 acre of scrub/shrub wetlands, and 0.03 acre of tidal shore wetlands (PUS) were identified within the 1.8-acre Study Area during this

investigation. The location of delineated wetlands is depicted on **Figure 4-1**. Dominant species observed within the wetlands include southern bayberry (*Morella cerifera*) and lamp rush (*Juncus effusus*). The JCSA proposes locating the drill entry and exit pits outside of delineated wetland areas. Therefore, no impacts to wetlands are anticipated with this project.

As mentioned above, approximately 63 linear ft of College Creek, a tidal tributary of the James River, occurs in the Study Area. As such, pipeline installation under the creek would be subject to regulation under Section 10 of the Rivers and Harbors Act. In addition, as the waterway is tidal, the Virginia Marine Resources Commission has jurisdiction over the project, and any activities which occur over, in, or under tidal waters and subaqueous bottoms.

Although no impacts are anticipated to WOUS as a result of this project, agency permits would be required from the USACE, VDEQ, and VMRC. The JCSA would apply for, and obtain, the necessary permits prior to initiation of construction activities. As no impacts are anticipated, no mitigation is proposed for the project.

The *Final 2016 305(b)/303(d) Water Quality Assessment Integrated Report* was released by the Virginia Department of Environmental Quality (VDEQ) on April 2, 2018. The report summarizes water quality conditions in Virginia from January 1, 2009 through December 31, 2014 (VDEQ, 2018b). Data from this report is available as GIS shapefiles (VDEQ, 2018c) and this data was used to determine the location and extent of impaired waters in the Study Area. According to the report, College Creek is listed as impaired for aquatic life (**Figure 4-1**). The source of the impairment is unknown. The JCSA would construct the project in accordance with the Virginia Erosion & Sediment Control Law and Regulations. Adherence to the law and regulations would reduce or eliminate pollutants before they are discharged into the impaired water body. Therefore, the project is not expected to contribute to the further impairment of College Creek.

Resource Protection Areas

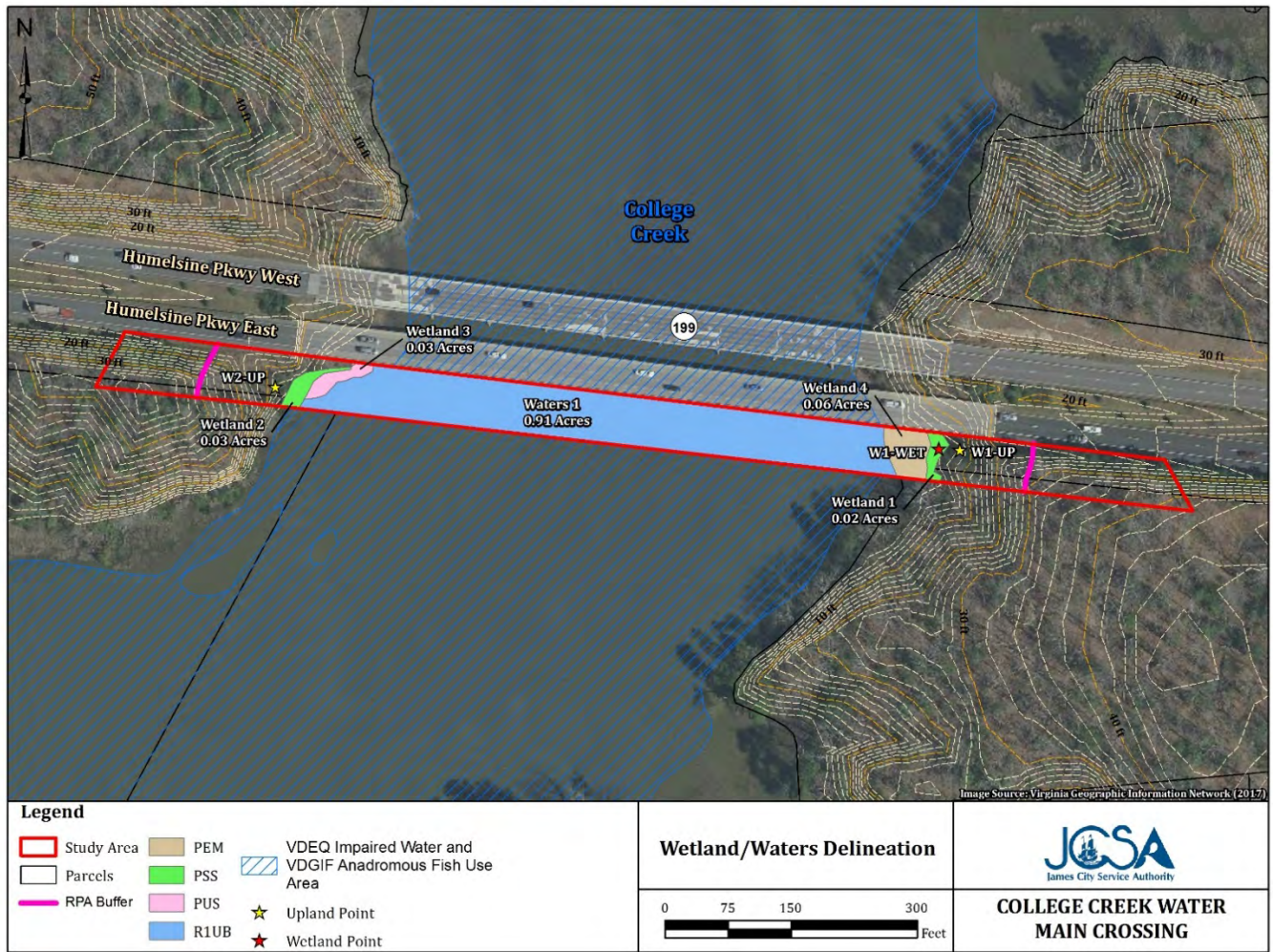
Within the Chesapeake Bay watershed of coastal counties, Resource Protection Areas (RPA) include tidal wetlands, tidal shores, waterbodies with perennial flow, and non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or perennial water bodies, as well as a 100-foot vegetated buffer area located adjacent to and landward of these features. The RPAs preserve water quality by removing excess sediment, nutrients, and potentially harmful substances from groundwater and surface water prior to their entrance into the Chesapeake Bay watershed. The RPAs also serve as protected habitat and corridors for wildlife use and movement.

The RPA limits for the Study Area includes a 100-foot buffer of the upland edge of the delineated PSS wetlands which occur in the Study Area. The limits are shown on **Figure 4-1** and are included on the Master Plan mapping included with the Special Use Permit submittal.

Threatened, Endangered, and Special Status Species and Species Habitat

State- and federally-listed species that are reported to occur within the vicinity of the Study Area were identified through use of the Virginia Department of Game and Inland Fisheries (VDGIF's) Virginia Fish and

Figure 4-1: Wetland/Waters Delineation



Wildlife Information Service (VaFWIS) database and the Virginia Department of Conservation and Recreation-Division of Natural Heritage’s (VDCR-DNH’s) Natural Heritage Database Explorer (NHDE). JCSA attempted to obtain an official species list for federally-listed species using the United States Fish and Wildlife Services’ Information for Planning and Conservation (IPaC) database, however, the database system is not operational due to the government shutdown. The IPaC database would be queried during the permitting phase of the project. At this point, JCSA assumes that the IPaC official species list would include the Northern Long-eared Bat (NLEB) (*Myotis septentrionalis*). Supporting documentation from appropriate agencies with authority over threatened and endangered species is included as **Appendix A** to this report. A list of confirmed federal and/or state-listed species is include with **Table 4-1**. VDGIF’s VaFWIS Coordination Recommendations indicate that coordination is required only for those species listed as “confirmed” in the Study Area search results. No species were confirmed for the Study Area using the VaFWIS database (VDGIF, 2019a).

Table 4-1: Threatened and Endangered Species Mapped within the Vicinity of the Study Area

Species	Status	Source of Listing
Atlantic Sturgeon (<i>Acipenser oxyrinchus</i>)	Federally and State Endangered	NHDE
Northern Long-eared Bat (<i>Myotis septentrionalis</i>)	Federally and State Threatened	IPaC ¹
Small Whorled Pogonia (<i>Isotria medeoloides</i>)	Federally Threatened and State Endangered	NHDE

¹Although not validated with use of the IPaC database, it is anticipated that an official species list for the Study Area would include the NLEB.

Northern Long-Eared Bat – On April 2, 2015, the USFWS determined that the NLEB should be listed as federally threatened under the Section 4d provision (80 FR 17974 – 18033) of the Endangered Species Act. The final ruling to list the NLEB took effect on May 4, 2015. A final 4d rule was issued and became effective as of February 15, 2016. The species was also listed as Threatened in Virginia subsequent to the federal listing.

The NLEB is a medium-sized bat in the genus *Myotis* that can be found throughout the eastern and midwestern US and southern Canada. Roosting habitat includes forested areas with live trees and/or snags with a diameter at breast height (dbh) of at least 3 inches with exfoliating bark, cracks, crevices, and/or other cavities. Trees are considered suitable if they meet those requirements and are located within 1,000 ft of the nearest suitable roost tree, woodlot, or wooded fencerow. Maternity habitat is defined as suitable summer habitat that is used by juveniles and reproductive females.

According to the VDGIF Northern Long-Eared Bat Winter Habitat and Roost Trees Application, no confirmed maternity roost trees or hibernacula are located within the vicinity of the Study Area (VDGIF, 2019b). The trees in the Study Area have the potential to serve as roost trees based on their size. However, trees in the Study Area are all unlikely to be utilized as roosts by NLEB as roosts would not be expected in close proximity to the existing transportation corridor. Therefore, harm to roosting NLEB from tree removal would be unlikely as a result of the project. Further, the JCSA would limit tree removal to the minimum necessary to complete the directional drill of the pipeline. **Appendix B** of this report contains

photographs of the Study Area and existing forested cover in the areas proposed for tree clearing at the drill pit locations.

Small Whorled Pogonia – On October 6, 1994, the USFWS reclassified the small whorled pogonia as a threatened species. It is a member of the orchid family which grows in older hardwood stands of beech, birch, maple, oak, and hickory and prefers slopes near small streams (USFWS, 2018). The portion of the Study Area which would be cleared to enable the directional drill of the pipeline does not contain older hardwood species, it contains a younger stand of pine saplings and small trees (See **Appendix B** photographs). In addition, the area of clearing occurs upslope of the stream bank, and no disturbance would occur to the bank or stream edge with project activities. Therefore, it is believed that the project would not have a negative effect on the listed species.

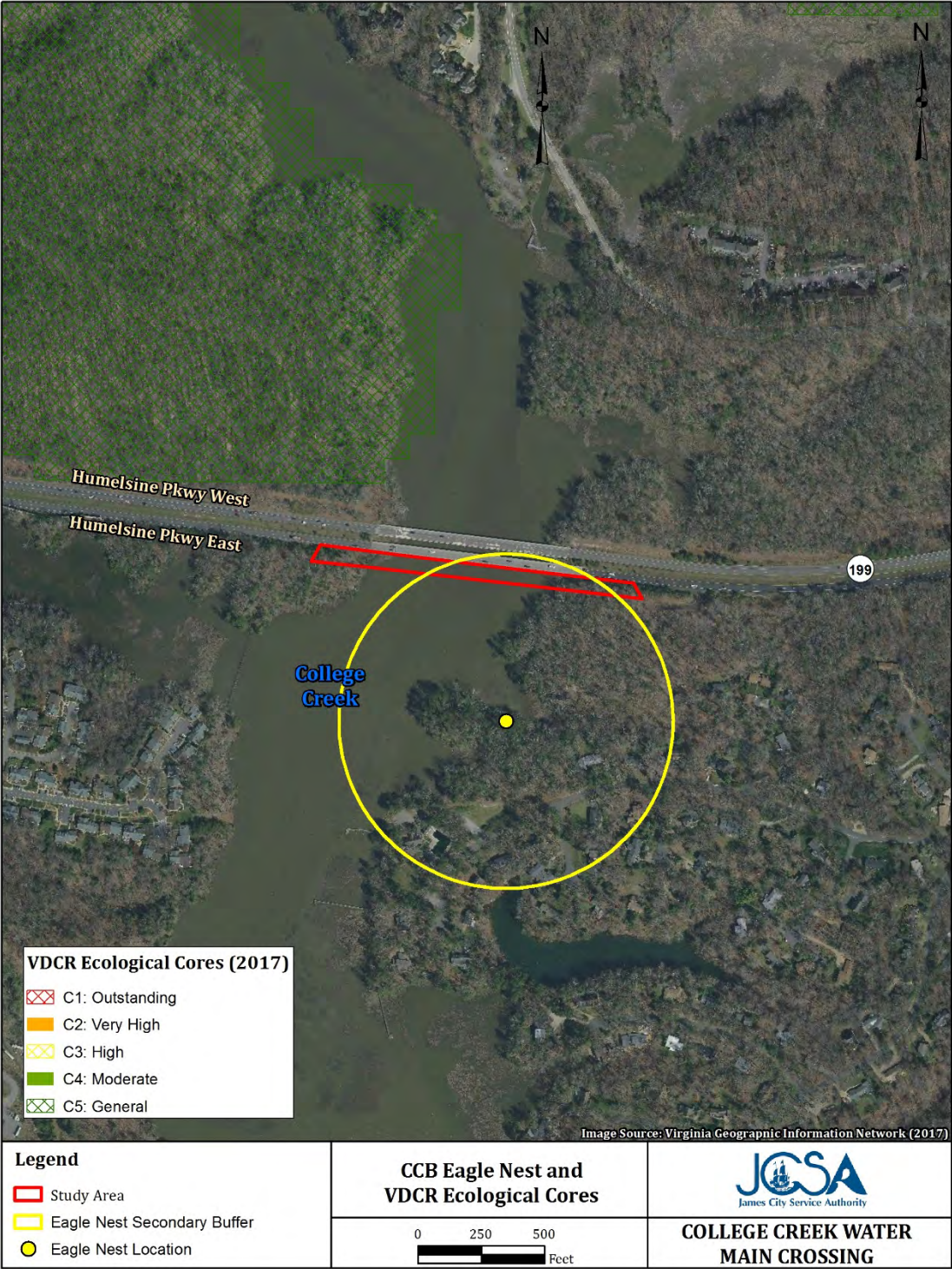
Atlantic Sturgeon – The Atlantic sturgeon is a Federal and State Endangered species. It is an anadromous fish species which has the potential to be present within College Creek in the Study Area. Juveniles may spend several years in rivers or estuaries before migrating to the ocean. Adult Atlantic sturgeons are benthic feeders and consume mainly worms, aquatic insects, shellfish, crustaceans, snails, sand lances, and large amounts of mud and debris (NMFS, 2019).

On September 18, 2017, the National Marine Fisheries Service issued a final rule designating critical habitat for the Chesapeake Bay Distinct Population Segment which included the following rivers in Virginia: Potomac, Rappahannock, York, Pamunkey, Mattaponi, and James. However, the critical habitat area for the James River does not include College Creek. Therefore, the project would not affect designated critical habitat for the species. Further, as no instream work is proposed with the project, no impacts to the species are anticipated with installation of the proposed water line.

Bald Eagle – Although bald eagles (*Haliaeetus leucocephalus*) are no longer federally- or state-listed, bald eagles currently are protected under the Bald and Golden Eagle Protection Act. As such, the USFWS' Virginia Field Office's Bald Eagle Map Tool and The Center for Conservation Biology (CCB) VaEagles Nest Locator were utilized to inform this report. The Bald Eagle Map tool indicates that Bald Eagle concentration areas do not occur in the Study Area. The CCB VaEagles Nest Locator (CCB, 2019) indicates that a known eagle nest occurs south of the Study Area, on the eastern side of College Creek (**Figure 4-2**). Nest sites such as this one are protected with primary and secondary buffers. The smaller 330' "primary buffer" is where human activities are considered to be detrimental to breeding pairs (e.g. residential/commercial development). The larger 660' "secondary buffer" is where human activities are considered to impact the integrity of the "primary buffer" (e.g. construction, multi-story buildings, and new roadways).

The Study Area occurs outside of the primary buffer but it does include a portion of the secondary buffer. JCSA contacted the Northeastern Region Eagle Coordinator (Tom Wittig) with the USFWS to determine the project's potential effect on the eagle nest. As detailed in the correspondence included in **Appendix A**, the USFWS indicated that noise and visibility would be mitigated by both distance and topography, as such, the USFWS believed an Eagle Act Permit would not be required for the project. Therefore, it is anticipated that the project would not have a negative effect on the species.

Figure 4-2: CCB Eagle Nest and VDCR Ecological Cores



Anadromous Fish Use Areas – Under the Fish & Wildlife Coordination Act, the VDGIF and VMRC, in combination with the NMFS, oversee anadromous fish in Virginia. The NMFS has jurisdiction over anadromous fish listed under the Endangered Species Act through their Office of Protected Resources. The VDGIF restricts instream work in designated anadromous fish use areas during certain times of the year. The VaFWIS database was queried to determine if confirmed anadromous fish use areas occur in the Study Area. The database indicates that College Creek, in the Study Area, is a confirmed anadromous fish use stream for striped bass (*Morone saxatilis*) and yellow perch (*Perca flavescens*) (VDGIF, 2019b). However, as no instream work is proposed with the project, no impacts to anadromous fish species are anticipated with installation of the proposed water line.

Essential Fish Habitat – The federal Magnuson-Steven Fisheries Conservation and Management Act of 1976, as amended, provides for the conservation and management of the nation’s fishery resources through the preparation and implementation of fishery management plans. Federal agencies are required to consult with the NMFS on proposed actions that may affect essential fish habitat (EFH); that is, waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. According to data obtained from the NMFS, the Study Area does not contain waters designated as EFH (NMFS, 2019).

Submerged Aquatic Vegetation – Submerged aquatic vegetation (SAV) includes an assemblage of underwater plants found in shallow waters of the Chesapeake Bay and its river tributaries as well as coastal bays of Virginia. According to the Virginia Administrative Code (VAC), 4 VAC 20-337-30, any removal of SAV from State bottom or planting of nursery stock SAV for any purpose, other than pre-approved research or scientific investigation, would require prior approval by VMRC. Any request to remove SAV from, or plant SAV upon, State bottom would need to be accompanied by a complete Joint Permit Application submitted to the VMRC. Consideration of SAV may be coupled with EFH concerns and require coordination with NMFS. According to data obtained from the Virginia Institute of Marine Science for the 2017 survey year, no SAV beds were mapped in the Study Area (Orth et al. 2018). In addition, as no instream work is proposed with the project, no impacts to SAV beds are anticipated with installation of the proposed water line.

Conservation Habitat – The VDCR-DNH NHDE was queried for occurrences of natural heritage resources, including Conservation Sites and Stream Conservation Units, located within the Study Area. The data indicates that no Conservation Sites or Stream Conservation Units occur in the Study Area. Results of the database query are included in **Appendix A**. The VDCR Conservation Lands Database (12/18/18 version) was queried to determine if lands in public or private protective management, or conservation easements, occur in the Study Area. The data indicated that no conservation lands or easements occur in the Study Area (VDCR, 2018).

James City County requires that Special Use Permit applicants determine if their project areas coincide with mapped areas with natural heritage rankings of S1, S2, S3, G1, G2, or G3 as listed in the *Conservation Planning for the Natural Areas of the Lower Peninsula of Virginia* (VDCR, 1993). A review of the project area determined that it does not contain a natural heritage area with one of these rankings.

Ecological Cores – The VDCR-DNH Natural Landscape Assessment (VDCR, 2017) identifies the ecological integrity of habitat in the region as depicted on **Figure 4-2**. These areas are identified as ecological cores and receive a designation based upon an assessment of 50 attributes including information on rare species and habitats, environmental diversity, species diversity, patch characteristics, patch context, and water quality benefits. Larger, more biologically-diverse areas are generally given higher scores. According to

the data, no scored areas occur in the Study Area.

Soils

Soil composition determines the suitability of land for farming and development. Its physical and chemical properties establish its appropriateness for these uses. Some soils have the best combination of properties for agricultural use, while the physical properties of others may cause land slippage and slope instability, poor foundation support, and poor drainage.

Agricultural lands, including those underlain with prime, unique, or important farmland soils are considered sensitive terrestrial resources. Soils data acquired using the Natural Resources Conservation Service (NRCS) Web Soil Survey was used to identify “prime farmland,” “farmland of statewide importance,” or “farmland of unique importance” soils in the Study Area. However, those lands not subject to the Farmland Protection Policy Act include:

- 1) Lands that receive a combined score of less than 160 points from the Land Evaluation and Site Assessment criteria;
- 2) Lands identified as an “urbanized area” on US Census Bureau maps;
- 3) Land with a “tint overprint” on the USGS topographical map;
- 4) Areas shown as white (not farmland) on US Department of Agriculture (USDA) Important Farmland Maps;
- 5) Areas shown as “urban-built up” on USDA Important Farmland Maps;
- 6) Land in water storage, including lands that have been acquired or planned for water storage prior to August 5, 1984;
- 7) Lands that are used for national defense; and
- 8) Private land where no federal funds or technical assistance is utilized.

According to the data obtained from the NRCS, prime farmland soils, and soils of statewide importance occur in the Study Area (**Figure 4-3**). However, the entire land-based portion of the Study Area occurs within an urbanized area as designated by the US Census Bureau (US Census Bureau, 2017). Therefore, as discussed above, these lands are not subject to the Farmland Protection Policy Act.

The hydrologic soil group for study area soils was determined using the Web Soil Survey. The Study Area contains soils within hydrologic groups B and D (**Figure 4-4**). James City County requires that the location of highly erodible soils be identified during the site planning process. **Figure 4-5** indicates that highly erodible and potentially highly erodible soils occur in the Study Area. As discussed above for water quality, the JCSA would construct the project in accordance with the Virginia Erosion & Sediment Control Law and Regulations. Adherence to the law and regulations would reduce or eliminate pollutants before they are discharged from the construction site as a result of eroding soils during construction. Therefore, the project is not expected to contribute to the further impairment of College Creek or to negatively affect State waters.

Floodplains

The Federal Emergency Management Agency (FEMA) is required to identify and map the nation’s flood-prone areas through the development of Flood Insurance Rate Maps. Digital floodplain data was obtained from the FEMA Flood Map Service Center and plotted within the Study Area to determine the extent of

Figure 4-3: Farmland Soils

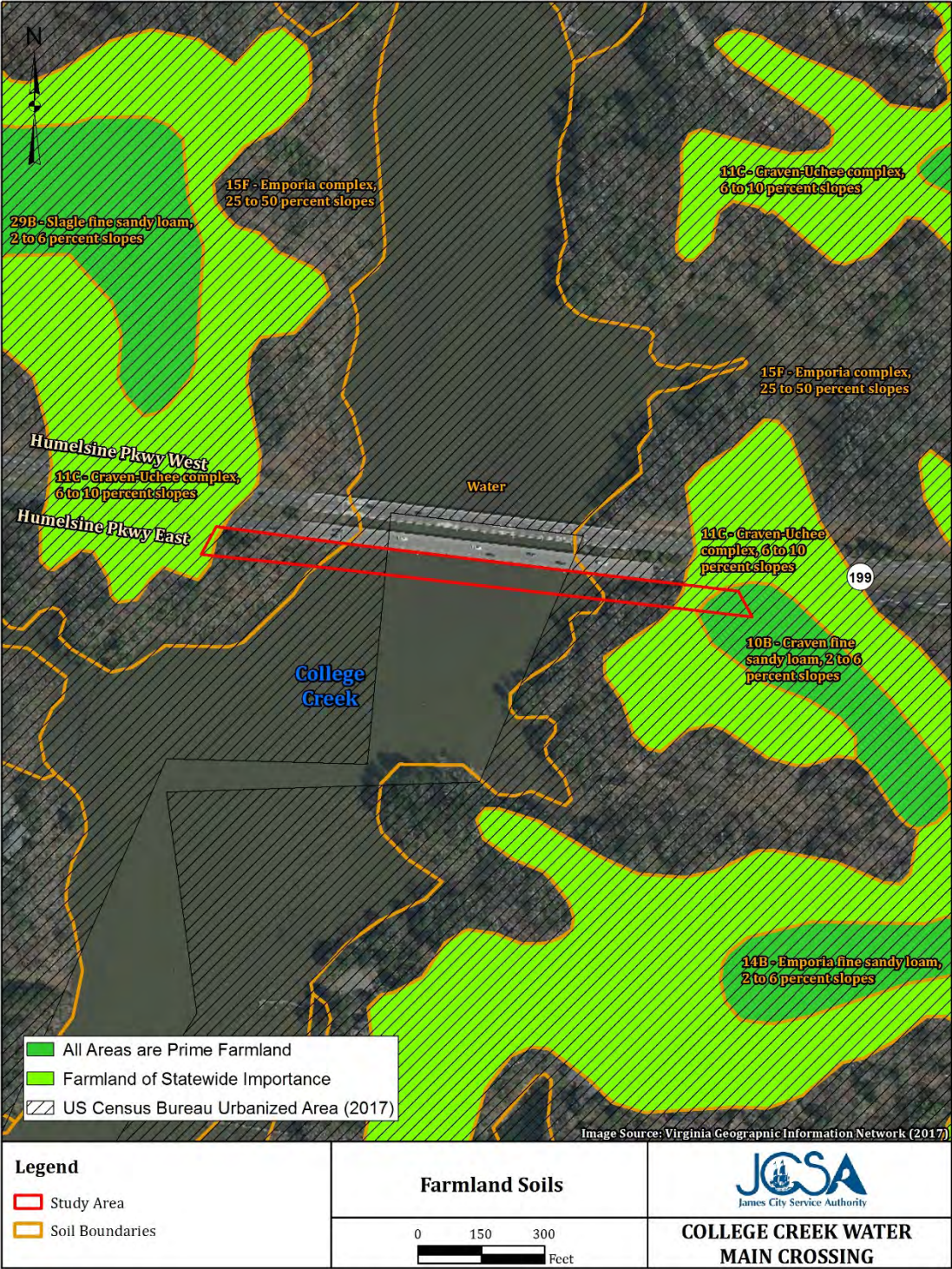


Figure 4-4: Hydrologic Soil Groups

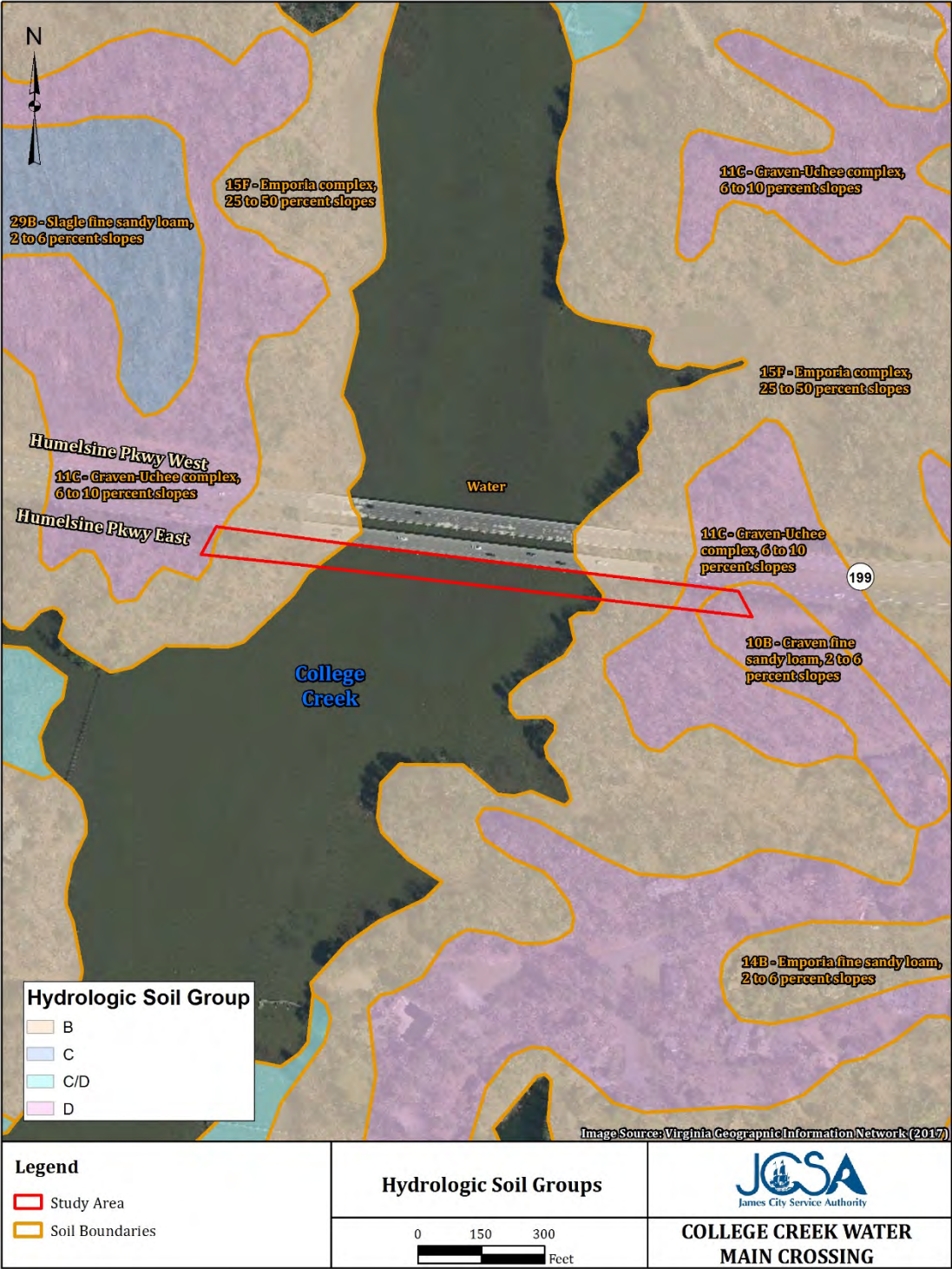
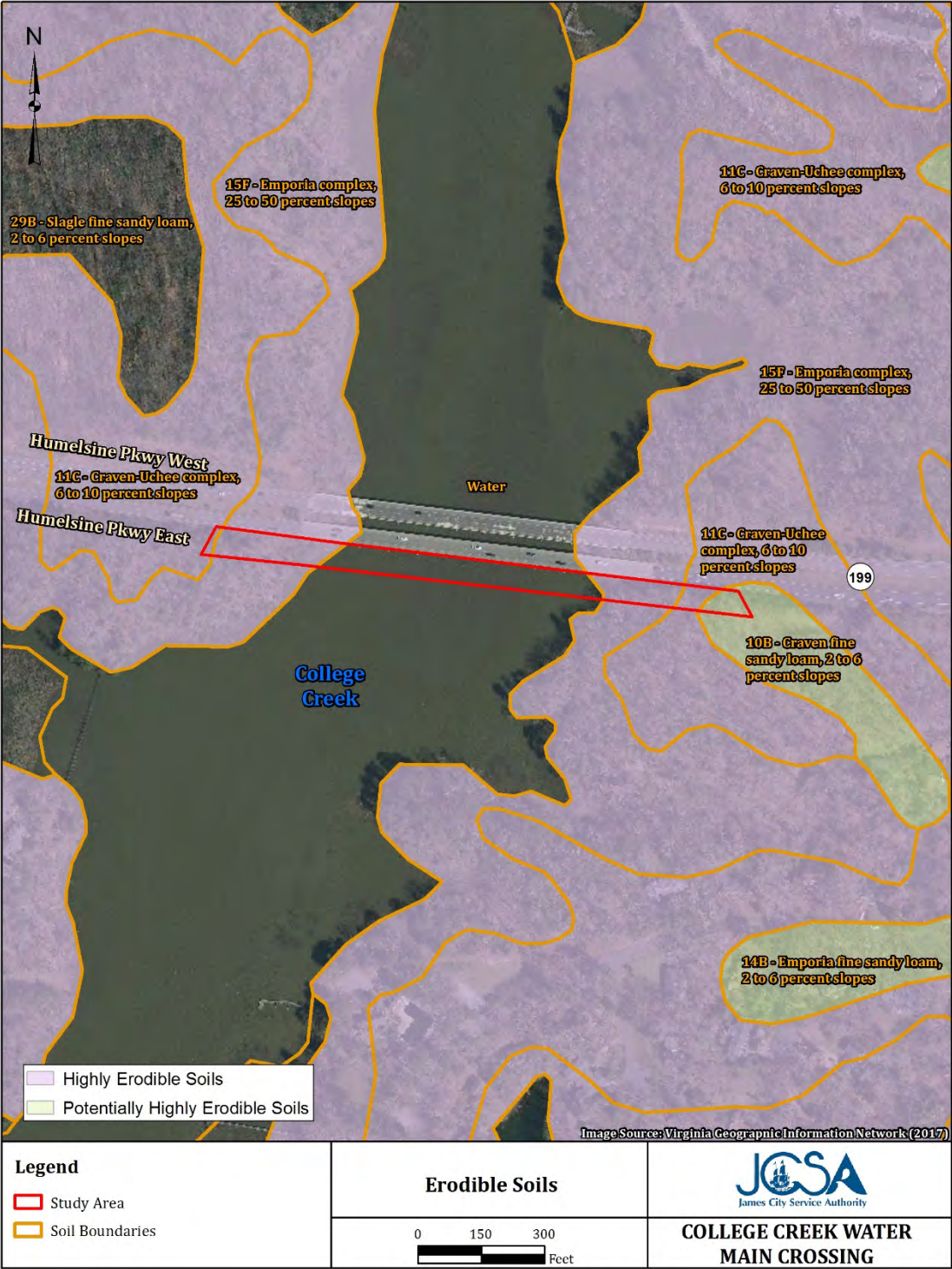


Figure 4-5: Erodible Soils



floodplain areas (FEMA, 2018). Floodplain areas were associated with the waterbody that controls hydrology affecting the floodplain elevation associated with the floodplain area.

The Study Area contains 100-year floodplains as designated by FEMA (FEMA, 2018). The 100-year floodplain includes those areas that statistically have a one percent chance of being flooded in any given year. The floodplains occurring within the Study Area are associated with College Creek (**Figure 4-6**). The entry and exit points would occur outside of the floodplain area and the proposed pipeline is not anticipated to affect upstream or downstream floodplain elevations.

Steep Slopes

Terrain constraints are naturally occurring features of the landscape that can affect the construction or operation of the project, such as steep slopes. The approximate location of steep slopes greater than 25 percent were identified using James City County's GIS contour data, coupled with National Elevation Dataset information obtained from the USGS, and soil data descriptions provided from the Web Soil Survey. As shown on **Figure 4-7**, steep slopes occur in the Study Area along the shoreline of College Creek. These steep slopes areas are generally associated with the Emporia Complex soils shown on **Figure 4-3**. As with erodible soils, JCSA would construct the project in accordance with the Virginia Erosion & Sediment Control Law and Regulations to minimize negative effects resulting from disturbance of soils along steep slopes. Adherence to the law and regulations would reduce or eliminate pollutants before they are discharged from the construction site as a result of eroding soils during construction. Therefore, the project is not expected to contribute to the further impairment of College Creek or to negatively affect State waters.

5. CULTURAL RESOURCES

The project has the potential to affect historic properties and therefore meets the definition of an undertaking as defined by 36 CFR 800.16. **Figure 5-1** shows the archaeological and historic architectural area of potential effects (APE) that is approximately 1,315 ft long by 60 ft wide along the south edge of the eastbound bridge. This area is generally the area of direct effects of the undertaking. Surrounding land use is largely undeveloped forest immediately adjacent to the crossing, with suburban developments approximately 1,500 ft south of the bridge. The City of Williamsburg boundary is just north of the College Creek Bridge, and the Colonial National Historic Parkway is approximately a half-mile east of the bridge. James City County online parcel data indicates adjacent parcels with a view to the bridge south of the crossing were developed in the early 1980s (Williamsburg Landing on the southwest side of the crossing) and the early 2000s (Kingsport Club) on the southeast side of the crossing. Adjacent parcels on the north side of the crossing are undeveloped with continuous forestland extending at least 0.25 mile north from the College Creek bridges.

The historic architectural APE of this undertaking is the same as the archaeological APE. The project as proposed does not have the potential to indirectly affect historic architectural properties in the long-term. Because the waterline would be buried, no potential long-term indirect effects to historic architectural properties, if any were in the viewshed of the project, could occur. In addition, the temporary construction impacts would not be very visible to the surrounding areas because of heavy tree cover adjacent to the right-of-way. Therefore, only long-term direct effects could occur to historic architectural properties, if present.

Figure 4-1: Floodplains

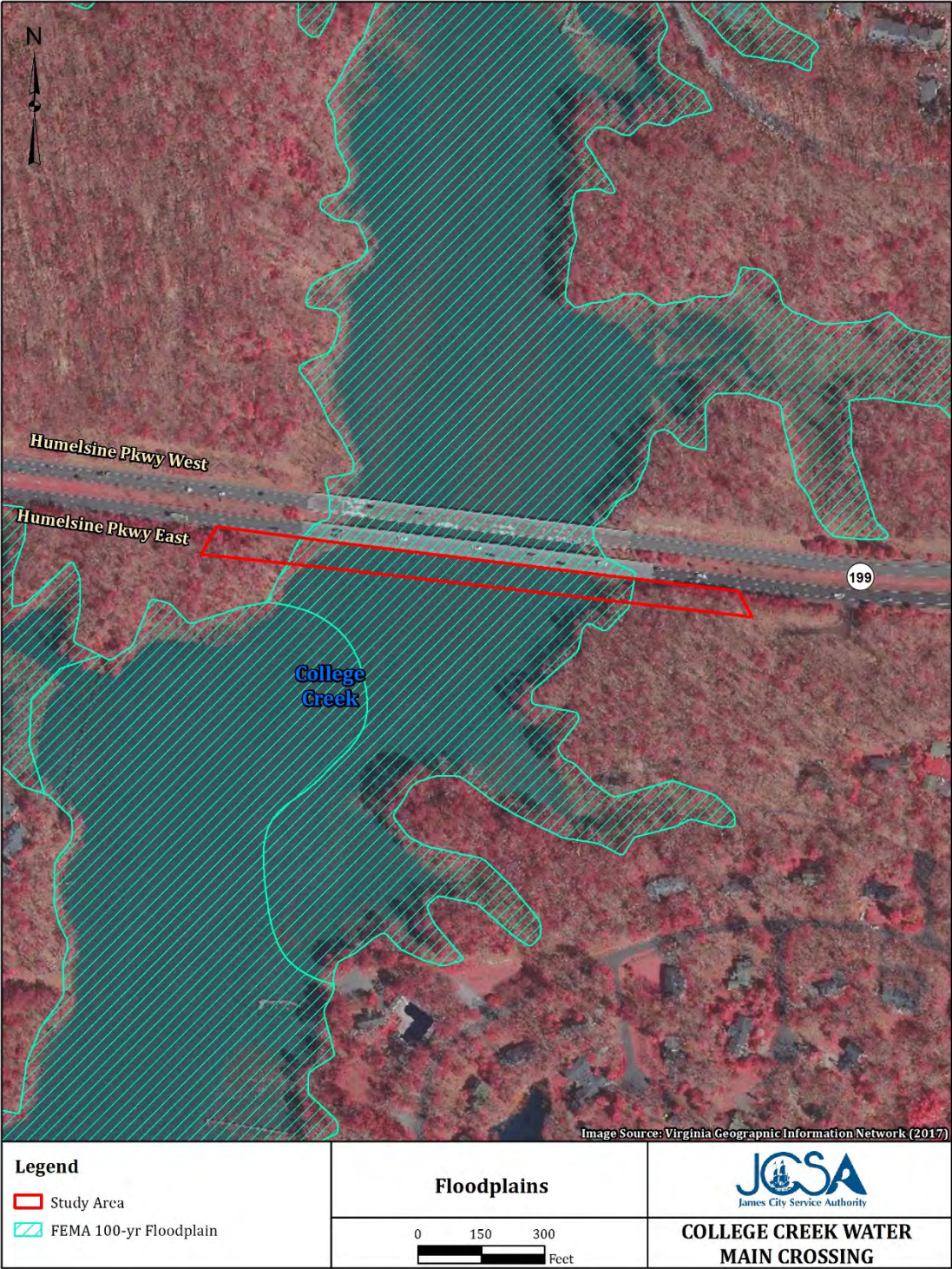


Figure 4-2: Topography

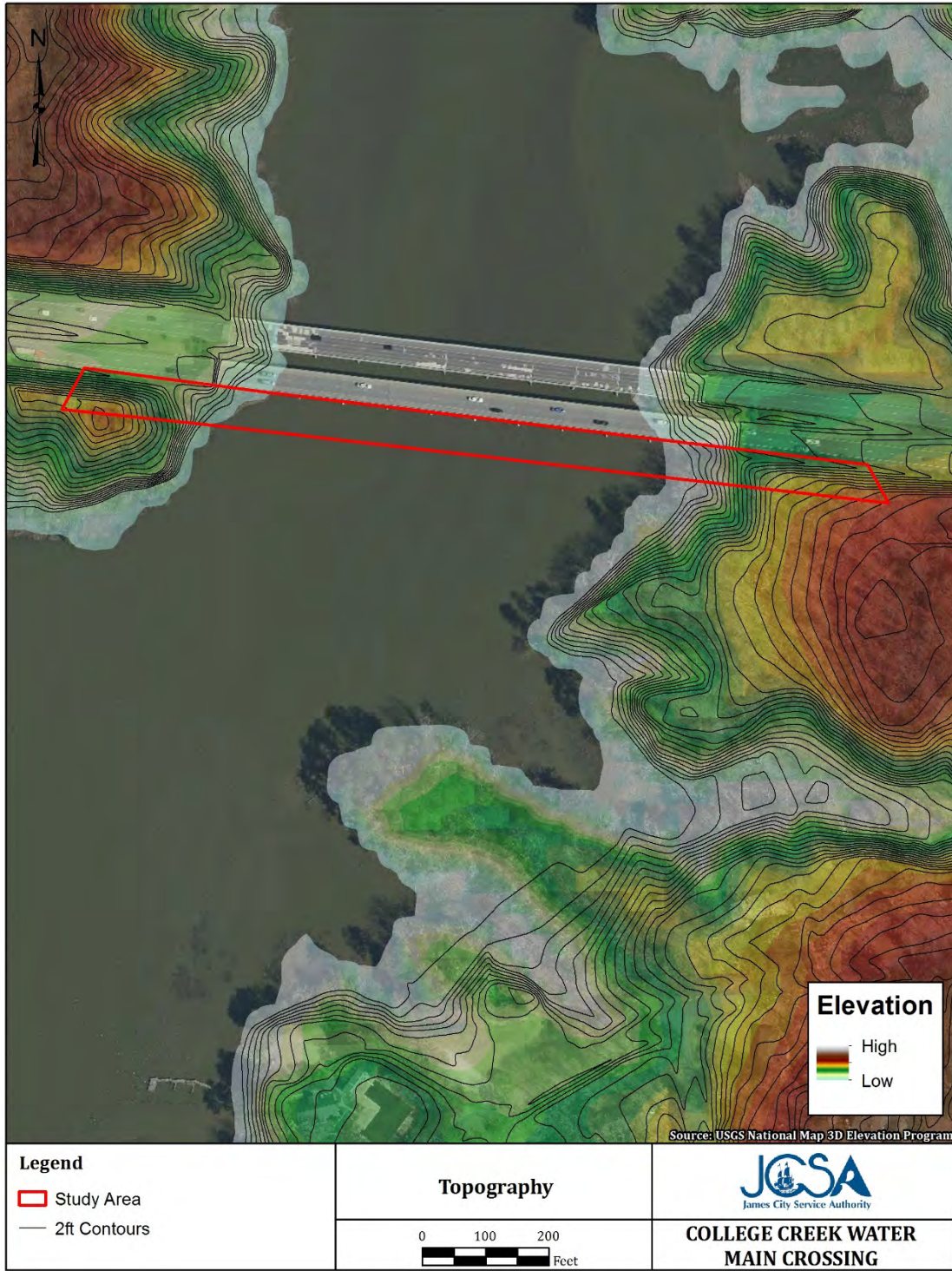
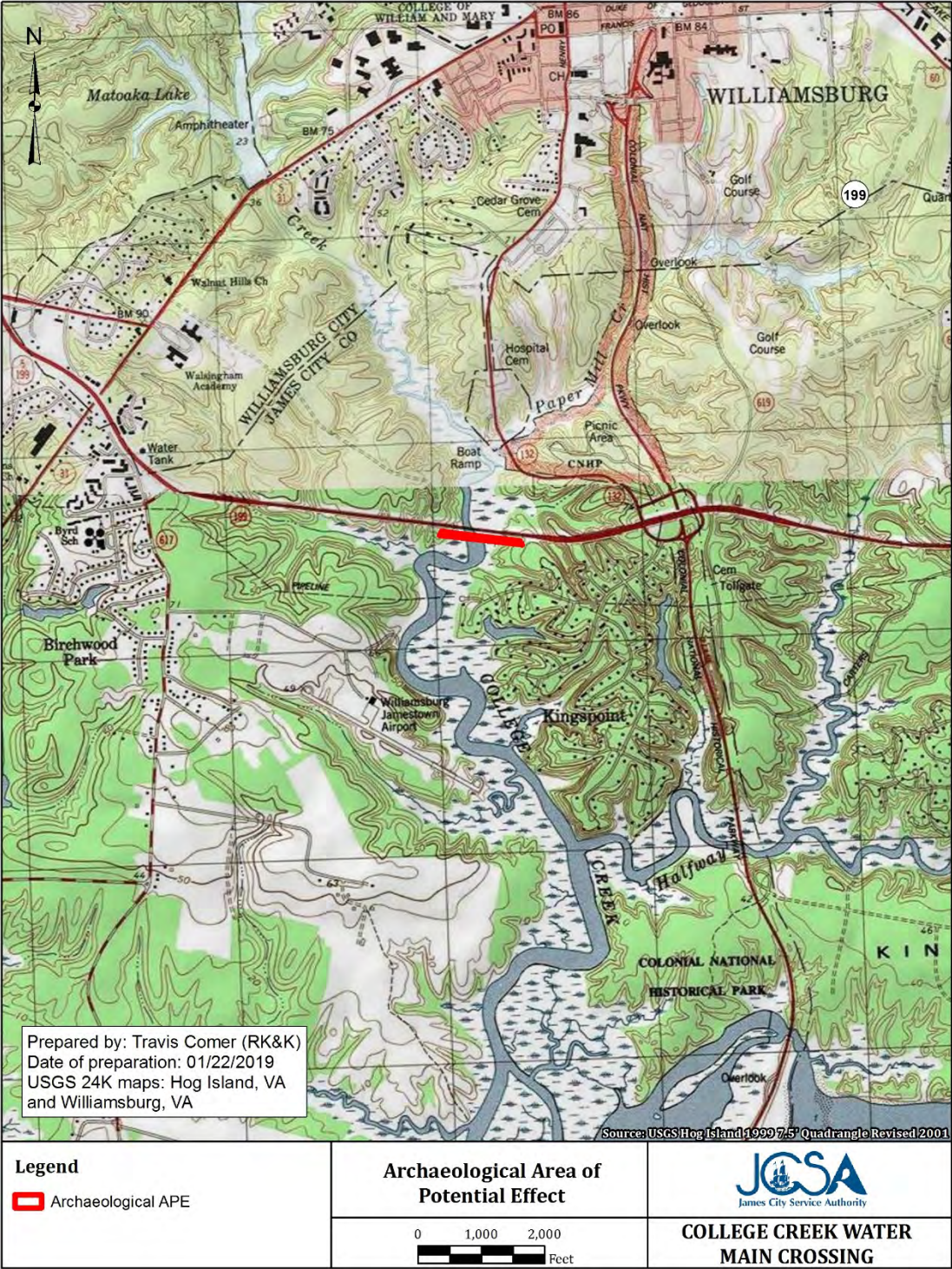


Figure 5-3: Archaeological Area of Potential Effect



The Virginia Cultural Resources Information System (V-CRIS) database of previously documented surveys and sites maintained by the Department of Historic Resources (DHR) was checked on January 17, 2019. **Figure 5-2** shows the V-CRIS search results for previous Phase I archaeological surveys within the current APE. In 1997, the College of William and Mary Center for Archaeology Research (WMCAR) completed a Phase I pedestrian and limited testing archaeological survey approximately 500-ft wide centered on SR-199, reported in *Archaeological Survey of Proposed Route 199 Widening Project, James City County* (DHR Report No. JC-129) (Higgins and Gray, 1997). No cultural resources were found in the current APE.

In 2003, WMCAR completed a Phase I archaeological survey approximately 225-ft wide extending slightly further south than the earlier 1997 survey. This effort is reported in *An Archaeological Survey of Expanded Right of Way, Proposed Route 199 Improvements Project (Segment II), James City County, Virginia* (DHR Report No. JC-171) (Jensen et al., 2003). Archaeological site 44JC1110 was documented in the extreme eastern extent of the APE in VDOT right-of-way (**Figure 5-3**). Limited testing found a low density, undiagnostic aboriginal lithic scatter partially disturbed by previous utility and waterline construction. Site 44JC1110 was evaluated not eligible for the National Register of Historic Places (NRHP) in consultation with DHR.

According to V-CRIS, the APE is not within any American Battlefield Protection Program site.

DHR's *Guidelines for Conducting Historic Resources Survey in Virginia* (rev. 2017) specify resources for which existing survey data is five years of age or older may need to be resurveyed. Although the current APE was surveyed for archaeological resources about 15 years ago, no further archaeological investigations are recommended in the APE. This is based on the degree of previous disturbance in the APE. The proposed project would abandon an existing waterline and replace it with a new waterline drilled approximately 35-40 ft below the bottom of College Creek. The new waterline would be offset approximately 10 ft from the existing line (see included Master Plan mapping). The former line was originally constructed by trenching, which disturbed all sediments above it. Further, the terrestrial surface of the APE was also previously disturbed by the construction of the College Creek bridges and approaches, as well as maintenance, as seen in **Appendix B** images.

Humelsine Parkway (State Route 199) and the College Creek original span were constructed circa 1975 as a concrete single span with two travel lanes. This structure was converted to westbound use only after completion of the new concrete trestle eastbound span circa 2003-2004. Therefore, both spans are more recent than 50 years before present and are considered modern. No other historic architectural resources are within the area of direct effect for the waterline.

Based on the above determinations, a finding of no historic properties affected is recommended for the undertaking in accordance with 36 CFR 800.4(d).

Figure 5-2: Previous Phase I Archaeological Surveys in the Study Area

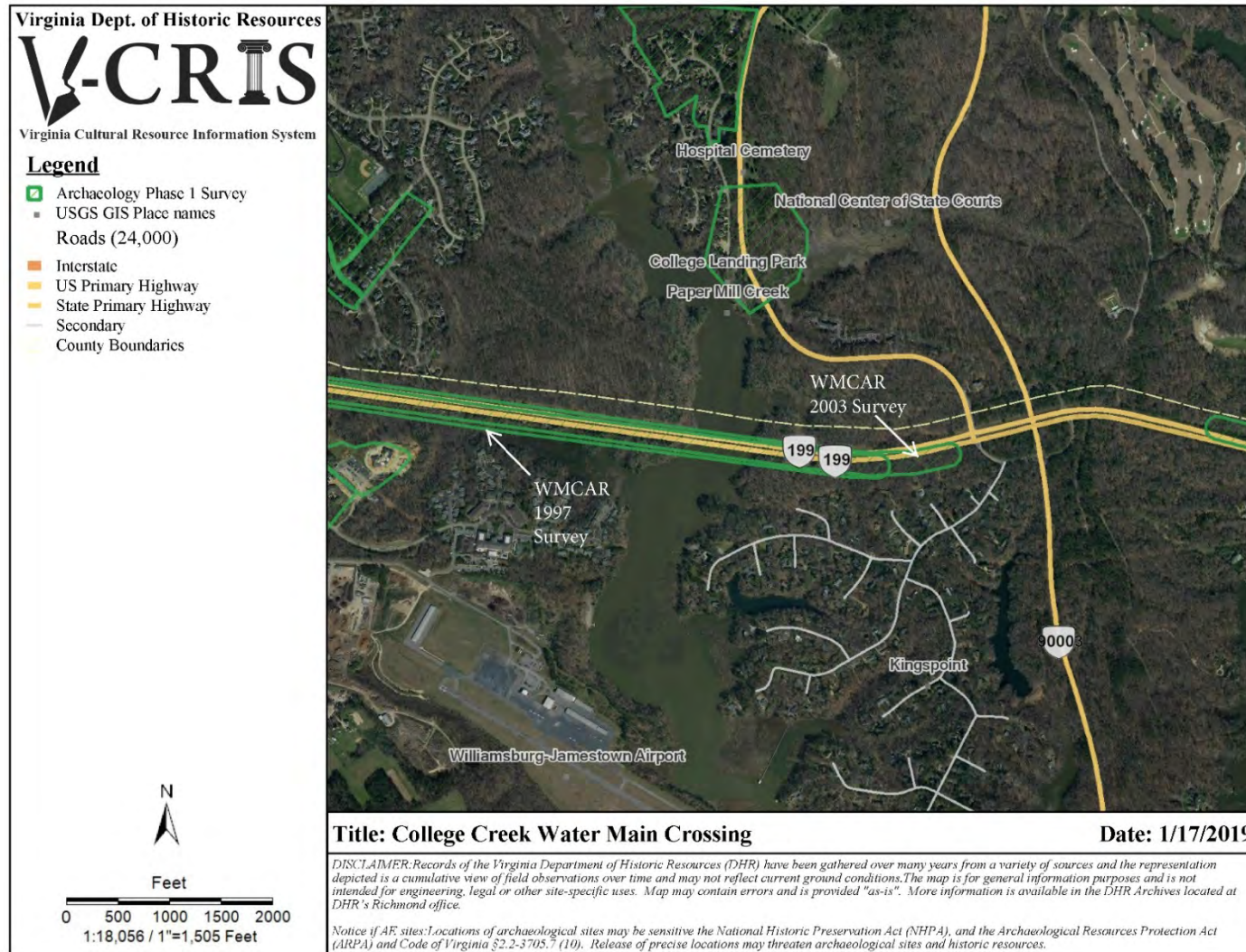
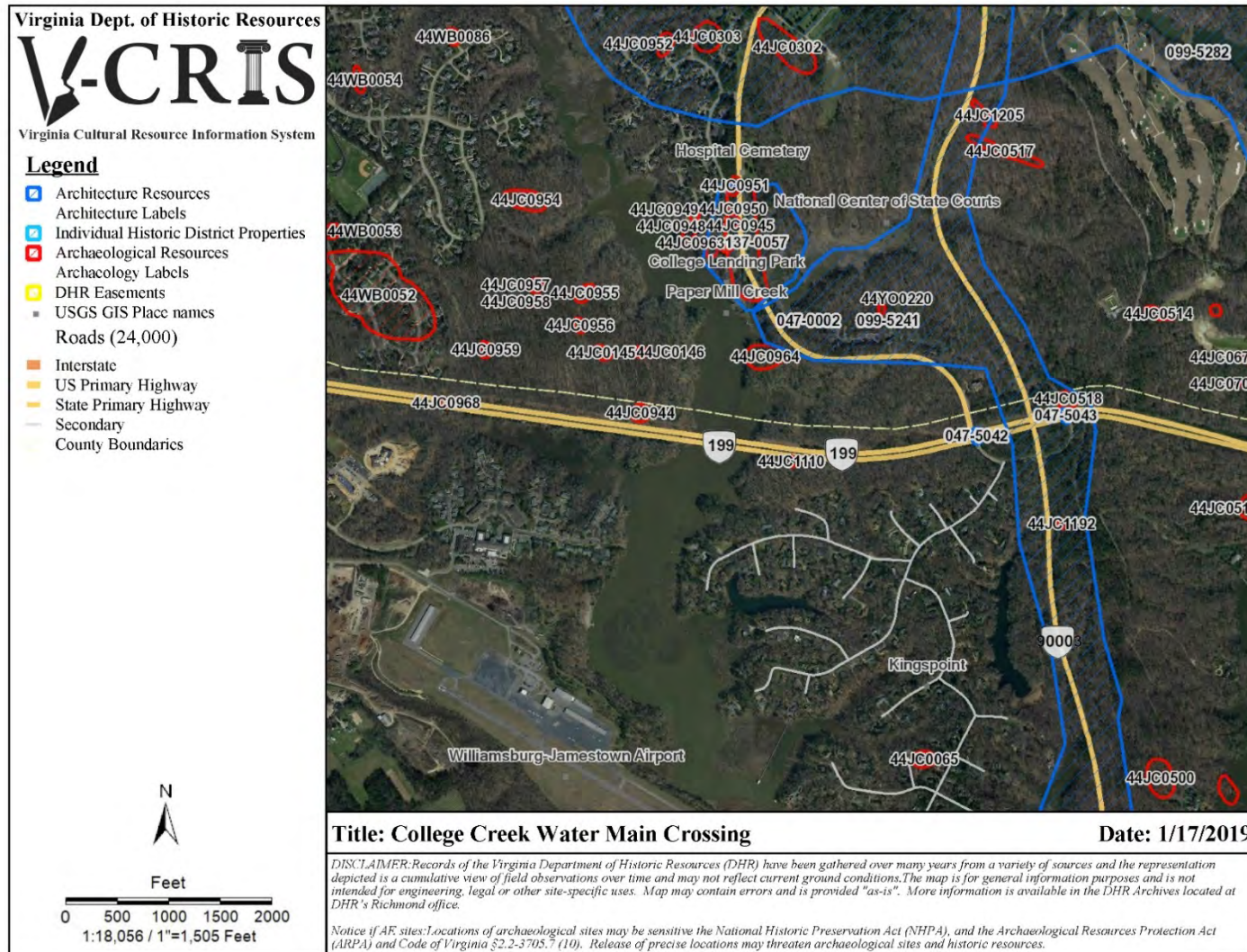


Figure 5-3: Recorded Resources in the Study Area



6. EXISTING AND PROPOSED CHANGES TO THE SITE

The Study Area for the project consists of undeveloped and forested lands separated by College Creek. It is bounded to the north by Humelsine Parkway. An existing residential development occurs approximately 300 ft to the south of the Study Area, along Meadow Rue Court, on the east side of College Creek. Another existing development occurs approximately 680 ft south of the western end of the Study Area along Williamsburg Landing Drive. No impacts are anticipated to these existing properties and neighborhoods as a result of this project.

No existing impervious surface occurs in the Study Area and no impervious surface is proposed with construction of the project. The installed pipeline would exist below grade. As such, an increase in stormwater discharge is not anticipated with the project. The project's LOD and limits of clearing are shown on the included Master Plan mapping.

7. MITIGATION MEASURES

The JCSA proposes to construct the water main using HDD. The HDD method is a minimal impact trenchless method of installing underground pipe. Best management practices would be followed to avoid accidental spills of fuel, oils, chemicals, concrete leachate, and sediments into aquatic habitats. These practices include proper storage, use, and cleanup of all construction-related chemicals. Construction routes would be carefully selected to avoid sensitive riparian and wetland area.

A summary of impact minimization strategies include:

- Minimize construction impacts on College Creek by implementing an erosion and sediment control plan and following best management practices.
- Limit vegetation clearing to what is necessary to construct the water main. Only trees and shrubs within the limits of clearing and tree limbs extending into the clearance area would be removed. Using and maintaining vegetative cover appropriately during construction would minimize soil erosion.
- Limit grading, excavation, and filling activities to what is necessary for construction.
- Use HDD construction methods to minimize sediment and soil disturbance.

8. SUPPLEMENTAL INFORMATION

Required supplemental information has been included with the submitted Special Use Permit application. This information includes:

- An *Application and Authorization for the VESCP and VSMP Authority Permit for Land Disturbing and Stormwater Construction Activity* form. The Study Area is owned by the Commonwealth of Virginia, and is under the control of the Virginia Department of Transportation (VDOT). An easement from VDOT is not required to construct the proposed pipeline. Therefore, a signature was not obtained from VDOT for the form.
- An *Original Signature EnerGov* form. The Original Signature EnterGOV document is included but a signature was not obtained as the Study Area is owned by the Commonwealth of Virginia.

- A completed *Rezoning and Special Use Permit Submittal Requirements Checklist*.

JCSA reviewed the supplemental requirements for Special Use Permit submittals adopted by the Board of Supervisors of James City County on December 1, 1999 to determine their applicability to the project. In addition, through consultation with James City County planning staff (Terry Costello) it was determined that these supplemental requirements do not apply to the project and that the JCSA would not have to comply by these requirements to construct the project.

James City County requires that each person or entity submitting an application for a Special Use Permit attach to such application a signed statement from the county treasurer certifying that, for the property listed in the application, all real estate taxes owed to the county have been paid in full. The required statement from the county treasurer was not retrieved as the owner of the project area is the Commonwealth of Virginia. Due to the project being within VDOT right of way, no taxes are obtained from this area, so the required statement does not apply.

9. REFERENCES

- Center for Conservation Biology. 2019. Virginia Bald Eagle Nest Locator. Accessed at <http://www.ccbirds.org/what-we-do/research/species-of-concern/virginia-eagles/nest-locator/>.
- Cowardin, L. M., Golet, F. C., and V. Carter. 1979. Classification of Wetlands and Deepwater Habitats of the United States. FWS/OBS-79/31. U.S. Fish and Wildlife Service. 142 pages. <https://www.fws.gov/wetlands/Documents/Classification-of-Wetlands-and-Deepwater-Habitats-of-the-United-States.pdf>.
- Federal Emergency Management Agency (FEMA). 2018. National Flood Hazard Layer. <https://catalog.data.gov/dataset/national-flood-hazard-layer-nfhl/resource/89b88927-fc8e-4557-a97f-3f3729aad36d>.
- Higgins, T.F., III and A.L. Gray. 1997 Archaeological Survey of the Proposed Route 199 Widening Project, James City County, Virginia. William and Mary Center for Archaeological Research, Williamsburg, Virginia. Submitted to Virginia Department of Transportation, Richmond.
- National Marine Fisheries Service (NMFS). 2019. Atlantic Sturgeon. Accessed at <https://www.fisheries.noaa.gov/species/atlantic-sturgeon>.
- Orth, R.J., Wilcox, D.J., Whiting, J.R., Keene, A.K., and E.R. Smith. 2018. 2017 Distribution of Submerged Aquatic Vegetation in Chesapeake Bay and Coastal Bays. Virginia Institute of Marine Science. Accessed at <http://web.vims.edu/bio/sav/sav16/quadindex.html>.
- United States Army Corps of Engineers (USACE). 1987. Corps of Engineers Wetlands Delineation Manual. Wetlands Research Program Technical Report Y-87-1. Waterways Experiment Station. Accessed at <http://www.lrh.usace.army.mil/Portals/38/docs/USACE%2087%20Wetland%20Delineation%20Manual.pdf>.
- United States Army Corps of Engineers (USACE). 2010a. Navigable Waters of the United States. Accessed at http://www.nao.usace.army.mil/Portals/31/docs/regulatory/guidance/section_10_determinations.pdf.

United States Army Corps of Engineers (USACE). 2010b. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0). Wetlands Regulatory Assistance Program. Accessed at

http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg_supp/AGCP_regsupV2.pdf.

United States Census Bureau. 2017. Cartographic Boundary Shapefiles - Urban Areas. Accessed at

https://www.census.gov/geo/maps-data/data/cbf/cbf_ua.html.

United States Department of Transportation (USDOT). 2018. Navigable Water Lines. Accessed at

<https://osav->

[usdot.opendata.arcgis.com/datasets/fdd63ec4b7bc4d278d03dceb2b8d2a7d_0?geometry=22.148%2C-31.846%2C-22.852%2C58.144](https://osav-usdot.opendata.arcgis.com/datasets/fdd63ec4b7bc4d278d03dceb2b8d2a7d_0?geometry=22.148%2C-31.846%2C-22.852%2C58.144).

United States Fish and Wildlife Service (USFWS). 2018. Small Whorled Pogonia (*Isotria medeoloides*) Fact Sheet. Accessed at <https://www.fws.gov/midwest/endangered/plants/smallwhorledpogoniafs.html>.

United States Geologic Survey (USGS). 2018. National Hydrography Dataset. Accessed at

<https://viewer.nationalmap.gov/basic/?basemap=b1&category=nhd&title=NHD%20View>.

Virginia Department of Conservation and Recreation (VDCR). 1993. Conservation Planning for the Natural Areas of the Lower Peninsula of Virginia. Prepared by Kennedy H. Clark. Accessed at:

<https://www.govinfo.gov/content/pkg/CZIC-ht393-v57-v8-1993/html/CZIC-ht393-v57-v8-1993.htm>.

Virginia Department of Conservation and Recreation (VDCR). 2017. Virginia Natural Landscape

Assessment. Accessed at <http://www.dcr.virginia.gov/natural-heritage/vaconvisvnl>.

Virginia Department of Conservation and Recreation (VDCR). 2018. Natural heritage: Conservation Lands Shapefiles and Metadata. Accessed at <http://www.dcr.virginia.gov/natural-heritage/cldownload>.

Virginia Department of Environmental Quality (VDEQ). 2018. Final 2016 305(b)/303(d) Water Quality Assessment Integrated Report GIS Data. Accessed at

<https://www.deq.virginia.gov/Portals/0/DEQ/Water/WaterQualityAssessments/GISData/ir16gisdata.zip>.

Virginia Department of Game and Inland Fisheries (VDGIF). 2019a. Virginia Fish and Wildlife Information Service. Species Information. Accessed at <https://vafwis.dgif.virginia.gov/fwis/>.

Virginia Department of Game and Inland Fisheries (VDGIF). 2019b. Northern Long-Eared Bat Winter Habitat & Roost Trees. Accessed at <https://www.dgif.virginia.gov/wildlife/bats/northern-long-eared-bat-application/>.

Appendix A

VaFWIS Search Report Compiled on 1/22/2019, 12:14:16 PM

[Help](#)

Known or likely to occur within a **2 mile radius around point 37.2478710 -76.7110125**
in **095 James City County, 830 Williamsburg City, VA**

[View Map of Site Location](#)

513 Known or Likely Species ordered by Status Concern for Conservation
(displaying first 29) (29 species with Status* or Tier I** or Tier II**)

BOVA Code	Status*	Tier**	Common Name	Scientific Name	Confirmed	Database(s)
010032	FESE	Ib	Sturgeon, Atlantic	Acipenser oxyrinchus		BOVA,HU6
040144	FTST	Ia	Knot, red	Calidris canutus rufa		HU6
050022	FTST	Ia	Bat, northern long-eared	Myotis septentrionalis		BOVA
040110	FPSE	Ia	Rail, eastern black	Laterallus jamaicensis jamaicensis		BOVA
050020	SE	Ia	Bat, little brown	Myotis lucifugus		BOVA
050034	SE	Ia	Bat, Rafinesque's eastern big-eared	Corynorhinus rafinesquii macrotis		HU6
050027	SE	Ia	Bat, tri-colored	Perimyotis subflavus		BOVA
030013	SE	IIa	Rattlesnake, canebrake	Crotalus horridus		HU6
040096	ST	Ia	Falcon, peregrine	Falco peregrinus		BOVA
040293	ST	Ia	Shrike, loggerhead	Lanius ludovicianus		BOVA
020044	ST	IIa	Salamander, Mabee's	Ambystoma mabeei	Potential	BOVA,Habitat,HU6
020002	ST	IIa	Treefrog, barking	Hyla gratiosa		HU6
040292	ST		Shrike, migrant loggerhead	Lanius ludovicianus migrans		BOVA
030067	CC	IIa	Terrapin, northern diamond-backed	Malaclemys terrapin terrapin	Yes	BOVA,SppObs,HU6
030063	CC	IIIa	Turtle, spotted	Clemmys guttata	Yes	BOVA,SppObs,HU6
010077		Ia	Shiner, bridle	Notropis bifrenatus		BOVA
040040		Ia	Ibis, glossy	Plegadis falcinellus		HU6
020063		IIa	Toad, oak	Anaxyrus quercicus		HU6
040052		IIa	Duck, American black	Anas rubripes	Potential	BOVA,BBA,HU6
040033		IIa	Egret, snowy	Egretta thula	Potential	BOVA,BBA
040029		IIa	Heron, little blue	Egretta caerulea caerulea		BOVA
040036		IIa	Night-heron, yellow-crowned	Nyctanassa violacea violacea		BOVA
040181		IIa	Tern, common	Sterna hirundo		BOVA,HU6
040320		IIa	Warbler, cerulean	Setophaga cerulea		BOVA,HU6
040140		IIa	Woodcock, American	Scolopax minor		BOVA,HU6
040203		IIb	Cuckoo, black-billed	Coccyzus erythrophthalmus		BOVA
040105		IIb	Rail, king	Rallus elegans		BOVA
040304		IIc	Warbler, Swainson's	Limnithlypis swainsonii		HU6
100003		IIc	Skipper, rare	Problema bulenta		HU6

To view **All 513 species** [View 513](#)

*FE=Federal Endangered; FT=Federal Threatened; SE=State Endangered; ST=State Threatened; FP=Federal Proposed; FC=Federal Candidate; CC=Collection Concern

**I=VA Wildlife Action Plan - Tier I - Critical Conservation Need; II=VA Wildlife Action Plan - Tier II - Very High Conservation Need; III=VA Wildlife Action Plan - Tier III - High Conservation Need; IV=VA Wildlife Action Plan - Tier IV - Moderate Conservation Need
Virginia Wildlife Action Plan Conservation Opportunity Ranking:

- a - On the ground management strategies/actions exist and can be feasibly implemented.;
- b - On the ground actions or research needs have been identified but cannot feasibly be implemented at this time.;
- c - No on the ground actions or research needs have been identified or all identified conservation opportunities have been exhausted.

[View Map of All Query Results from All Observation Tables](#)

Bat Colonies or Hibernacula: **Not Known**

Anadromous Fish Use Streams (3 records)

[View Map of All Anadromous Fish Use Streams](#)

Stream ID	Stream Name	Reach Status	Anadromous Fish Species			View Map
			Different Species	Highest TE*	Highest Tier**	
C14	College creek	Confirmed	2			Yes
C32	Halfway creek	Confirmed	1			Yes
C92	James River 1	Confirmed	6		IV	Yes

Impediments to Fish Passage (2 records)

[View Map of All Fish Impediments](#)

ID	Name	River	View Map
404	MOTOAKA DAM	COLLEGE CREEK	Yes
416	TUTTERS NECK POND DAM	TR-HALFWAY CREEK	Yes

Colonial Water Bird Survey (5 records)

[View Map of All Query Results Colonial Water Bird Survey](#)

Colony_Name	N Obs	Latest Date	N Species			View Map
			Different Species	Highest TE*	Highest Tier**	
Western Shore, Hog Island, James City	2	May 4 2013	1			Yes
Western Shore, Williamsburg, Williamsburg	1	May 4 2013	1			Yes
Lake Matoaka	1	May 4 2003	1			Yes
College Creek	1	Apr 28 2003	1			Yes
College Creek at Rt. 31	1	Jun 1 1993	1			Yes

Displayed 5 Colonial Water Bird Survey

Threatened and Endangered Waters

N/A

Managed Trout Streams

N/A

Bald Eagle Concentration Areas and Roosts

are present. [View Map of Bald Eagle Concentration Areas and Roosts](#)

(3 records)

BECAR ID	Observation Year	Authority	Type	Comments	View Map
25	2009	Jeannette Parker (VDGIF)	Roost	Count 2	Yes
49	2006 - 2007	Center for Conservation Biology at the College of William and Mary/Virginia Commonwealth University	Summer Concentration Area	Eagle_use Moderate	Yes
52	2006 - 2007	Center for Conservation Biology at the College of William and Mary/Virginia Commonwealth University	Winter Concentration Area	Eagle_use Moderate	Yes

Bald Eagle Nests (8 records)

[View Map of All Query Results](#)
[Bald Eagle Nests](#)

Nest	N Obs	Latest Date	DGIF Nest Status	View Map
JC0102	10	Apr 26 2007	HISTORIC	Yes
JC0501	2	Mar 3 2011	Unknown	Yes
JC0605	13	Apr 18 2011	Unknown	Yes
JC0804	8	Apr 18 2011	UNKNOWN	Yes
JC0905	4	Apr 18 2011	Unknown	Yes
JC1003	2	Mar 3 2011	UNKNOWN	Yes
JC1105	2	Apr 18 2011	Unknown	Yes
JC1106	2	Apr 18 2011	Unknown	Yes

Displayed 8 Bald Eagle Nests

Species Observations (160 records - displaying first 20 , 3
 Observations with Threatened or
 Endangered species)

[View Map of All Query Results](#)
[Species Observations](#)

obsID	class	Date Observed	Observer	N Species			View Map
				Different Species	Highest TE*	Highest Tier**	
50916	SppObs	May 13 1996	Michael Odom, USFWS, David Peterson, Edward Darlington	17	CC	II	Yes
50917	SppObs	Oct 3 1995	Michael Odom, USFWS, David Peterson, Edward Darlington	20	CC	II	Yes
29731	SppObs	Jan 1 1900	Mitchell, J. C.	1	CC	III	Yes
618534	SppObs	Jul 23 2012	Angela; Zappalla Benjamin; Proshek	2		III	Yes
603998	SppObs	Sep 24 2008	Ashley; Haines	13		III	Yes
339348	SppObs	May 3 2000	D. FOWLER, B. MEHL	3		III	Yes
339375	SppObs	Apr 19 2000	D. FOWLER, B. MEHL	11		III	Yes
339349	SppObs	Apr 19 2000	D. FOWLER, B. MEHL	12		III	Yes
339368	SppObs	Apr 7 2000	D. FOWLER, B. MEHL	7		III	Yes
339341	SppObs	Sep 14 1999	Greenlee, RLH	7		III	Yes
339364	SppObs	Nov 20 1998	R. Simmonds & J. Graber	11		III	Yes
339183	SppObs	Nov 20 1998	R. Simmonds & J. Graber	9		III	Yes
339324	SppObs	Nov 18 1998	R. Simmonds & J. Graber	12		III	Yes
339182	SppObs	May 28 1998	R. Simmonds & C. Routh	14		III	Yes
339295	SppObs	May 26 1998	R. Simmonds & C. Routh	16		III	Yes
339323	SppObs	May 26 1998	R. Simmonds & C. Routh	15		III	Yes
50919	SppObs	Oct 2 1995	Michael Odom, USFWS, David Peterson, Edward Darlington	19		III	Yes
365654	SppObs	Jan 1 1900		7		III	Yes
29824	SppObs	Jan 1 1900	Mitchell, J. C.	1		III	Yes
29825	SppObs	Jan 1 1900	Mitchell, J. C.	1		III	Yes

Displayed 20 Species Observations

Selected 160 Observations [View all 160 Species Observations](#)

Habitat Predicted for Aquatic WAP Tier I & II Species

N/A

Habitat Predicted for Terrestrial WAP Tier I & II Species

BOVA Code	Status*	Tier**	Common Name	Scientific Name	View Map
020044	ST	IIa	Salamander, Mabee's	Ambystoma mabeei	Yes

Virginia Breeding Bird Atlas Blocks (4 records)

[View Map of All Query Results](#)
[Virginia Breeding Bird Atlas Blocks](#)

BBA ID	Atlas Quadrangle Block Name	Breeding Bird Atlas Species			View Map
		Different Species	Highest TE*	Highest Tier**	
57062	Hog Island, NE	105		II	Yes
57061	Hog Island, NW	80		II	Yes
57076	Williamsburg, SE	38		III	Yes
57075	Williamsburg, SW	14		IV	Yes

Public Holdings: (1 names)

Name	Agency	Level
Colonial National Historical Park	National Park Service	Federal

Summary of BOVA Species Associated with Cities and Counties of the Commonwealth of Virginia:

FIPS Code	City and County Name	Different Species	Highest TE	Highest Tier
095	James City	420	FESE	I
830	Williamsburg City	361	FTSE	I

USGS 7.5' Quadrangles:

Hog Island
 Williamsburg

USGS NRCS Watersheds in Virginia:

N/A

USGS National 6th Order Watersheds Summary of Wildlife Action Plan Tier I, II, III, and IV Species:

HU6 Code	USGS 6th Order Hydrologic Unit	Different Species	Highest TE	Highest Tier
JL33	James River-Lower Chippokes Creek	85	FESE	I
JL34	College Creek	76	FTST	I
JL35	James River-Skiffes Creek	98	FESE	I
YO67	Queen Creek	72	FTST	I

Compiled on 1/22/2019, 12:14:16 PM 1955622.0 report=all searchType= R dist= 3218 poi= 37.2478710 -76.7110125

PixelSize=64; Anadromous=0.033313; BBA=0.066806; BECAR=0.047617; Bats=0.023595; Buffer=0.097153; County=0.107834; HU6=0.114838; Impediments=0.035097; Init=0.175701; PublicLands=0.043872; Quad=0.06639; SppObs=0.353805; TEWaters=0.031348; TierReaches=0.038568; TierTerrestrial=0.076219; Total=1.484706; Tracking_BOVA=0.176586; Trout=0.027139; huva=0.056273

Site Location

37,14,52.3 -76,42,39.6
is the Search Point

Show Position Rings

Yes No
1/2 mile and 1/8 mile at the
Search Point

Show Search Area

Yes No
2 Search distance miles
radius

Search Point is at
map center

Base Map Choices



Topography

Map Overlay Choices

Current List: Position, Search,
BECA, BAEANests,
TEWaters, TierII, Habitat,
Trout, Anadromous

Map Overlay Legend



T & E Waters

-  Federal
-  State

**Predicted Habitat
WAP Tier I & II**

-  Aquatic
-  Terrestrial

Trout Waters

-  Class I - IV
-  Class V - VI

Anadromous Fish Reach

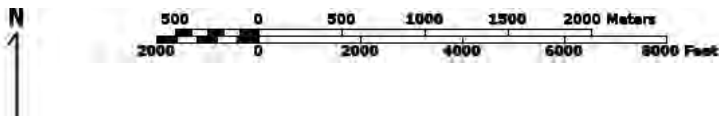
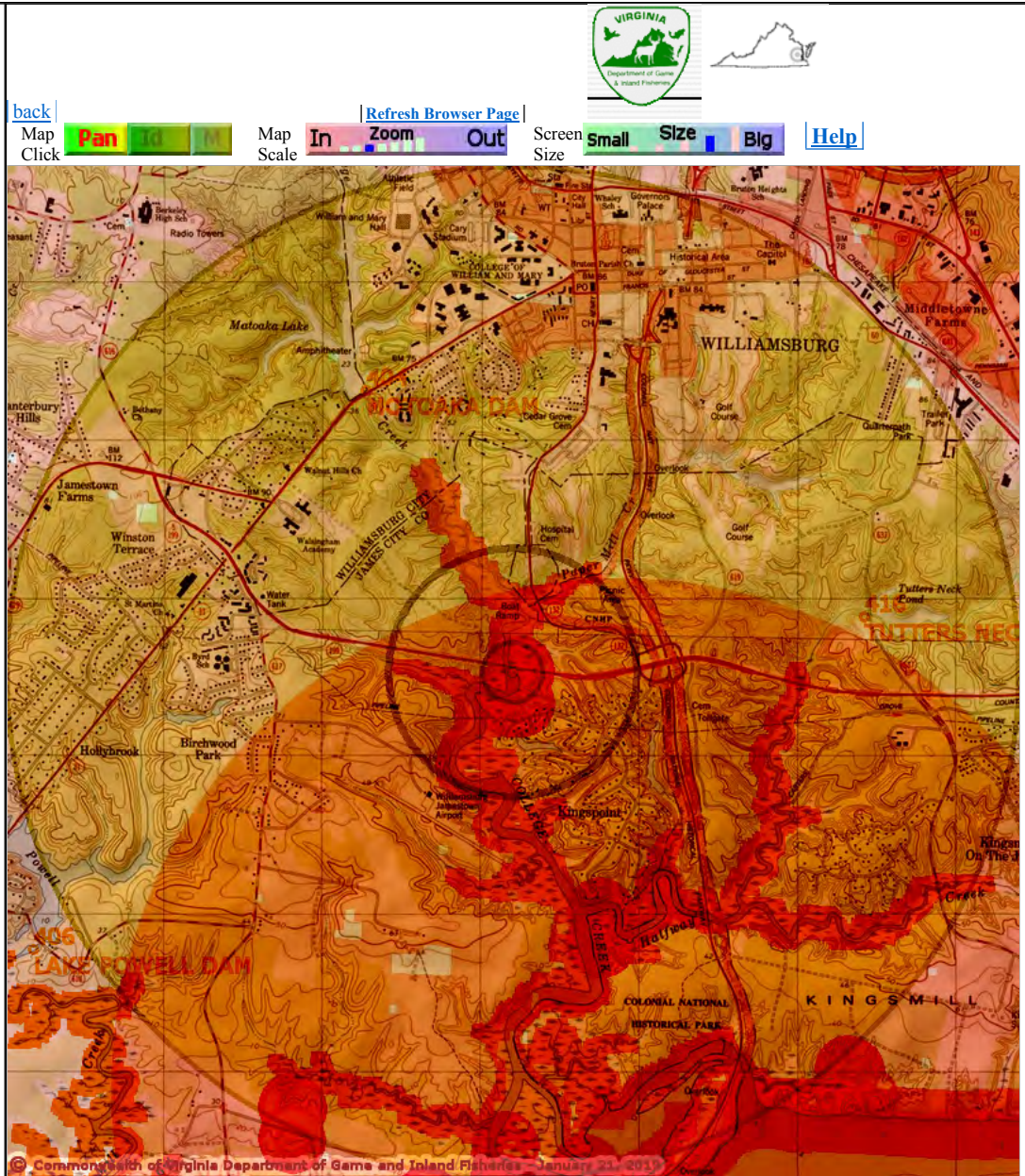
-  Confirmed
-  Potential

 Impediment

 Position Rings
1/2 mile and
1/8 mile at the
Search Point

 2 mile radius
Search Area

 Bald Eagle
Concentration Areas
and Roosts



Point of Search 37,14,52.3 -76,42,39.6
Map Location 37,14,52.3 -76,42,39.6

- Select **Coordinate System:**
- Degrees,Minutes,Seconds Latitude - Longitude
 - Decimal Degrees Latitude - Longitude
 - Meters UTM NAD83 East North Zone
 - Meters UTM NAD27 East North Zone

Base Map source: Topographic maps from TOPO! copyright 2006 (see [National Geographic Maps](http://www.national Geographic Maps) for details)

Map projection is UTM Zone 18 NAD 1983 with left 345052 and top 4126942. Pixel size is 8 meters . Coordinates displayed are Degrees, Minutes, Seconds North and West.Map is currently displayed as 800 columns by 800 rows for a total of 640000 pixels. The map display represents 6400 meters east to west by 6400 meters north to south for a total of 40.9 square kilometers. The map display represents 21000 feet east to west by 21000 feet north to south for a total of 15.8 square miles.

Topographic maps and Black and white aerial photography for year 1990+ are from the United States Department of the Interior, United States Geological Survey. Color aerial photography aquired 2002 is from Virginia Base Mapping Program, Virginia Geographic Information Network.
Shaded topographic maps are from TOPO! ©2006 National Geographic
<http://www.national.geographic.com/topo>
All other map products are from the Commonwealth of Virginia Department of Game and Inland Fisheries.

map assembled 2019-01-21 10:55:07 (qa/qc March 21, 2016 12:20 - tn=955511.0 dist=3218
I)
\$poi=37.2478710 -76.7110128

| [DGIF](#) | [Credits](#) | [Disclaimer](#) | Contact vafwis_support@dgif.virginia.gov | Please view our [privacy policy](#) |
© 1998- 2019 Commonwealth of Virginia Department of Game and Inland Fisheries

NHDE Search Results



Virginia Department of Conservation and Recreation

Log In

- Home
- Map
- Species/Communities Search
- Terms & Conditions
- About Us
- Contact Us
- Help

Natural Heritage Resources

Your Criteria

Taxonomic Group: Select All
 Global Conservation Status Rank: Select All
 State Conservation Status Rank: Select All
 Federal Legal Status: Select All
 State Legal Status: Select All
 Watershed (8 digit HUC): 02080206 - Lower James River
 Subwatershed (12 digit HUC): JL34 - College Creek
 Search Run: 1/22/2019 10:59:01 AM

Result Summary

Total Species returned: 2
 Total Communities returned: 0

Click scientific names below to go to NatureServe report.

Click column headings for an explanation of species and community ranks.

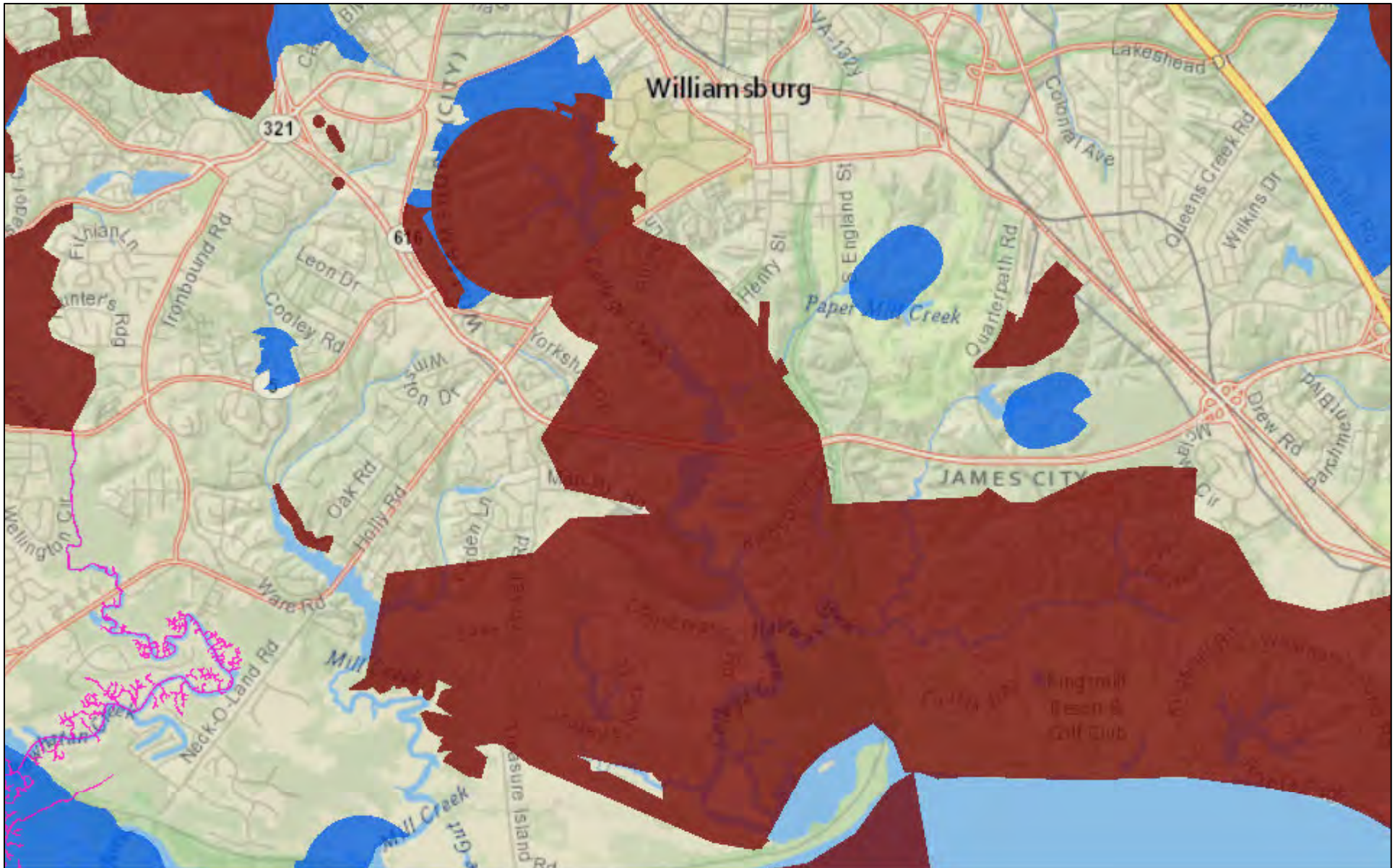
Common Name/Natural Community	Scientific Name	Global Conservation Status Rank	State Conservation Status Rank	Federal Legal Status	State Legal Status	Statewide Occurrences	Virginia Coastal Zone
Lower James							
College Creek							
FISH							
Atlantic Sturgeon	<i>Acipenser oxyrinchus</i>	G3	S2	LE	LE	2	Y
VASCULAR PLANTS							
Small Whorled Pogonia	<i>Isotria medeoloides</i>	G2?	S2	LT	LE	55	Y

Note: On-line queries provide basic information from DCR's databases at the time of the request. They are NOT to be substituted for a project review or for on-site surveys required for environmental assessments of specific project areas.

For **Additional Information** on locations of Natural Heritage Resources please submit an **information request**.

To **Contribute information** on locations of natural heritage resources, please fill out and submit a **rare species sighting form**.

JCSA College Creek Water Line Crossing

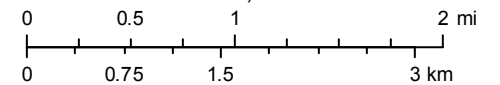


January 21, 2019

NH Screening Layer

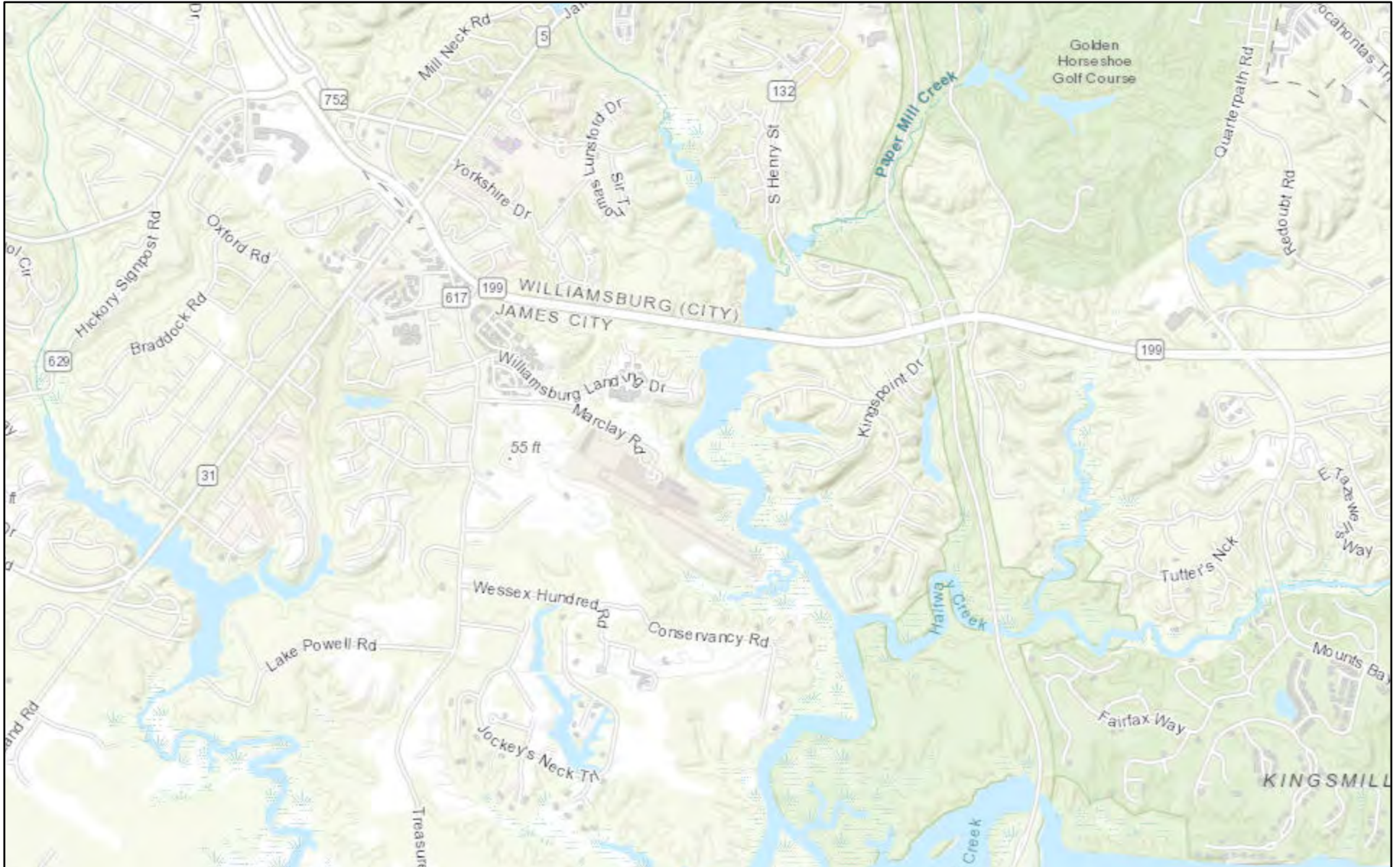
- SCU
- Conservation Site
- GLNHR
- Adjacent States

1:58,381



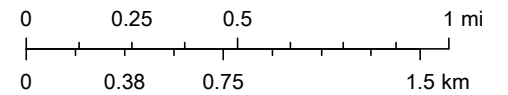
Content may not reflect National Geographic's current map policy. Sources: National Geographic, Esri, Garmin, HERE, UNEP-WCMC, USGS, NASA,

NLEB Locations and Roost Trees



1/21/2019 11:21:58 AM

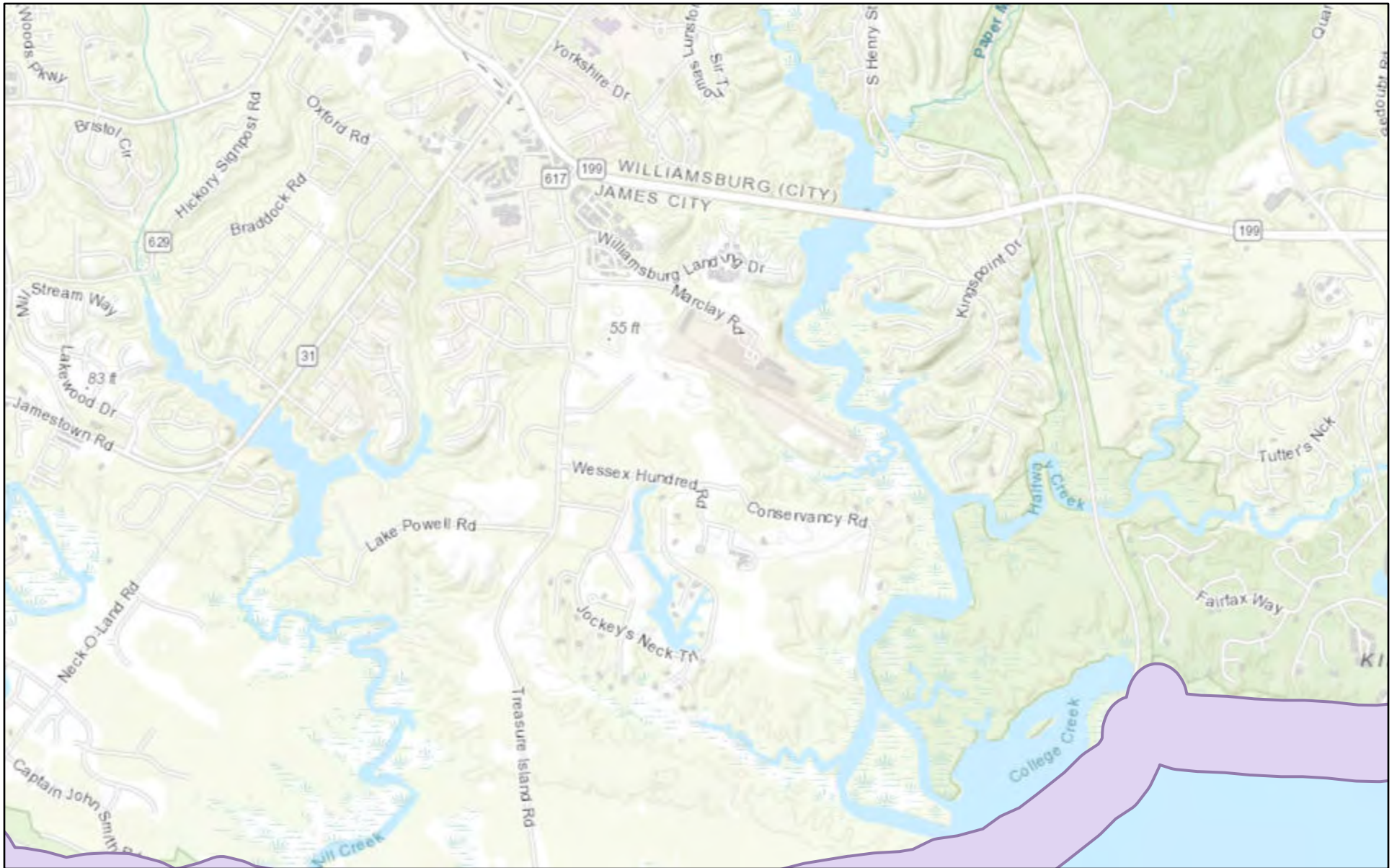
1:36,112



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS,

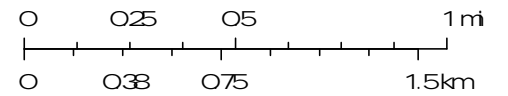
VA Dept. Game & Inland Fisheries
VITA, Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA |

College Creek Water Main Crossing



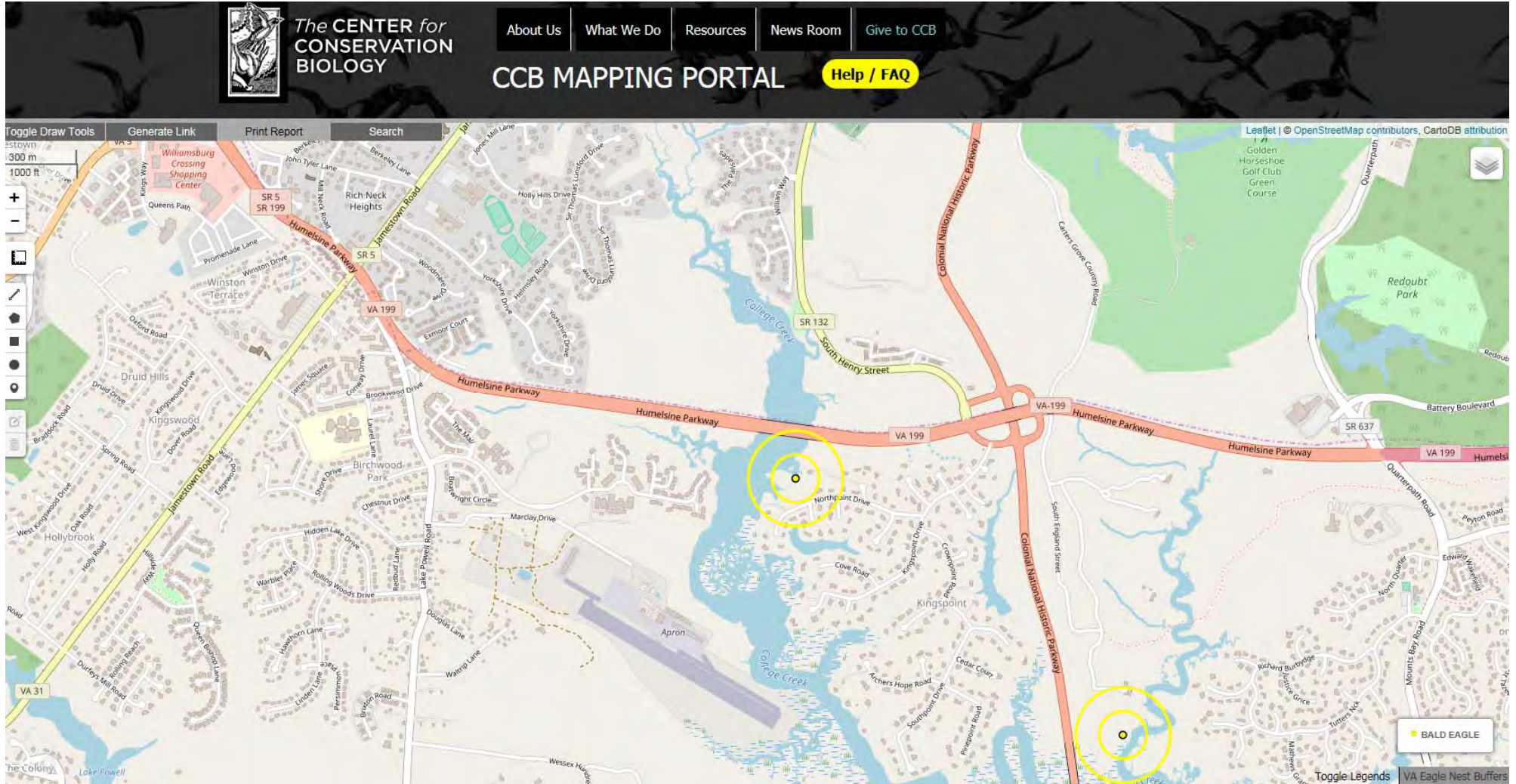
January 21, 2019

1:36,112



Sources Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS,

CCB Eagle Nest Locations



From: [Wittig, Thomas](#)
To: [Travis R. Comer](#)
Subject: Re: [EXTERNAL] James City Waterline
Date: Thursday, September 27, 2018 4:17:55 PM
Attachments: [image001.png](#)
[image005.png](#)

Hello Travis,

Thanks again for calling. As discussed, the entry point for HDD drilling under College Creek will be on the west side of the creek and the exit on the east side, both outside the 660-foot nest management buffer. Where the pipeline passes within this buffer, it will be beneath the creek and imperceptible to the nest. The noise and visibility of drilling will be mitigated by both distance and topography. Additionally, the volume of regular traffic on Virginia Route 199, which passes within the outer management buffer, likely creates a level of ambient noise which is comparable to what the project will introduce.

The Center for Conservation Biology Roost Registry does not report any bald eagle roosts with 660 feet of the project. The project also lies outside what the Service generally considers as concentration area along the mid and lower stretches of the James River.

Please let me know if I can provide any further assistance.

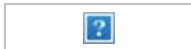
Best,
Tom

On Thu, Sep 27, 2018 at 11:41 AM Travis R. Comer <tcomer@rkk.com> wrote:

Topo map attached.

TRAVIS COMER, PWS, CSE

Project Planner



11827 Canon Boulevard, Suite 402

Newport News, Virginia 23606

757.320.1037 D | 757.846.0783 C
www.rkk.com



"RK&K" and "RK&K Engineers" are registered trade names of Rummel, Klepper & Kahl, LLP, a Maryland limited liability partnership. This message contains confidential information intended only for the person or persons named above. If you have received this message in error, please immediately notify the sender by return email and delete the message. Thank you.

--

Tom Wittig

Northeast Region Eagle Coordinator
US Fish and Wildlife Service
Division of Migratory Birds
300 Westgate Center Drive
Hadley, MA 01035
(413)253-8577 phone
(413)253-8424 fax

We have a new mailing address:

***US Fish and Wildlife Service
Migratory Bird Permit Office
[300 Westgate Center Dr.](#)
[Hadley, MA 01035](#)***

This transmission, including any attachments, is for the sole use of the intended recipient(s) or entity named above and may contain confidential and privileged information. If you received this and are not the intended recipient(s), you are hereby notified that any disclosure, copying, unauthorized distribution or the taking of any action in reliance on the contents of this information is prohibited. If you have received this transmission in error, please immediately contact the sender as indicated above to arrange the proper handling of the information.

Appendix B



Location: 1 Company: RK&K
Date: 01/04/2019 Photographer: T. Comer
Description: Facing west towards drill entry area



Location: 2 Company: RK&K
Date: 01/04/2019 Photographer: T. Comer
Description: Facing east towards College Creek



Location: 3 Company: RK&K
Date: 01/04/2019 Photographer: T. Comer
Description: Facing east towards drill exit area



Location: 4 Company: RK&K
Date: 01/04/2019 Photographer: T. Comer
Description: Facing west towards College Creek

Special Use Permit Application Supplemental Materials



Application and Authorization for the VESCP and VSMP Authority Permit for Land Disturbing and Stormwater Construction Activity

This local permit application and authorization is for the following land disturbing activity (LDA):

Land Disturbing Stormwater Construction

Date: _____

Landowner/Permittee: _____

Mailing Address: _____

(Street) (City) (State) (Zip)

Phone: _____ Fax: _____ Email: _____

Contact: _____ Phone: _____ Fax: _____

Email: _____

Project Name: _____

Project Street Address: _____

County Plan No.: _____ Parcel ID(s): _____

Total Size of Tract or Lot (acres): _____ Total Area to Be Disturbed (acres): _____

Description of Land Disturbing Activity (LDA): _____

Owner's Certification and Right of Entry

The undersigned owner/permittee hereby grants employees of James City County, Virginia and its agents, as local VESCP and VSMP authority, the right to enter the above referenced property for the purpose of inspecting or monitoring for compliance with any component of an approved stormwater pollution prevention plan SWPPP ("Plan") for the above-referenced project and further certifies that they understand the provisions of the Virginia Erosion and Sediment Control and Virginia Stormwater Management Act and Regulations and the local Erosion and Sediment Control/VSMP ordinance and agrees to carry out the approved Plan for the above-referenced project. Further, the permittee understands that one year after issuance of this permit annual local permit maintenance fees apply unless the general permit coverage is appropriately terminated.

N/A

(Print Name and Title of Landowner)

(Signature of Landowner)

Evidence of registration and general permit coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR10), if applicable, is required prior to local VESCP or VSMP permit issuance. If applicable, a Certificate to Construct stormwater facilities and fees should be submitted with this application.

This permit does not authorize a Certificate to Construct public water and sewer utilities which is issued separately by the James City Service Authority, 757-253-6805.

(For Office Use Only) Reviewed by: _____ Date: _____

Permit No.: _____ Surety Amount: \$ _____

Permit Conditions: _____

Approved by: _____ Date: _____

(Administrator – VESCP and/or VSMP Authority)

Project Code: _____ HUC: _____ Planner: _____ Proffer: _____ Treasurer: _____

CGP Registration No.: _____ VSMP fee: _____ CC fee: _____ DOC: _____

REZONING AND SPECIAL USE PERMIT SUBMITTAL REQUIREMENTS CHECKLIST

Please complete the following checklist to ensure that your application meets the requirements of the Zoning Ordinance. Any section not completed can delay processing of this application and the date of the Planning Commission hearing.

Please note that this checklist is only a guide to facilitate the application process. Section 24-23 of the James City County Zoning Ordinance should be reviewed for a complete list of submittal requirements required with any application for a rezoning or request for a special use permit.

Any request for a waiver to any submittal requirement should be made in accordance with Section 24-23 of the Zoning Ordinance at least one week prior to submittal of any application.

Traffic Impacts:

1. How many weekday peak hour trips to and from the site during hours of operation will your project generate? 0
2. What level of service does the roadway have where your project will enter or exit? B - Principal Arteri

If your answer to #1 is greater than 100, or if your answer to #2 is "D" or lower, a Traffic Impact Analysis must be submitted pursuant to the Traffic Impact Analysis Submittal Requirement Policy.

Water and sewer impact study:

1. What is the anticipated average daily flow of water and sewer volume, in gallons? 0
2. How many residential lots are proposed? None

If your answer to #1 is greater than 15,500 gallons, or if your answer to #2 is greater than 50 lots, a water and sewer impact study must be submitted.

Environmental Constraints Analysis:

1. Have you provided the environmental information required in accordance with the Environmental Constraints Analysis? Yes No

Adequate public facilities:

1. Have you attached an adequate public facilities report to include sewer, water, schools, fire stations, libraries, and other major locally-financed facilities? Yes No

Historic and archaeological study:

1. Is the property identified as being a highly sensitive area on the James City County archaeological assessment? Yes No

If yes, a Phase IA historic and archaeological study is required.

Environmental inventory:

1. Have you provided an environment inventory in accordance with the James City County Natural Resource policy? Yes No

Fiscal impacts:

1. Does your proposal include residential dwelling units? Yes No

If yes, a fiscal impact analysis is required, using the worksheet and assumptions provided by the planning division.

Parks and recreation facilities:

1. Have you provided parks and recreation information based on the Parks and Recreation Master Plan Proffer Guidelines? Yes No



Original Signature EnerGov

The applicant and property owner for all legislative case requests must submit an original signature of consent or the application will not be processed.

(Legislative cases include the following: Rezoning, Master Plan, Special Use Permit, Height Waiver, Land Use Change, Board of Zoning Appeals and Agricultural and Forestal District.)

Project Information

Case Type: Special Use Permit

Online Case Submission Date: 01/23/2019

Project Name: College Creek Water Main Crossing Project

Address: Adjacent to Humelsine Parkway eastbound lanes and College Creek bridge

Tax Map and Parcel ID: Project is within VDOT ROW, no parcel ID defined in County GIS data

Applicant/Contact Information

Name: Mike Gaffney

Company: Rummel, Klepper & Kahl (RK&K)

Phone: 757-320-2364

Address: 11827 Canon Blvd, Newport News, VA, 23606

Email: mgaffney@rkk.com

Property Owner Information

Name: Commonwealth of Virginia - Public right-of-way, no easement required

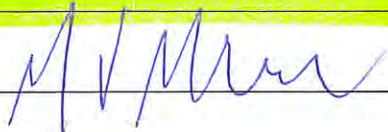
Company: Virginia Department of Transportation

Phone: N/A

Address: N/A

Email: N/A

I (We), the undersigned do hereby make application and petition the applicable governing body of James City County, Virginia, to consider the above request. All applicable submittal requirements and documentation has been submitted online as Case No.: _____.

Applicant Signature: 

Date: 1/23/2019

Property Owner Signature: _____

Date: _____

Property Owner Signature: _____

Date: _____

Master Plan:

1. Does your master plan depict the approximate boundaries and general location of all principal land uses and their building square footage and height, roads, rights-of-ways (with an indication of whether public or private), accesses, open spaces, public uses, and other features located on the site for which approval is sought? Yes No
2. Has your master plan been prepared by a licensed surveyor, engineer, architect, landscape architect or planner? Yes No

A total of 12 copies of the master plan should be submitted along with an application for rezoning or special use permit; if necessary, additional copies of the master plan may be required for submittal.

Supplemental Information:

1. Supplemental information should be submitted in accordance with the "Supplemental Submittal Requirements for Special Use Permits and Rezonings" policy as adopted by the Board of Supervisors and any additional policies as deemed necessary by the planning director.
Is this information attached? Yes No

I attest that this checklist is filled out in full. Any section not completed can delay processing of this application and the date of the Planning Commission public hearing.


Applicant Signature

1/23/2019
Date

Please note that before accepting this application, County staff will verify that all real estate taxes owed for the subject properties have been paid in full in accordance with Section 24-24. If you are unsure if your payments are up-to-date, please contact the County Treasurer at 757-253-6705.

Attachments to this application (please check off):

- Traffic Impact Study
- Water/Sewer Impact Study
- Environmental Constraints Analysis
- Adequate Public Facilities
- Historical and Archaeological Study
- Environmental Inventory
- Fiscal Impact Analysis
- Parks and Recreation Information
- Master Plan
- Supplemental Information

Master Plan Mapping

ABANDONED WATER LINE SHOWN ON
AES PLAN TITLED ROUTE 199 AND
COLLEGE CREEK 12-INCH WATER MAIN
DATED 8/19/05.
LOCATION SHOWN IS APPROXIMATE.

SEE SHEET OVERALL FOR FULL EXTENT
OF CONSTRUCTION ENTRANCE

N: 3618807.98
E: 12003063.77

50' x 25' DRILL
STAGING AREA

DRILL ENTRY
POINT

LIMITS OF CLEARING (TYP.)

NOW OR FORMERLY
WILLIAMSBURG LANDING INC
O.B. 246, PG. 116
M.B. 39, PG. 20-21 (PLAT)
PID 4820100002

VARIABLE WIDTH
JAMES CITY COUNTY
CONSERVATION EASEMENT
INST# 110015345

WATER ELEVATION
AT THE TIME OF SURVEY
0.50' ± IS MEAN LOW
WATER

EXISTING RIGHT OF WAY & LIMITED ACCESS LINE
VDOT PROJ# 0199-047-110, RW202, B616, C502

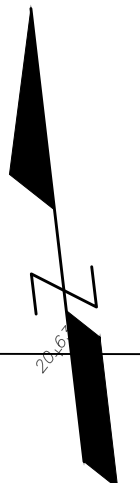
HUMELSINE PARKWAY

STATE ROUTE 199
VARIABLE WIDTH LIMITED ACCESS R/W

COLLEGE CREEK WATER MAIN PLAN
HORIZONTAL SCALE: 1" = 20'

ABANDONED WATER LINE SHOWN ON
AES PLAN TITLED ROUTE 199 AND
COLLEGE CREEK 12-INCH WATER MAIN
DATED 8/19/05.
LOCATION SHOWN IS APPROXIMATE.

MATCH LINE STA. 16+00, SEE SHEET C-1



17+00

18+00

19+00

20+00

21+00

22+00

25' ±

EXISTING RIGHT OF WAY & LIMITED ACCESS LINE
VDOT PROJ# 0199-047-110, RW202, B616, C502

RESOURCE PROTECTION
AREA (RPA)

SEE SHEET OVERALL FOR FULL
EXTENT OF STAGING AREA

1200' x 25' PIPE
STAGING AREA

DRILL EXIT
POINT

N: 3618665.58
E: 12004249.65

LIMITS OF CLEARING (TYP.)

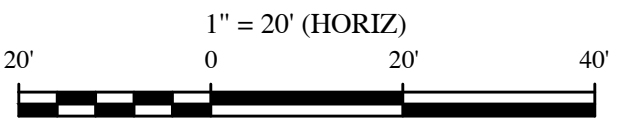
UPPER LIMITS
OF WETLANDS

NOW OR FORMERLY
COLLEGE CREEK ESTATES
INST# 10002159
M.B. 30, PG. 27 (PLAT)
PID 49103A0002

WATER ELEVATION
AT THE TIME OF SURVEY
0.50' ± IS MEAN LOW
WATER

COLLEGE CREEK WATER MAIN PLAN
HORIZONTAL SCALE: 1" = 20'

GRAPHIC SCALE



James City
County
James City
1607
James City Service Authority
DEPARTMENT OF ENGINEERING
101 MOUNTAINS BAY ROAD
WILLIAMSBURG, VA 23185



30%
PRELIMINARY
SUBMITTAL
NOT FOR
CONSTRUCTION

REVISIONS

DATE

COLLEGE CREEK WATER MAIN CROSSING

COLLEGE CREEK WATER MAIN PLAN
STA. 10+00 TO STA. 22+25

DRAWN BY: CAD
DESIGNED BY: AWP
DATE: JANUARY 2019
SCALE: AS NOTED

SHEET
SITE

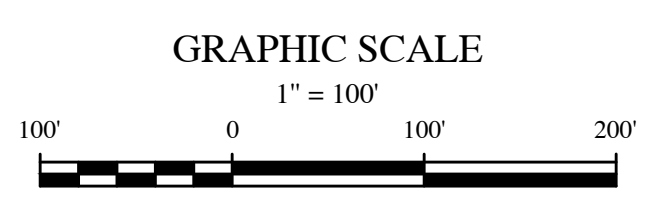
FILE NAME: T:\PROJECTS\2018\18240 ColCreekWM CAD\0218240-C-1 (SpecialUsePermit).dwg LAYOUT NAME: SHEET C-1 PLOTTED: Wednesday, January 23, 2019 - 11:00am

30%
PRELIMINARY
SUBMITTAL
NOT FOR
CONSTRUCTION



COLLEGE CREEK WATER MAIN LAYOUT PLAN
SCALE: 1" = 20'

NOTES:
1. HDPE PIPE LAYOUT SHALL BE COORDINATED WITH INGRESS/EGRESS REQUIREMENTS.



DATE	REVISIONS

COLLEGE CREEK WATER MAIN CROSSING
WATER MAIN LAYOUT PLAN

DRAWN BY: CAD
DESIGNED BY: AWP
DATE: JANUARY 2019
SCALE: AS NOTED

SHEET
OVERALL

**Unapproved Minutes of the March 6, 2019
Planning Commission Regular Meeting**

SUP-19-0004. James City Service Authority College Creek Pipeline Project

Ms. Terry Costello, Deputy Zoning Administrator stated that Mr. Mike Gaffney of Rummel, Klepper & Kahl (RK&K) has applied on behalf of the James City Service Authority (JCSA) for a Special Use Permit to allow for the installation of approximately 1100 linear feet of a 14 inch water main. Ms. Costello stated that the proposed water main will be located under College Creek, along the south side of the Humelsine Parkway eastbound bridge. Ms. Costello stated that the project is within the Virginia Department of Transportation's right-of-way, which is zoned R-5, Multi-family residential, R-8, Rural Residential, and R-1, Limited Residential. Ms. Costello further stated that the property is designated Low Density Residential on the Comprehensive Plan Land Use Map, and is located inside the Primary Service Area.

Ms. Costello stated that the current water main is located along the north side of the Humelsine Parkway westbound bridge and is need of major repair and rehabilitation. Ms. Costello stated that this water main was installed in 1976 when water lines were a permitted use in accordance with the issuance of a conditional use permit. Ms. Costello stated that staff was unable to locate this permit in County records.

Ms. Costello further stated that the proposed water main will handle a larger capacity of water than what is currently in use, therefore it would not be considered a maintenance project. Ms. Costello stated that the current ordinance also requires a special use permit for water lines that are located outside a subdivision or other approved development.

Ms. Costello stated that the County will simultaneously be co-locating a fiber optic cable which will enhance the County's communication system as well as serve the Williamsburg-James City County School Division.

Ms. Costello stated that staff finds the proposal to be compatible with the Comprehensive Plan, the Zoning Ordinance and surrounding development, and recommends that the Planning Commission recommend approval of this application subject to the proposed conditions.

Mr. Schmidt inquired about the box structure shown on the Master Plan.

Ms. Costello stated that on one side there will be a staging area where the drilling will occur and on the opposite end an area where the pipe and fiber optic cable will be pulled back.

Mr. Schmidt inquired whether the box was a three dimensional structure.

Ms. Costello stated that she did not think it was three dimensional but would defer to the applicant.

Mr. Schmidt inquired if the area of clearing shown could be reduced by having vehicles and equipment stored where there are existing pull offs and cleared area adjacent to the project.

Ms. Costello stated that the intent is to keep everything within the VDOT right-of-way and not have to cross property lines.

Mr. Paul Holt, Director of Community Development and Planning, requested that the applicant address questions about the staging areas.

Mr. Mike Gaffney, Municipal Engineer, RK&K, stated that area on the western side of the creek includes the drill rig, mud mixing equipment, recovery equipment and any equipment necessary to move the other equipment. Mr. Gaffney further stated that on the eastern side is the pipe stringing area where the pipe would be laid out and welded together. Mr. Gaffney stated that this area would be behind a jersey barrier for safety. Mr. Gaffney stated that the initial access would be created and then reamed out to accommodate the pipe. Mr. Gaffney further stated that the pipe would be assembled at the same time. Mr. Gaffney stated that the pipe would be pulled back and then conduits would be run for the fiber optic cable.

Mr. Gaffney stated that they could require the contractor to limit the number of personal vehicles on site.

Mr. Schmidt stated that he was more concerned with reducing the amount of vegetation that would be removed since the vegetation provides a sound buffer for the adjacent neighborhoods.

Mr. Gaffney stated that they have and will continue to limit the clearing area. Mr. Gaffney noted that the area in question has been developed previously and the trees are not mature trees.

Mr. Schmidt inquired if there would be any structures above ground at the completion of the project.

Mr. Gaffney stated that the only above ground structure would be the existing hydrant.

Mr. Schmidt noted that this matter has come forward as he was contacted by a friend who noticed the leak while boating. Mr. Schmidt stated that he notified the JCSA

Mr. Schmidt opened the Public Hearing.

Mr. Schmidt called for disclosures from the Commission.

There were no disclosures.

As no one wished to speak, Mr. Schmidt closed the Public Hearing.

Mr. Schmidt opened the floor for discussion by the Commission.

Mr. Polster stated that he was impressed with the quality and detail of the Environmental Impact Study.

Mr. Rich Krapf made a motion to recommend approval the application subject to the proposed conditions.

On a roll call vote, the Commission voted to recommend approval of SUP-19-0004. James City Service Authority College Creek Pipeline Project (6-0).

ITEM SUMMARY

DATE: 4/9/2019

TO: Board of Supervisors

FROM: Joe Melton, Legal Extern

SUBJECT: Ordinance to Amend Sections 10-4 and 10-5 of the County Code, Maintenance of premises and Recourse of county upon failure to maintain

ATTACHMENTS:

	Description	Type
☐	Memorandum	Cover Memo
☐	Ordinance	Ordinance
☐	Ordinance (Final Clean Version)	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Attorney	Kinsman, Adam	Approved	3/20/2019 - 4:09 PM
Publication Management	Burcham, Nan	Approved	3/20/2019 - 4:16 PM
Legal Review	Kinsman, Adam	Approved	3/20/2019 - 4:21 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2019 - 1:35 PM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 1:53 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 2:00 PM

MEMORANDUM

DATE: April 9, 2019
TO: The Board of Supervisors
FROM: Joe T. Melton, Legal Extern
SUBJECT: Ordinance to Amend Chapter 10, Garbage and Refuse, by Amending Section 10-4 and Section 10-5

Attached for your consideration is an Ordinance revising Chapter 10, Garbage and Refuse, of the County Code. This Chapter has not been updated since July 2011. Changes are primarily to expand the authority of the County to the maximum extent allowed by state law and to fix minor grammatical issues. Since the Ordinance was last amended, the state law changed in three major ways:

- (1) Added general authority to regulate occupied dwellings to the law so long as it is a platted subdivision or zoned for residential, business, commercial, or industrial use;
- (2) Limited the application of Section 10-4(b) and (c) so that it may not apply to property zoned for or in use as an active farming operation; and
- (3) Included “running bamboo” as a type of plant growth allowed to be regulated and cut under Section 10-4(b) and (c).

Section 10-4(a) complies with current state law and is therefore not amended. The first major change strikes Section 10-4(c) from the law as it is an unnecessary restatement of the language in Section 10-4(b). Changes in state law now require localities with a population density of less than 500 square miles to apply the Ordinance only to platted subdivisions or land zoned for residential, business, commercial, and industrial use. Therefore, Section 10-4(b) is amended to include language authorizing the County to regulate occupied, vacant, or undeveloped property within such areas. The subsection is also amended to prohibit application of the Ordinance to land zoned for or in active farming operation as required by state law. In addition, Section 10-4(b) is amended to include “running bamboo” as an enumerated type of plant growth which can be cut and regulated by the County.

Section 10-5(b) is amended to work better in conjunction with amended Section 10-4 and to fix several minor grammatical errors. Substantive changes include adding the words “nuisance or” in front of “condition” in the first sentence to clarify the right of the County to abate a nuisance arising from violations of Section 10-4 and adding specific language about the right of the County to cut grass, weeds, bamboo, or other foreign growths. Sections 10-5(a) and (b) are also amended to fix sentence structure, grammar, and readability.

The County Attorney’s office recommends adoption of the attached Ordinance.

JTM/nb
AmdCh10GarbRf-mem

Attachments

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 10. GARBAGE AND REFUSE, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 10-4, MAINTENANCE OF PREMISES - DUTY OF OWNERS, OCCUPANTS, AND PERSONS IN CHARGE; AND SECTION 10-5, RECOURSE OF COUNTY UPON FAILURE TO MAINTAIN BY OWNER OR OCCUPANT.

BE IT ORDAINED, by the Board of Supervisors of the County of James City, Virginia, that Chapter 10, Garbage and Refuse, is hereby amended and reordained by amending Section 10-4, Maintenance of premises - Duty of owners, occupants, and persons in charge; and Section 10-5, Recourse of county upon failure to maintain by owner of occupant.

Chapter 10. Garbage and Refuse

Article I. In General

Sec. 10-4. Maintenance of premises - Duty of owners, occupants, and persons in charge.

- (a) It shall be the duty of each owner of any real property in the county to maintain such property at all times free from any accumulation of garbage, trash, litter, refuse or other waste matter, whether liquid or solid, which might endanger the health or safety of residents of the county or otherwise constitute a nuisance. Such garbage, trash, litter, refuse or other waste material shall be disposed of in personally owned or privately owned receptacles that are provided for such use and for the use of the persons disposing of such matter or in authorized facilities provided for such purpose and in no other manner not authorized by law.
- (b) It shall be the duty of each owner of any *occupied or* vacant developed, or undeveloped property, including such property upon which buildings or other improvements are located, *within platted subdivisions and areas zoned for residential, business, commercial, or industrial use*, to provide for the cutting of grass, weeds, *running bamboo*, and other foreign growth as often as needed to prevent breeding and harboring places for insects, reptiles and rodents, *or and* to prevent other hazards to the health or safety of residents of the county or other nuisances. *This section shall not apply to land zoned for or in active farming operation.*
- ~~(c) It shall be the duty of each owner of any occupied real property within platted subdivisions and areas zoned for residential, business, commercial or industrial use to provide for the cutting of grass, weeds, and other foreign growths as often as needed to prevent breeding and harboring places for insects, reptiles and rodents and to prevent other hazards to the health or safety of residents of the county or other nuisances.~~

State Law reference - Authority of county to provide for removal of trash, garbage, grass, weeds, etc., Code of Va. § 15.2-901.

Sec. 10-5. Recourse of county upon failure to maintain by owner or occupant.

- (a) The county administrator or his designee, ~~and~~ upon complaint by any responsible person that conditions exist on any real property in violation of section 10-4, shall investigate conditions existing on real property in the county at any time, ~~and~~. ~~Upon determination by the county administrator or his designee, following investigation,~~ that the owner of any real property in the county stands in violation of his duty as provided in section 10-4, *the county administrator or his designee shall* ~~and directing~~ him to take such action as may be necessary to rectify such conditions within such time, not more than ten days, as shall be stated in the notice.
- (b) If ten days after the service of any such notice the directive thereof has not been complied with, the county administrator or his designee shall proceed to have such work done as may be necessary to abate any *nuisance or* condition which might endanger the health or safety of residents of the county, *including cutting any grass, weeds, running bamboo, or other foreign growth which is in violation of section 10-4 of this Chapter.* ~~and~~ All expenses resulting therefrom shall be chargeable to and paid by the owner of such property and shall be collected by the county as taxes and levies are collected, and all charges not so collected shall constitute a lien against such property. In addition, the county administrator or his designee may record such documents among the real estate records of the county as may be necessary to give notice of such lien.

State Law reference - Authority of county to charge for removal and record liens for failure to remove trash, garbage, weeds, etc., Code of Va. § 15.2-901.

James O. Icenhour, Jr.
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Deputy Clerk to the Board

	VOTES		
	AYE	NAY	ABSTAIN
HIPPLE	_____	_____	_____
LARSON	_____	_____	_____
SADLER	_____	_____	_____
MCGLENNON	_____	_____	_____
ICENHOUR	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April, 2019.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 10. GARBAGE AND REFUSE, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 10-4, MAINTENANCE OF PREMISES - DUTY OF OWNERS, OCCUPANTS, AND PERSONS IN CHARGE; AND SECTION 10-5, RECOURSE OF COUNTY UPON FAILURE TO MAINTAIN BY OWNER OR OCCUPANT.

BE IT ORDAINED, by the Board of Supervisors of the County of James City, Virginia, that Chapter 10, Garbage and Refuse, is hereby amended and reordained by amending Section 10-4, Maintenance of premises - Duty of owners, occupants, and persons in charge; and Section 10-5, Recourse of county upon failure to maintain by owner of occupant.

Chapter 10. Garbage and Refuse

Article I. In General

Sec. 10-4. Maintenance of premises - Duty of owners, occupants, and persons in charge.

- (a) It shall be the duty of each owner of any real property in the county to maintain such property at all times free from any accumulation of garbage, trash, litter, refuse or other waste matter, whether liquid or solid, which might endanger the health or safety of residents of the county or otherwise constitute a nuisance. Such garbage, trash, litter, refuse or other waste material shall be disposed of in personally owned or privately owned receptacles that are provided for such use and for the use of the persons disposing of such matter or in authorized facilities provided for such purpose and in no other manner not authorized by law.
- (b) It shall be the duty of each owner of any occupied or vacant developed, or undeveloped property, including such property upon which buildings or other improvements are located, within platted subdivisions and areas zoned for residential, business, commercial, or industrial use, to provide for the cutting of grass, weeds, running bamboo, and other foreign growth as often as needed to prevent breeding and harboring places for insects, reptiles and rodents, or to prevent other hazards to the health or safety of residents of the county or other nuisances. This section shall not apply to land zoned for or in active farming operation.

State Law reference - Authority of county to provide for removal of trash, garbage, grass, weeds, etc., Code of Va. § 15.2-901.

Sec. 10-5. Recourse of county upon failure to maintain by owner or occupant.

- (a) The county administrator or his designee, upon complaint by any responsible person that conditions exist on any real property in violation of section 10-4, shall investigate conditions existing on real property in the county at any time. Upon determination that the owner of any real property in the county stands in violation of his duty as provided in section 10-4, the county administrator or his designee shall direct him to take such action as may be necessary to rectify such conditions within such time, not more than ten days, as shall be stated in the notice.

- (b) If ten days after the service of any such notice the directive thereof has not been complied with, the county administrator or his designee shall proceed to have such work done as may be necessary to abate any nuisance or condition which might endanger the health or safety of residents of the county, including cutting any grass, weeds, running bamboo, or other foreign growth which is in violation of section 10-4 of this Chapter. All expenses resulting therefrom shall be chargeable to and paid by the owner of such property and shall be collected by the county as taxes and levies are collected, and all charges not so collected shall constitute a lien against such property. In addition, the county administrator or his designee may record such documents among the real estate records of the county as may be necessary to give notice of such lien.

State Law reference - Authority of county to charge for removal and record liens for failure to remove trash, garbage, weeds, etc., Code of Va. § 15.2-901.

AmdCh10GarbRf-ord-final

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Roberta Sulouff, Senior Planner

SUBJECT: AFD-02-86-2-2018. 4450 Ware Creek Road Croaker Addition

ATTACHMENTS:

	Description	Type
☐	Staff Report	Staff Report
☐	Attachment 1. Ordinance	Ordinance
☐	Attachment 2. Location Map	Backup Material
☐	Attachment 3. Unapproved minutes from the March 6, 2019 Planning Commission meeting	Minutes
☐	Attachment 4. Unapproved minutes from the January 24, 2019 AFD Advisory Committee meeting	Minutes
☐	Attachment 5. Croaker 2018 AFD Renewal Staff Report and Ordinance	Backup Material
☐	Attachment 6. State Code regarding AFD application criteria	Backup Material
☐	Attachment 7. Property narrative provided by the applicant	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/25/2019 - 12:15 PM
Development Management	Holt, Paul	Approved	3/25/2019 - 12:16 PM
Publication Management	Daniel, Martha	Approved	3/25/2019 - 1:29 PM
Legal Review	Kinsman, Adam	Approved	3/25/2019 - 3:14 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 11:58 AM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 1:50 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 1:57 PM

Agricultural and Forestal District-2-86-2-2018. 4450 Ware Creek Road Croaker Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

SUMMARY FACTS

Applicant: Mr. Jonathan Kinney of Bean, Kinney, and Korman Attorneys

Land Owner: Mr. Jonathan Kinney, Trustee

Proposal: Addition of ± 14.18 acres of land to the Croaker Agricultural and Forestal District (AFD)

Location: 4450 Ware Creek Road

Tax Map/Parcel No.: 1410100046

Project Acreage: ± 14.18 acres

Current Zoning: A-1, General Agricultural

Comprehensive Plan: Low Density Residential

Primary Service Area: Inside

Staff Contact: Roberta Sulouff, Senior Planner

PUBLIC HEARING DATES

AFD Advisory Committee: January 24, 2019, 4:00 p.m.
Planning Commission: March 6, 2019, 6:00 p.m.
Board of Supervisors: April 9, 2019, 5:00 p.m.

FACTORS FAVORABLE

1. With the proposed Ordinance, the proposal is compatible with surrounding development.

2. The proposal is consistent with the recommendations of the James City County Comprehensive Plan adopted in 2015, “*Toward 2035: Leading the Way.*”
3. The proposal is consistent with local and State Code governing the addition of lands into AFDs.

FACTORS UNFAVORABLE

1. No factors unfavorable.

STAFF RECOMMENDATION

Staff finds that the proposed addition meets all state and local requirements for inclusion in the Croaker AFD and recommends that the Board of Supervisors approve the proposed addition to the Croaker AFD subject to the conditions listed in the attached Ordinance (Attachment No. 1).

PLANNING COMMISSION RECOMMENDATION

At its March 6, 2019 meeting, the Planning Commission voted 6-0 to recommend approval of this addition to the Board of Supervisors.

AFD ADVISORY COMMITTEE RECOMMENDATION

At its January 24, 2019 meeting, the AFD Advisory Committee voted 7-0 to recommend approval of this addition to the Planning Commission and Board of Supervisors.

PROJECT DESCRIPTION

- Mr. Jonathan Kinney has applied to add an approximate 14.18-acre parcel to the Croaker AFD.

Agricultural and Forestal District-2-86-2-2018. 4450 Ware Creek Road Croaker Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

- The land is currently undeveloped and wooded, and under the care of a professional forester.
- Per the United States Department of Agriculture Soil Survey, the majority of soil on this parcel is Suffolk fine sandy loam (31B). The Soil Survey indicates this soil has very high potential for the production of important trees with very limited or insignificant limitations on production such as slope, seedling mortality, and potential equipment usage limitations.

DISTRICT HISTORY

- The Croaker AFD was created in 1986 for a term of four years and originally consisted of 13 parcels totaling ± 1,341 acres.
- The District was last renewed earlier in 2018. The District consists of approximately 1,182.23 acres of land located between I-64 and York River State Park.
- If this addition were approved, the District would consist of approximately 1,197.3 acres.

SURROUNDING ZONING AND DEVELOPMENT

- All surrounding properties are zoned A-1, General Agricultural, and designated Rural Lands or Low Density Residential on the Comprehensive Plan.
- The District consists primarily of forested land. The principal land use on adjacent properties is undeveloped, forested land with single-family residences.

COMPREHENSIVE PLAN AND ZONING

The Comprehensive Plan designates this parcel as Low Density Residential. Land Use Action 6.1.1 of the 2035 Comprehensive Plan

states the County shall “support both the use value assessment and Agricultural and Forestal (AFD) programs to the maximum degree allowed by the *Code of Virginia*.”

STATE AND LOCAL CODE

- Section 15.2-4301 of the Virginia State Code, Agricultural and Forestal Districts Act-Declaration of policy findings and purpose states that:

“It is the policy of the Commonwealth to conserve and protect and to encourage the development and improvement of the Commonwealth’s agricultural and forestal lands for the production of food and other agricultural and forestal products. It is also the policy of the Commonwealth to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes...”

- State Code establishes the AFD Advisory Committee to:

“...advise the local planning commission and the local governing body and assist in creating, reviewing, modifying, continuing, or terminating districts within the locality. In particular, the committee shall render expert advice as to the nature of farming and forestry and agricultural and forestal resources within the district and their relation to the entire locality.”

- Section 15.2-4305 states that a parcel may be added to a district if it is directly contiguous to the core of the district, within a mile of the core, or directly contiguous to a parcel whose boundary lines are within a mile to the core. This parcel is directly contiguous to the core of the Croaker AFD.

Agricultural and Forestal District-2-86-2-2018. 4450 Ware Creek Road Croaker Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

- Section 15.2-4306 (Attachment No. 5) includes factors for consideration in the addition of lands to AFDs. One such factor includes the presence of any significant forestal lands within the district and in areas adjacent thereto that are not now in active forestal production. The Code later states that the presence of suitable soils may be considered in the determination of forestal significance.

STAFF RECOMMENDATION

Staff finds that the proposed addition meets all state and local requirements for inclusion in the Croaker AFD and recommends that the Board of Supervisors approve the proposed addition to the Croaker AFD subject to the conditions listed in the attached Ordinance (Attachment No. 1).

RS/md
AFD2-86-2-18WareCrk

Attachments:

1. Ordinance
2. Location Map
3. Unapproved Minutes from the March 6, 2019 Planning Commission Meeting
4. Unapproved Minutes from the January 24, 2019 AFD Advisory Committee Meeting
5. Croaker 2018 AFD Renewal Staff Report and Ordinance
6. State Code Regarding AFD Application Criteria
7. Property Narrative Provided by the Applicant

ORDINANCE NO. _____

AGRICULTURAL AND FORESTAL DISTRICT-2-86-2-2018.

4450 WARE CREEK ROAD, CROAKER ADDITION

WHEREAS, a request has been filed with the Board of Supervisors of James City County, Virginia, (the “Board of Supervisors”) to add ± 14.18 acres of land owned by Mr. Johnathan Kinney, located at 4450 Ware Creek Road and identified as James City County Real Estate Tax Map/Parcel No. 1410100046 to Agricultural and Forestal District (AFD)-02-86, which is generally known as the “Croaker Agricultural and Forestal District” (the “Application”); and

WHEREAS, at its January 24, 2019 meeting, the AFD Advisory Committee voted 7-0 to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Planning Commission (the “Commission”) at its March 6, 2019 meeting, after which the Commission voted 6-0 to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Board of Supervisors.

NOW, THEREFORE, BE IT ORDAINED that the Board of Supervisors of James City County, Virginia, hereby adds ± 14.18 acres located at 4450 Ware Creek Road and identified as James City County Real Estate Tax Map/Parcel No. 1410100046 (the “Property”) to AFD-02-86, which is generally known as the “Croaker Agricultural and Forestal District” (the “District”) with the following conditions:

1. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner’s immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCFs), provided: a) the subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
2. No land outside the Primary Service Area and within the District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors’ Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.
3. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for WCFs on properties in the District that are in accordance with the County’s policies and Ordinances regulating such facilities.

James O. Icenhour, Jr.
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Deputy Clerk to the Board

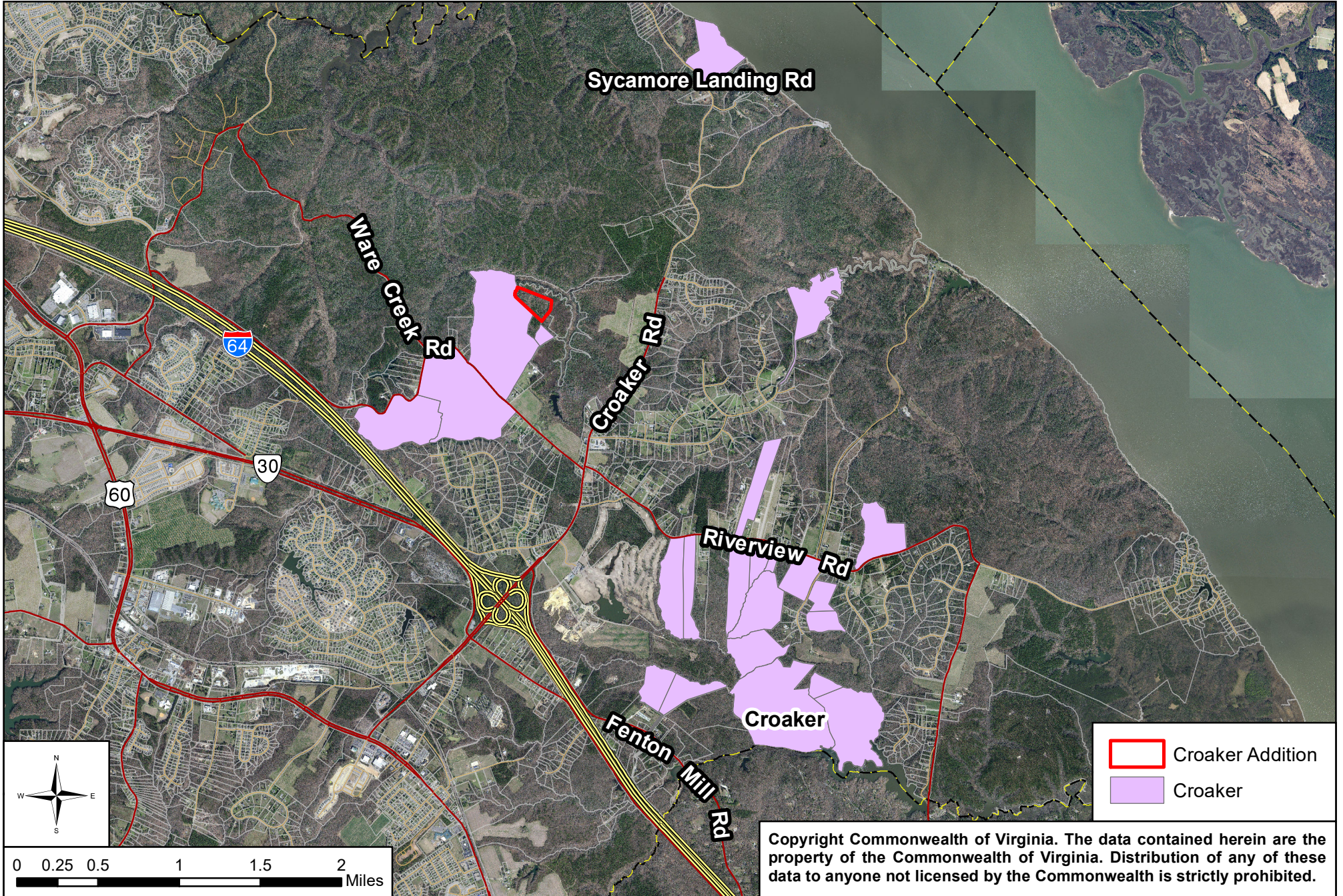
	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
HIPPLE	___	___	___
LARSON	___	___	___
SADLER	___	___	___
MCGLENNON	___	___	___
ICENHOUR	___	___	___

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April,
2019.

AFD2-86-2-18WareCrk-res

JCC AFD-02-86-2-2018

4450 Ware Creek Rd Croaker AFD Addition



**Unapproved Minutes of the March 6, 2019
Planning Commission Regular Meeting**

AFD-02-86-2-2018. 4450 Ware Creek Road Croaker AFD Addition

Ms. Roberta Sulouff, Senior Planner, stated that Mr. Jonathan Kinney has applied to add a 14.18 acre parcel to the Croaker Agricultural and Forestal District (AFD). Ms. Sulouff stated that the parcel is located at 4450 Ware Creek Road, is zone A-1, general Agricultural and is designated Low Density Residential on the Comprehensive Plan Land Use Map.

Ms. Sulouff stated that the land is currently under the care of a professional forester and meets proximity requirements for inclusion into the AFD. Ms. Sulouff stated that approval of this application would bring the total district to approximately 1197.3 acres

Ms. Sulouff stated that staff recommends that the Planning Commission recommend inclusion of this parcel into the Croaker AFD to the Board of Supervisors, subject to the conditions adopted during the renewal of the Croaker AFD in 2018.

Mr. Schmidt opened the Public Hearing.

Mr. Schmidt called for disclosures from the Commission.

There were no disclosures.

As no one wished to speak, Mr. Schmidt closed the Public Hearing.

Mr. Schmidt opened the floor for discussion by the Commission.

Mr. Polster stated that he does not understand how some of the properties qualify for inclusion in an AFD based on the criteria used to determine an agriculturally significant property. Mr. Polster stated that he realizes that there is not a set number of the specific factors that a property must meet. Mr. Polster further stated that the AFD Committee minutes did not shed light on how the criteria applied to the properties.

Mr. Polster stated that the applicant and owner of this property has three parcels in the Barnes Swamp AFD. Mr. Polster noted that the professional forester for this property is under contract to the property owner and manages approximately 3,200 acres. Mr. Polster stated that he had hoped that the AFD Committee would have looked at each parcel and provided advice on whether any of the seven factors other than Comprehensive Plan, agriculture and soil applied to the property.

Mr. Polster stated that he believes that this property does meet Criteria 1 and Criteria 2 for inclusion in the AFD and that he will support this application.

Mr. Polster made a motion to recommend approval of the addition of the parcel into the Croaker AFD.

On a roll call vote, the Planning Commission voted to recommend approval of AFD-02-86-2-2018.
4450 Ware Creek Road Croaker AFD Addition (6-0).

MINUTES OF THE AGRICULTURAL AND FORESTAL ADVISORY COMMITTEE OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE TWENTY-FOURTH DAY OF JANUARY, TWO THOUSAND AND NINETEEN, AT 4:00 P.M. AT THE BUILDING A CONFERENCE ROOM, 101 MOUNTS BAY ROAD, WILLIAMSBURG, VIRGINIA.

A. CALL TO ORDER

Mr. William C. Taylor called the meeting to order at 4:00 p.m.

B. ROLL CALL

Members Present

Mr. Thomas Hitchens
Ms. Loretta Garrett
Mr. William C. Taylor, chair
Mr. L. Bruce Abbott
Mr. Payten Harcum
Mr. Sandy Wanner
Ms. Sue Sadler

Also Present

Ms. Ellen Cook, Principal Planner
Ms. Roberta Sulouff, Senior Planner
Ms. Tori Haynes, Planner
Ms. Katie Pelletier, Community
Development Assistant

Absent

Mr. Richard Bradshaw
Mr. William R. Harcum
Mr. John Grantz

C. APPROVAL OF MINUTES

1. Approval of the June 21, 2018 Meeting Minutes

Mr. Taylor reminded the Committee that the October 25, 2018 meeting had been canceled because they lacked a quorum.

Mr. Bruce Abbott moved to approve the minutes of the June 21, 2018 meeting.

Mr. Tom Hitchens seconded the motion.

On a voice vote, the motion was approved 6-0-1. Ms. Loretta Garrett abstained from the vote as she was absent from the June 21, 2018 meeting.

D. OLD BUSINESS:

1. AFD-18-0020. 8328 Diascund Road Mill Creek AFD Addition

Mr. Taylor explained the Committee would next address old business from the canceled October 25, 2018 meeting.

Ms. Roberta Sulouff said applicant Mr. John Michael Sim has applied to enroll approximately 10 acres of a parcel located at 8328 Diascund Road in the Mill Creek AFD. The parcel is zoned A-1 (General Agricultural) and is designated Rural Lands in the County Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 3,224 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Mill Creek AFD to the Planning Commission.

Mr. Taylor clarified that applicants could have property included in the AFD which may not meet the tax-break threshold.

Ms. Sulouff confirmed there is no minimum acreage requirement for inclusion in the AFD.

Mr. Abbott moved to recommend approval of the proposed addition of the parcel at 8328 Diascund Road into the Mill Creek AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Ms. Garrett seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

2. AFD-18-0019. 4928 Fenton Mill Road Croaker Addition

Ms. Sulouff stated that Mr. Charles Apperson and Ms. Patricia Russo have applied to enroll an approximately 52-acre parcel in the Croaker AFD. The parcel is located at 4928 Fenton Mill Road, zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff noted this parcel was brought up at the 2018 renewal process. Staff believed the parcel was not included in the AFD after the 1996 renewal due to an administrative error. This property was originally part of a parcel in the AFD at 4920 Fenton Mill Road, but after a 1995 subdivision the new parcel at 4928 Fenton Mill Road was not included in notifications for that renewal period.

The Committee discussed the issue at the June 21, 2018 meeting and recommended the parcel be included. However, staff found that a more proper route to re-include the parcel would be to go through the formal addition process.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 1,234 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission.

Mr. Hitchens moved to recommend approval of the proposed addition of the parcel at 4928 Fenton Mill Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Payten Harcum seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

3. AFD-18-0017. 9888 Sycamore Landing Road Croaker Addition

Ms. Sulouff stated that Ms. Kelly Fulton has applied, on behalf and with the permission of Mr. Thomas W. Dana, III, to add an approximately 62-acre parcel to the Croaker AFD. The parcel is located at 9888 Sycamore Landing Road, zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff noted that, while this parcel is over one mile away from the core parcels in the Croaker AFD, State Code permits the addition of a parcel into an AFD if the governing body finds the property contains agriculturally and forestally significant land. Ms. Sulouff reminded the Committee that they reviewed a similar case and permitted addition of an adjacent property at 9730 Sycamore Landing Road to the Croaker AFD in 2017.

Ms. Sulouff noted the U.S. Department of Agriculture Soil Survey indicates the site is home to soils which have moderately high potential for both crops and timbering. Should the Committee find that the property contains agriculturally and forestally significant land and that it meets the criteria for inclusion of land in an AFD, staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission. If this addition were approved, the District would consist of approximately 1,244 acres.

Mr. Hitchens commented he supports inclusion of properties which will help preserve the rural nature of the county.

Mr. Hitchens moved to recommend approval of the proposed addition of the parcel at 9888 Sycamore Landing Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Harcum seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

4. AFD-18-0016. 365, 358 and 382 Ivy Hill Road Mill Creek Addition

Ms. Sulouff stated that Mr. John Michael Sim has applied to enroll approximately 60.73 acres of land located at 365, 358 and 382 Ivy Hill Road into the Mill Creek AFD. The

parcel is zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 3,274 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Mill Creek AFD to the Planning Commission.

Mr. Abbott moved to recommend approval of the proposed addition of the parcels at 365, 358 and 382 Ivy Hill Road into the Mill Creek AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Hitchens seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

5. AFD-02-86-2-2018. 4450 Ware Creek Road Croaker Addition

Ms. Sulouff stated that Mr. Jonathan Kinney has applied to enroll approximately 14.18 acres of land located at 4450 Ware Creek Road into the Croaker AFD. The parcel is zoned A-1 (General Agricultural) and designated Low-Density Residential in the County's Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 1,197.3 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission.

Mr. Hitchens requested a hard copy of the AFD map be available for reference during meetings.

Ms. Garrett moved to recommend approval of the proposed addition of the parcel at 4450 Ware Creek Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Sandy Wanner seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

E. NEW BUSINESS

1. C-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD

Ms. Tori Haynes stated Hampton Roads Sanitation District currently operates the Williamsburg Treatment Plant located at 300 Ron Springs Drive. This is a landlocked

parcel that is wholly surrounded by 250 Ron Springs Drive and the Carter's Grove AFD.

HRSD has stated that it requires a facility expansion adjacent to the Williamsburg Treatment Plant. This expansion is in response to federal enforcement action taken by the EPA and Dept. of Justice. HRSD has stated there is insufficient property on their current parcel to accommodate the facility expansion, and as such has stated its intent to acquire 250 Ron Springs Drive by condemnation for public utility purposes.

HRSD is not requesting a withdrawal of the property from the AFD at this time. Rather, per State Code, utilities may acquire interests in properties within an AFD provided that the Board of Supervisors, in consultation with the AFD Advisory Committee and Planning Commission, reviews the proposal and specifically examines the following criteria found in §15.2-4313: (i) the effect the action would have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district.

The evaluation and analysis of the proposal against these three criteria are a State-Code mandated process that is required when acquisition of a parcel by a political subdivision of the state is proposed.

Ultimately, the Board of Supervisors will consider the above criteria and make a determination as to whether the proposed action might have an unreasonably adverse effect upon state or local policy.

This review does not withdraw any portion of the parcel from the AFD or grant any sort of approval for the facility expansion itself. Should HRSD be successful in acquiring ownership of the subject parcel, they would then need to apply separately for those items, and accordingly, the AFD Advisory Committee would consider the withdrawal request at that time.

Staff recommends that each of the above criteria be discussed individually to make clear the findings of the Committee to the Planning Commission and Board of Supervisors.

In consideration of the criteria, staff ultimately found that the proposal was necessary to provide service in the most economical and practical manner, and that it will not have an unreasonably adverse effect upon state or local policy.

Mr. Taylor disclosed to the Committee and staff that he is affiliated with companies represented by Kaufman and Canoles law firm. However, he does not feel this will sway his opinion or recommendations while serving on the Committee.

Mr. Taylor then asked staff to clarify whether the Committee would be voting to agree or disagree with the HRSD proposal.

Ms. Haynes stated the Committee would not be considering any AFD withdrawal at this time but needed to determine if the action of taking the parcel would have an adverse effect on State or local policy. She said this is an automatic review of three criteria triggered or prompted by the intent stated by HRSD to acquire the parcel by condemnation for public utility purposes. Their findings will then go to the Planning Commission and Board of Supervisors.

Ms. Haynes suggested discussion of the three criteria found in §15.2-4313 and stated that representatives of HRSD and Carter's Grove Associates, LLC are available to answer questions.

Ms. Haynes then shared staff's understanding of the proposal. HRSD is looking to expand beyond their current borders into the Carter's Grove AFD. They propose clearing approximately 7 acres, but a final site has not been located yet.

Mr. Wanner stated HRSD is under Federal mandate to make improvements to the facility.

Ms. Haynes confirmed there is a Federal action against HRSD, and existing lands cannot accommodate the necessary expansion. They require an additional seven acres.

Mr. Taylor stated HRSD is attempting to acquire 76 acres.

Ms. Haynes stated HRSD is pursuing ownership of the entire parcel but not necessarily withdrawal of all 76 acres from the AFD. She reiterated that this review is prompted by the intent to condemn lands within an AFD by a political subdivision.

Mr. Hitchens asked staff why HRSD would need to withdraw land from the AFD if they are a public entity.

Ms. Haynes answered that a Special Use Permit (SUP) is not allowed in an AFD unless it is related to farming practices. If HRSD takes ownership of the parcel, and a use is permitted with a SUP, they will need to withdraw that portion of land from the AFD.

Mr. Abbott asked the HRSD representative for an explanation of their plan.

Ted Henifin, General Manager at HRSD, addressed the Committee and began with a discussion on the impact of topography in the subject parcel. He explained the land has steep slopes, wetlands and Resource Protection Area and is largely undevelopable. He stated that of the 76 acres, maybe only 30 acres are buildable. He showed the Committee on a map the area of the parcel most likely suitable for their facility expansion and access points. Mr. Henifin stated there have been many discussions with the property owner regarding alternatives to condemnation in the past year with no resolution. Regarding the consent order, Mr. Henifin stated the federal enforcement action is driving the timeline tied to the project.

Mr. Henifin explained HRSD requires the 76 acres because of the unusual, unique residual that would be created by the project and buildout. The mostly unbuildable, remaining land would serve as a buffer between the WTP and surrounding properties to protect the investment and property, in case slopes erode. He said they have an outfall through an easement on the beach and have already had to make improvements on the beach for erosion. Mr. Henifin said they would like to have control long-term and do not find much residual value in the remaining property beyond the buildable acres. He stated it would be difficult to assess the value of the residual property, and there is also potential for further expansion requirements in the future. He noted HRSD has stated it is willing to dedicate a permanent conservation easement over the remaining portion of the parcel. He said they do not know the exact project location until they can access the land and survey.

Mr. Abbott asked about the purpose of the project or facility improvements.

Mr. Henifin stated this will be the first of several projects whereby HRSD is adding advanced water treatment capability and drinking water standards to their current treatment plants. Of the 22 million gallons of wastewater treated per day, 8 million gallons will be treated in this manner and discharged into the Potomac aquifer instead of the James River.

Mr. Henifin stressed HRSD does not currently have room to expand within their current site as it is mostly built out. He stated the proposal will protect their ability to advance wastewater treatment in as compact a footprint and most economical way as possible. The water will need to move through several process and control points, so use of an alternative or nearby property would still impact the AFD with easement connections. From a cost perspective, Mr. Henifin said sharing a property and fence line allows for the sharing of other resources such as operators and security.

Mr. Taylor asked about the purpose of owning the residual property if it is largely unusable.

Mr. Henifin expressed the difficulty in defining both the acquisition of land required and also the value of the residual property. A one-time take would avoid these issues and allow for additional land use if needed in the future.

Mr. Tim Trant, attorney with Kaufman and Canoles, introduced his law partner also present at the meeting, Mr. Paul Gerhardt. Mr. Trant said they represent Mr. Sam Mencoﬀ, owner of Carter's Grove Associates, LLC and the 76-acre parcel located at 250 Ron Springs Drive in the Carter's Grove AFD which surrounds the HRSD WTP. Mr. Mencoﬀ also owns the adjacent 400-acre Carter's Grove parcel. Mr. Trant said Mr. Mencoﬀ's intent when purchasing the property was to fulfil the County and community interest in restoration and preservation of the historic Carter's Grove property, and he has since invested heavily in the property.

Mr. Trant said they object to HRSD's request at this time, stating the HRSD intent to take

76 acres and develop a small portion of seven acres does not meet the statutory criteria. He said Mr. Mencoﬀ desires to keep the buffer, the take is larger than it needs to be, the proposal is not the most practical way to provide the service, and there are reasonable alternatives. Mr. Trant stated they request that the Committee defer action on this item until they can continue their conversation with HRSD, and they do not support any plan to take the entire property.

Mr. Trant said HRSD approached them last year about the need for some additional land and felt there was constructive dialogue. However, he said, HRSD required them to enter into a Nondisclosure Agreement in connection with those conversations so he cannot disclose any details. Mr. Trant said they would like those conversations to continue. Regarding the compulsory timeline for HRSD, Mr. Trant said they did not create this sense of urgency and noted HRSD has been under the consent decree since 2010 to implement the changes.

Mr. Wanner noted all of Hampton Roads is under the same consent.

Mr. Trant said the timeline is a proposal, and as a landowner invested in historic property, his client would like the opportunity for thoughtful dialogue to reach a reasonable resolution.

Mr. Hitchens asked Mr. Trant if a survey would be possible.

Mr. Trant referenced the Nondisclosure Agreement but stated there is a willingness to engage in reasonable conversation about what is needed. He said the threat of condemnation of 76 acres is an attempt to short-circuit the process as a negotiating tactic.

Mr. Wanner asked the staff how long it might be possible to defer.

Ms. Haynes stated that, on counsel from the County Attorney's Office, deferral is not an option because of the State code requirements. The March 12, 2019 Board of Supervisor's meeting is the ninety day deadline from the date the original report was filed. If the Board determines there is an unreasonably adverse effect upon state or local policy, they may then hold a public hearing within the next 60 days.

Ms. Haynes stated the Committee needs to determine if the action of taking the parcel would have an adverse effect on State or local policy then forward their finding to the Planning Commission for their February meeting before the Board of Supervisor's March meeting.

Mr. Trant said HRSD could also withdraw their request, continue the conversation with Mr. Mencoﬀ and return with a proposal that meets the criteria.

Ms. Sue Sadler asked Mr. Henifin about the status of the Sustainable Water Initiative for Tomorrow (SWIFT) project.

Mr. Henifin said the SWIFT research center is putting water in the ground, and the aquifer is 400-500 feet below the surface. He said the issue with surveying is having relative assurance against the potential waste of money surveying land not yet acquired. Mr. Henifin mentioned the challenges of negotiations and said the Nondisclosure Agreement was actually a requirement of Mr. Trant's client. He said condemnation includes compensation for the legal value of the land, and they are seeking a willing partner.

Mr. Trant noted one of the County's articulated benefits for landowners in joining an AFD is a layer of protection from condemnation. He said the County would offend that commitment by recommending or condoning the action by HRSD.

Mr. Wanner stated he believes the public good is served by condemnation of some amount of land in this situation.

Mr. Abbott said he believes a buffer should be maintained and owned by the original owner.

Mr. Trant asked for a recommendation of deferral until an agreement is made between HRSD and the landowner.

Ms. Sulouff and Ms. Haynes stated that as long as there is an application, the Board is required to make a determination within 90 days. If HRSD chooses not to withdraw, the process moves forward in accordance with State code. The Committee may tailor its recommendation to reflect the discussion.

Mr. Henifin said with HRSD surrounded by the AFD, it will be impacted but any withdrawal will be brought forward later and separately. He said the full 76-acre parcel is required to protect the facility, slopes and beachfront.

Mr. Trant said there is a mutual interest in protecting the property and facility, and there have been no problems addressing any issues on the property to date.

Ms. Haynes suggested addressing each of the three criteria being considered. Regarding criteria (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies, Ms. Haynes noted to the Committee there is some planned, intended agricultural activities but no formal activity, and they are not receiving land use valuation. Ms. Haynes did note that Carter's Grove Associates, LLC representatives did appeal to the Department of Conservation and Recreation (DCR) to advise the County on this proposed action. DCR was not able to provide a full report based on access and timeline, but there are some known natural resource heritage areas there.

Ms. Sulouff stated this Committee review and recommendation is significant as an extra board hearing and part of the extra protection provided to landowners in an AFD.

Ms. Haynes then read to the Committee criteria (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and criteria (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Taylor said the third criteria is most troubling when considering how much of the parcel is required by HRSD and the Committee's commitment to AFD landowners.

Mr. Henifin stated he has little confidence an agreement could be made, given the proposals already rejected by the landowner.

Mr. Trant said they are also frustrated and feel there have been reasonable counter-offers.

Mr. Wanner asked how soon HRSD could reapply, if they were to withdraw their application.

Ms. Haynes answered the 90-day clock would start again upon resubmittal.

Mr. Hitchens said the landowner has made a great investment in the County and feels uncomfortable with HRSD taking the entire parcel.

Mr. Abbott motioned, based on the Committee's consideration of the three criteria found in §15.2-4313, that the proposed action by HRSD to acquire 250 Ron Springs Drive, located in the Carter's Grove AFD, by condemnation for public utility purposes might have an unreasonably adverse effect upon state or local policy. The proposed action (i) would have an unreasonably adverse effect upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies; (ii) there is no necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) there could be reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Harcum seconded the motion.

On a voice vote of 5-1-1, the motion was approved.

Ms. Garrett, Mr. Hitchens, Mr. Harcum, Mr. Abbott, and Mr. Taylor voted yes, the proposed action might have an unreasonably adverse effect upon state or local policy. Mr. Wanner voted against the motion, and Ms. Sadler abstained from the vote.

2. The Agricultural and Forestal District Advisory Committee Organizational Meeting

Ms. Sulouff said the Committee has one last item of new business.

She stated at its January 2018 meeting, the Committee adopted by-laws, established a yearly organizational meeting to take place in subsequent years in the month of January and adopted a calendar for 2018. The Committee also reviewed a tentative calendar for 2019, but it did not formally adopt those dates.

Ms. Sulouff referenced the proposed calendar with quarterly meeting dates. All meetings are scheduled to take place at 4:00 p.m. in the Building A Large Conference Room. Staff recommends that the Committee adopt the meeting dates and times through January 23, 2020. Meeting dates and times shown after January 23, 2020 are draft and subject to adoption at the Committee's 2020 organizational meeting.

2019/2020 (Proposed): January 24, 2019 (Organizational Meeting), April 25, 2019, July 25, 2019, October 24, 2019 and January 23, 2020 (Organizational Meeting).

2020/2021 (Tentative): January 23, 2020 (Organizational Meeting), April 23, 2020, July 23, 2020, October 22, 2020, and January 21, 2021 (Organizational Meeting).

Mr. Hitchens motioned to approve the proposed 2019/2020 and tentative 2020/2021 Committee meeting dates and times.

Mr. Wanner seconded the motion.

On a voice vote of 6-0, because Ms. Sadler had left the meeting, the motion was unanimously approved.

Regarding the election of officers, Ms. Sulouff stated per the Committee's adopted by-laws (Article VI, Section A), the Committee must elect a chairman and vice-chairman at its yearly organizational meeting.

Mr. Hitchens motioned to re-elect Mr. Taylor as the Committee chairman and Mr. Abbott as the vice-chairman.

Mr. Harcum seconded the motion.

On a voice vote of 6-0, because Ms. Sadler had left the meeting, the motion was unanimously approved.

F. DISCUSSION ITEMS

G. ADJOURNMENT

On a voice vote, the meeting was adjourned at 5:15 p.m.

Mr. William C. Taylor, Chair

Ellen Cook, Principal Planner

AGRICULTURAL AND FORESTAL DISTRICT-02-86-1-2018. Croaker Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

SUMMARY FACTS

<u>LAND OWNERS</u>	<u>PARCEL ID</u>	<u>ACRES (±)</u>
Hankins Land Trust	1530100044	119.00
William L. & Mary M. Apperson	1440100015	26.05
William L. & Mary M. Apperson	1440100015A	26.23
Ronald McManus, et al.	1530100043	119.85
Ronald McManus, et al.	1530100042	10.10
Ronald McManus, et al.	1530100036	40.40
Hazel M. & L. Richardson	1530100002	39.76
Hazel M. Richardson	1530100034	39.78
J. Rosalie Will, Trustee	1440100010	40.00
Stephanie L. Billon-Wolfe, Trustee	1440100009	49.08
Wenger Farms, LLC	1320100018	95.30
Wenger Farms, LLC	1410100001	150.00
Wenger Farms, LLC	1410100014	143.50
Thomas B. Ballard	1530100035	53.17
Sharpe Family Properties, LLC	1530100018	16.05
William R. Atkins, Jr.	1530100019	16.40
William R. Atkins, Jr.	1530100029	30.94
Milly Wallis	1540100004	40.00
Thomas B. Ballard	1530100035A	4.91
Thomas B. Ballard	1530100032	16.22
Wenger Farms, LLC	1410100007	7.00
Katherine G. & William Mann	1510400003	50.00
Mitchell Family Ltd. Partnership	0740100002	48.49
TOTAL ACRES		1,182.23

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands
Low-Density Residential

Primary Service Area

(PSA): Inside and Outside

Staff Contact: Roberta Sulouff, Senior Planner

PUBLIC HEARING DATES

Planning Commission: August 1, 2018, 6:00 p.m.

Board of Supervisors: September 11, 2018, 5:00 p.m.

STAFF RECOMMENDATION

Approval, subject to the proposed conditions.

AGRICULTURAL AND FORESTAL DISTRICT (AFD) ADVISORY COMMITTEE RECOMMENDATION

At its June 21, 2018 meeting, the AFD Advisory Committee voted 9-0 to recommend the continuation of the District to the Planning Commission and Board of Supervisors.

PLANNING COMMISSION

At its August 1, 2018 meeting, the Planning Commission voted 5-0 to recommend the continuation of the District to the Board of Supervisors.

DISTRICT HISTORY

- The Croaker AFD was created in 1986 for a term of four years and originally consisted of 13 parcels totaling ±1,341 acres.
- The District was renewed for four-year intervals in 1990, 1994, 1998, 2002, 2006, 2010 and 2014 with various withdrawals and additions occurring during that period.

AGRICULTURAL AND FORESTAL DISTRICT-02-86-1-2018. Croaker Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

- In 2017, the Board of Supervisors approved the addition of 48.49 acres of land located at 9730 Sycamore Landing Road to the AFD.

DISTRICT DESCRIPTION

While still conforming to applicable area and proximity requirements this District is somewhat geographically dispersed. According to the United States Geological Service Soils Survey, the bulk of the District appears to consist of soils which are prime for crop cultivation or forestry. The majority of the District is forested and remains rural in nature. All the land in this District is zoned A-1, General Agricultural. Pieces of the District are located both outside and inside of the PSA, and are designated both Rural Lands and Low-Density Residential by the adopted Comprehensive Plan.

Total acreage includes all the land in the above properties with the exception of all land within 25 feet of right-of-ways. This area has been excluded to allow for possible road and/or drainage improvements.

ADDITION/WITHDRAWAL REQUESTS/OTHER CHANGES IN ACREAGE

- *Addition Requests:*
 - The owner of the property located at 4450 Ware Creek Road (Tax Map ID No. 1410100046) has applied to add approximately 14.8 acres to the District. That application will be evaluated under a separate cover and is tentatively scheduled for the AFD Committee’s consideration at the October 25, 2018, meeting.
 - The owner of the property located at 4960 Fenton Mill Road (Tax Map ID 2420100035) has applied to add approximately 52.28 acres to the District. That application will be evaluated

under a separate cover and is tentatively scheduled for the AFD Committee’s consideration at the October 25, 2018 meeting.

CHANGES TO CONDITIONS

None.

SURROUNDING ZONING AND DEVELOPMENT

The majority of this District is located southeast of the Croaker Road/Interstate 64 interchange, though several small pieces are located north and east of the interchange as well. The surrounding area is mostly zoned A-1, General Agricultural; however, the northern and eastern portions of the District are surrounded by undeveloped portions of the Stonehouse Development, which is zoned PUD-R, Planned Unit Development-Residential. The Christenson’s Corner AFD lies to the southeast of the District and the Hill Pleasant Farm AFD lies to the southwest of the District.

COMPREHENSIVE PLAN

The Comprehensive Plan designates these parcels as Rural Lands and Low-Density Residential. Land Use Action 6.1.1 of the adopted Comprehensive Plan states the County shall “support both the use value assessment and Agricultural and Forestal (AFD) programs to the maximum degree allowed by the *Code of Virginia*.”

STAFF RECOMMENDATION

Staff finds the Croaker AFD compatible with surrounding development and consistent with the recommendations of the adopted Comprehensive Plan and Zoning Ordinance. Staff recommends that the Board of Supervisors approve the renewal of this AFD for a period of four years, subject to conditions listed in the District Ordinance (Attachment No. 1).

AGRICULTURAL AND FORESTAL DISTRICT-02-86-1-2018. Croaker Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

RS/md

AFD-CroakerRnw

Attachments:

1. Ordinance
2. Location Map
3. Adopted conditions for the Croaker AFD
4. Board of Supervisors staff report for the 2014 renewal of the Croaker AFD

CORRECTED

ADOPTED

SEP 11 2018

ORDINANCE NO. 164A-17

Board of Supervisors
James City County, VA

AGRICULTURAL AND FORESTAL DISTRICT-02-86-1-2018

CROAKER 2018 RENEWAL

WHEREAS, James City County has completed a review of the Croaker Agricultural and Forestal District (the "District"); and

WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, 1950, as amended (the "Virginia Code"), property owners have been notified, public notices have been filed, public hearings have been advertised, and public hearings have been held on the continuation of the District; and

WHEREAS, the Agricultural and Forestal District (AFD) Advisory Committee at its meeting on June 21, 2018, voted 9-0 to recommend renewal of the District; and

WHEREAS, the Planning Commission following its public hearing on August 1, 2018, concurred with the recommendation of staff and the AFD Advisory Committee and voted 5-0 to recommend renewal of the District with the conditions listed below.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of James City County, Virginia, that:

1. The Croaker Agricultural and Forestal District (the "District") is hereby continued to October 31, 2022 in accordance with the provisions of the Virginia Agricultural and Forestal District Act, Virginia Code Section 15.2-4300 et. seq. (the "Act").
2. That the District shall include the following parcels, provided, however, that all land within 25 feet of road right-of-ways is excluded from the District:

<u>Owner</u>	<u>Parcel No.</u>	<u>Acres</u>
Hankins Land Trust	1530100044	119.00
William and Mary M. Apperson	1440100015	26.05
William and Mary M. Apperson	1440100015A	26.23
Ronald McManus, et al.	1530100043	119.85
Ronald McManus, et al.	1530100042	10.10
Ronald McManus, et al.	1530100036	40.40
Hazel M. Richardson & LA Richardson	1530100002	39.76
Hazel M. Richardson	1530100034	39.78
J. Rosalie Will, Trustee	1440100010	40.00
Stephanie L. Billon-Wolfe, Trustee	1440100009	49.08
Wenger Farms LLC	1320100018	95.30
Wenger Farms LLC	1410100001	150.00
Wenger Farms LLC	1410100014	143.50
Thomas B. Ballard	1530100035	53.17
Sharpe Family Properties, LLC	1530100018	16.05

William R. Atkins, Jr.	1530100019	16.40
William R. Atkins, Jr	1530100029	30.94
Milly Wallis	1540100004	40.00
Thomas B. Ballard	1530100035A	4.91
Thomas B. Ballard	1530100032	16.22
Wenger Farms, LLC	1410100007	7.00
Katherine G. & William Mann	1510400003	50.00
Mitchell Family Ltd. Partnership	0740100002	48.49
	Total:	<u>1,182.23</u>

3. That pursuant to Sections 15.2-4312 and 15.2-4313 of the Act, the Board of Supervisors requires that no parcel in the District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:

- a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCFs), provided: a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
- b. No land outside the Primary Service Area and within the District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.
- c. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for WCFs on properties in the District that are in accordance with the County's policies and Ordinances regulating such facilities.

Ruth M. Larson

Ruth M. Larson
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Teresa J. Fellows
Deputy Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	✓	—	—
ICENHOUR	✓	—	—
SADLER	✓	—	—
HIPPLE	✓	—	—
LARSON	✓	—	—

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of September, 2018.

§ 15.2-4306. Criteria for evaluating application

Land being considered for inclusion in a district may be evaluated by the advisory committee and the planning commission through the Virginia Land Evaluation and Site Assessment (LESA) System or, if one has been developed, a local LESA System. The following factors should be considered by the local planning commission and the advisory committee, and at any public hearing at which an application that has been filed pursuant to § 15.2-4303 is being considered:

1. The agricultural and forestal significance of land within the district or addition and in areas adjacent thereto;
2. The presence of any significant agricultural lands or significant forestal lands within the district and in areas adjacent thereto that are not now in active agricultural or forestal production;
3. The nature and extent of land uses other than active farming or forestry within the district and in areas adjacent thereto;
4. Local developmental patterns and needs;
5. The comprehensive plan and, if applicable, the zoning regulations;
6. The environmental benefits of retaining the lands in the district for agricultural and forestal uses; and
7. Any other matter which may be relevant.

In judging the agricultural and forestal significance of land, any relevant agricultural or forestal maps may be considered, as well as soil, climate, topography, other natural factors, markets for agricultural and forestal products, the extent and nature of farm structures, the present status of agriculture and forestry, anticipated trends in agricultural economic conditions and such other factors as may be relevant.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.



2300 WILSON BOULEVARD
7TH FLOOR
ARLINGTON, VA 22201
PHONE 703.525.4000
FAX 703.525.2207

May 21, 2018

JONATHAN C. KINNEY
Ext: 305
Fax 703.525.2207
Jkinney@beankinney.com

Paul D. Holt, Director
James City County Department of
Community Development and Planning
101 Mounts Bay Road
Building A
Williamsburg, Virginia 23185

Re: **Agriculture and Forest District Renewals**

Dear Mr. Holt:

I appreciate your reaching out to me in your April 18, 2018 letter regarding the renewal of the Barnes Swamp and Croaker Agricultural and Forestal Districts. As an adjacent property owner, I would be interested in adding the attached properties to the Districts.

Tax parcel 0410100010 is a 196-acre parcel that is immediately adjacent to the Barnes Swamp Agricultural and Forestal District. We would like this property to be considered for inclusion in the District.

Tax parcel 141-010-0046 is a 14.7-acre parcel, which we would like to be considered for inclusion in the Croaker Agricultural and Forestal District. While this property is less than 20 acres, it is surrounded on three sides by parcels within the Croaker Agricultural and Forestal District. The property is undeveloped as are the surrounding properties.

For both of these property we work with Paul Verbyla, a professional Forrester.

~~I have enclosed completed applications for both properties along with the application fees.~~
If there is any additional information you would like on either of these properties, please let me know.

Sincerely,

BEAN, KINNEY & KORMAN, P.C.

Jonathan C. Kinney

JCK/dso
Enclosures

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Roberta Sulouff, Senior Planner

SUBJECT: AFD-18-0016. 365, 358, and 382 Ivy Hill Road Mill Creek Addition

ATTACHMENTS:

	Description	Type
☐	Staff Report	Staff Report
☐	Attachment 1. Ordinance	Ordinance
☐	Attachment 2. Location Map	Backup Material
☐	Attachment 3. Unapproved minutes from the March 6, 2019 Planning Commission meeting	Minutes
☐	Attachment 4. Unapproved minutes from the January 24, 2019 AFD Advisory Committee meeting	Minutes
☐	Attachment 5. Mill Creek AFD 2018 Renewal Staff Report and Ordinance	Backup Material
☐	Attachment 6. State Code regarding AFD application criteria	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/25/2019 - 12:21 PM
Development Management	Holt, Paul	Approved	3/25/2019 - 12:22 PM
Publication Management	Daniel, Martha	Approved	3/25/2019 - 1:28 PM
Legal Review	Kinsman, Adam	Approved	3/25/2019 - 3:18 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 11:58 AM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 1:50 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 1:58 PM

Agricultural and Forestal District-18-0016. 365, 358 and 382 Ivy Hill Road Mill Creek Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

SUMMARY FACTS

Applicant: WGJ Land Holdings LLC

Land Owner: WGJ Land Holdings LLC

Proposal: Addition of ± 60.73 acres to the Mill Creek Agricultural and Forestal District (AFD)

Locations: 365, 358, and 382 Ivy Hill Road

Tax Map/Parcel Nos.: 1040100004, 1130100011, and 1130100011A

Project Acreage: ± 60.73 acres

Current Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

Staff Contact: Roberta Sulouff, Senior Planner

PUBLIC HEARING DATES

AFD Advisory Committee: January 24, 2019, 4:00 p.m.
Planning Commission: March 6, 2019, 6:00 p.m.
Board of Supervisors: April 9, 2019, 5:00 p.m.

FACTORS FAVORABLE

1. With the proposed Ordinance, the proposal is compatible with surrounding development.

2. The proposal is consistent with the recommendations of the James City County Comprehensive Plan adopted in 2015, “*Toward 2035: Leading the Way*”.
3. The proposal is consistent with local and State Code governing the addition of lands into AFDs.

FACTORS UNFAVORABLE

1. No factors unfavorable.

STAFF RECOMMENDATION

Staff finds that the proposed addition meets all state and local requirements for inclusion in the Mill Creek AFD and recommends that the Board of Supervisors approve the proposed addition to the Mill Creek AFD subject to the conditions listed in the attached Ordinance (Attachment No. 1).

PLANNING COMMISSION RECOMMENDATION

At its March 6, 2019 meeting, the Planning Commission voted 5-1 to recommend approval of the proposed addition to the Mill Creek AFD.

AFD ADVISORY COMMITTEE RECOMMENDATION

At its January 24, 2019 meeting, the AFD Advisory Committee voted 7-0 to recommend approval of this addition to the Planning Commission and Board of Supervisors.

PROJECT DESCRIPTION

- Mr. John Michael Sim has applied to enroll ± 60.73 acres of land located at 365, 358, and 382 Ivy Hill Road into the Mill Creek AFD.

Agricultural and Forestal District-18-0016. 365, 358 and 382 Ivy Hill Road Mill Creek Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

- The proposed addition includes the entirety of the subject parcels.
- The parcels are currently undeveloped and wooded.
- Per the United States Department of Agriculture Soil Survey, the majority of soil on these parcels is Emporia Complex 15-25% slopes (15E) and Emporia Complex 15-25% slopes (15F). The Soil Survey indicates that both 15E and 15F soils have moderately high potential for the production of important trees with generally limited or moderate limitations on production such as slope, seedling mortality, and potential equipment usage limitations.

DISTRICT HISTORY

- The Mill Creek AFD was created in 1986 for a term of four years and originally consisted of 28 parcels totaling ± 3,547 acres.
- The District was renewed at four-year intervals again in 1990, 1994, 1998, 2002, 2006, 2010, 2014, and 2018 with various additions and withdrawals taking place during that period.
- If this addition is approved, the District would consist of approximately 3,274.39 acres.

SURROUNDING ZONING AND DEVELOPMENT

All surrounding properties are zoned A-1, General Agricultural and designated Rural Lands on the Comprehensive Plan.

COMPREHENSIVE PLAN AND ZONING

The Comprehensive Plan designates these parcels as Rural Lands. Appropriate primary uses in Rural Lands include traditional agricultural and forestal activities. Land Use Action 6.1.1 of the 2035 Comprehensive Plan states the County shall “support both the use

value assessment and Agricultural and Forestal (AFD) programs to the maximum degree allowed by the *Code of Virginia*.”

STATE AND LOCAL CODE

- Section 15.2-4301 of Virginia State Code, Agricultural and Forestal Districts Act-Declaration of policy findings and purpose states that:

“It is the policy of the Commonwealth to conserve and protect and to encourage the development and improvement of the Commonwealth's agricultural and forestal lands for the production of food and other agricultural and forestal products. It is also the policy of the Commonwealth to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes...”

- The State Code establishes the AFD Advisory Committee to:

“...advise the local planning commission and the local governing body and assist in creating, reviewing, modifying, continuing, or terminating districts within the locality. In particular, the committee shall render expert advice as to the nature of farming and forestry and agricultural and forestal resources within the district and their relation to the entire locality.”

- Section 15.2-4305 states that a parcel may be added to a district if it is directly contiguous to the core of the district, within a mile of the core, or directly contiguous to a parcel whose boundary lines are within a mile to the core. These parcels are directly contiguous to the core of the Mill Creek AFD.
- Section 15.2-4306 (Attachment No. 6) includes the factors for consideration in the addition of lands to AFDs. One such factor

includes the presence of any significant forestal lands within the district and in areas adjacent thereto that are not now in active forestal production. The Code later states that the presence of suitable soils may be considered in the determination of forestal significance.

STAFF RECOMMENDATION

Staff finds that the proposed addition meets all state and local requirements for inclusion in the Mill Creek AFD and recommends that the Board of Supervisors approve the proposed addition to the Mill Creek AFD subject to the conditions listed in the attached Ordinance (Attachment No. 1).

RS/md
AFD18-16IvyHill

Attachments:

1. Ordinance
2. Location Map
3. Unapproved Minutes from the March 6, 2019 Planning Commission meeting
4. Unapproved Minutes from the January 24, 2019 AFD Advisory Committee meeting
5. Mill Creek AFD 2018 Renewal Staff Report and Ordinance
6. State Code Regarding AFD Application Criteria

ORDINANCE NO. _____

AGRICULTURAL AND FORESTAL DISTRICT-18-0016.

365, 358, AND 382 IVY HILL ROAD, MILL CREEK ADDITION

WHEREAS, a request has been filed with the Board of Supervisors of James City County, Virginia, (the “Board of Supervisors”) to add ± 60.73 acres of land owned by WGJ Land Holdings LLC located at 365, 358, and 382 Ivy Hill Road and identified as James City County Real Estate Tax Map/Parcel Nos. 1040100004, 1130100011, and 1130100011A, respectively, to Agricultural and Forestal District (AFD)-07-86, which is generally known as the “Mill Creek Agricultural and Forestal District” (the “Application”); and

WHEREAS, at its January 24, 2019 meeting, the AFD Advisory Committee voted 7-0 to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Planning Commission (the “Commission”) at its March 6, 2019 meeting, after which the Commission voted 5-1 to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Board of Supervisors.

NOW, THEREFORE, BE IT ORDAINED that the Board of Supervisors of James City County, Virginia, hereby adds ± 60.73 acres located at 365, 358, and 382 Ivy Hill Road and identified as James City County Real Estate Tax Map/Parcel Nos. 1040100004, 1130100011, and 1130100011A, respectively, to AFD-07-86, which is generally known as the “Mill Creek Agricultural and Forestal District” with the following conditions:

1. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner’s immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCF), provided: a) the subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
2. No land outside the Primary Service Area and within the District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors’ Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.
3. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for WCFs on properties in the District that are in accordance with the County’s policies and Ordinances regulating such facilities.

James O. Icenhour, Jr.
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Deputy Clerk to the Board

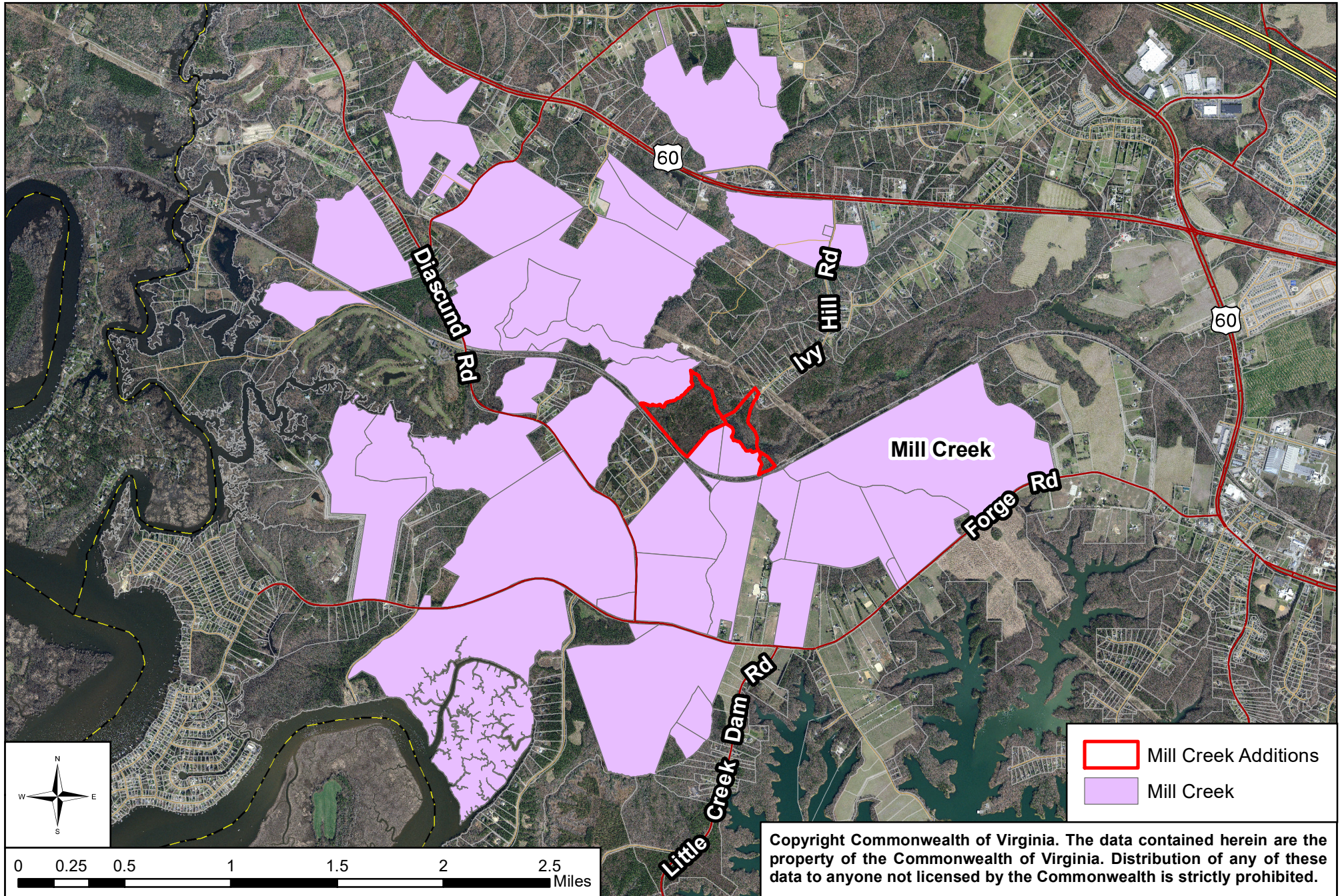
	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
HIPPLE	_____	_____	_____
LARSON	_____	_____	_____
SADLER	_____	_____	_____
MCGLENNON	_____	_____	_____
ICENHOUR	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April,
2019.

AFD18-16IvyHill-res

JCC AFD-18-0016

365, 358 and 382 Ivy Hill Road Mill Creek AFD Addition



**Unapproved Minutes of the March 6, 2019
Planning Commission Regular Meeting**

AFD-18-0016. 365, 358, and 382 Ivy Hill Road Mill Creek AFD Addition

Ms. Sulouff stated that Mr. John Sim has applied to enroll the parcels located at 365, 358 and 382 Ivy Hill Road, which total approximately 60.73, acres into the Mill Creek AFD. The parcels are zoned A-1, General Agricultural and are designated Rural Lands on the Comprehensive Plan Land Use Map.

Ms. Sulouff stated that staff finds that the property meets applicable criteria for inclusion including proximity requirements. Ms. Sulouff stated that approval of this application would bring the total district to approximately 3,224 acres or if AFD-18-0020 is also approved, 3,234 acres.

Ms. Sulouff stated that staff recommends that the Planning Commission recommend inclusion of this parcel into the Mill Creek AFD to the Board of Supervisors, subject to the conditions adopted during the renewal of the Mill Creek AFD in 2018.

Mr. Polster inquired if anyone from the AFD Committee or the Commissioner of the Revenue's Office was in attendance.

Ms. Sulouff stated that there were no representatives attending.

Mr. Schmidt called for disclosures from the Commission.

There were no disclosures.

Mr. Schmidt opened the Public Hearing.

Mr. Krapf stated that he meant to disclose that he owns a property enrolled in this AFD; however, it does not create a conflict of interest that would prevent him from voting on the application.

As no one wished to speak, Mr. Schmidt closed the Public Hearing.

Mr. Schmidt opened the floor for discussion by the Commission.

Mr. Polster stated that he had concerns about the property located at 382 Ivy Hill Road; specifically the amount of land that is in the Resource Protection Area (RPA) and the steep slopes. Mr. Polster stated that he understands that if the parcel is in an AFD it is permissible to encroach 50 feet into the RPA; however it must be restored at the end of use. Mr. Polster stated that his question for the Commissioner of the Revenue was whether the portion of the property in the AFD would qualify for a tax reduction. Mr. Polster noted that there is another property in an AFD that is entirely within the RPA, being mostly marsh land. Mr. Polster further stated that he questioned the need to protect a property through enrolling it in an AFD when it was already protected by being in the RPA or by virtue of its topography. Mr. Polster stated that the only expert advice on the whether the

property qualified to be in an AFD related to the Comprehensive Plan, soil and agriculture and did not cover any of the other criteria. Mr. Polster stated that he would not support the application.

Mr. Tim O'Connor stated that although the property is likely undevelopable by virtue of the RPA and topography; however, the AFD offers the advantage of ensuring that the entire property is protected for the life of the AFD.

Mr. O'Connor further stated that based on information provided on the County's website, "...it is the policy of the Commonwealth of Virginia to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes." Mr. O'Connor stated that these are the reasons that a parcel might be included in an AFD when it might not meet other criteria.

Mr. Haldeman stated that one purpose of the AFD is to reduce the property assessment. Mr. Haldeman further stated that properties that are non-developable should already be assessed at a lower value.

Mr. Polster stated that he wants to understand the process the Commissioner of the Revenue uses to make those determinations.

Mr. Holt stated that over the years, it does not appear that the main reason for enrolling a property in an AFD is the tax reduction. Mr. Holt further stated that the purposes of an AFD, as set forth by the Commonwealth, are very broad. Mr. Holt stated that many of the property owners are in the AFD for good stewardship of the land and the protection it provides from development pressures.

Mr. Haldeman made a motion to recommend approval of the addition of the parcel into the Mill Creek AFD.

On a roll call vote the Planning Commission voted to recommend approval of AFD-18-0016. 365, 358, and 382 Ivy Hill Road Mill Creek AFD Addition (5-1).

MINUTES OF THE AGRICULTURAL AND FORESTAL ADVISORY COMMITTEE OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE TWENTY-FOURTH DAY OF JANUARY, TWO THOUSAND AND NINETEEN, AT 4:00 P.M. AT THE BUILDING A CONFERENCE ROOM, 101 MOUNTS BAY ROAD, WILLIAMSBURG, VIRGINIA.

A. CALL TO ORDER

Mr. William C. Taylor called the meeting to order at 4:00 p.m.

B. ROLL CALL

Members Present

Mr. Thomas Hitchens
Ms. Loretta Garrett
Mr. William C. Taylor, chair
Mr. L. Bruce Abbott
Mr. Payten Harcum
Mr. Sandy Wanner
Ms. Sue Sadler

Also Present

Ms. Ellen Cook, Principal Planner
Ms. Roberta Sulouff, Senior Planner
Ms. Tori Haynes, Planner
Ms. Katie Pelletier, Community
Development Assistant

Absent

Mr. Richard Bradshaw
Mr. William R. Harcum
Mr. John Grantz

C. APPROVAL OF MINUTES

1. Approval of the June 21, 2018 Meeting Minutes

Mr. Taylor reminded the Committee that the October 25, 2018 meeting had been canceled because they lacked a quorum.

Mr. Bruce Abbott moved to approve the minutes of the June 21, 2018 meeting.

Mr. Tom Hitchens seconded the motion.

On a voice vote, the motion was approved 6-0-1. Ms. Loretta Garrett abstained from the vote as she was absent from the June 21, 2018 meeting.

D. OLD BUSINESS:

1. AFD-18-0020. 8328 Diascund Road Mill Creek AFD Addition

Mr. Taylor explained the Committee would next address old business from the canceled October 25, 2018 meeting.

Ms. Roberta Sulouff said applicant Mr. John Michael Sim has applied to enroll approximately 10 acres of a parcel located at 8328 Diascund Road in the Mill Creek AFD. The parcel is zoned A-1 (General Agricultural) and is designated Rural Lands in the County Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 3,224 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Mill Creek AFD to the Planning Commission.

Mr. Taylor clarified that applicants could have property included in the AFD which may not meet the tax-break threshold.

Ms. Sulouff confirmed there is no minimum acreage requirement for inclusion in the AFD.

Mr. Abbott moved to recommend approval of the proposed addition of the parcel at 8328 Diascund Road into the Mill Creek AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Ms. Garrett seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

2. AFD-18-0019. 4928 Fenton Mill Road Croaker Addition

Ms. Sulouff stated that Mr. Charles Apperson and Ms. Patricia Russo have applied to enroll an approximately 52-acre parcel in the Croaker AFD. The parcel is located at 4928 Fenton Mill Road, zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff noted this parcel was brought up at the 2018 renewal process. Staff believed the parcel was not included in the AFD after the 1996 renewal due to an administrative error. This property was originally part of a parcel in the AFD at 4920 Fenton Mill Road, but after a 1995 subdivision the new parcel at 4928 Fenton Mill Road was not included in notifications for that renewal period.

The Committee discussed the issue at the June 21, 2018 meeting and recommended the parcel be included. However, staff found that a more proper route to re-include the parcel would be to go through the formal addition process.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 1,234 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission.

Mr. Hitchens moved to recommend approval of the proposed addition of the parcel at 4928 Fenton Mill Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Payten Harcum seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

3. AFD-18-0017. 9888 Sycamore Landing Road Croaker Addition

Ms. Sulouff stated that Ms. Kelly Fulton has applied, on behalf and with the permission of Mr. Thomas W. Dana, III, to add an approximately 62-acre parcel to the Croaker AFD. The parcel is located at 9888 Sycamore Landing Road, zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff noted that, while this parcel is over one mile away from the core parcels in the Croaker AFD, State Code permits the addition of a parcel into an AFD if the governing body finds the property contains agriculturally and forestally significant land. Ms. Sulouff reminded the Committee that they reviewed a similar case and permitted addition of an adjacent property at 9730 Sycamore Landing Road to the Croaker AFD in 2017.

Ms. Sulouff noted the U.S. Department of Agriculture Soil Survey indicates the site is home to soils which have moderately high potential for both crops and timbering. Should the Committee find that the property contains agriculturally and forestally significant land and that it meets the criteria for inclusion of land in an AFD, staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission. If this addition were approved, the District would consist of approximately 1,244 acres.

Mr. Hitchens commented he supports inclusion of properties which will help preserve the rural nature of the county.

Mr. Hitchens moved to recommend approval of the proposed addition of the parcel at 9888 Sycamore Landing Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Harcum seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

4. AFD-18-0016. 365, 358 and 382 Ivy Hill Road Mill Creek Addition

Ms. Sulouff stated that Mr. John Michael Sim has applied to enroll approximately 60.73 acres of land located at 365, 358 and 382 Ivy Hill Road into the Mill Creek AFD. The

parcel is zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 3,274 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Mill Creek AFD to the Planning Commission.

Mr. Abbott moved to recommend approval of the proposed addition of the parcels at 365, 358 and 382 Ivy Hill Road into the Mill Creek AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Hitchens seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

5. AFD-02-86-2-2018. 4450 Ware Creek Road Croaker Addition

Ms. Sulouff stated that Mr. Jonathan Kinney has applied to enroll approximately 14.18 acres of land located at 4450 Ware Creek Road into the Croaker AFD. The parcel is zoned A-1 (General Agricultural) and designated Low-Density Residential in the County's Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 1,197.3 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission.

Mr. Hitchens requested a hard copy of the AFD map be available for reference during meetings.

Ms. Garrett moved to recommend approval of the proposed addition of the parcel at 4450 Ware Creek Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Sandy Wanner seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

E. NEW BUSINESS

1. C-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD

Ms. Tori Haynes stated Hampton Roads Sanitation District currently operates the Williamsburg Treatment Plant located at 300 Ron Springs Drive. This is a landlocked

parcel that is wholly surrounded by 250 Ron Springs Drive and the Carter's Grove AFD.

HRSD has stated that it requires a facility expansion adjacent to the Williamsburg Treatment Plant. This expansion is in response to federal enforcement action taken by the EPA and Dept. of Justice. HRSD has stated there is insufficient property on their current parcel to accommodate the facility expansion, and as such has stated its intent to acquire 250 Ron Springs Drive by condemnation for public utility purposes.

HRSD is not requesting a withdrawal of the property from the AFD at this time. Rather, per State Code, utilities may acquire interests in properties within an AFD provided that the Board of Supervisors, in consultation with the AFD Advisory Committee and Planning Commission, reviews the proposal and specifically examines the following criteria found in §15.2-4313: (i) the effect the action would have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district.

The evaluation and analysis of the proposal against these three criteria are a State-Code mandated process that is required when acquisition of a parcel by a political subdivision of the state is proposed.

Ultimately, the Board of Supervisors will consider the above criteria and make a determination as to whether the proposed action might have an unreasonably adverse effect upon state or local policy.

This review does not withdraw any portion of the parcel from the AFD or grant any sort of approval for the facility expansion itself. Should HRSD be successful in acquiring ownership of the subject parcel, they would then need to apply separately for those items, and accordingly, the AFD Advisory Committee would consider the withdrawal request at that time.

Staff recommends that each of the above criteria be discussed individually to make clear the findings of the Committee to the Planning Commission and Board of Supervisors.

In consideration of the criteria, staff ultimately found that the proposal was necessary to provide service in the most economical and practical manner, and that it will not have an unreasonably adverse effect upon state or local policy.

Mr. Taylor disclosed to the Committee and staff that he is affiliated with companies represented by Kaufman and Canoles law firm. However, he does not feel this will sway his opinion or recommendations while serving on the Committee.

Mr. Taylor then asked staff to clarify whether the Committee would be voting to agree or disagree with the HRSD proposal.

Ms. Haynes stated the Committee would not be considering any AFD withdrawal at this time but needed to determine if the action of taking the parcel would have an adverse effect on State or local policy. She said this is an automatic review of three criteria triggered or prompted by the intent stated by HRSD to acquire the parcel by condemnation for public utility purposes. Their findings will then go to the Planning Commission and Board of Supervisors.

Ms. Haynes suggested discussion of the three criteria found in §15.2-4313 and stated that representatives of HRSD and Carter's Grove Associates, LLC are available to answer questions.

Ms. Haynes then shared staff's understanding of the proposal. HRSD is looking to expand beyond their current borders into the Carter's Grove AFD. They propose clearing approximately 7 acres, but a final site has not been located yet.

Mr. Wanner stated HRSD is under Federal mandate to make improvements to the facility.

Ms. Haynes confirmed there is a Federal action against HRSD, and existing lands cannot accommodate the necessary expansion. They require an additional seven acres.

Mr. Taylor stated HRSD is attempting to acquire 76 acres.

Ms. Haynes stated HRSD is pursuing ownership of the entire parcel but not necessarily withdrawal of all 76 acres from the AFD. She reiterated that this review is prompted by the intent to condemn lands within an AFD by a political subdivision.

Mr. Hitchens asked staff why HRSD would need to withdraw land from the AFD if they are a public entity.

Ms. Haynes answered that a Special Use Permit (SUP) is not allowed in an AFD unless it is related to farming practices. If HRSD takes ownership of the parcel, and a use is permitted with a SUP, they will need to withdraw that portion of land from the AFD.

Mr. Abbott asked the HRSD representative for an explanation of their plan.

Ted Henifin, General Manager at HRSD, addressed the Committee and began with a discussion on the impact of topography in the subject parcel. He explained the land has steep slopes, wetlands and Resource Protection Area and is largely undevelopable. He stated that of the 76 acres, maybe only 30 acres are buildable. He showed the Committee on a map the area of the parcel most likely suitable for their facility expansion and access points. Mr. Henifin stated there have been many discussions with the property owner regarding alternatives to condemnation in the past year with no resolution. Regarding the consent order, Mr. Henifin stated the federal enforcement action is driving the timeline tied to the project.

Mr. Henifin explained HRSD requires the 76 acres because of the unusual, unique residual that would be created by the project and buildout. The mostly unbuildable, remaining land would serve as a buffer between the WTP and surrounding properties to protect the investment and property, in case slopes erode. He said they have an outfall through an easement on the beach and have already had to make improvements on the beach for erosion. Mr. Henifin said they would like to have control long-term and do not find much residual value in the remaining property beyond the buildable acres. He stated it would be difficult to assess the value of the residual property, and there is also potential for further expansion requirements in the future. He noted HRSD has stated it is willing to dedicate a permanent conservation easement over the remaining portion of the parcel. He said they do not know the exact project location until they can access the land and survey.

Mr. Abbott asked about the purpose of the project or facility improvements.

Mr. Henifin stated this will be the first of several projects whereby HRSD is adding advanced water treatment capability and drinking water standards to their current treatment plants. Of the 22 million gallons of wastewater treated per day, 8 million gallons will be treated in this manner and discharged into the Potomac aquifer instead of the James River.

Mr. Henifin stressed HRSD does not currently have room to expand within their current site as it is mostly built out. He stated the proposal will protect their ability to advance wastewater treatment in as compact a footprint and most economical way as possible. The water will need to move through several process and control points, so use of an alternative or nearby property would still impact the AFD with easement connections. From a cost perspective, Mr. Henifin said sharing a property and fence line allows for the sharing of other resources such as operators and security.

Mr. Taylor asked about the purpose of owning the residual property if it is largely unusable.

Mr. Henifin expressed the difficulty in defining both the acquisition of land required and also the value of the residual property. A one-time take would avoid these issues and allow for additional land use if needed in the future.

Mr. Tim Trant, attorney with Kaufman and Canoles, introduced his law partner also present at the meeting, Mr. Paul Gerhardt. Mr. Trant said they represent Mr. Sam Mencoﬀ, owner of Carter's Grove Associates, LLC and the 76-acre parcel located at 250 Ron Springs Drive in the Carter's Grove AFD which surrounds the HRSD WTP. Mr. Mencoﬀ also owns the adjacent 400-acre Carter's Grove parcel. Mr. Trant said Mr. Mencoﬀ's intent when purchasing the property was to fulfil the County and community interest in restoration and preservation of the historic Carter's Grove property, and he has since invested heavily in the property.

Mr. Trant said they object to HRSD's request at this time, stating the HRSD intent to take

76 acres and develop a small portion of seven acres does not meet the statutory criteria. He said Mr. Mencoﬀ desires to keep the buffer, the take is larger than it needs to be, the proposal is not the most practical way to provide the service, and there are reasonable alternatives. Mr. Trant stated they request that the Committee defer action on this item until they can continue their conversation with HRSD, and they do not support any plan to take the entire property.

Mr. Trant said HRSD approached them last year about the need for some additional land and felt there was constructive dialogue. However, he said, HRSD required them to enter into a Nondisclosure Agreement in connection with those conversations so he cannot disclose any details. Mr. Trant said they would like those conversations to continue. Regarding the compulsory timeline for HRSD, Mr. Trant said they did not create this sense of urgency and noted HRSD has been under the consent decree since 2010 to implement the changes.

Mr. Wanner noted all of Hampton Roads is under the same consent.

Mr. Trant said the timeline is a proposal, and as a landowner invested in historic property, his client would like the opportunity for thoughtful dialogue to reach a reasonable resolution.

Mr. Hitchens asked Mr. Trant if a survey would be possible.

Mr. Trant referenced the Nondisclosure Agreement but stated there is a willingness to engage in reasonable conversation about what is needed. He said the threat of condemnation of 76 acres is an attempt to short-circuit the process as a negotiating tactic.

Mr. Wanner asked the staff how long it might be possible to defer.

Ms. Haynes stated that, on counsel from the County Attorney's Office, deferral is not an option because of the State code requirements. The March 12, 2019 Board of Supervisor's meeting is the ninety day deadline from the date the original report was filed. If the Board determines there is an unreasonably adverse effect upon state or local policy, they may then hold a public hearing within the next 60 days.

Ms. Haynes stated the Committee needs to determine if the action of taking the parcel would have an adverse effect on State or local policy then forward their finding to the Planning Commission for their February meeting before the Board of Supervisor's March meeting.

Mr. Trant said HRSD could also withdraw their request, continue the conversation with Mr. Mencoﬀ and return with a proposal that meets the criteria.

Ms. Sue Sadler asked Mr. Henifin about the status of the Sustainable Water Initiative for Tomorrow (SWIFT) project.

Mr. Henifin said the SWIFT research center is putting water in the ground, and the aquifer is 400-500 feet below the surface. He said the issue with surveying is having relative assurance against the potential waste of money surveying land not yet acquired. Mr. Henifin mentioned the challenges of negotiations and said the Nondisclosure Agreement was actually a requirement of Mr. Trant's client. He said condemnation includes compensation for the legal value of the land, and they are seeking a willing partner.

Mr. Trant noted one of the County's articulated benefits for landowners in joining an AFD is a layer of protection from condemnation. He said the County would offend that commitment by recommending or condoning the action by HRSD.

Mr. Wanner stated he believes the public good is served by condemnation of some amount of land in this situation.

Mr. Abbott said he believes a buffer should be maintained and owned by the original owner.

Mr. Trant asked for a recommendation of deferral until an agreement is made between HRSD and the landowner.

Ms. Sulouff and Ms. Haynes stated that as long as there is an application, the Board is required to make a determination within 90 days. If HRSD chooses not to withdraw, the process moves forward in accordance with State code. The Committee may tailor its recommendation to reflect the discussion.

Mr. Henifin said with HRSD surrounded by the AFD, it will be impacted but any withdrawal will be brought forward later and separately. He said the full 76-acre parcel is required to protect the facility, slopes and beachfront.

Mr. Trant said there is a mutual interest in protecting the property and facility, and there have been no problems addressing any issues on the property to date.

Ms. Haynes suggested addressing each of the three criteria being considered. Regarding criteria (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies, Ms. Haynes noted to the Committee there is some planned, intended agricultural activities but no formal activity, and they are not receiving land use valuation. Ms. Haynes did note that Carter's Grove Associates, LLC representatives did appeal to the Department of Conservation and Recreation (DCR) to advise the County on this proposed action. DCR was not able to provide a full report based on access and timeline, but there are some known natural resource heritage areas there.

Ms. Sulouff stated this Committee review and recommendation is significant as an extra board hearing and part of the extra protection provided to landowners in an AFD.

Ms. Haynes then read to the Committee criteria (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and criteria (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Taylor said the third criteria is most troubling when considering how much of the parcel is required by HRSD and the Committee's commitment to AFD landowners.

Mr. Henifin stated he has little confidence an agreement could be made, given the proposals already rejected by the landowner.

Mr. Trant said they are also frustrated and feel there have been reasonable counter-offers.

Mr. Wanner asked how soon HRSD could reapply, if they were to withdraw their application.

Ms. Haynes answered the 90-day clock would start again upon resubmittal.

Mr. Hitchens said the landowner has made a great investment in the County and feels uncomfortable with HRSD taking the entire parcel.

Mr. Abbott motioned, based on the Committee's consideration of the three criteria found in §15.2-4313, that the proposed action by HRSD to acquire 250 Ron Springs Drive, located in the Carter's Grove AFD, by condemnation for public utility purposes might have an unreasonably adverse effect upon state or local policy. The proposed action (i) would have an unreasonably adverse effect upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies; (ii) there is no necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) there could be reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Harcum seconded the motion.

On a voice vote of 5-1-1, the motion was approved.

Ms. Garrett, Mr. Hitchens, Mr. Harcum, Mr. Abbott, and Mr. Taylor voted yes, the proposed action might have an unreasonably adverse effect upon state or local policy. Mr. Wanner voted against the motion, and Ms. Sadler abstained from the vote.

2. The Agricultural and Forestal District Advisory Committee Organizational Meeting

Ms. Sulouff said the Committee has one last item of new business.

She stated at its January 2018 meeting, the Committee adopted by-laws, established a yearly organizational meeting to take place in subsequent years in the month of January and adopted a calendar for 2018. The Committee also reviewed a tentative calendar for 2019, but it did not formally adopt those dates.

Ms. Sulouff referenced the proposed calendar with quarterly meeting dates. All meetings are scheduled to take place at 4:00 p.m. in the Building A Large Conference Room. Staff recommends that the Committee adopt the meeting dates and times through January 23, 2020. Meeting dates and times shown after January 23, 2020 are draft and subject to adoption at the Committee's 2020 organizational meeting.

2019/2020 (Proposed): January 24, 2019 (Organizational Meeting), April 25, 2019, July 25, 2019, October 24, 2019 and January 23, 2020 (Organizational Meeting).

2020/2021 (Tentative): January 23, 2020 (Organizational Meeting), April 23, 2020, July 23, 2020, October 22, 2020, and January 21, 2021 (Organizational Meeting).

Mr. Hitchens motioned to approve the proposed 2019/2020 and tentative 2020/2021 Committee meeting dates and times.

Mr. Wanner seconded the motion.

On a voice vote of 6-0, because Ms. Sadler had left the meeting, the motion was unanimously approved.

Regarding the election of officers, Ms. Sulouff stated per the Committee's adopted by-laws (Article VI, Section A), the Committee must elect a chairman and vice-chairman at its yearly organizational meeting.

Mr. Hitchens motioned to re-elect Mr. Taylor as the Committee chairman and Mr. Abbott as the vice-chairman.

Mr. Harcum seconded the motion.

On a voice vote of 6-0, because Ms. Sadler had left the meeting, the motion was unanimously approved.

F. DISCUSSION ITEMS

G. ADJOURNMENT

On a voice vote, the meeting was adjourned at 5:15 p.m.

Mr. William C. Taylor, Chair

Ellen Cook, Principal Planner

AGRICULTURAL AND FORESTAL DISTRICT-07-86-1-2018. Mill Creek Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

SUMMARY FACTS

<u>LAND OWNERS</u>	<u>PARCEL ID</u>	<u>±ACRES</u>
Cowles-Lobbs LLC	2020100006	352.96
Dale Cowles Henderson & John Cowles Dozier, et al.	2020100003	102.66
Dale Cowles Henderson & John Cowles Dozier, et al.	20201000001	8.75
Mayes D. & Cheryl M. Matthews	2110100005	46.01
Pamela C. & Steve L. Massie	1130100028	98.76*
Pamela C. & Steve L. Massie	1130100028A	32.74*
Richard W. & Margaret Krapf	1140100006	4.73
Nancy Cottrell Kruse & M. Anderson Bradshaw	1140100002	297.28
Cowles-Cowlesville LLC	1040100005	249.88
Cowles-Cowlesville LLC	1040100006	124.76
J. Michael Sim	1040100003	103.26
8700 Barnes Road LLC	1010100037	104.00
Sarah H. Armistead	1010100038	50.00
Daniel R. & Marion Virginia Winall	1030100019	97.59
Pamaka, LLC	1020100017	242.70*
Albert T. & Joan Lloyd Slater	1010100028	69.69
McRae O. Selph	1010100007	50.00
Walter N. Marshall, III Trustee	1140100005	79.94
Martha M. Ware Trust	2020100002	57.41
Christopher M. Ware	0920100036	39.13*
Pamaka, LLC	1030100003	45.80*
<i>Ralph Benjamin Dozier, Charles Norris Dozier III & Mary Elizabeth Sink</i>	<i>2020100005</i>	<i>186.16**</i>
Ralph Benjamin Dozier, Charles Norris Dozier III & Mary Elizabeth Sink	2020100007	16.50
Ralph Benjamin Dozier, Charles Norris Dozier III & Mary Elizabeth Sink	2020100008	12.00
Dennis P. & Christina A. Weygand	1030100013	34.02
John M. L. Barnes Estate	1020100004	215.76
John M. L. Barnes Estate	1110100001	29.00

Cowles-Cowlesville LLC	2010100002	2.00
Randolph G. & Michelle H. Gulden	1020100012	62.20
Randolph G. & Michelle H. Gulden	1020100032	25.00
John E. & Elaine M. Sharp	0940100008N	57.81
John G. & Marie Antoinette Findlay	0940100008H	118.29
Richard F. Abbitt Investment LC	0920100040	95.51
Ivy Hill LLC	1110100013	100.18
Ivy Hill LLC	1110100024	1.18
TOTAL ACRES		3,213.66

* Updated parcel acreage based on boundary survey

** Requesting to withdraw a portion of property

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands

Primary Service Area (PSA): Outside and Inside

Staff Contact: Savannah Pietrowski, Senior Planner

PUBLIC HEARING DATES

Planning Commission: August 1, 2018, 6:00 p.m.

Board of Supervisors: September 11, 2018, 5:00 p.m.

STAFF RECOMMENDATION

Approval, subject to the proposed conditions.

AGRICULTURAL AND FORESTAL DISTRICT (AFD) ADVISORY COMMITTEE RECOMMENDATION

At its June 21, 2018 meeting, the AFD Advisory Committee voted 9-0 to recommend the continuation of the District to the Planning Commission and Board of Supervisors.

AGRICULTURAL AND FORESTAL DISTRICT-07-86-1-2018. Mill Creek Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

PLANNING COMMISSION RECOMMENDATION

At its August 1, 2018 meeting, the Planning Commission voted 5-0 to recommend the continuation of the District to the Board of Supervisors.

DISTRICT HISTORY

- The Mill Creek AFD was created in 1986 for a term of four years and originally consisted of 28 parcels totaling ±3,547 acres.
- The District was renewed in 1990, 1994, 1998, 2002, 2006, 2010 and 2014 for four-year periods. Various additions and withdrawals occurred throughout these years.
- Since the 2014 renewal, the Board of Supervisors approved the addition of ±101.36 acres and the addition of ±95.5 acres to the District.
- Acreages for parcels denoted with an asterisk (*) in the summary facts table have been updated based on boundary surveys that have been recorded for these properties.

DISTRICT DESCRIPTION

The Mill Creek AFD consists of ±3,213.66 acres, the majority of which are located along Forge Road or Diascund Road. The majority of the District contains either woodland or active agriculture. All parcels are zoned A-1, General Agriculture and are designated Rural Lands on the Comprehensive Plan.

Total acreage includes all the land in the above properties with the exception of all land within 25 feet of right-of-ways. This area has been excluded to allow for possible road and/or drainage improvements.

ADDITION/WITHDRAWAL REQUESTS

Since the Planning Commission meeting, the owners of the property located at 1827 Forge Road (Parcel ID No. 2020100005) have requested to withdraw approximately 7.73 acres of their parcel from the District. The District will continue to meet minimum area requirements.

CHANGES TO CONDITIONS

None.

SURROUNDING ZONING AND DEVELOPMENT

The surrounding area consists mostly of forestland. The majority of the surrounding property is zoned A-1 and is designated Rural Lands on the Comprehensive Plan. The Chickahominy River is located to the west. The Barnes Swamp AFD is located to the north and the Wright’s Island AFD is located to the south.

COMPREHENSIVE PLAN

The Comprehensive Plan designates these parcels as Rural Lands. Land Use Action 6.1.1 of the adopted Comprehensive Plan states the County shall “support both the use value assessment and Agricultural and Forestal (AFD) programs to the maximum degree allowed by the *Code of Virginia*.”

STAFF RECOMMENDATION

Staff finds the Mill Creek AFD compatible with surrounding development and consistent with the recommendations of the adopted Comprehensive Plan and Zoning Ordinance. Staff recommends that the Board of Supervisors approve the renewal of this AFD for a period of four years, subject to the conditions listed in the District Ordinance (Attachment No. 1).

AGRICULTURAL AND FORESTAL DISTRICT-07-86-1-2018. Mill Creek Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

SP/nb
AFD-MillCrkRnw

Attachments:

1. Ordinance
2. Location Map
3. Property Owner withdrawal request for 1827 Forge Road
4. Adopted conditions for the Mill Creek AFD
5. Board of Supervisors staff report for the 2014 renewal of the Mill Creek AFD

ADOPTED

SEP 11 2018

ORDINANCE NO. 169A-18

Board of Supervisors
James City County, VA

AGRICULTURAL AND FORESTAL DISTRICT-07-86-1-2018

MILL CREEK 2018 RENEWAL

WHEREAS, James City County has completed a review of the Mill Creek Agricultural and Forestal District (the "District"); and

WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, 1950, as amended (the "Virginia Code"), property owners have been notified, public notices have been filed, public hearings have been advertised, and public hearings have been held on the continuation of the District; and

WHEREAS, the Agricultural and Forestal District (AFD) Advisory Committee at its meeting on June 21, 2018, voted 9-0 to recommend renewal of the District; and

WHEREAS, the Planning Commission following its public hearing on August 1, 2018, concurred with the recommendation of staff and the AFD Advisory Committee and voted 5-0 to recommend renewal of the District with the conditions listed below.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of James City County, Virginia, that:

1. The Mill Creek Agricultural and Forestal District (the "District") is hereby continued to October 31, 2022 in accordance with the provisions of the Virginia Agricultural and Forestal District Act, Virginia Code Section 15.2-4300 et. seq. (the "Act").
2. That the District shall include the following parcels, provided, however, that all land within 25 feet of road right-of-way is excluded from the District:

<u>Owner</u>	<u>Parcel No.</u>	<u>±Acres</u>
Cowles-Lobbs LLC	2020100006	352.96
Dale Cowles Henderson & John Cowles Dozier, et al.	2020100003	102.66
Dale Cowles Henderson & John Cowles Dozier, et al.	2020100001	8.75
Mayes D. & Cheryl M. Matthews	2110100005	46.01
Pamela C. & Steve L. Massie	1130100028	98.76
Pamela C. & Steve L. Massie	1130100028A	32.74
Richard W. & Margaret Krapf	1140100006	4.73
Nancy Cottrell Kruse & M. Anderson Bradshaw	1140100002	297.28
Cowles-Cowlesville LLC	1040100005	249.88
Cowles-Cowlesville LLC	1040100006	124.76
J. Michael Sim	1040100003	103.26

8700 Barnes Road LLC	1010100037	104.00
Sarah H. Armistead	1010100038	50.00
Daniel R. & Marion Virginia Winall	1030100019	97.59
Pamaka LLC	1020100017	242.70
Albert T. & Joan Lloyd Slater	1010100028	69.69
McRae O. Selph	1010100007	50.00
Walter N. Marshall, III Trustee	1140100005	79.94
Martha M. Ware Trust	2020100002	57.41
Christopher M. Ware	0920100036	39.13
Pamaka LLC	1030100003	45.80
Ralph Benjamin Dozier, Charles Norris Dozier III & Mary Elizabeth Sink	2020100005	178.44
Ralph Benjamin Dozier, Charles Norris Dozier III & Mary Elizabeth Sink	2020100007	16.50
Ralph Benjamin Dozier, Charles Norris Dozier III & Mary Elizabeth Sink	2020100008	12.00
Dennis P. & Christine A. Weygand	1030100013	34.02
John M. L. Barnes Estate	1020100004	215.76
John M. L. Barnes Estate	1110100001	29.00
Cowles-Cowlesville LLC	2010100002	2.00
Randolph G. & Michelle H. Gulden	1020100012	62.20
Randolph G. & Michelle H. Gulden	1020100032	25.00
John E. & Elaine M. Sharp	0940100008N	57.81
John G. & Marie Antoinette Findlay	0940100008H	118.29
Richard F. Abbitt Investment LC	0920100040	95.51
Ivy Hill LLC	1110100013	100.18
Ivy Hill LLC	1110100024	1.18
Total:		<u>3,205.94</u>

3. That pursuant to Sections 15.2-4312 and 15.2-4313 of the Act, the Board of Supervisors requires that no parcel in the District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:
- a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCF), provided: a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
 - b. No land outside the Primary Service Area and within the District may be rezoning and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.

- c. No special use permit shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue special use permits for WCFs on properties in the District that are in accordance with the County's policies and Ordinances regulating such facilities.

Ruth M. Larson

Ruth M. Larson
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows

Teresa J. Fellows
Deputy Clerk to the Board

VOTES

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	✓	—	—
ICENHOUR	✓	—	—
SADLER	✓	—	—
HIPPLE	✓	—	—
LARSON	✓	—	—

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of September, 2018.

AFD-MillCrkRnw-res

§ 15.2-4306. Criteria for evaluating application

Land being considered for inclusion in a district may be evaluated by the advisory committee and the planning commission through the Virginia Land Evaluation and Site Assessment (LESA) System or, if one has been developed, a local LESA System. The following factors should be considered by the local planning commission and the advisory committee, and at any public hearing at which an application that has been filed pursuant to § 15.2-4303 is being considered:

1. The agricultural and forestal significance of land within the district or addition and in areas adjacent thereto;
2. The presence of any significant agricultural lands or significant forestal lands within the district and in areas adjacent thereto that are not now in active agricultural or forestal production;
3. The nature and extent of land uses other than active farming or forestry within the district and in areas adjacent thereto;
4. Local developmental patterns and needs;
5. The comprehensive plan and, if applicable, the zoning regulations;
6. The environmental benefits of retaining the lands in the district for agricultural and forestal uses; and
7. Any other matter which may be relevant.

In judging the agricultural and forestal significance of land, any relevant agricultural or forestal maps may be considered, as well as soil, climate, topography, other natural factors, markets for agricultural and forestal products, the extent and nature of farm structures, the present status of agriculture and forestry, anticipated trends in agricultural economic conditions and such other factors as may be relevant.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Roberta Sulouff, Senior Planner

SUBJECT: AFD-18-0017. 9888 Sycamore Landing Road Croaker Addition

ATTACHMENTS:

	Description	Type
☐	Staff Report	Staff Report
☐	Attachment 1. Ordinance	Ordinance
☐	Attachment 2. Location Map	Backup Material
☐	Attachment 3. Unapproved minutes from the March 6, 2019 Planning Commission meeting	Minutes
☐	Attachment 4. Unapproved minutes from the January 24, 2019 AFD Advisory Committee meeting	Minutes
☐	Attachment 5. Croaker 2018 AFD Renewal Staff Report and Ordinance	Backup Material
☐	Attachment 6. State Code regarding AFD application criteria	Backup Material
☐	Attachment 7. Property narrative provided by the applicant	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/25/2019 - 12:38 PM
Development Management	Holt, Paul	Approved	3/25/2019 - 12:38 PM
Publication Management	Daniel, Martha	Approved	3/25/2019 - 1:27 PM
Legal Review	Kinsman, Adam	Approved	3/25/2019 - 3:18 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 11:58 AM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 1:51 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 1:58 PM

Agricultural and Forestal District-18-0017. 9888 Sycamore Landing Road Croaker Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

SUMMARY FACTS

Applicant: Ms. Kelly Fulton
Land Owner: Mr. Thomas W. Dana, III, Trustee
Proposal: Addition of ± 62.35 acres of land to the Croaker Agricultural and Forestal District (AFD)
Location: 9888 Sycamore Landing Road
Tax Map/Parcel No.: 0720100006
Project Acreage: ± 62.35 acres
Current Zoning: A-1, General Agricultural
Comprehensive Plan: Rural Lands
Primary Service Area: Outside
Staff Contact: Roberta Sulouff, Senior Planner

PUBLIC HEARING DATES

AFD Advisory Committee: January 24, 2019, 4:00 p.m.
Planning Commission: March 6, 2019, 6:00 p.m.
Board of Supervisors: April 9, 2019, 5:00 p.m.

FACTORS FAVORABLE

1. With the proposed Ordinance, the proposal is compatible with the surrounding development.

2. The proposal is consistent with the recommendations of the James City County Comprehensive Plan adopted in 2015, “*Toward 2035: Leading the Way.*”

FACTORS UNFAVORABLE

1. No factors unfavorable.

STAFF RECOMMENDATION

This parcel is more than one mile away from property that makes up the core of the Croaker AFD District. Per State Code, a parcel of land over one mile from the core may be added to an AFD only upon finding that the property contains agriculturally and forestally significant land. At its January 24, 2019 meeting, the AFD Advisory Committee found the parcel is agriculturally and forestally significant and recommended approval of this application to the Planning Commission by a vote of 7-0. With the AFD Advisory Committee’s recommendation of approval and finding that this property is agriculturally significant, staff recommends that the Board of Supervisors approve the proposed addition to the Croaker AFD, subject to the conditions listed in the attached Ordinance (Attachment No. 1).

PLANNING COMMISSION RECOMMENDATION

At its March 6, 2019 meeting, the Planning Commission voted 5-1 to recommend approval of this addition.

AFD ADVISORY COMMITTEE RECOMMENDATION

At its January 24, 2019 meeting, the AFD Advisory Committee voted 7-0 to find that the parcel contains agriculturally and forestally significant land and to recommend approval of this addition.

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.

Agricultural and Forestal District-18-0017. 9888 Sycamore Landing Road Croaker Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

PROJECT DESCRIPTION

- Ms. Kelly Fulton has applied to add an approximately 62.35-acre parcel to the Croaker AFD.
- The majority of the land is currently undeveloped and wooded, with a home site also located on the parcel.
- Per the United States Department of Agriculture Soil Survey, the majority of soil on this parcel is Craven-Uchee Complex 6-10% slopes (11C), Emporia Complex 25-50% slopes (15F), and Suffolk fine sandy loam (31B). The Soil Survey indicates that both 11C and 15F soils have moderately high potential for the production of important trees with moderate to significant limitations on timbering, due to slope limitations on equipment usage. The Survey also indicates that 31B soils are well-suited to crop cultivation and moderately high timbering potential with very limited or insignificant limitations on production such as slope, seedling mortality, and potential equipment usage limitations.

DISTRICT HISTORY

- The Croaker AFD was created in 1986 for a term of four years and originally consisted of 13 parcels totaling ± 1,341 acres.
- The District was last renewed earlier in 2018. The District consists of approximately 1,182.23 acres of land located between I-64 and York River State Park.
- If this addition were approved, the District would consist of approximately 1,244.58 acres.
- This parcel is over one mile away from the core parcels in the Croaker AFD; therefore, as specified in the Code of Virginia, the

governing body must decide if this property contains agriculturally and forestally significant land to be added to the Croaker AFD (see Attachment No. 3). The Committee reviewed a similar case for addition to the Croaker AFD on an adjacent property in 2017 (AFD-2-86-1-2017, 9730 Sycamore Landing Road).

SURROUNDING ZONING AND DEVELOPMENT

- All surrounding properties are zoned A-1, General Agricultural, or M-1, Limited Business/Industrial and designated Rural Lands or Mixed Use on the Comprehensive Plan.
- The District consists primarily of forested land. The principal land use on most adjacent properties is undeveloped, forested land with single-family residences. The Hankins-Croaker Mixed Use District lies north/northwest of the parcel and is actively mined.

COMPREHENSIVE PLAN AND ZONING

The Comprehensive Plan designates this parcel as Rural Lands. Land Use Action 6.1.1 of the 2035 Comprehensive Plan states the County shall “support both the use value assessment and Agricultural and Forestal (AFD) programs to the maximum degree allowed by the *Code of Virginia*.”

STATE AND LOCAL CODE

- Section 15.2-4301 of Virginia State Code, Agricultural and Forestal Districts Act-Declaration of policy findings and purpose states that:

“It is the policy of the Commonwealth to conserve and protect and to encourage the development and improvement of the Commonwealth’s agricultural and forestal lands for the

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.

Agricultural and Forestal District-18-0017. 9888 Sycamore Landing Road Croaker Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

production of food and other agricultural and forestal products. It is also the policy of the Commonwealth to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes...”

- The State Code establishes the AFD Advisory Committee to:

“...advise the local planning commission and the local governing body and assist in creating, reviewing, modifying, continuing, or terminating districts within the locality. In particular, the committee shall render expert advice as to the nature of farming and forestry and agricultural and forestal resources within the district and their relation to the entire locality.”

- Section 15.2-4305 (Attachment No. 6) states that a parcel may be added to a district if it is outside of a mile radius of the core of the district if the Agricultural and Forestal District Advisory Committee finds that the property contains agriculturally and forestally significant land.
- Section 15.2-4306 (Attachment No. 6) states the factors for consideration in the addition of lands to AFDs. One such factor includes the presence of any significant forestal lands within the district and in areas adjacent thereto that are not now in active forestal production. The Code later states that the presence of suitable soils may be considered in the determination of forestal significance.

STAFF RECOMMENDATION

This parcel is more than one mile away from property that makes up the core of the Croaker AFD District. Per State Code, a parcel of land over one mile from the core may be added to an AFD only upon

finding that the property contains agriculturally and forestally significant land. At its January 24, 2019 meeting, the AFD Advisory Committee found the parcel is agriculturally and forestally significant and recommended approval of this application to the Planning Commission by a vote of 7-0. With the AFD Advisory Committee’s recommendation of approval and finding that this property is agriculturally significant, staff recommends that the Board of Supervisors approve the proposed addition to the Croaker AFD, subject to the conditions listed in the attached Ordinance (Attachment No. 1).

RS/md

AFD18-17Sycamore

Attachments:

1. Ordinance
2. Location Map
3. Unapproved Minutes from the March 6, 2019 Planning Commission meeting
4. Unapproved Minutes from the January 24, 2019 AFD Advisory Committee meeting
5. Croaker 2018 AFD Renewal Staff Report and Ordinance
6. State Code Regarding AFD Application Criteria
7. Applicant Narrative

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.

ORDINANCE NO. _____

AGRICULTURAL AND FORESTAL DISTRICT-18-0017.

9888 SYCAMORE LANDING ROAD, CROAKER ADDITION

WHEREAS, a request has been filed with the Board of Supervisors of James City County, Virginia, (the “Board of Supervisors”) to add ± 62.35 acres of land owned by Mr. Thomas Dana located at 9888 Sycamore Landing Road and identified as James City County Real Estate Tax Map/Parcel No. 0720100006 to Agricultural and Forestal District (AFD)-02-86, which is generally known as the “Croaker Agricultural and Forestal District” (the “Application”); and

WHEREAS, at its January 24, 2019 meeting, the AFD Advisory Committee voted 7-0 that the parcel is agriculturally and forestally significant land and to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Planning Commission (the “Commission”) at its March 6, 2019 meeting, after which the Commission voted 5-1 to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Board of Supervisors.

NOW, THEREFORE, BE IT ORDAINED that the Board of Supervisors of James City County, Virginia, finds that the property consisting of ± 62.35 acres located at 9888 Sycamore Landing Road and identified as James City County Real Estate Tax Map/Parcel No. 0720100006 (the “Property”) contains agriculturally and forestally significant land and hereby adds the Property to AFD-02-86, which is generally known as the “Croaker Agricultural and Forestal District” (the “District”) with the following conditions:

1. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner’s immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCFs), provided: a) the subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
2. No land outside the Primary Service Area and within the District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors’ Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.
3. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for WCFs on

properties in the District that are in accordance with the County's policies and Ordinances regulating such facilities.

James O. Icenhour, Jr.
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Deputy Clerk to the Board

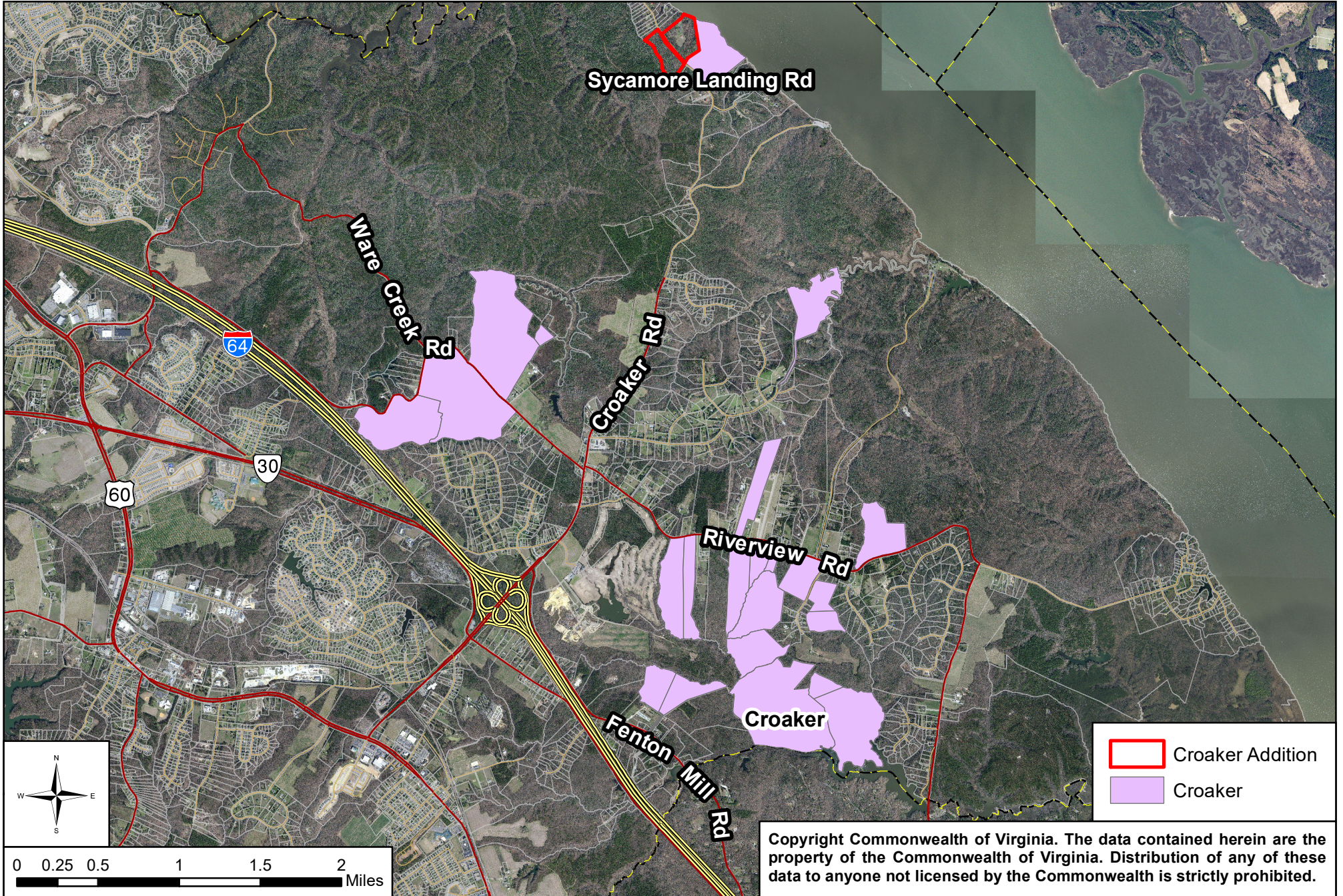
	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
HIPPLE	___	___	___
LARSON	___	___	___
SADLER	___	___	___
MCGLENNON	___	___	___
ICENHOUR	___	___	___

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April, 2019.

AFD18-17Sycamore-res

JCC AFD-18-0017

9888 Sycamore Landing Road Croaker AFD Addition



**Unapproved Minutes of the March 6, 2019
Planning Commission Regular Meeting**

AFD-18-0017. 9888 Sycamore Landing Road Croaker AFD Addition

Ms. Sulouff stated that Ms. Kelly Fulton has applied on behalf, and with the permission of Mr. Thomas Dana to add 62.35 acres of land to the Croaker district. Ms. Sulouff stated that the land is located at 9888 Sycamore Landing Road, is Zoned A-1, General Agricultural and is designed Rural Lands on the Comprehensive Plan Land Use Map.

Ms. Sulouff stated that while the land is outside of the mile radius from the core of the district, State Code permits parcels to be added upon finding that the property contains agriculturally and forestally significant land. Ms. Sulouff further stated that the Board of Supervisors approved a similar case, AFD-2-86-1-2017, 9730 Sycamore Landing Road, for addition in to the Croaker AFD in 2017.

Ms. Sulouff stated that the United States Department of Agriculture (USDA) Soil Survey indicates that the site is home to soils which have moderately high potentially potential for both crops and timbering. State code indicates that one such factor for the consideration of the addition of property is the presence of suitable soils on the site.

Ms. Sulouff further stated that at its January 24 meeting, the AFD Advisory Committee unanimously found that the land in question contains agriculturally and forestally significant land and voted to include this parcel in the district.

Ms. Sulouff stated that staff recommends that the Planning Commission recommend inclusion of this parcel into the Croaker AFD to the Board of Supervisors, subject to the conditions adopted during the renewal of the Croaker AFD in 2018.

Mr. Schmidt called for disclosures from the Commission.

There were no disclosures.

Mr. Schmidt opened the Public Hearing.

As no one wished to speak, Mr. Schmidt closed the Public Hearing.

Mr. Schmidt opened the floor for discussion by the Commission.

Mr. Polster stated that he continues to have the same concerns as with the previous applications. Mr. Polster stated that he has reviewed several Conceptual Plans brought before the DRC where properties have been removed from an AFD and been developed. Mr. Polster noted that there are also parcels in the AFD Program that are also part of the Purchase of Development Rights (PDR) program. Mr. Polster stated that there are multiple ways to restrict development on a parcel. Mr. Polster stated that he believes the Commission needs to be given more evidence in addition to what is provided in the Staff Report that the AFD Program is the best method to preserve the property.

Mr. Krapf stated that he would support the application. Mr. Krapf further stated that the AFD Program is part of the County's tool box to preserve and protect open space, wooded areas, and agricultural land. Mr. Krapf stated that he tends to take a broader perspective using the overarching principles of the Commonwealth of Virginia that support measures to preserve and protect agricultural and wooded lands.

Mr. Krapf made a motion to recommend approval of the addition of the parcel into the Croaker AFD.

On a roll call vote the Planning Commission voted to recommend approval of AFD-18-0017. 9888 Sycamore Landing Road Croaker AFD Addition (5-1).

MINUTES OF THE AGRICULTURAL AND FORESTAL ADVISORY COMMITTEE OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE TWENTY-FOURTH DAY OF JANUARY, TWO THOUSAND AND NINETEEN, AT 4:00 P.M. AT THE BUILDING A CONFERENCE ROOM, 101 MOUNTS BAY ROAD, WILLIAMSBURG, VIRGINIA.

A. CALL TO ORDER

Mr. William C. Taylor called the meeting to order at 4:00 p.m.

B. ROLL CALL

Members Present

Mr. Thomas Hitchens
Ms. Loretta Garrett
Mr. William C. Taylor, chair
Mr. L. Bruce Abbott
Mr. Payten Harcum
Mr. Sandy Wanner
Ms. Sue Sadler

Also Present

Ms. Ellen Cook, Principal Planner
Ms. Roberta Sulouff, Senior Planner
Ms. Tori Haynes, Planner
Ms. Katie Pelletier, Community Development Assistant

Absent

Mr. Richard Bradshaw
Mr. William R. Harcum
Mr. John Grantz

C. APPROVAL OF MINUTES

1. Approval of the June 21, 2018 Meeting Minutes

Mr. Taylor reminded the Committee that the October 25, 2018 meeting had been canceled because they lacked a quorum.

Mr. Bruce Abbott moved to approve the minutes of the June 21, 2018 meeting.

Mr. Tom Hitchens seconded the motion.

On a voice vote, the motion was approved 6-0-1. Ms. Loretta Garrett abstained from the vote as she was absent from the June 21, 2018 meeting.

D. OLD BUSINESS:

1. AFD-18-0020. 8328 Diascund Road Mill Creek AFD Addition

Mr. Taylor explained the Committee would next address old business from the canceled October 25, 2018 meeting.

Ms. Roberta Sulouff said applicant Mr. John Michael Sim has applied to enroll approximately 10 acres of a parcel located at 8328 Diascund Road in the Mill Creek AFD. The parcel is zoned A-1 (General Agricultural) and is designated Rural Lands in the County Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 3,224 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Mill Creek AFD to the Planning Commission.

Mr. Taylor clarified that applicants could have property included in the AFD which may not meet the tax-break threshold.

Ms. Sulouff confirmed there is no minimum acreage requirement for inclusion in the AFD.

Mr. Abbott moved to recommend approval of the proposed addition of the parcel at 8328 Diascund Road into the Mill Creek AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Ms. Garrett seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

2. AFD-18-0019. 4928 Fenton Mill Road Croaker Addition

Ms. Sulouff stated that Mr. Charles Apperson and Ms. Patricia Russo have applied to enroll an approximately 52-acre parcel in the Croaker AFD. The parcel is located at 4928 Fenton Mill Road, zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff noted this parcel was brought up at the 2018 renewal process. Staff believed the parcel was not included in the AFD after the 1996 renewal due to an administrative error. This property was originally part of a parcel in the AFD at 4920 Fenton Mill Road, but after a 1995 subdivision the new parcel at 4928 Fenton Mill Road was not included in notifications for that renewal period.

The Committee discussed the issue at the June 21, 2018 meeting and recommended the parcel be included. However, staff found that a more proper route to re-include the parcel would be to go through the formal addition process.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 1,234 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission.

Mr. Hitchens moved to recommend approval of the proposed addition of the parcel at 4928 Fenton Mill Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Payten Harcum seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

3. AFD-18-0017. 9888 Sycamore Landing Road Croaker Addition

Ms. Sulouff stated that Ms. Kelly Fulton has applied, on behalf and with the permission of Mr. Thomas W. Dana, III, to add an approximately 62-acre parcel to the Croaker AFD. The parcel is located at 9888 Sycamore Landing Road, zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff noted that, while this parcel is over one mile away from the core parcels in the Croaker AFD, State Code permits the addition of a parcel into an AFD if the governing body finds the property contains agriculturally and forestally significant land. Ms. Sulouff reminded the Committee that they reviewed a similar case and permitted addition of an adjacent property at 9730 Sycamore Landing Road to the Croaker AFD in 2017.

Ms. Sulouff noted the U.S. Department of Agriculture Soil Survey indicates the site is home to soils which have moderately high potential for both crops and timbering. Should the Committee find that the property contains agriculturally and forestally significant land and that it meets the criteria for inclusion of land in an AFD, staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission. If this addition were approved, the District would consist of approximately 1,244 acres.

Mr. Hitchens commented he supports inclusion of properties which will help preserve the rural nature of the county.

Mr. Hitchens moved to recommend approval of the proposed addition of the parcel at 9888 Sycamore Landing Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Harcum seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

4. AFD-18-0016. 365, 358 and 382 Ivy Hill Road Mill Creek Addition

Ms. Sulouff stated that Mr. John Michael Sim has applied to enroll approximately 60.73 acres of land located at 365, 358 and 382 Ivy Hill Road into the Mill Creek AFD. The

parcel is zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 3,274 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Mill Creek AFD to the Planning Commission.

Mr. Abbott moved to recommend approval of the proposed addition of the parcels at 365, 358 and 382 Ivy Hill Road into the Mill Creek AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Hitchens seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

5. AFD-02-86-2-2018. 4450 Ware Creek Road Croaker Addition

Ms. Sulouff stated that Mr. Jonathan Kinney has applied to enroll approximately 14.18 acres of land located at 4450 Ware Creek Road into the Croaker AFD. The parcel is zoned A-1 (General Agricultural) and designated Low-Density Residential in the County's Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 1,197.3 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission.

Mr. Hitchens requested a hard copy of the AFD map be available for reference during meetings.

Ms. Garrett moved to recommend approval of the proposed addition of the parcel at 4450 Ware Creek Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Sandy Wanner seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

E. NEW BUSINESS

1. C-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD

Ms. Tori Haynes stated Hampton Roads Sanitation District currently operates the Williamsburg Treatment Plant located at 300 Ron Springs Drive. This is a landlocked

parcel that is wholly surrounded by 250 Ron Springs Drive and the Carter's Grove AFD.

HRSD has stated that it requires a facility expansion adjacent to the Williamsburg Treatment Plant. This expansion is in response to federal enforcement action taken by the EPA and Dept. of Justice. HRSD has stated there is insufficient property on their current parcel to accommodate the facility expansion, and as such has stated its intent to acquire 250 Ron Springs Drive by condemnation for public utility purposes.

HRSD is not requesting a withdrawal of the property from the AFD at this time. Rather, per State Code, utilities may acquire interests in properties within an AFD provided that the Board of Supervisors, in consultation with the AFD Advisory Committee and Planning Commission, reviews the proposal and specifically examines the following criteria found in §15.2-4313: (i) the effect the action would have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district.

The evaluation and analysis of the proposal against these three criteria are a State-Code mandated process that is required when acquisition of a parcel by a political subdivision of the state is proposed.

Ultimately, the Board of Supervisors will consider the above criteria and make a determination as to whether the proposed action might have an unreasonably adverse effect upon state or local policy.

This review does not withdraw any portion of the parcel from the AFD or grant any sort of approval for the facility expansion itself. Should HRSD be successful in acquiring ownership of the subject parcel, they would then need to apply separately for those items, and accordingly, the AFD Advisory Committee would consider the withdrawal request at that time.

Staff recommends that each of the above criteria be discussed individually to make clear the findings of the Committee to the Planning Commission and Board of Supervisors.

In consideration of the criteria, staff ultimately found that the proposal was necessary to provide service in the most economical and practical manner, and that it will not have an unreasonably adverse effect upon state or local policy.

Mr. Taylor disclosed to the Committee and staff that he is affiliated with companies represented by Kaufman and Canoles law firm. However, he does not feel this will sway his opinion or recommendations while serving on the Committee.

Mr. Taylor then asked staff to clarify whether the Committee would be voting to agree or disagree with the HRSD proposal.

Ms. Haynes stated the Committee would not be considering any AFD withdrawal at this time but needed to determine if the action of taking the parcel would have an adverse effect on State or local policy. She said this is an automatic review of three criteria triggered or prompted by the intent stated by HRSD to acquire the parcel by condemnation for public utility purposes. Their findings will then go to the Planning Commission and Board of Supervisors.

Ms. Haynes suggested discussion of the three criteria found in §15.2-4313 and stated that representatives of HRSD and Carter's Grove Associates, LLC are available to answer questions.

Ms. Haynes then shared staff's understanding of the proposal. HRSD is looking to expand beyond their current borders into the Carter's Grove AFD. They propose clearing approximately 7 acres, but a final site has not been located yet.

Mr. Wanner stated HRSD is under Federal mandate to make improvements to the facility.

Ms. Haynes confirmed there is a Federal action against HRSD, and existing lands cannot accommodate the necessary expansion. They require an additional seven acres.

Mr. Taylor stated HRSD is attempting to acquire 76 acres.

Ms. Haynes stated HRSD is pursuing ownership of the entire parcel but not necessarily withdrawal of all 76 acres from the AFD. She reiterated that this review is prompted by the intent to condemn lands within an AFD by a political subdivision.

Mr. Hitchens asked staff why HRSD would need to withdraw land from the AFD if they are a public entity.

Ms. Haynes answered that a Special Use Permit (SUP) is not allowed in an AFD unless it is related to farming practices. If HRSD takes ownership of the parcel, and a use is permitted with a SUP, they will need to withdraw that portion of land from the AFD.

Mr. Abbott asked the HRSD representative for an explanation of their plan.

Ted Henifin, General Manager at HRSD, addressed the Committee and began with a discussion on the impact of topography in the subject parcel. He explained the land has steep slopes, wetlands and Resource Protection Area and is largely undevelopable. He stated that of the 76 acres, maybe only 30 acres are buildable. He showed the Committee on a map the area of the parcel most likely suitable for their facility expansion and access points. Mr. Henifin stated there have been many discussions with the property owner regarding alternatives to condemnation in the past year with no resolution. Regarding the consent order, Mr. Henifin stated the federal enforcement action is driving the timeline tied to the project.

Mr. Henifin explained HRSD requires the 76 acres because of the unusual, unique residual that would be created by the project and buildout. The mostly unbuildable, remaining land would serve as a buffer between the WTP and surrounding properties to protect the investment and property, in case slopes erode. He said they have an outfall through an easement on the beach and have already had to make improvements on the beach for erosion. Mr. Henifin said they would like to have control long-term and do not find much residual value in the remaining property beyond the buildable acres. He stated it would be difficult to assess the value of the residual property, and there is also potential for further expansion requirements in the future. He noted HRSD has stated it is willing to dedicate a permanent conservation easement over the remaining portion of the parcel. He said they do not know the exact project location until they can access the land and survey.

Mr. Abbott asked about the purpose of the project or facility improvements.

Mr. Henifin stated this will be the first of several projects whereby HRSD is adding advanced water treatment capability and drinking water standards to their current treatment plants. Of the 22 million gallons of wastewater treated per day, 8 million gallons will be treated in this manner and discharged into the Potomac aquifer instead of the James River.

Mr. Henifin stressed HRSD does not currently have room to expand within their current site as it is mostly built out. He stated the proposal will protect their ability to advance wastewater treatment in as compact a footprint and most economical way as possible. The water will need to move through several process and control points, so use of an alternative or nearby property would still impact the AFD with easement connections. From a cost perspective, Mr. Henifin said sharing a property and fence line allows for the sharing of other resources such as operators and security.

Mr. Taylor asked about the purpose of owning the residual property if it is largely unusable.

Mr. Henifin expressed the difficulty in defining both the acquisition of land required and also the value of the residual property. A one-time take would avoid these issues and allow for additional land use if needed in the future.

Mr. Tim Trant, attorney with Kaufman and Canoles, introduced his law partner also present at the meeting, Mr. Paul Gerhardt. Mr. Trant said they represent Mr. Sam Mencoﬀ, owner of Carter's Grove Associates, LLC and the 76-acre parcel located at 250 Ron Springs Drive in the Carter's Grove AFD which surrounds the HRSD WTP. Mr. Mencoﬀ also owns the adjacent 400-acre Carter's Grove parcel. Mr. Trant said Mr. Mencoﬀ's intent when purchasing the property was to fulfil the County and community interest in restoration and preservation of the historic Carter's Grove property, and he has since invested heavily in the property.

Mr. Trant said they object to HRSD's request at this time, stating the HRSD intent to take

76 acres and develop a small portion of seven acres does not meet the statutory criteria. He said Mr. Mencoﬀ desires to keep the buffer, the take is larger than it needs to be, the proposal is not the most practical way to provide the service, and there are reasonable alternatives. Mr. Trant stated they request that the Committee defer action on this item until they can continue their conversation with HRSD, and they do not support any plan to take the entire property.

Mr. Trant said HRSD approached them last year about the need for some additional land and felt there was constructive dialogue. However, he said, HRSD required them to enter into a Nondisclosure Agreement in connection with those conversations so he cannot disclose any details. Mr. Trant said they would like those conversations to continue. Regarding the compulsory timeline for HRSD, Mr. Trant said they did not create this sense of urgency and noted HRSD has been under the consent decree since 2010 to implement the changes.

Mr. Wanner noted all of Hampton Roads is under the same consent.

Mr. Trant said the timeline is a proposal, and as a landowner invested in historic property, his client would like the opportunity for thoughtful dialogue to reach a reasonable resolution.

Mr. Hitchens asked Mr. Trant if a survey would be possible.

Mr. Trant referenced the Nondisclosure Agreement but stated there is a willingness to engage in reasonable conversation about what is needed. He said the threat of condemnation of 76 acres is an attempt to short-circuit the process as a negotiating tactic.

Mr. Wanner asked the staff how long it might be possible to defer.

Ms. Haynes stated that, on counsel from the County Attorney's Office, deferral is not an option because of the State code requirements. The March 12, 2019 Board of Supervisor's meeting is the ninety day deadline from the date the original report was filed. If the Board determines there is an unreasonably adverse effect upon state or local policy, they may then hold a public hearing within the next 60 days.

Ms. Haynes stated the Committee needs to determine if the action of taking the parcel would have an adverse effect on State or local policy then forward their finding to the Planning Commission for their February meeting before the Board of Supervisor's March meeting.

Mr. Trant said HRSD could also withdraw their request, continue the conversation with Mr. Mencoﬀ and return with a proposal that meets the criteria.

Ms. Sue Sadler asked Mr. Henifin about the status of the Sustainable Water Initiative for Tomorrow (SWIFT) project.

Mr. Henifin said the SWIFT research center is putting water in the ground, and the aquifer is 400-500 feet below the surface. He said the issue with surveying is having relative assurance against the potential waste of money surveying land not yet acquired. Mr. Henifin mentioned the challenges of negotiations and said the Nondisclosure Agreement was actually a requirement of Mr. Trant's client. He said condemnation includes compensation for the legal value of the land, and they are seeking a willing partner.

Mr. Trant noted one of the County's articulated benefits for landowners in joining an AFD is a layer of protection from condemnation. He said the County would offend that commitment by recommending or condoning the action by HRSD.

Mr. Wanner stated he believes the public good is served by condemnation of some amount of land in this situation.

Mr. Abbott said he believes a buffer should be maintained and owned by the original owner.

Mr. Trant asked for a recommendation of deferral until an agreement is made between HRSD and the landowner.

Ms. Sulouff and Ms. Haynes stated that as long as there is an application, the Board is required to make a determination within 90 days. If HRSD chooses not to withdraw, the process moves forward in accordance with State code. The Committee may tailor its recommendation to reflect the discussion.

Mr. Henifin said with HRSD surrounded by the AFD, it will be impacted but any withdrawal will be brought forward later and separately. He said the full 76-acre parcel is required to protect the facility, slopes and beachfront.

Mr. Trant said there is a mutual interest in protecting the property and facility, and there have been no problems addressing any issues on the property to date.

Ms. Haynes suggested addressing each of the three criteria being considered. Regarding criteria (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies, Ms. Haynes noted to the Committee there is some planned, intended agricultural activities but no formal activity, and they are not receiving land use valuation. Ms. Haynes did note that Carter's Grove Associates, LLC representatives did appeal to the Department of Conservation and Recreation (DCR) to advise the County on this proposed action. DCR was not able to provide a full report based on access and timeline, but there are some known natural resource heritage areas there.

Ms. Sulouff stated this Committee review and recommendation is significant as an extra board hearing and part of the extra protection provided to landowners in an AFD.

Ms. Haynes then read to the Committee criteria (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and criteria (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Taylor said the third criteria is most troubling when considering how much of the parcel is required by HRSD and the Committee's commitment to AFD landowners.

Mr. Henifin stated he has little confidence an agreement could be made, given the proposals already rejected by the landowner.

Mr. Trant said they are also frustrated and feel there have been reasonable counter-offers.

Mr. Wanner asked how soon HRSD could reapply, if they were to withdraw their application.

Ms. Haynes answered the 90-day clock would start again upon resubmittal.

Mr. Hitchens said the landowner has made a great investment in the County and feels uncomfortable with HRSD taking the entire parcel.

Mr. Abbott motioned, based on the Committee's consideration of the three criteria found in §15.2-4313, that the proposed action by HRSD to acquire 250 Ron Springs Drive, located in the Carter's Grove AFD, by condemnation for public utility purposes might have an unreasonably adverse effect upon state or local policy. The proposed action (i) would have an unreasonably adverse effect upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies; (ii) there is no necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) there could be reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Harcum seconded the motion.

On a voice vote of 5-1-1, the motion was approved.

Ms. Garrett, Mr. Hitchens, Mr. Harcum, Mr. Abbott, and Mr. Taylor voted yes, the proposed action might have an unreasonably adverse effect upon state or local policy. Mr. Wanner voted against the motion, and Ms. Sadler abstained from the vote.

2. The Agricultural and Forestal District Advisory Committee Organizational Meeting

Ms. Sulouff said the Committee has one last item of new business.

She stated at its January 2018 meeting, the Committee adopted by-laws, established a yearly organizational meeting to take place in subsequent years in the month of January and adopted a calendar for 2018. The Committee also reviewed a tentative calendar for 2019, but it did not formally adopt those dates.

Ms. Sulouff referenced the proposed calendar with quarterly meeting dates. All meetings are scheduled to take place at 4:00 p.m. in the Building A Large Conference Room. Staff recommends that the Committee adopt the meeting dates and times through January 23, 2020. Meeting dates and times shown after January 23, 2020 are draft and subject to adoption at the Committee's 2020 organizational meeting.

2019/2020 (Proposed): January 24, 2019 (Organizational Meeting), April 25, 2019, July 25, 2019, October 24, 2019 and January 23, 2020 (Organizational Meeting).

2020/2021 (Tentative): January 23, 2020 (Organizational Meeting), April 23, 2020, July 23, 2020, October 22, 2020, and January 21, 2021 (Organizational Meeting).

Mr. Hitchens motioned to approve the proposed 2019/2020 and tentative 2020/2021 Committee meeting dates and times.

Mr. Wanner seconded the motion.

On a voice vote of 6-0, because Ms. Sadler had left the meeting, the motion was unanimously approved.

Regarding the election of officers, Ms. Sulouff stated per the Committee's adopted by-laws (Article VI, Section A), the Committee must elect a chairman and vice-chairman at its yearly organizational meeting.

Mr. Hitchens motioned to re-elect Mr. Taylor as the Committee chairman and Mr. Abbott as the vice-chairman.

Mr. Harcum seconded the motion.

On a voice vote of 6-0, because Ms. Sadler had left the meeting, the motion was unanimously approved.

F. DISCUSSION ITEMS

G. ADJOURNMENT

On a voice vote, the meeting was adjourned at 5:15 p.m.

Mr. William C. Taylor, Chair

Ellen Cook, Principal Planner

AGRICULTURAL AND FORESTAL DISTRICT-02-86-1-2018. Croaker Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

SUMMARY FACTS

<u>LAND OWNERS</u>	<u>PARCEL ID</u>	<u>ACRES (±)</u>
Hankins Land Trust	1530100044	119.00
William L. & Mary M. Apperson	1440100015	26.05
William L. & Mary M. Apperson	1440100015A	26.23
Ronald McManus, et al.	1530100043	119.85
Ronald McManus, et al.	1530100042	10.10
Ronald McManus, et al.	1530100036	40.40
Hazel M. & L. Richardson	1530100002	39.76
Hazel M. Richardson	1530100034	39.78
J. Rosalie Will, Trustee	1440100010	40.00
Stephanie L. Billon-Wolfe, Trustee	1440100009	49.08
Wenger Farms, LLC	1320100018	95.30
Wenger Farms, LLC	1410100001	150.00
Wenger Farms, LLC	1410100014	143.50
Thomas B. Ballard	1530100035	53.17
Sharpe Family Properties, LLC	1530100018	16.05
William R. Atkins, Jr.	1530100019	16.40
William R. Atkins, Jr.	1530100029	30.94
Milly Wallis	1540100004	40.00
Thomas B. Ballard	1530100035A	4.91
Thomas B. Ballard	1530100032	16.22
Wenger Farms, LLC	1410100007	7.00
Katherine G. & William Mann	1510400003	50.00
Mitchell Family Ltd. Partnership	0740100002	48.49
TOTAL ACRES		1,182.23

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands
Low-Density Residential

Primary Service Area (PSA): Inside and Outside
Staff Contact: Roberta Sulouff, Senior Planner

PUBLIC HEARING DATES

Planning Commission: August 1, 2018, 6:00 p.m.
Board of Supervisors: September 11, 2018, 5:00 p.m.

STAFF RECOMMENDATION

Approval, subject to the proposed conditions.

AGRICULTURAL AND FORESTAL DISTRICT (AFD) ADVISORY COMMITTEE RECOMMENDATION

At its June 21, 2018 meeting, the AFD Advisory Committee voted 9-0 to recommend the continuation of the District to the Planning Commission and Board of Supervisors.

PLANNING COMMISSION

At its August 1, 2018 meeting, the Planning Commission voted 5-0 to recommend the continuation of the District to the Board of Supervisors.

DISTRICT HISTORY

- The Croaker AFD was created in 1986 for a term of four years and originally consisted of 13 parcels totaling ±1,341 acres.
- The District was renewed for four-year intervals in 1990, 1994, 1998, 2002, 2006, 2010 and 2014 with various withdrawals and additions occurring during that period.

AGRICULTURAL AND FORESTAL DISTRICT-02-86-1-2018. Croaker Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

- In 2017, the Board of Supervisors approved the addition of 48.49 acres of land located at 9730 Sycamore Landing Road to the AFD.

DISTRICT DESCRIPTION

While still conforming to applicable area and proximity requirements this District is somewhat geographically dispersed. According to the United States Geological Service Soils Survey, the bulk of the District appears to consist of soils which are prime for crop cultivation or forestry. The majority of the District is forested and remains rural in nature. All the land in this District is zoned A-1, General Agricultural. Pieces of the District are located both outside and inside of the PSA, and are designated both Rural Lands and Low-Density Residential by the adopted Comprehensive Plan.

Total acreage includes all the land in the above properties with the exception of all land within 25 feet of right-of-ways. This area has been excluded to allow for possible road and/or drainage improvements.

ADDITION/WITHDRAWAL REQUESTS/OTHER CHANGES IN ACREAGE

- *Addition Requests:*
 - The owner of the property located at 4450 Ware Creek Road (Tax Map ID No. 1410100046) has applied to add approximately 14.8 acres to the District. That application will be evaluated under a separate cover and is tentatively scheduled for the AFD Committee’s consideration at the October 25, 2018, meeting.
 - The owner of the property located at 4960 Fenton Mill Road (Tax Map ID 2420100035) has applied to add approximately 52.28 acres to the District. That application will be evaluated

under a separate cover and is tentatively scheduled for the AFD Committee’s consideration at the October 25, 2018 meeting.

CHANGES TO CONDITIONS

None.

SURROUNDING ZONING AND DEVELOPMENT

The majority of this District is located southeast of the Croaker Road/Interstate 64 interchange, though several small pieces are located north and east of the interchange as well. The surrounding area is mostly zoned A-1, General Agricultural; however, the northern and eastern portions of the District are surrounded by undeveloped portions of the Stonehouse Development, which is zoned PUD-R, Planned Unit Development-Residential. The Christenson’s Corner AFD lies to the southeast of the District and the Hill Pleasant Farm AFD lies to the southwest of the District.

COMPREHENSIVE PLAN

The Comprehensive Plan designates these parcels as Rural Lands and Low-Density Residential. Land Use Action 6.1.1 of the adopted Comprehensive Plan states the County shall “support both the use value assessment and Agricultural and Forestal (AFD) programs to the maximum degree allowed by the *Code of Virginia*.”

STAFF RECOMMENDATION

Staff finds the Croaker AFD compatible with surrounding development and consistent with the recommendations of the adopted Comprehensive Plan and Zoning Ordinance. Staff recommends that the Board of Supervisors approve the renewal of this AFD for a period of four years, subject to conditions listed in the District Ordinance (Attachment No. 1).

AGRICULTURAL AND FORESTAL DISTRICT-02-86-1-2018. Croaker Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

RS/md

AFD-CroakerRnw

Attachments:

1. Ordinance
2. Location Map
3. Adopted conditions for the Croaker AFD
4. Board of Supervisors staff report for the 2014 renewal of the Croaker AFD

CORRECTED

ADOPTED

SEP 11 2018

ORDINANCE NO. 164A-17

Board of Supervisors
James City County, VA

AGRICULTURAL AND FORESTAL DISTRICT-02-86-1-2018

CROAKER 2018 RENEWAL

WHEREAS, James City County has completed a review of the Croaker Agricultural and Forestal District (the "District"); and

WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, 1950, as amended (the "Virginia Code"), property owners have been notified, public notices have been filed, public hearings have been advertised, and public hearings have been held on the continuation of the District; and

WHEREAS, the Agricultural and Forestal District (AFD) Advisory Committee at its meeting on June 21, 2018, voted 9-0 to recommend renewal of the District; and

WHEREAS, the Planning Commission following its public hearing on August 1, 2018, concurred with the recommendation of staff and the AFD Advisory Committee and voted 5-0 to recommend renewal of the District with the conditions listed below.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of James City County, Virginia, that:

1. The Croaker Agricultural and Forestal District (the "District") is hereby continued to October 31, 2022 in accordance with the provisions of the Virginia Agricultural and Forestal District Act, Virginia Code Section 15.2-4300 et. seq. (the "Act").
2. That the District shall include the following parcels, provided, however, that all land within 25 feet of road right-of-ways is excluded from the District:

<u>Owner</u>	<u>Parcel No.</u>	<u>Acres</u>
Hankins Land Trust	1530100044	119.00
William and Mary M. Apperson	1440100015	26.05
William and Mary M. Apperson	1440100015A	26.23
Ronald McManus, et al.	1530100043	119.85
Ronald McManus, et al.	1530100042	10.10
Ronald McManus, et al.	1530100036	40.40
Hazel M. Richardson & LA Richardson	1530100002	39.76
Hazel M. Richardson	1530100034	39.78
J. Rosalie Will, Trustee	1440100010	40.00
Stephanie L. Billon-Wolfe, Trustee	1440100009	49.08
Wenger Farms LLC	1320100018	95.30
Wenger Farms LLC	1410100001	150.00
Wenger Farms LLC	1410100014	143.50
Thomas B. Ballard	1530100035	53.17
Sharpe Family Properties, LLC	1530100018	16.05

William R. Atkins, Jr.	1530100019	16.40
William R. Atkins, Jr	1530100029	30.94
Milly Wallis	1540100004	40.00
Thomas B. Ballard	1530100035A	4.91
Thomas B. Ballard	1530100032	16.22
Wenger Farms, LLC	1410100007	7.00
Katherine G. & William Mann	1510400003	50.00
Mitchell Family Ltd. Partnership	0740100002	48.49
	Total:	<u>1,182.23</u>

3. That pursuant to Sections 15.2-4312 and 15.2-4313 of the Act, the Board of Supervisors requires that no parcel in the District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:

- a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCFs), provided: a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
- b. No land outside the Primary Service Area and within the District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.
- c. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for WCFs on properties in the District that are in accordance with the County's policies and Ordinances regulating such facilities.

Ruth M. Larson

Ruth M. Larson
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Teresa J. Fellows
Deputy Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	✓	—	—
ICENHOUR	✓	—	—
SADLER	✓	—	—
HIPPLE	✓	—	—
LARSON	✓	—	—

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of September, 2018.

§ 15.2-4305. Application for creation of district in one or more localities; size and location of parcels

On or before November 1 of each year or any other annual date selected by the locality, any owner or owners of land may submit an application to the locality for the creation of a district or addition of land to an existing district within the locality. Each district shall have a core of no less than 200 acres in one parcel or in contiguous parcels. A parcel not part of the core may be included in a district (i) if the nearest boundary of the parcel is within one mile of the boundary of the core, (ii) if it is contiguous to a parcel in the district the nearest boundary of which is within one mile of the boundary of the core, or (iii) if the local governing body finds, in consultation with the advisory committee or planning commission, that the parcel not part of the core or within one mile of the boundary of the core contains agriculturally and forestally significant land. No land shall be included in any district without the signature on the application, or the written approval of all owners thereof. A district may be located in more than one locality, provided that (i) separate application is made to each locality involved, (ii) each local governing body approves the district, and (iii) the district meets the size requirements of this section. In the event that one of the local governing bodies disapproves the creation of a district within its boundaries, the creation of the district within the adjacent localities' boundaries shall not be affected, provided that the district otherwise meets the requirements set out in this chapter. In no event shall the act of creating a single district located in two localities pursuant to this subsection be construed to create two districts.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587; 1998, c. 833; 2011, cc. 344, 355.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Applicant Narrative

"I would like to add our property to the Croaker AFD. We have 62 acres that have approximately 50 acres of woods. This has been in our family for over 100 years and will continue to be passed down. We have no plans to develop or commercialize this property and want to maintain it's natural state. The property is in a Trust. This property goes back into the Byrd and Custis families of historical significance. Thank you for this opportunity"

Kelly Fulton

Submitted to PermitLink on August 3, 2018

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Roberta Sulouff, Senior Planner

SUBJECT: AFD-18-0019. 4928 Fenton Mill Road Croaker Addition

ATTACHMENTS:

	Description	Type
☐	Staff Report	Cover Memo
☐	Attachment 1. Ordinance	Ordinance
☐	Attachment 2. Location Map	Backup Material
☐	Attachment 3. Unapproved minutes from the March 6, 2019 Planning Commission meeting	Minutes
☐	Attachment 4. Unapproved minutes from the January 24, 2019 AFD Advisory Committee meeting	Minutes
☐	Attachment 5. Croaker 2018 AFD Renewal Staff Report and Ordinance	Backup Material
☐	Attachment 6. State Code regarding AFD application criteria	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/25/2019 - 12:03 PM
Development Management	Holt, Paul	Approved	3/25/2019 - 12:05 PM
Publication Management	Daniel, Martha	Approved	3/25/2019 - 12:15 PM
Legal Review	Kinsman, Adam	Approved	3/25/2019 - 12:19 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2019 - 1:33 PM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 1:51 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 1:58 PM

Agricultural and Forestal District-18-0019. 4928 Fenton Mill Road Croaker Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

SUMMARY FACTS

Applicants: Mr. Charles Apperson and Ms. Patricia Russo
Land Owners: Mr. Charles Apperson and Ms. Patricia Russo
Proposal: Addition of ± 52.28 acres of land to the Croaker Agricultural and Forestal District (AFD)
Location: 4928 Fenton Mill Road
Tax Map/Parcel No.: 2420100035
Project Acreage: ± 52.28 acres
Current Zoning: A-1, General Agricultural
Comprehensive Plan: Rural Lands
Primary Service Area: Outside
Staff Contact: Roberta Sulouff, Senior Planner

PUBLIC HEARING DATES

AFD Advisory Committee: January 24, 2019, 4:00 p.m.
Planning Commission: March 6, 2019, 6:00 p.m.
Board of Supervisors: April 9, 2019, 5:00 p.m.

FACTORS FAVORABLE

1. With the proposed Ordinance, the proposal is compatible with surrounding development.

2. The proposal is consistent with the recommendations of the James City County Comprehensive Plan adopted in 2015, “*Toward 2035: Leading the Way.*”
3. The proposal is consistent with local and State Code governing the addition of lands into AFDs.

FACTORS UNFAVORABLE

1. No factors unfavorable.

STAFF RECOMMENDATION

Staff finds that the proposed addition meets all state and local requirements for inclusion in the Croaker AFD and recommends that the Board of Supervisors approve the proposed addition to the Croaker AFD subject to the conditions listed in the attached Ordinance (Attachment No. 1).

PLANNING COMMISSION RECOMMENDATION

At its March 6, 2019 meeting, the Planning Commission voted 6-0 to recommend approval of this addition to the Board of Supervisors.

AFD ADVISORY COMMITTEE RECOMMENDATION

At its January 24, 2019 meeting, the AFD Advisory Committee voted 7-0 to recommend approval of this addition to the Planning Commission and Board of Supervisors.

PROJECT DESCRIPTION

- Mr. Charles Apperson and Ms. Patricia Russo have applied to add an approximately 52.28-acre parcel to the Croaker AFD.

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.

Agricultural and Forestal District-18-0019. 4928 Fenton Mill Road Croaker Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

- The majority of the land is currently undeveloped and wooded, with some active farming occurring on the remainder of the parcel.
- Per the United States Department of Agriculture Soil Survey, the majority of soil on this parcel is Craven-Uchee Complex 6-10% slopes (11C), Emporia Complex 25-50% slopes (15F), and Kempsville-Emporia fine sandy loams 2-6% slopes (19B). The Soil Survey indicates that both 11C and 15F soils have moderately high potential for the production of important trees with moderate to significant limitations on timbering due to slope limitations on equipment usage. The Survey also indicates that 19B soils are well-suited to crop cultivation and moderately high timbering potential with very limited or insignificant limitations on production such as slope, seedling mortality, and potential equipment usage limitations.

DISTRICT HISTORY

- The Croaker AFD was created in 1986 for a term of four years and originally consisted of 13 parcels totaling \pm 1,341 acres.
- The District was last renewed earlier in 2018. The District consists of approximately 1,182.23 acres of land located between I-64 and York River State Park.
- If this addition were approved, the District would consist of approximately 1,234.51 acres.
- This parcel was originally part of Tax Map Parcel ID 1440100015, which has been included in the District since its creation in 1986. In 1995, it was subdivided to create two parcels and as part of what appears to be an administrative error, the parcel was not included in notifications during the next renewal period.

SURROUNDING ZONING AND DEVELOPMENT

- All surrounding properties are zoned A-1, General Agricultural, or M-1, Limited Business/Industrial and designated Rural Lands, or Mixed Use on the Comprehensive Plan.
- The District consists primarily of forested land. The principal land use on most adjacent properties is undeveloped, forested land with single-family residences. The Hankins Resource Recovery Facility, zoned MU, Mixed Use, lies north/northwest of the parcel and is actively mined.

COMPREHENSIVE PLAN AND ZONING

The Comprehensive Plan designates this parcel as Rural Lands. Land Use Action 6.1.1 of the 2035 Comprehensive Plan states the County shall “support both the use value assessment and Agricultural and Forestal (AFD) programs to the maximum degree allowed by the *Code of Virginia*.”

STATE AND LOCAL CODE

- Section 15.2-4301 of Virginia State Code, Agricultural and Forestal Districts Act-Declaration of policy findings and purpose states that:

“It is the policy of the Commonwealth to conserve and protect and to encourage the development and improvement of the Commonwealth’s agricultural and forestal lands for the production of food and other agricultural and forestal products. It is also the policy of the Commonwealth to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes...”

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.

Agricultural and Forestal District-18-0019. 4928 Fenton Mill Road Croaker Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

- The State Code establishes the AFD Advisory Committee to:

“...advise the local planning commission and the local governing body and assist in creating, reviewing, modifying, continuing, or terminating districts within the locality. In particular, the committee shall render expert advice as to the nature of farming and forestry and agricultural and forestall resources within the district and their relation to the entire locality.”

- Section 15.2-4305 states that a parcel may be added to a district if it is directly contiguous to the core of the district, within a mile of the core, or directly contiguous to a parcel whose boundary lines are within a mile to the core. This parcel is directly contiguous to the core of the Croaker AFD.
- Section 15.2-4306 (Attachment No. 6) includes factors for consideration in the addition of lands to AFDs. One such factor includes the presence of any significant forestal lands within the district and in areas adjacent thereto that are not now in active forestal production. The Code later states that the presence of suitable soils may be considered in the determination of forestal significance.

STAFF RECOMMENDATION

Staff finds that the proposed addition meets all state and local requirements for inclusion in the Croaker AFD and recommends that the Board of Supervisors approve the proposed addition to the Croaker AFD subject to the conditions listed in the attached Ordinance (Attachment No. 1).

RS/md
AFD18-19FentnMill

Attachments:

1. Ordinance
2. Location Map
3. Unapproved Minutes from the March 6, 2019 Planning Commission meeting
4. Unapproved Minutes from the January 24, 2019 AFD Advisory Committee meeting
5. Croaker 2018 AFD Renewal Staff Report and Ordinance
6. State Code Regarding AFD Application Criteria

ORDINANCE NO. _____

AGRICULTURAL AND FORESTAL DISTRICT-18-0019.

4928 FENTON MILL ROAD, CROAKER ADDITION

WHEREAS, a request has been filed with the Board of Supervisors of James City County, Virginia, (the “Board of Supervisors”) to add ± 52.28 acres of land owned by Mr. Charles Apperson and Ms. Patricia Russo, located at 4928 Fenton Mill Road and identified as James City County Real Estate Tax Map/Parcel No. 2420100035 to Agricultural and Forestal District (AFD)-02-86, which is generally known as the “Croaker Agricultural and Forestal District” (the “Application”); and

WHEREAS, at its January 24, 2019 meeting, the AFD Advisory Committee voted 7-0 to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Planning Commission (the “Commission”) at its March 6, 2019 meeting, after which the Commission voted 6-0 to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Board of Supervisors.

NOW, THEREFORE, BE IT ORDAINED that the Board of Supervisors of James City County, Virginia, hereby adds ± 52.28 acres located at 4928 Fenton Mill Road, and identified as James City County Real Estate Tax Map/Parcel No. 2420100035 (the “Property”) to AFD-02-86, which is generally known as the “Croaker Agricultural and Forestal District” (the “District”) with the following conditions:

1. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner’s immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCFs), provided: a) the subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
2. No land outside the Primary Service Area and within the District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors’ Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.
3. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for WCFs on properties in the District that are in accordance with the County’s policies and Ordinances regulating such facilities.

James O. Icenhour, Jr.
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Deputy Clerk to the Board

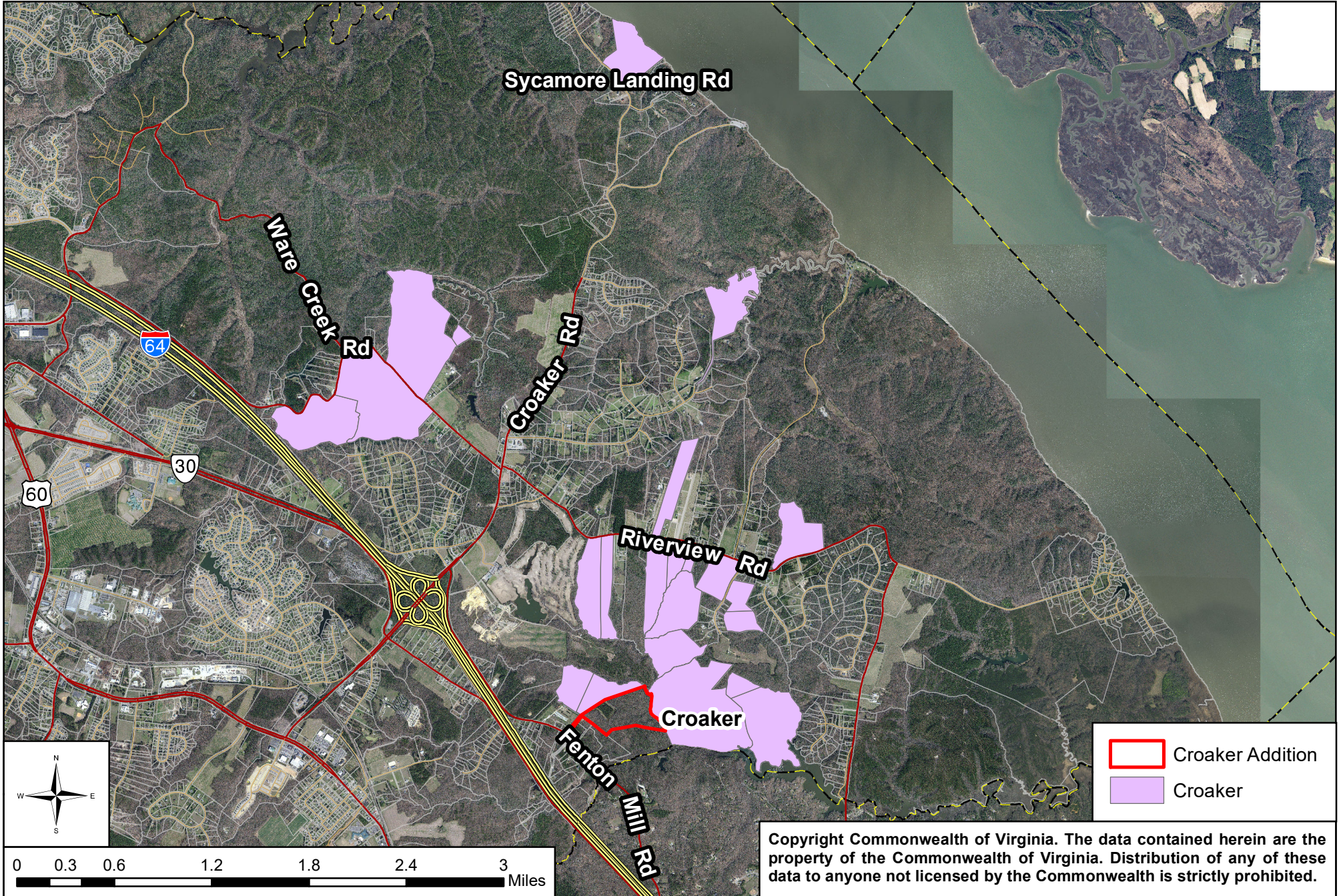
	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
HIPPLE	___	___	___
LARSON	___	___	___
SADLER	___	___	___
MCGLENNON	___	___	___
ICENHOUR	___	___	___

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April, 2019.

AFD18-19FentnMill-res

JCC AFD-18-0019

4928 Fenton Mill Road Croaker AFD Addition



**Unapproved Minutes of the March 6, 2019
Planning Commission Regular Meeting**

AFD-18-0019. 4928 Fenton Mill Road Croaker AFD Addition

Ms. Sulouff stated that Mr. Charles Apperson and Ms. Patricia Russo have applied to enroll a 52 acre parcel in the Croaker AFD. Ms. Sulouff stated that the parcel is located at 4928 Fenton Mill Road, is zoned A-1, General Agricultural and is designated Rural Lands on the Comprehensive Plan Land Use Map.

Ms. Sulouff stated that staff believes this parcel was not included in the AFD after the 1996 renewal of the district due to an administrative error. Ms. Sulouff stated that the parcel has remained active in agricultural and forestal activities in conjunction with neighboring parcels since that time.

Ms. Sulouff stated that staff finds that the property meets applicable criteria for inclusion including proximity requirements. Ms. Sulouff stated that approval of this application would bring the total district to approximately 1234 acres.

Ms. Sulouff further stated that at its January 24th meeting, the AFD Advisory Committee unanimously voted to recommend inclusion of this parcel into the district.

Ms. Sulouff stated that staff recommends that the Planning Commission recommend inclusion of this parcel in the Croaker AFD to the Board of Supervisors, subject to the conditions adopted during the renewal of the Croaker AFD in 2018.

Mr. Schmidt called for disclosures from the Commission.

There were no disclosures.

Mr. Schmidt opened the Public Hearing.

As no one wished to speak, Mr. Schmidt closed the Public Hearing.

Mr. Schmidt opened the floor for discussion by the Commission.

Mr. Polster stated that, while he raises the same issues as mentioned previously, he would support this application. Mr. Polster stated that when looking at the criteria for considering significance to adjacent areas, the applicant has two properties that have been actively worked since they were purchased in 1995. Mr. Polster noted that one of the adjacent parcels has new planting that extend onto the subject parcel and there is no doubt about what the applicant is trying to protect as well as how they are making a living from agricultural and forestal products. Mr. Polster stated that this is the type of specific evidence he is looking for.

Mr. O'Connor noted that the discussion on criteria for enrollment in an AFD and the options for land preservation has been helpful. Mr. O'Connor further stated that the AFD can be summed up

as a mutual undertaking between the property owner and the local government where the property owner agrees not to convert their farm, forestland and other open space lands to more intense commercial, industrial or residential uses for a term of 4 to 10 years. Mr. O'Connor stated that in return, the County and Commonwealth agree not to take actions or make infrastructure investments that will place increased pressure on landowners to convert land in the district to more intense land uses during the term of the AFD. Mr. O'Connor stated that this is the broad brush approach the County has encouraged through the Comprehensive Plan. Mr. O'Connor further stated that by enrolling a property in an AFD, it makes them subject to meeting specific criteria for removal through a legislative review process.

Mr. Polster stated that he concurs with those points; however, the Commission is not receiving the specific advice, guidance or testimony as to why the property should be in an AFD that was provided with earlier applications.

Mr. Polster made a motion to recommend approval of the addition of the parcel into the Croaker AFD.

On a roll call vote the Planning Commission voted to recommend approval of AFD-18-0019. 4928 Fenton Mill Road Croaker AFD Addition (6-0).

MINUTES OF THE AGRICULTURAL AND FORESTAL ADVISORY COMMITTEE OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE TWENTY-FOURTH DAY OF JANUARY, TWO THOUSAND AND NINETEEN, AT 4:00 P.M. AT THE BUILDING A CONFERENCE ROOM, 101 MOUNTS BAY ROAD, WILLIAMSBURG, VIRGINIA.

A. CALL TO ORDER

Mr. William C. Taylor called the meeting to order at 4:00 p.m.

B. ROLL CALL

Members Present

Mr. Thomas Hitchens
Ms. Loretta Garrett
Mr. William C. Taylor, chair
Mr. L. Bruce Abbott
Mr. Payten Harcum
Mr. Sandy Wanner
Ms. Sue Sadler

Also Present

Ms. Ellen Cook, Principal Planner
Ms. Roberta Sulouff, Senior Planner
Ms. Tori Haynes, Planner
Ms. Katie Pelletier, Community
Development Assistant

Absent

Mr. Richard Bradshaw
Mr. William R. Harcum
Mr. John Grantz

C. APPROVAL OF MINUTES

1. Approval of the June 21, 2018 Meeting Minutes

Mr. Taylor reminded the Committee that the October 25, 2018 meeting had been canceled because they lacked a quorum.

Mr. Bruce Abbott moved to approve the minutes of the June 21, 2018 meeting.

Mr. Tom Hitchens seconded the motion.

On a voice vote, the motion was approved 6-0-1. Ms. Loretta Garrett abstained from the vote as she was absent from the June 21, 2018 meeting.

D. OLD BUSINESS:

1. AFD-18-0020. 8328 Diascund Road Mill Creek AFD Addition

Mr. Taylor explained the Committee would next address old business from the canceled October 25, 2018 meeting.

Ms. Roberta Sulouff said applicant Mr. John Michael Sim has applied to enroll approximately 10 acres of a parcel located at 8328 Diascund Road in the Mill Creek AFD. The parcel is zoned A-1 (General Agricultural) and is designated Rural Lands in the County Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 3,224 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Mill Creek AFD to the Planning Commission.

Mr. Taylor clarified that applicants could have property included in the AFD which may not meet the tax-break threshold.

Ms. Sulouff confirmed there is no minimum acreage requirement for inclusion in the AFD.

Mr. Abbott moved to recommend approval of the proposed addition of the parcel at 8328 Diascund Road into the Mill Creek AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Ms. Garrett seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

2. AFD-18-0019. 4928 Fenton Mill Road Croaker Addition

Ms. Sulouff stated that Mr. Charles Apperson and Ms. Patricia Russo have applied to enroll an approximately 52-acre parcel in the Croaker AFD. The parcel is located at 4928 Fenton Mill Road, zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff noted this parcel was brought up at the 2018 renewal process. Staff believed the parcel was not included in the AFD after the 1996 renewal due to an administrative error. This property was originally part of a parcel in the AFD at 4920 Fenton Mill Road, but after a 1995 subdivision the new parcel at 4928 Fenton Mill Road was not included in notifications for that renewal period.

The Committee discussed the issue at the June 21, 2018 meeting and recommended the parcel be included. However, staff found that a more proper route to re-include the parcel would be to go through the formal addition process.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 1,234 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission.

Mr. Hitchens moved to recommend approval of the proposed addition of the parcel at 4928 Fenton Mill Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Payten Harcum seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

3. AFD-18-0017. 9888 Sycamore Landing Road Croaker Addition

Ms. Sulouff stated that Ms. Kelly Fulton has applied, on behalf and with the permission of Mr. Thomas W. Dana, III, to add an approximately 62-acre parcel to the Croaker AFD. The parcel is located at 9888 Sycamore Landing Road, zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff noted that, while this parcel is over one mile away from the core parcels in the Croaker AFD, State Code permits the addition of a parcel into an AFD if the governing body finds the property contains agriculturally and forestally significant land. Ms. Sulouff reminded the Committee that they reviewed a similar case and permitted addition of an adjacent property at 9730 Sycamore Landing Road to the Croaker AFD in 2017.

Ms. Sulouff noted the U.S. Department of Agriculture Soil Survey indicates the site is home to soils which have moderately high potential for both crops and timbering. Should the Committee find that the property contains agriculturally and forestally significant land and that it meets the criteria for inclusion of land in an AFD, staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission. If this addition were approved, the District would consist of approximately 1,244 acres.

Mr. Hitchens commented he supports inclusion of properties which will help preserve the rural nature of the county.

Mr. Hitchens moved to recommend approval of the proposed addition of the parcel at 9888 Sycamore Landing Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Harcum seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

4. AFD-18-0016. 365, 358 and 382 Ivy Hill Road Mill Creek Addition

Ms. Sulouff stated that Mr. John Michael Sim has applied to enroll approximately 60.73 acres of land located at 365, 358 and 382 Ivy Hill Road into the Mill Creek AFD. The

parcel is zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 3,274 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Mill Creek AFD to the Planning Commission.

Mr. Abbott moved to recommend approval of the proposed addition of the parcels at 365, 358 and 382 Ivy Hill Road into the Mill Creek AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Hitchens seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

5. AFD-02-86-2-2018. 4450 Ware Creek Road Croaker Addition

Ms. Sulouff stated that Mr. Jonathan Kinney has applied to enroll approximately 14.18 acres of land located at 4450 Ware Creek Road into the Croaker AFD. The parcel is zoned A-1 (General Agricultural) and designated Low-Density Residential in the County's Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 1,197.3 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission.

Mr. Hitchens requested a hard copy of the AFD map be available for reference during meetings.

Ms. Garrett moved to recommend approval of the proposed addition of the parcel at 4450 Ware Creek Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Sandy Wanner seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

E. NEW BUSINESS

1. C-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD

Ms. Tori Haynes stated Hampton Roads Sanitation District currently operates the Williamsburg Treatment Plant located at 300 Ron Springs Drive. This is a landlocked

parcel that is wholly surrounded by 250 Ron Springs Drive and the Carter's Grove AFD.

HRSD has stated that it requires a facility expansion adjacent to the Williamsburg Treatment Plant. This expansion is in response to federal enforcement action taken by the EPA and Dept. of Justice. HRSD has stated there is insufficient property on their current parcel to accommodate the facility expansion, and as such has stated its intent to acquire 250 Ron Springs Drive by condemnation for public utility purposes.

HRSD is not requesting a withdrawal of the property from the AFD at this time. Rather, per State Code, utilities may acquire interests in properties within an AFD provided that the Board of Supervisors, in consultation with the AFD Advisory Committee and Planning Commission, reviews the proposal and specifically examines the following criteria found in §15.2-4313: (i) the effect the action would have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district.

The evaluation and analysis of the proposal against these three criteria are a State-Code mandated process that is required when acquisition of a parcel by a political subdivision of the state is proposed.

Ultimately, the Board of Supervisors will consider the above criteria and make a determination as to whether the proposed action might have an unreasonably adverse effect upon state or local policy.

This review does not withdraw any portion of the parcel from the AFD or grant any sort of approval for the facility expansion itself. Should HRSD be successful in acquiring ownership of the subject parcel, they would then need to apply separately for those items, and accordingly, the AFD Advisory Committee would consider the withdrawal request at that time.

Staff recommends that each of the above criteria be discussed individually to make clear the findings of the Committee to the Planning Commission and Board of Supervisors.

In consideration of the criteria, staff ultimately found that the proposal was necessary to provide service in the most economical and practical manner, and that it will not have an unreasonably adverse effect upon state or local policy.

Mr. Taylor disclosed to the Committee and staff that he is affiliated with companies represented by Kaufman and Canoles law firm. However, he does not feel this will sway his opinion or recommendations while serving on the Committee.

Mr. Taylor then asked staff to clarify whether the Committee would be voting to agree or disagree with the HRSD proposal.

Ms. Haynes stated the Committee would not be considering any AFD withdrawal at this time but needed to determine if the action of taking the parcel would have an adverse effect on State or local policy. She said this is an automatic review of three criteria triggered or prompted by the intent stated by HRSD to acquire the parcel by condemnation for public utility purposes. Their findings will then go to the Planning Commission and Board of Supervisors.

Ms. Haynes suggested discussion of the three criteria found in §15.2-4313 and stated that representatives of HRSD and Carter's Grove Associates, LLC are available to answer questions.

Ms. Haynes then shared staff's understanding of the proposal. HRSD is looking to expand beyond their current borders into the Carter's Grove AFD. They propose clearing approximately 7 acres, but a final site has not been located yet.

Mr. Wanner stated HRSD is under Federal mandate to make improvements to the facility.

Ms. Haynes confirmed there is a Federal action against HRSD, and existing lands cannot accommodate the necessary expansion. They require an additional seven acres.

Mr. Taylor stated HRSD is attempting to acquire 76 acres.

Ms. Haynes stated HRSD is pursuing ownership of the entire parcel but not necessarily withdrawal of all 76 acres from the AFD. She reiterated that this review is prompted by the intent to condemn lands within an AFD by a political subdivision.

Mr. Hitchens asked staff why HRSD would need to withdraw land from the AFD if they are a public entity.

Ms. Haynes answered that a Special Use Permit (SUP) is not allowed in an AFD unless it is related to farming practices. If HRSD takes ownership of the parcel, and a use is permitted with a SUP, they will need to withdraw that portion of land from the AFD.

Mr. Abbott asked the HRSD representative for an explanation of their plan.

Ted Henifin, General Manager at HRSD, addressed the Committee and began with a discussion on the impact of topography in the subject parcel. He explained the land has steep slopes, wetlands and Resource Protection Area and is largely undevelopable. He stated that of the 76 acres, maybe only 30 acres are buildable. He showed the Committee on a map the area of the parcel most likely suitable for their facility expansion and access points. Mr. Henifin stated there have been many discussions with the property owner regarding alternatives to condemnation in the past year with no resolution. Regarding the consent order, Mr. Henifin stated the federal enforcement action is driving the timeline tied to the project.

Mr. Henifin explained HRSD requires the 76 acres because of the unusual, unique residual that would be created by the project and buildout. The mostly unbuildable, remaining land would serve as a buffer between the WTP and surrounding properties to protect the investment and property, in case slopes erode. He said they have an outfall through an easement on the beach and have already had to make improvements on the beach for erosion. Mr. Henifin said they would like to have control long-term and do not find much residual value in the remaining property beyond the buildable acres. He stated it would be difficult to assess the value of the residual property, and there is also potential for further expansion requirements in the future. He noted HRSD has stated it is willing to dedicate a permanent conservation easement over the remaining portion of the parcel. He said they do not know the exact project location until they can access the land and survey.

Mr. Abbott asked about the purpose of the project or facility improvements.

Mr. Henifin stated this will be the first of several projects whereby HRSD is adding advanced water treatment capability and drinking water standards to their current treatment plants. Of the 22 million gallons of wastewater treated per day, 8 million gallons will be treated in this manner and discharged into the Potomac aquifer instead of the James River.

Mr. Henifin stressed HRSD does not currently have room to expand within their current site as it is mostly built out. He stated the proposal will protect their ability to advance wastewater treatment in as compact a footprint and most economical way as possible. The water will need to move through several process and control points, so use of an alternative or nearby property would still impact the AFD with easement connections. From a cost perspective, Mr. Henifin said sharing a property and fence line allows for the sharing of other resources such as operators and security.

Mr. Taylor asked about the purpose of owning the residual property if it is largely unusable.

Mr. Henifin expressed the difficulty in defining both the acquisition of land required and also the value of the residual property. A one-time take would avoid these issues and allow for additional land use if needed in the future.

Mr. Tim Trant, attorney with Kaufman and Canoles, introduced his law partner also present at the meeting, Mr. Paul Gerhardt. Mr. Trant said they represent Mr. Sam Mencoﬀ, owner of Carter's Grove Associates, LLC and the 76-acre parcel located at 250 Ron Springs Drive in the Carter's Grove AFD which surrounds the HRSD WTP. Mr. Mencoﬀ also owns the adjacent 400-acre Carter's Grove parcel. Mr. Trant said Mr. Mencoﬀ's intent when purchasing the property was to fulfil the County and community interest in restoration and preservation of the historic Carter's Grove property, and he has since invested heavily in the property.

Mr. Trant said they object to HRSD's request at this time, stating the HRSD intent to take

76 acres and develop a small portion of seven acres does not meet the statutory criteria. He said Mr. Mencoﬀ desires to keep the buffer, the take is larger than it needs to be, the proposal is not the most practical way to provide the service, and there are reasonable alternatives. Mr. Trant stated they request that the Committee defer action on this item until they can continue their conversation with HRSD, and they do not support any plan to take the entire property.

Mr. Trant said HRSD approached them last year about the need for some additional land and felt there was constructive dialogue. However, he said, HRSD required them to enter into a Nondisclosure Agreement in connection with those conversations so he cannot disclose any details. Mr. Trant said they would like those conversations to continue. Regarding the compulsory timeline for HRSD, Mr. Trant said they did not create this sense of urgency and noted HRSD has been under the consent decree since 2010 to implement the changes.

Mr. Wanner noted all of Hampton Roads is under the same consent.

Mr. Trant said the timeline is a proposal, and as a landowner invested in historic property, his client would like the opportunity for thoughtful dialogue to reach a reasonable resolution.

Mr. Hitchens asked Mr. Trant if a survey would be possible.

Mr. Trant referenced the Nondisclosure Agreement but stated there is a willingness to engage in reasonable conversation about what is needed. He said the threat of condemnation of 76 acres is an attempt to short-circuit the process as a negotiating tactic.

Mr. Wanner asked the staff how long it might be possible to defer.

Ms. Haynes stated that, on counsel from the County Attorney's Office, deferral is not an option because of the State code requirements. The March 12, 2019 Board of Supervisor's meeting is the ninety day deadline from the date the original report was filed. If the Board determines there is an unreasonably adverse effect upon state or local policy, they may then hold a public hearing within the next 60 days.

Ms. Haynes stated the Committee needs to determine if the action of taking the parcel would have an adverse effect on State or local policy then forward their finding to the Planning Commission for their February meeting before the Board of Supervisor's March meeting.

Mr. Trant said HRSD could also withdraw their request, continue the conversation with Mr. Mencoﬀ and return with a proposal that meets the criteria.

Ms. Sue Sadler asked Mr. Henifin about the status of the Sustainable Water Initiative for Tomorrow (SWIFT) project.

Mr. Henifin said the SWIFT research center is putting water in the ground, and the aquifer is 400-500 feet below the surface. He said the issue with surveying is having relative assurance against the potential waste of money surveying land not yet acquired. Mr. Henifin mentioned the challenges of negotiations and said the Nondisclosure Agreement was actually a requirement of Mr. Trant's client. He said condemnation includes compensation for the legal value of the land, and they are seeking a willing partner.

Mr. Trant noted one of the County's articulated benefits for landowners in joining an AFD is a layer of protection from condemnation. He said the County would offend that commitment by recommending or condoning the action by HRSD.

Mr. Wanner stated he believes the public good is served by condemnation of some amount of land in this situation.

Mr. Abbott said he believes a buffer should be maintained and owned by the original owner.

Mr. Trant asked for a recommendation of deferral until an agreement is made between HRSD and the landowner.

Ms. Sulouff and Ms. Haynes stated that as long as there is an application, the Board is required to make a determination within 90 days. If HRSD chooses not to withdraw, the process moves forward in accordance with State code. The Committee may tailor its recommendation to reflect the discussion.

Mr. Henifin said with HRSD surrounded by the AFD, it will be impacted but any withdrawal will be brought forward later and separately. He said the full 76-acre parcel is required to protect the facility, slopes and beachfront.

Mr. Trant said there is a mutual interest in protecting the property and facility, and there have been no problems addressing any issues on the property to date.

Ms. Haynes suggested addressing each of the three criteria being considered. Regarding criteria (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies, Ms. Haynes noted to the Committee there is some planned, intended agricultural activities but no formal activity, and they are not receiving land use valuation. Ms. Haynes did note that Carter's Grove Associates, LLC representatives did appeal to the Department of Conservation and Recreation (DCR) to advise the County on this proposed action. DCR was not able to provide a full report based on access and timeline, but there are some known natural resource heritage areas there.

Ms. Sulouff stated this Committee review and recommendation is significant as an extra board hearing and part of the extra protection provided to landowners in an AFD.

Ms. Haynes then read to the Committee criteria (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and criteria (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Taylor said the third criteria is most troubling when considering how much of the parcel is required by HRSD and the Committee's commitment to AFD landowners.

Mr. Henifin stated he has little confidence an agreement could be made, given the proposals already rejected by the landowner.

Mr. Trant said they are also frustrated and feel there have been reasonable counter-offers.

Mr. Wanner asked how soon HRSD could reapply, if they were to withdraw their application.

Ms. Haynes answered the 90-day clock would start again upon resubmittal.

Mr. Hitchens said the landowner has made a great investment in the County and feels uncomfortable with HRSD taking the entire parcel.

Mr. Abbott motioned, based on the Committee's consideration of the three criteria found in §15.2-4313, that the proposed action by HRSD to acquire 250 Ron Springs Drive, located in the Carter's Grove AFD, by condemnation for public utility purposes might have an unreasonably adverse effect upon state or local policy. The proposed action (i) would have an unreasonably adverse effect upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies; (ii) there is no necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) there could be reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Harcum seconded the motion.

On a voice vote of 5-1-1, the motion was approved.

Ms. Garrett, Mr. Hitchens, Mr. Harcum, Mr. Abbott, and Mr. Taylor voted yes, the proposed action might have an unreasonably adverse effect upon state or local policy. Mr. Wanner voted against the motion, and Ms. Sadler abstained from the vote.

2. The Agricultural and Forestal District Advisory Committee Organizational Meeting

Ms. Sulouff said the Committee has one last item of new business.

She stated at its January 2018 meeting, the Committee adopted by-laws, established a yearly organizational meeting to take place in subsequent years in the month of January and adopted a calendar for 2018. The Committee also reviewed a tentative calendar for 2019, but it did not formally adopt those dates.

Ms. Sulouff referenced the proposed calendar with quarterly meeting dates. All meetings are scheduled to take place at 4:00 p.m. in the Building A Large Conference Room. Staff recommends that the Committee adopt the meeting dates and times through January 23, 2020. Meeting dates and times shown after January 23, 2020 are draft and subject to adoption at the Committee's 2020 organizational meeting.

2019/2020 (Proposed): January 24, 2019 (Organizational Meeting), April 25, 2019, July 25, 2019, October 24, 2019 and January 23, 2020 (Organizational Meeting).

2020/2021 (Tentative): January 23, 2020 (Organizational Meeting), April 23, 2020, July 23, 2020, October 22, 2020, and January 21, 2021 (Organizational Meeting).

Mr. Hitchens motioned to approve the proposed 2019/2020 and tentative 2020/2021 Committee meeting dates and times.

Mr. Wanner seconded the motion.

On a voice vote of 6-0, because Ms. Sadler had left the meeting, the motion was unanimously approved.

Regarding the election of officers, Ms. Sulouff stated per the Committee's adopted by-laws (Article VI, Section A), the Committee must elect a chairman and vice-chairman at its yearly organizational meeting.

Mr. Hitchens motioned to re-elect Mr. Taylor as the Committee chairman and Mr. Abbott as the vice-chairman.

Mr. Harcum seconded the motion.

On a voice vote of 6-0, because Ms. Sadler had left the meeting, the motion was unanimously approved.

F. DISCUSSION ITEMS

G. ADJOURNMENT

On a voice vote, the meeting was adjourned at 5:15 p.m.

Mr. William C. Taylor, Chair

Ellen Cook, Principal Planner

AGRICULTURAL AND FORESTAL DISTRICT-02-86-1-2018. Croaker Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

SUMMARY FACTS

<u>LAND OWNERS</u>	<u>PARCEL ID</u>	<u>ACRES (±)</u>
Hankins Land Trust	1530100044	119.00
William L. & Mary M. Apperson	1440100015	26.05
William L. & Mary M. Apperson	1440100015A	26.23
Ronald McManus, et al.	1530100043	119.85
Ronald McManus, et al.	1530100042	10.10
Ronald McManus, et al.	1530100036	40.40
Hazel M. & L. Richardson	1530100002	39.76
Hazel M. Richardson	1530100034	39.78
J. Rosalie Will, Trustee	1440100010	40.00
Stephanie L. Billon-Wolfe, Trustee	1440100009	49.08
Wenger Farms, LLC	1320100018	95.30
Wenger Farms, LLC	1410100001	150.00
Wenger Farms, LLC	1410100014	143.50
Thomas B. Ballard	1530100035	53.17
Sharpe Family Properties, LLC	1530100018	16.05
William R. Atkins, Jr.	1530100019	16.40
William R. Atkins, Jr.	1530100029	30.94
Milly Wallis	1540100004	40.00
Thomas B. Ballard	1530100035A	4.91
Thomas B. Ballard	1530100032	16.22
Wenger Farms, LLC	1410100007	7.00
Katherine G. & William Mann	1510400003	50.00
Mitchell Family Ltd. Partnership	0740100002	48.49
TOTAL ACRES		1,182.23

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands
Low-Density Residential

Primary Service Area (PSA): Inside and Outside
Staff Contact: Roberta Sulouff, Senior Planner

PUBLIC HEARING DATES

Planning Commission: August 1, 2018, 6:00 p.m.
Board of Supervisors: September 11, 2018, 5:00 p.m.

STAFF RECOMMENDATION

Approval, subject to the proposed conditions.

AGRICULTURAL AND FORESTAL DISTRICT (AFD) ADVISORY COMMITTEE RECOMMENDATION

At its June 21, 2018 meeting, the AFD Advisory Committee voted 9-0 to recommend the continuation of the District to the Planning Commission and Board of Supervisors.

PLANNING COMMISSION

At its August 1, 2018 meeting, the Planning Commission voted 5-0 to recommend the continuation of the District to the Board of Supervisors.

DISTRICT HISTORY

- The Croaker AFD was created in 1986 for a term of four years and originally consisted of 13 parcels totaling ±1,341 acres.
- The District was renewed for four-year intervals in 1990, 1994, 1998, 2002, 2006, 2010 and 2014 with various withdrawals and additions occurring during that period.

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.

AGRICULTURAL AND FORESTAL DISTRICT-02-86-1-2018. Croaker Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

- In 2017, the Board of Supervisors approved the addition of 48.49 acres of land located at 9730 Sycamore Landing Road to the AFD.

DISTRICT DESCRIPTION

While still conforming to applicable area and proximity requirements this District is somewhat geographically dispersed. According to the United States Geological Service Soils Survey, the bulk of the District appears to consist of soils which are prime for crop cultivation or forestry. The majority of the District is forested and remains rural in nature. All the land in this District is zoned A-1, General Agricultural. Pieces of the District are located both outside and inside of the PSA, and are designated both Rural Lands and Low-Density Residential by the adopted Comprehensive Plan.

Total acreage includes all the land in the above properties with the exception of all land within 25 feet of right-of-ways. This area has been excluded to allow for possible road and/or drainage improvements.

ADDITION/WITHDRAWAL REQUESTS/OTHER CHANGES IN ACREAGE

- *Addition Requests:*
 - The owner of the property located at 4450 Ware Creek Road (Tax Map ID No. 1410100046) has applied to add approximately 14.8 acres to the District. That application will be evaluated under a separate cover and is tentatively scheduled for the AFD Committee’s consideration at the October 25, 2018, meeting.
 - The owner of the property located at 4960 Fenton Mill Road (Tax Map ID 2420100035) has applied to add approximately 52.28 acres to the District. That application will be evaluated

under a separate cover and is tentatively scheduled for the AFD Committee’s consideration at the October 25, 2018 meeting.

CHANGES TO CONDITIONS

None.

SURROUNDING ZONING AND DEVELOPMENT

The majority of this District is located southeast of the Croaker Road/Interstate 64 interchange, though several small pieces are located north and east of the interchange as well. The surrounding area is mostly zoned A-1, General Agricultural; however, the northern and eastern portions of the District are surrounded by undeveloped portions of the Stonehouse Development, which is zoned PUD-R, Planned Unit Development-Residential. The Christenson’s Corner AFD lies to the southeast of the District and the Hill Pleasant Farm AFD lies to the southwest of the District.

COMPREHENSIVE PLAN

The Comprehensive Plan designates these parcels as Rural Lands and Low-Density Residential. Land Use Action 6.1.1 of the adopted Comprehensive Plan states the County shall “support both the use value assessment and Agricultural and Forestal (AFD) programs to the maximum degree allowed by the *Code of Virginia*.”

STAFF RECOMMENDATION

Staff finds the Croaker AFD compatible with surrounding development and consistent with the recommendations of the adopted Comprehensive Plan and Zoning Ordinance. Staff recommends that the Board of Supervisors approve the renewal of this AFD for a period of four years, subject to conditions listed in the District Ordinance (Attachment No. 1).

AGRICULTURAL AND FORESTAL DISTRICT-02-86-1-2018. Croaker Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

RS/md

AFD-CroakerRnw

Attachments:

1. Ordinance
2. Location Map
3. Adopted conditions for the Croaker AFD
4. Board of Supervisors staff report for the 2014 renewal of the Croaker AFD

CORRECTED

ADOPTED

SEP 11 2018

ORDINANCE NO. 164A-17

Board of Supervisors
James City County, VA

AGRICULTURAL AND FORESTAL DISTRICT-02-86-1-2018

CROAKER 2018 RENEWAL

WHEREAS, James City County has completed a review of the Croaker Agricultural and Forestal District (the "District"); and

WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, 1950, as amended (the "Virginia Code"), property owners have been notified, public notices have been filed, public hearings have been advertised, and public hearings have been held on the continuation of the District; and

WHEREAS, the Agricultural and Forestal District (AFD) Advisory Committee at its meeting on June 21, 2018, voted 9-0 to recommend renewal of the District; and

WHEREAS, the Planning Commission following its public hearing on August 1, 2018, concurred with the recommendation of staff and the AFD Advisory Committee and voted 5-0 to recommend renewal of the District with the conditions listed below.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of James City County, Virginia, that:

1. The Croaker Agricultural and Forestal District (the "District") is hereby continued to October 31, 2022 in accordance with the provisions of the Virginia Agricultural and Forestal District Act, Virginia Code Section 15.2-4300 et. seq. (the "Act").
2. That the District shall include the following parcels, provided, however, that all land within 25 feet of road right-of-ways is excluded from the District:

<u>Owner</u>	<u>Parcel No.</u>	<u>Acres</u>
Hankins Land Trust	1530100044	119.00
William and Mary M. Apperson	1440100015	26.05
William and Mary M. Apperson	1440100015A	26.23
Ronald McManus, et al.	1530100043	119.85
Ronald McManus, et al.	1530100042	10.10
Ronald McManus, et al.	1530100036	40.40
Hazel M. Richardson & LA Richardson	1530100002	39.76
Hazel M. Richardson	1530100034	39.78
J. Rosalie Will, Trustee	1440100010	40.00
Stephanie L. Billon-Wolfe, Trustee	1440100009	49.08
Wenger Farms LLC	1320100018	95.30
Wenger Farms LLC	1410100001	150.00
Wenger Farms LLC	1410100014	143.50
Thomas B. Ballard	1530100035	53.17
Sharpe Family Properties, LLC	1530100018	16.05

William R. Atkins, Jr.	1530100019	16.40
William R. Atkins, Jr	1530100029	30.94
Milly Wallis	1540100004	40.00
Thomas B. Ballard	1530100035A	4.91
Thomas B. Ballard	1530100032	16.22
Wenger Farms, LLC	1410100007	7.00
Katherine G. & William Mann	1510400003	50.00
Mitchell Family Ltd. Partnership	0740100002	48.49
	Total:	<u>1,182.23</u>

3. That pursuant to Sections 15.2-4312 and 15.2-4313 of the Act, the Board of Supervisors requires that no parcel in the District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:

- a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCFs), provided: a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
- b. No land outside the Primary Service Area and within the District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.
- c. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for WCFs on properties in the District that are in accordance with the County's policies and Ordinances regulating such facilities.

Ruth M. Larson

Ruth M. Larson
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Teresa J. Fellows
Deputy Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	✓	—	—
ICENHOUR	✓	—	—
SADLER	✓	—	—
HIPPLE	✓	—	—
LARSON	✓	—	—

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of September, 2018.

§ 15.2-4306. Criteria for evaluating application

Land being considered for inclusion in a district may be evaluated by the advisory committee and the planning commission through the Virginia Land Evaluation and Site Assessment (LESA) System or, if one has been developed, a local LESA System. The following factors should be considered by the local planning commission and the advisory committee, and at any public hearing at which an application that has been filed pursuant to § 15.2-4303 is being considered:

1. The agricultural and forestal significance of land within the district or addition and in areas adjacent thereto;
2. The presence of any significant agricultural lands or significant forestal lands within the district and in areas adjacent thereto that are not now in active agricultural or forestal production;
3. The nature and extent of land uses other than active farming or forestry within the district and in areas adjacent thereto;
4. Local developmental patterns and needs;
5. The comprehensive plan and, if applicable, the zoning regulations;
6. The environmental benefits of retaining the lands in the district for agricultural and forestal uses; and
7. Any other matter which may be relevant.

In judging the agricultural and forestal significance of land, any relevant agricultural or forestal maps may be considered, as well as soil, climate, topography, other natural factors, markets for agricultural and forestal products, the extent and nature of farm structures, the present status of agriculture and forestry, anticipated trends in agricultural economic conditions and such other factors as may be relevant.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Roberta Sulouff, Senior Planner

SUBJECT: AFD-18-0020. 8328 Diascund Road Mill Creek AFD Addition

ATTACHMENTS:

	Description	Type
☐	Staff Report	Staff Report
☐	Attachment 1. Ordinance	Ordinance
☐	Attachment 2. Location Map	Backup Material
☐	Attachment 3. Unapproved minutes from the March 6, 2019 Planning Commission meeting	Minutes
☐	Attachment 4. Unapproved minutes from the January 24, 2019 AFD Advisory Committee meeting	Minutes
☐	Attachment 5. Mill Creek AFD 2018 Renewal Staff Report and Ordinance	Backup Material
☐	Attachment 6. State Code regarding AFD application criteria	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/25/2019 - 12:46 PM
Development Management	Holt, Paul	Approved	3/25/2019 - 12:50 PM
Publication Management	Daniel, Martha	Approved	3/25/2019 - 1:26 PM
Legal Review	Kinsman, Adam	Approved	3/25/2019 - 3:18 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 11:58 AM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 1:51 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 1:58 PM

Agricultural and Forestal District-18-0020. 8328 Diascund Road Mill Creek Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

SUMMARY FACTS

Applicant: Mr. John Michael Sim
Land Owner: Mr. John Michael Sim
Proposal: Addition of ± 10 acres to the Mill Creek Agricultural and Forestal District (AFD)
Location: 8328 Diascund Road
Tax Map/Parcel No.: 1040100001A
Project Acreage: ± 10 acres
Current Zoning: A-1, General Agricultural
Comprehensive Plan: Rural Lands
Primary Service Area: Outside
Staff Contact: Roberta Sulouff, Senior Planner

PUBLIC HEARING DATES

AFD Advisory Committee: January 24, 2019, 4:00 p.m.
Planning Commission: March 6, 2019, 6:00 p.m.
Board of Supervisors: April 9, 2019, 5:00 p.m

FACTORS FAVORABLE

1. With the proposed Ordinance, the proposal is compatible with surrounding development.

2. The proposal is consistent with the recommendations of the James City County Comprehensive Plan adopted in 2015, “*Toward 2035: Leading the Way*”.
3. The proposal is consistent with local and State Code governing the addition of lands into AFDs.

FACTORS UNFAVORABLE

1. No factors unfavorable.

STAFF RECOMMENDATION

Staff finds that the proposed addition meets all state and local requirements for inclusion in the Mill Creek AFD and recommends that the Board of Supervisors approve the proposed addition to the Mill Creek AFD subject to the conditions listed in the attached Ordinance (Attachment No. 1).

PLANNING COMMISSION RECOMMENDATION

At its March 6, 2019 meeting, the Planning Commission voted 5-1 to recommend approval of this addition to the Board of Supervisors.

AFD ADVISORY COMMITTEE RECOMMENDATION

At its January 24, 2019 meeting, the AFD Advisory Committee voted 7-0 to recommend approval of this addition to the Planning Commission and Board of Supervisors.

PROJECT DESCRIPTION

- Mr. John Michael Sim has applied to enroll ± 10 acres of land located at 8328 Diascund Road into the Mill Creek AFD.
- The proposed addition includes the entirety of the subject parcel.

Agricultural and Forestal District-18-0020. 8328 Diascund Road Mill Creek Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

- The parcel is currently undeveloped and wooded.
- Per the United States Department of Agriculture Soil Survey, the majority of soil on this parcel is Craven-Uchee Complex 6-10% slopes (11C), Emporia Complex 15-25% slopes (15F), and Kempsville-Emporia fine sandy loams 2-6% slopes (19B). The Soil Survey indicates that both 11C and 15F soils have moderately high potential for the production of important trees with very limited or insignificant limitations on production such as slope, seedling mortality, and potential equipment usage limitations.

DISTRICT HISTORY

- The Mill Creek AFD was created in 1986 for a term of four years and originally consisted of 28 parcels totaling ± 3,547 acres.
- The District was renewed at four-year intervals again in 1990, 1994, 1998, 2002, 2006, 2010, 2014, and 2018 with various additions and withdrawals taking place during that period.
- If this addition is approved, the District would consist of approximately 3,223.66 acres.

SURROUNDING ZONING AND DEVELOPMENT

All surrounding properties are zoned A-1, General Agricultural and designated Rural Lands on the Comprehensive Plan.

COMPREHENSIVE PLAN AND ZONING

The Comprehensive Plan designates this parcel as Rural Lands. Appropriate primary uses in Rural Lands include traditional agricultural and forestal activities. Land Use Action 6.1.1 of the 2035 Comprehensive Plan states the County shall “support both the use value assessment and Agricultural and Forestal (AFD) programs to the maximum degree allowed by the *Code of Virginia*.”

STATE AND LOCAL CODE

- Section 15.2-4301 of Virginia State Code, Agricultural and Forestal Districts Act-Declaration of policy findings and purpose states that:

“It is the policy of the Commonwealth to conserve and protect and to encourage the development and improvement of the Commonwealth’s agricultural and forestal lands for the production of food and other agricultural and forestal products. It is also the policy of the Commonwealth to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes...”

- The State Code establishes the AFD Advisory Committee to:

“...advise the local planning commission and the local governing body and assist in creating, reviewing, modifying, continuing, or terminating districts within the locality. In particular, the committee shall render expert advice as to the nature of farming and forestry and agricultural and forestal resources within the district and their relation to the entire locality.”

- Section 15.2-4305 states that a parcel may be added to a district if it is directly contiguous to the core of the district, within a mile of the core, or directly contiguous to a parcel whose boundary lines are within a mile to the core. This parcel is directly contiguous to the core of the Mill Creek AFD.

Agricultural and Forestal District-18-0020. 8328 Diascund Road Mill Creek Addition

Staff Report for the April 9, 2019, Board of Supervisors Public Hearing

- Section 15.2-4306 (Attachment No. 6) includes the factors for consideration in the addition of lands to AFDs. One such factor includes the presence of any significant forestal lands within the district and in areas adjacent thereto that are not now in active forestal production. The Code later states that the presence of suitable soils may be considered in the determination of forestal significance.

STAFF RECOMMENDATION

Staff finds that the proposed addition meets all state and local requirements for inclusion in the Mill Creek AFD and recommends that the Board of Supervisors approve the proposed addition to the Mill Creek AFD subject to the conditions listed in the attached Ordinance (Attachment No. 1).

RS/md
AFD18-20DiascRd

Attachments:

1. Ordinance
2. Location Map
3. Unapproved Minutes from the March 6, 2019 Planning Commission meeting
4. Unapproved Minutes from the January 24, 2019 AFD Advisory Committee meeting
5. Mill Creek AFD 2018 Renewal Staff Report and Ordinance
6. State Code Regarding AFD Application Criteria

ORDINANCE NO. _____

AGRICULTURAL AND FORESTAL DISTRICT-18-0020.

8328 DIASCUND ROAD, MILL CREEK ADDITION

WHEREAS, a request has been filed with the Board of Supervisors of James City County, Virginia, (the “Board”) to add ± 10.0 acres of land owned by Mr. John Michael Sim located at 8328 Diascund Road and identified as James City County Real Estate Tax Map/Parcel No. 1040100001A, to Agricultural and Forestal District (AFD)-07-86, which is generally known as the “Mill Creek Agricultural and Forestal District” (the “Application”); and

WHEREAS, at its January 24, 2019 meeting, the AFD Advisory Committee voted 7-0 to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Planning Commission (the “Commission”) at its March 6, 2019 meeting, after which the Commission voted 5-1 to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Board of Supervisors.

NOW, THEREFORE, BE IT ORDAINED that the Board of Supervisors of James City County, Virginia, hereby adds ± 10.0 acres of land located at 8328 Diascund Road and identified as James City County Real Estate Tax Map/Parcel No. 1040100001A, to AFD-07-86, which is generally known as the “Mill Creek Agricultural and Forestal District” with the following conditions:

1. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner’s immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCF), provided: a) the subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
2. No land outside the Primary Service Area and within the District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors’ Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.
3. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for WCFs on properties in the District that are in accordance with the County’s policies and Ordinances regulating such facilities.

James O. Icenhour, Jr.
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Deputy Clerk to the Board

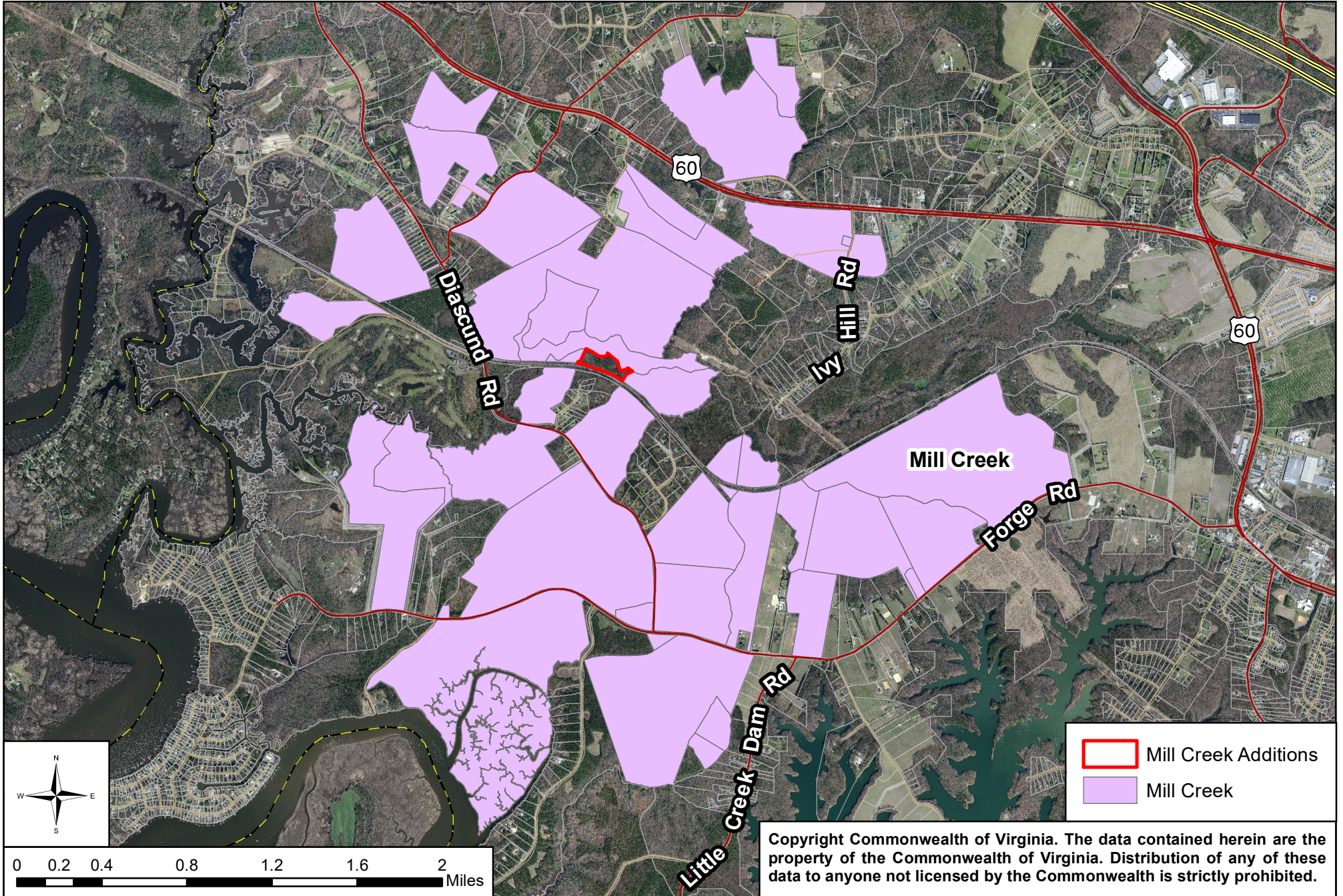
	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
HIPPLE	___	___	___
LARSON	___	___	___
SADLER	___	___	___
MCGLENNON	___	___	___
ICENHOUR	___	___	___

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April,
2019.

AFD18-20DiascRd-res

JCC AFD-18-0020

Mill Creek 8328 Diascund Rd Addition



**Unapproved Minutes of the March 6, 2019
Planning Commission Regular Meeting**

AFD-18-0020. 8328 Diascund Road Mill Creek AFD Addition

Ms. Sulouff stated that Mr. John Sim has applied to enroll the entire 10 acres of his property located at 8328 Diascund Road into the Mill Creek AFD. Ms. Sulouff stated that the parcel is zoned A-1, General Agricultural and is designated Rural Lands on the Comprehensive Plan Land Use Map.

Ms. Sulouff stated that staff finds that the property meets applicable criteria for inclusion including proximity requirements. Ms. Sulouff stated that approval of this application would bring the total district to approximately 3,224 acres.

Ms. Sulouff stated that staff recommends that the Planning Commission recommend inclusion of this parcel into the Mill Creek AFD to the Board of Supervisors, subject to the conditions adopted during the renewal of the Mill Creek AFD in 2018.

Mr. Schmidt called for disclosures from the Commission.

Mr. Krapf noted again that he owns a property that is enrolled in this AFD; however, this does not created a conflict of interest that would preclude him from voting on this application.

Mr. Schmidt opened the Public Hearing.
As no one wished to speak, Mr. Schmidt closed the Public Hearing.

Mr. Schmidt opened the floor for discussion by the Commission.

Mr. Haldeman made a motion to recommend approval of the addition of the parcel into the Mill Creek AFD.

On a roll call vote the Planning Commission voted to recommend approval of AFD-18-0020. 8328 Diascund Road Mill Creek AFD Addition (5-1).

MINUTES OF THE AGRICULTURAL AND FORESTAL ADVISORY COMMITTEE OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE TWENTY-FOURTH DAY OF JANUARY, TWO THOUSAND AND NINETEEN, AT 4:00 P.M. AT THE BUILDING A CONFERENCE ROOM, 101 MOUNTS BAY ROAD, WILLIAMSBURG, VIRGINIA.

A. CALL TO ORDER

Mr. William C. Taylor called the meeting to order at 4:00 p.m.

B. ROLL CALL

Members Present

Mr. Thomas Hitchens
Ms. Loretta Garrett
Mr. William C. Taylor, chair
Mr. L. Bruce Abbott
Mr. Payten Harcum
Mr. Sandy Wanner
Ms. Sue Sadler

Also Present

Ms. Ellen Cook, Principal Planner
Ms. Roberta Sulouff, Senior Planner
Ms. Tori Haynes, Planner
Ms. Katie Pelletier, Community
Development Assistant

Absent

Mr. Richard Bradshaw
Mr. William R. Harcum
Mr. John Grantz

C. APPROVAL OF MINUTES

1. Approval of the June 21, 2018 Meeting Minutes

Mr. Taylor reminded the Committee that the October 25, 2018 meeting had been canceled because they lacked a quorum.

Mr. Bruce Abbott moved to approve the minutes of the June 21, 2018 meeting.

Mr. Tom Hitchens seconded the motion.

On a voice vote, the motion was approved 6-0-1. Ms. Loretta Garrett abstained from the vote as she was absent from the June 21, 2018 meeting.

D. OLD BUSINESS:

1. AFD-18-0020. 8328 Diascund Road Mill Creek AFD Addition

Mr. Taylor explained the Committee would next address old business from the canceled October 25, 2018 meeting.

Ms. Roberta Sulouff said applicant Mr. John Michael Sim has applied to enroll approximately 10 acres of a parcel located at 8328 Diascund Road in the Mill Creek AFD. The parcel is zoned A-1 (General Agricultural) and is designated Rural Lands in the County Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 3,224 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Mill Creek AFD to the Planning Commission.

Mr. Taylor clarified that applicants could have property included in the AFD which may not meet the tax-break threshold.

Ms. Sulouff confirmed there is no minimum acreage requirement for inclusion in the AFD.

Mr. Abbott moved to recommend approval of the proposed addition of the parcel at 8328 Diascund Road into the Mill Creek AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Ms. Garrett seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

2. AFD-18-0019. 4928 Fenton Mill Road Croaker Addition

Ms. Sulouff stated that Mr. Charles Apperson and Ms. Patricia Russo have applied to enroll an approximately 52-acre parcel in the Croaker AFD. The parcel is located at 4928 Fenton Mill Road, zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff noted this parcel was brought up at the 2018 renewal process. Staff believed the parcel was not included in the AFD after the 1996 renewal due to an administrative error. This property was originally part of a parcel in the AFD at 4920 Fenton Mill Road, but after a 1995 subdivision the new parcel at 4928 Fenton Mill Road was not included in notifications for that renewal period.

The Committee discussed the issue at the June 21, 2018 meeting and recommended the parcel be included. However, staff found that a more proper route to re-include the parcel would be to go through the formal addition process.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 1,234 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission.

Mr. Hitchens moved to recommend approval of the proposed addition of the parcel at 4928 Fenton Mill Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Payten Harcum seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

3. AFD-18-0017. 9888 Sycamore Landing Road Croaker Addition

Ms. Sulouff stated that Ms. Kelly Fulton has applied, on behalf and with the permission of Mr. Thomas W. Dana, III, to add an approximately 62-acre parcel to the Croaker AFD. The parcel is located at 9888 Sycamore Landing Road, zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff noted that, while this parcel is over one mile away from the core parcels in the Croaker AFD, State Code permits the addition of a parcel into an AFD if the governing body finds the property contains agriculturally and forestally significant land. Ms. Sulouff reminded the Committee that they reviewed a similar case and permitted addition of an adjacent property at 9730 Sycamore Landing Road to the Croaker AFD in 2017.

Ms. Sulouff noted the U.S. Department of Agriculture Soil Survey indicates the site is home to soils which have moderately high potential for both crops and timbering. Should the Committee find that the property contains agriculturally and forestally significant land and that it meets the criteria for inclusion of land in an AFD, staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission. If this addition were approved, the District would consist of approximately 1,244 acres.

Mr. Hitchens commented he supports inclusion of properties which will help preserve the rural nature of the county.

Mr. Hitchens moved to recommend approval of the proposed addition of the parcel at 9888 Sycamore Landing Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Harcum seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

4. AFD-18-0016. 365, 358 and 382 Ivy Hill Road Mill Creek Addition

Ms. Sulouff stated that Mr. John Michael Sim has applied to enroll approximately 60.73 acres of land located at 365, 358 and 382 Ivy Hill Road into the Mill Creek AFD. The

parcel is zoned A-1 (General Agricultural) and designated Rural Lands in the County's Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 3,274 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Mill Creek AFD to the Planning Commission.

Mr. Abbott moved to recommend approval of the proposed addition of the parcels at 365, 358 and 382 Ivy Hill Road into the Mill Creek AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Hitchens seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

5. AFD-02-86-2-2018. 4450 Ware Creek Road Croaker Addition

Ms. Sulouff stated that Mr. Jonathan Kinney has applied to enroll approximately 14.18 acres of land located at 4450 Ware Creek Road into the Croaker AFD. The parcel is zoned A-1 (General Agricultural) and designated Low-Density Residential in the County's Comprehensive Plan.

Ms. Sulouff stated staff finds that the property meets the minimum size and proximity requirements for inclusion in the AFD. If this addition is approved, the District would consist of approximately 1,197.3 acres. Staff recommends the Advisory Committee recommend inclusion of this parcel into the Croaker AFD to the Planning Commission.

Mr. Hitchens requested a hard copy of the AFD map be available for reference during meetings.

Ms. Garrett moved to recommend approval of the proposed addition of the parcel at 4450 Ware Creek Road into the Croaker AFD, subject to the adopted conditions listed in the Ordinance and consistent with other properties in the District.

Mr. Sandy Wanner seconded the motion.

On a voice vote of 7-0, the motion was unanimously approved.

E. NEW BUSINESS

1. C-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD

Ms. Tori Haynes stated Hampton Roads Sanitation District currently operates the Williamsburg Treatment Plant located at 300 Ron Springs Drive. This is a landlocked

parcel that is wholly surrounded by 250 Ron Springs Drive and the Carter's Grove AFD.

HRSD has stated that it requires a facility expansion adjacent to the Williamsburg Treatment Plant. This expansion is in response to federal enforcement action taken by the EPA and Dept. of Justice. HRSD has stated there is insufficient property on their current parcel to accommodate the facility expansion, and as such has stated its intent to acquire 250 Ron Springs Drive by condemnation for public utility purposes.

HRSD is not requesting a withdrawal of the property from the AFD at this time. Rather, per State Code, utilities may acquire interests in properties within an AFD provided that the Board of Supervisors, in consultation with the AFD Advisory Committee and Planning Commission, reviews the proposal and specifically examines the following criteria found in §15.2-4313: (i) the effect the action would have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district.

The evaluation and analysis of the proposal against these three criteria are a State-Code mandated process that is required when acquisition of a parcel by a political subdivision of the state is proposed.

Ultimately, the Board of Supervisors will consider the above criteria and make a determination as to whether the proposed action might have an unreasonably adverse effect upon state or local policy.

This review does not withdraw any portion of the parcel from the AFD or grant any sort of approval for the facility expansion itself. Should HRSD be successful in acquiring ownership of the subject parcel, they would then need to apply separately for those items, and accordingly, the AFD Advisory Committee would consider the withdrawal request at that time.

Staff recommends that each of the above criteria be discussed individually to make clear the findings of the Committee to the Planning Commission and Board of Supervisors.

In consideration of the criteria, staff ultimately found that the proposal was necessary to provide service in the most economical and practical manner, and that it will not have an unreasonably adverse effect upon state or local policy.

Mr. Taylor disclosed to the Committee and staff that he is affiliated with companies represented by Kaufman and Canoles law firm. However, he does not feel this will sway his opinion or recommendations while serving on the Committee.

Mr. Taylor then asked staff to clarify whether the Committee would be voting to agree or disagree with the HRSD proposal.

Ms. Haynes stated the Committee would not be considering any AFD withdrawal at this time but needed to determine if the action of taking the parcel would have an adverse effect on State or local policy. She said this is an automatic review of three criteria triggered or prompted by the intent stated by HRSD to acquire the parcel by condemnation for public utility purposes. Their findings will then go to the Planning Commission and Board of Supervisors.

Ms. Haynes suggested discussion of the three criteria found in §15.2-4313 and stated that representatives of HRSD and Carter's Grove Associates, LLC are available to answer questions.

Ms. Haynes then shared staff's understanding of the proposal. HRSD is looking to expand beyond their current borders into the Carter's Grove AFD. They propose clearing approximately 7 acres, but a final site has not been located yet.

Mr. Wanner stated HRSD is under Federal mandate to make improvements to the facility.

Ms. Haynes confirmed there is a Federal action against HRSD, and existing lands cannot accommodate the necessary expansion. They require an additional seven acres.

Mr. Taylor stated HRSD is attempting to acquire 76 acres.

Ms. Haynes stated HRSD is pursuing ownership of the entire parcel but not necessarily withdrawal of all 76 acres from the AFD. She reiterated that this review is prompted by the intent to condemn lands within an AFD by a political subdivision.

Mr. Hitchens asked staff why HRSD would need to withdraw land from the AFD if they are a public entity.

Ms. Haynes answered that a Special Use Permit (SUP) is not allowed in an AFD unless it is related to farming practices. If HRSD takes ownership of the parcel, and a use is permitted with a SUP, they will need to withdraw that portion of land from the AFD.

Mr. Abbott asked the HRSD representative for an explanation of their plan.

Ted Henifin, General Manager at HRSD, addressed the Committee and began with a discussion on the impact of topography in the subject parcel. He explained the land has steep slopes, wetlands and Resource Protection Area and is largely undevelopable. He stated that of the 76 acres, maybe only 30 acres are buildable. He showed the Committee on a map the area of the parcel most likely suitable for their facility expansion and access points. Mr. Henifin stated there have been many discussions with the property owner regarding alternatives to condemnation in the past year with no resolution. Regarding the consent order, Mr. Henifin stated the federal enforcement action is driving the timeline tied to the project.

Mr. Henifin explained HRSD requires the 76 acres because of the unusual, unique residual that would be created by the project and buildout. The mostly unbuildable, remaining land would serve as a buffer between the WTP and surrounding properties to protect the investment and property, in case slopes erode. He said they have an outfall through an easement on the beach and have already had to make improvements on the beach for erosion. Mr. Henifin said they would like to have control long-term and do not find much residual value in the remaining property beyond the buildable acres. He stated it would be difficult to assess the value of the residual property, and there is also potential for further expansion requirements in the future. He noted HRSD has stated it is willing to dedicate a permanent conservation easement over the remaining portion of the parcel. He said they do not know the exact project location until they can access the land and survey.

Mr. Abbott asked about the purpose of the project or facility improvements.

Mr. Henifin stated this will be the first of several projects whereby HRSD is adding advanced water treatment capability and drinking water standards to their current treatment plants. Of the 22 million gallons of wastewater treated per day, 8 million gallons will be treated in this manner and discharged into the Potomac aquifer instead of the James River.

Mr. Henifin stressed HRSD does not currently have room to expand within their current site as it is mostly built out. He stated the proposal will protect their ability to advance wastewater treatment in as compact a footprint and most economical way as possible. The water will need to move through several process and control points, so use of an alternative or nearby property would still impact the AFD with easement connections. From a cost perspective, Mr. Henifin said sharing a property and fence line allows for the sharing of other resources such as operators and security.

Mr. Taylor asked about the purpose of owning the residual property if it is largely unusable.

Mr. Henifin expressed the difficulty in defining both the acquisition of land required and also the value of the residual property. A one-time take would avoid these issues and allow for additional land use if needed in the future.

Mr. Tim Trant, attorney with Kaufman and Canoles, introduced his law partner also present at the meeting, Mr. Paul Gerhardt. Mr. Trant said they represent Mr. Sam Mencoﬀ, owner of Carter's Grove Associates, LLC and the 76-acre parcel located at 250 Ron Springs Drive in the Carter's Grove AFD which surrounds the HRSD WTP. Mr. Mencoﬀ also owns the adjacent 400-acre Carter's Grove parcel. Mr. Trant said Mr. Mencoﬀ's intent when purchasing the property was to fulfil the County and community interest in restoration and preservation of the historic Carter's Grove property, and he has since invested heavily in the property.

Mr. Trant said they object to HRSD's request at this time, stating the HRSD intent to take

76 acres and develop a small portion of seven acres does not meet the statutory criteria. He said Mr. Mencoﬀ desires to keep the buffer, the take is larger than it needs to be, the proposal is not the most practical way to provide the service, and there are reasonable alternatives. Mr. Trant stated they request that the Committee defer action on this item until they can continue their conversation with HRSD, and they do not support any plan to take the entire property.

Mr. Trant said HRSD approached them last year about the need for some additional land and felt there was constructive dialogue. However, he said, HRSD required them to enter into a Nondisclosure Agreement in connection with those conversations so he cannot disclose any details. Mr. Trant said they would like those conversations to continue. Regarding the compulsory timeline for HRSD, Mr. Trant said they did not create this sense of urgency and noted HRSD has been under the consent decree since 2010 to implement the changes.

Mr. Wanner noted all of Hampton Roads is under the same consent.

Mr. Trant said the timeline is a proposal, and as a landowner invested in historic property, his client would like the opportunity for thoughtful dialogue to reach a reasonable resolution.

Mr. Hitchens asked Mr. Trant if a survey would be possible.

Mr. Trant referenced the Nondisclosure Agreement but stated there is a willingness to engage in reasonable conversation about what is needed. He said the threat of condemnation of 76 acres is an attempt to short-circuit the process as a negotiating tactic.

Mr. Wanner asked the staff how long it might be possible to defer.

Ms. Haynes stated that, on counsel from the County Attorney's Office, deferral is not an option because of the State code requirements. The March 12, 2019 Board of Supervisor's meeting is the ninety day deadline from the date the original report was filed. If the Board determines there is an unreasonably adverse effect upon state or local policy, they may then hold a public hearing within the next 60 days.

Ms. Haynes stated the Committee needs to determine if the action of taking the parcel would have an adverse effect on State or local policy then forward their finding to the Planning Commission for their February meeting before the Board of Supervisor's March meeting.

Mr. Trant said HRSD could also withdraw their request, continue the conversation with Mr. Mencoﬀ and return with a proposal that meets the criteria.

Ms. Sue Sadler asked Mr. Henifin about the status of the Sustainable Water Initiative for Tomorrow (SWIFT) project.

Mr. Henifin said the SWIFT research center is putting water in the ground, and the aquifer is 400-500 feet below the surface. He said the issue with surveying is having relative assurance against the potential waste of money surveying land not yet acquired. Mr. Henifin mentioned the challenges of negotiations and said the Nondisclosure Agreement was actually a requirement of Mr. Trant's client. He said condemnation includes compensation for the legal value of the land, and they are seeking a willing partner.

Mr. Trant noted one of the County's articulated benefits for landowners in joining an AFD is a layer of protection from condemnation. He said the County would offend that commitment by recommending or condoning the action by HRSD.

Mr. Wanner stated he believes the public good is served by condemnation of some amount of land in this situation.

Mr. Abbott said he believes a buffer should be maintained and owned by the original owner.

Mr. Trant asked for a recommendation of deferral until an agreement is made between HRSD and the landowner.

Ms. Sulouff and Ms. Haynes stated that as long as there is an application, the Board is required to make a determination within 90 days. If HRSD chooses not to withdraw, the process moves forward in accordance with State code. The Committee may tailor its recommendation to reflect the discussion.

Mr. Henifin said with HRSD surrounded by the AFD, it will be impacted but any withdrawal will be brought forward later and separately. He said the full 76-acre parcel is required to protect the facility, slopes and beachfront.

Mr. Trant said there is a mutual interest in protecting the property and facility, and there have been no problems addressing any issues on the property to date.

Ms. Haynes suggested addressing each of the three criteria being considered. Regarding criteria (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies, Ms. Haynes noted to the Committee there is some planned, intended agricultural activities but no formal activity, and they are not receiving land use valuation. Ms. Haynes did note that Carter's Grove Associates, LLC representatives did appeal to the Department of Conservation and Recreation (DCR) to advise the County on this proposed action. DCR was not able to provide a full report based on access and timeline, but there are some known natural resource heritage areas there.

Ms. Sulouff stated this Committee review and recommendation is significant as an extra board hearing and part of the extra protection provided to landowners in an AFD.

Ms. Haynes then read to the Committee criteria (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and criteria (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Taylor said the third criteria is most troubling when considering how much of the parcel is required by HRSD and the Committee's commitment to AFD landowners.

Mr. Henifin stated he has little confidence an agreement could be made, given the proposals already rejected by the landowner.

Mr. Trant said they are also frustrated and feel there have been reasonable counter-offers.

Mr. Wanner asked how soon HRSD could reapply, if they were to withdraw their application.

Ms. Haynes answered the 90-day clock would start again upon resubmittal.

Mr. Hitchens said the landowner has made a great investment in the County and feels uncomfortable with HRSD taking the entire parcel.

Mr. Abbott motioned, based on the Committee's consideration of the three criteria found in §15.2-4313, that the proposed action by HRSD to acquire 250 Ron Springs Drive, located in the Carter's Grove AFD, by condemnation for public utility purposes might have an unreasonably adverse effect upon state or local policy. The proposed action (i) would have an unreasonably adverse effect upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies; (ii) there is no necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) there could be reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Harcum seconded the motion.

On a voice vote of 5-1-1, the motion was approved.

Ms. Garrett, Mr. Hitchens, Mr. Harcum, Mr. Abbott, and Mr. Taylor voted yes, the proposed action might have an unreasonably adverse effect upon state or local policy. Mr. Wanner voted against the motion, and Ms. Sadler abstained from the vote.

2. The Agricultural and Forestal District Advisory Committee Organizational Meeting

Ms. Sulouff said the Committee has one last item of new business.

She stated at its January 2018 meeting, the Committee adopted by-laws, established a yearly organizational meeting to take place in subsequent years in the month of January and adopted a calendar for 2018. The Committee also reviewed a tentative calendar for 2019, but it did not formally adopt those dates.

Ms. Sulouff referenced the proposed calendar with quarterly meeting dates. All meetings are scheduled to take place at 4:00 p.m. in the Building A Large Conference Room. Staff recommends that the Committee adopt the meeting dates and times through January 23, 2020. Meeting dates and times shown after January 23, 2020 are draft and subject to adoption at the Committee's 2020 organizational meeting.

2019/2020 (Proposed): January 24, 2019 (Organizational Meeting), April 25, 2019, July 25, 2019, October 24, 2019 and January 23, 2020 (Organizational Meeting).

2020/2021 (Tentative): January 23, 2020 (Organizational Meeting), April 23, 2020, July 23, 2020, October 22, 2020, and January 21, 2021 (Organizational Meeting).

Mr. Hitchens motioned to approve the proposed 2019/2020 and tentative 2020/2021 Committee meeting dates and times.

Mr. Wanner seconded the motion.

On a voice vote of 6-0, because Ms. Sadler had left the meeting, the motion was unanimously approved.

Regarding the election of officers, Ms. Sulouff stated per the Committee's adopted by-laws (Article VI, Section A), the Committee must elect a chairman and vice-chairman at its yearly organizational meeting.

Mr. Hitchens motioned to re-elect Mr. Taylor as the Committee chairman and Mr. Abbott as the vice-chairman.

Mr. Harcum seconded the motion.

On a voice vote of 6-0, because Ms. Sadler had left the meeting, the motion was unanimously approved.

F. DISCUSSION ITEMS

G. ADJOURNMENT

On a voice vote, the meeting was adjourned at 5:15 p.m.

Mr. William C. Taylor, Chair

Ellen Cook, Principal Planner

AGRICULTURAL AND FORESTAL DISTRICT-07-86-1-2018. Mill Creek Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

SUMMARY FACTS

<u>LAND OWNERS</u>	<u>PARCEL ID</u>	<u>±ACRES</u>
Cowles-Lobbs LLC	2020100006	352.96
Dale Cowles Henderson & John Cowles Dozier, et al.	2020100003	102.66
Dale Cowles Henderson & John Cowles Dozier, et al.	20201000001	8.75
Mayes D. & Cheryl M. Matthews	2110100005	46.01
Pamela C. & Steve L. Massie	1130100028	98.76*
Pamela C. & Steve L. Massie	1130100028A	32.74*
Richard W. & Margaret Krapf	1140100006	4.73
Nancy Cottrell Kruse & M. Anderson Bradshaw	1140100002	297.28
Cowles-Cowlesville LLC	1040100005	249.88
Cowles-Cowlesville LLC	1040100006	124.76
J. Michael Sim	1040100003	103.26
8700 Barnes Road LLC	1010100037	104.00
Sarah H. Armistead	1010100038	50.00
Daniel R. & Marion Virginia Winall	1030100019	97.59
Pamaka, LLC	1020100017	242.70*
Albert T. & Joan Lloyd Slater	1010100028	69.69
McRae O. Selph	1010100007	50.00
Walter N. Marshall, III Trustee	1140100005	79.94
Martha M. Ware Trust	2020100002	57.41
Christopher M. Ware	0920100036	39.13*
Pamaka, LLC	1030100003	45.80*
<i>Ralph Benjamin Dozier, Charles Norris Dozier III & Mary Elizabeth Sink</i>	<i>2020100005</i>	<i>186.16**</i>
Ralph Benjamin Dozier, Charles Norris Dozier III & Mary Elizabeth Sink	2020100007	16.50
Ralph Benjamin Dozier, Charles Norris Dozier III & Mary Elizabeth Sink	2020100008	12.00
Dennis P. & Christina A. Weygand	1030100013	34.02
John M. L. Barnes Estate	1020100004	215.76
John M. L. Barnes Estate	1110100001	29.00

Cowles-Cowlesville LLC	2010100002	2.00
Randolph G. & Michelle H. Gulden	1020100012	62.20
Randolph G. & Michelle H. Gulden	1020100032	25.00
John E. & Elaine M. Sharp	0940100008N	57.81
John G. & Marie Antoinette Findlay	0940100008H	118.29
Richard F. Abbitt Investment LC	0920100040	95.51
Ivy Hill LLC	1110100013	100.18
Ivy Hill LLC	1110100024	1.18
TOTAL ACRES		3,213.66

* Updated parcel acreage based on boundary survey

** Requesting to withdraw a portion of property

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands

Primary Service Area (PSA): Outside and Inside

Staff Contact: Savannah Pietrowski, Senior Planner

PUBLIC HEARING DATES

Planning Commission: August 1, 2018, 6:00 p.m.

Board of Supervisors: September 11, 2018, 5:00 p.m.

STAFF RECOMMENDATION

Approval, subject to the proposed conditions.

AGRICULTURAL AND FORESTAL DISTRICT (AFD) ADVISORY COMMITTEE RECOMMENDATION

At its June 21, 2018 meeting, the AFD Advisory Committee voted 9-0 to recommend the continuation of the District to the Planning Commission and Board of Supervisors.

AGRICULTURAL AND FORESTAL DISTRICT-07-86-1-2018. Mill Creek Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

PLANNING COMMISSION RECOMMENDATION

At its August 1, 2018 meeting, the Planning Commission voted 5-0 to recommend the continuation of the District to the Board of Supervisors.

DISTRICT HISTORY

- The Mill Creek AFD was created in 1986 for a term of four years and originally consisted of 28 parcels totaling ±3,547 acres.
- The District was renewed in 1990, 1994, 1998, 2002, 2006, 2010 and 2014 for four-year periods. Various additions and withdrawals occurred throughout these years.
- Since the 2014 renewal, the Board of Supervisors approved the addition of ±101.36 acres and the addition of ±95.5 acres to the District.
- Acreages for parcels denoted with an asterisk (*) in the summary facts table have been updated based on boundary surveys that have been recorded for these properties.

DISTRICT DESCRIPTION

The Mill Creek AFD consists of ±3,213.66 acres, the majority of which are located along Forge Road or Diascund Road. The majority of the District contains either woodland or active agriculture. All parcels are zoned A-1, General Agriculture and are designated Rural Lands on the Comprehensive Plan.

Total acreage includes all the land in the above properties with the exception of all land within 25 feet of right-of-ways. This area has been excluded to allow for possible road and/or drainage improvements.

ADDITION/WITHDRAWAL REQUESTS

Since the Planning Commission meeting, the owners of the property located at 1827 Forge Road (Parcel ID No. 2020100005) have requested to withdraw approximately 7.73 acres of their parcel from the District. The District will continue to meet minimum area requirements.

CHANGES TO CONDITIONS

None.

SURROUNDING ZONING AND DEVELOPMENT

The surrounding area consists mostly of forestland. The majority of the surrounding property is zoned A-1 and is designated Rural Lands on the Comprehensive Plan. The Chickahominy River is located to the west. The Barnes Swamp AFD is located to the north and the Wright’s Island AFD is located to the south.

COMPREHENSIVE PLAN

The Comprehensive Plan designates these parcels as Rural Lands. Land Use Action 6.1.1 of the adopted Comprehensive Plan states the County shall “support both the use value assessment and Agricultural and Forestal (AFD) programs to the maximum degree allowed by the *Code of Virginia*.”

STAFF RECOMMENDATION

Staff finds the Mill Creek AFD compatible with surrounding development and consistent with the recommendations of the adopted Comprehensive Plan and Zoning Ordinance. Staff recommends that the Board of Supervisors approve the renewal of this AFD for a period of four years, subject to the conditions listed in the District Ordinance (Attachment No. 1).

AGRICULTURAL AND FORESTAL DISTRICT-07-86-1-2018. Mill Creek Renewal

Staff Report for the September 11, 2018, Board of Supervisors Public Hearing

SP/nb
AFD-MillCrkRnw

Attachments:

1. Ordinance
2. Location Map
3. Property Owner withdrawal request for 1827 Forge Road
4. Adopted conditions for the Mill Creek AFD
5. Board of Supervisors staff report for the 2014 renewal of the Mill Creek AFD

ADOPTED

SEP 11 2018

ORDINANCE NO. 169A-18

Board of Supervisors
James City County, VA

AGRICULTURAL AND FORESTAL DISTRICT-07-86-1-2018

MILL CREEK 2018 RENEWAL

WHEREAS, James City County has completed a review of the Mill Creek Agricultural and Forestal District (the "District"); and

WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, 1950, as amended (the "Virginia Code"), property owners have been notified, public notices have been filed, public hearings have been advertised, and public hearings have been held on the continuation of the District; and

WHEREAS, the Agricultural and Forestal District (AFD) Advisory Committee at its meeting on June 21, 2018, voted 9-0 to recommend renewal of the District; and

WHEREAS, the Planning Commission following its public hearing on August 1, 2018, concurred with the recommendation of staff and the AFD Advisory Committee and voted 5-0 to recommend renewal of the District with the conditions listed below.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of James City County, Virginia, that:

1. The Mill Creek Agricultural and Forestal District (the "District") is hereby continued to October 31, 2022 in accordance with the provisions of the Virginia Agricultural and Forestal District Act, Virginia Code Section 15.2-4300 et. seq. (the "Act").
2. That the District shall include the following parcels, provided, however, that all land within 25 feet of road right-of-way is excluded from the District:

<u>Owner</u>	<u>Parcel No.</u>	<u>±Acres</u>
Cowles-Lobbs LLC	2020100006	352.96
Dale Cowles Henderson & John Cowles Dozier, et al.	2020100003	102.66
Dale Cowles Henderson & John Cowles Dozier, et al.	2020100001	8.75
Mayes D. & Cheryl M. Matthews	2110100005	46.01
Pamela C. & Steve L. Massie	1130100028	98.76
Pamela C. & Steve L. Massie	1130100028A	32.74
Richard W. & Margaret Krapf	1140100006	4.73
Nancy Cottrell Kruse & M. Anderson Bradshaw	1140100002	297.28
Cowles-Cowlesville LLC	1040100005	249.88
Cowles-Cowlesville LLC	1040100006	124.76
J. Michael Sim	1040100003	103.26

8700 Barnes Road LLC	1010100037	104.00
Sarah H. Armistead	1010100038	50.00
Daniel R. & Marion Virginia Winall	1030100019	97.59
Pamaka LLC	1020100017	242.70
Albert T. & Joan Lloyd Slater	1010100028	69.69
McRae O. Selph	1010100007	50.00
Walter N. Marshall, III Trustee	1140100005	79.94
Martha M. Ware Trust	2020100002	57.41
Christopher M. Ware	0920100036	39.13
Pamaka LLC	1030100003	45.80
Ralph Benjamin Dozier, Charles Norris Dozier III & Mary Elizabeth Sink	2020100005	178.44
Ralph Benjamin Dozier, Charles Norris Dozier III & Mary Elizabeth Sink	2020100007	16.50
Ralph Benjamin Dozier, Charles Norris Dozier III & Mary Elizabeth Sink	2020100008	12.00
Dennis P. & Christine A. Weygand	1030100013	34.02
John M. L. Barnes Estate	1020100004	215.76
John M. L. Barnes Estate	1110100001	29.00
Cowles-Cowlesville LLC	2010100002	2.00
Randolph G. & Michelle H. Gulden	1020100012	62.20
Randolph G. & Michelle H. Gulden	1020100032	25.00
John E. & Elaine M. Sharp	0940100008N	57.81
John G. & Marie Antoinette Findlay	0940100008H	118.29
Richard F. Abbitt Investment LC	0920100040	95.51
Ivy Hill LLC	1110100013	100.18
Ivy Hill LLC	1110100024	1.18
Total:		<u>3,205.94</u>

3. That pursuant to Sections 15.2-4312 and 15.2-4313 of the Act, the Board of Supervisors requires that no parcel in the District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:
- a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCF), provided: a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
 - b. No land outside the Primary Service Area and within the District may be rezoning and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.

- c. No special use permit shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue special use permits for WCFs on properties in the District that are in accordance with the County's policies and Ordinances regulating such facilities.

Ruth M. Larson

Ruth M. Larson
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows

Teresa J. Fellows
Deputy Clerk to the Board

VOTES

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	✓	—	—
ICENHOUR	✓	—	—
SADLER	✓	—	—
HIPPLE	✓	—	—
LARSON	✓	—	—

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of September, 2018.

AFD-MillCrkRnw-res

§ 15.2-4306. Criteria for evaluating application

Land being considered for inclusion in a district may be evaluated by the advisory committee and the planning commission through the Virginia Land Evaluation and Site Assessment (LESA) System or, if one has been developed, a local LESA System. The following factors should be considered by the local planning commission and the advisory committee, and at any public hearing at which an application that has been filed pursuant to § 15.2-4303 is being considered:

1. The agricultural and forestal significance of land within the district or addition and in areas adjacent thereto;
2. The presence of any significant agricultural lands or significant forestal lands within the district and in areas adjacent thereto that are not now in active agricultural or forestal production;
3. The nature and extent of land uses other than active farming or forestry within the district and in areas adjacent thereto;
4. Local developmental patterns and needs;
5. The comprehensive plan and, if applicable, the zoning regulations;
6. The environmental benefits of retaining the lands in the district for agricultural and forestal uses; and
7. Any other matter which may be relevant.

In judging the agricultural and forestal significance of land, any relevant agricultural or forestal maps may be considered, as well as soil, climate, topography, other natural factors, markets for agricultural and forestal products, the extent and nature of farm structures, the present status of agriculture and forestry, anticipated trends in agricultural economic conditions and such other factors as may be relevant.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Grace Boone, Director of General Services

SUBJECT: An Ordinance to Enact a User Fee for Curbside Recycling Collection Service

ATTACHMENTS:

	Description	Type
☐	Memo	Cover Memo
☐	Ordinance	Ordinance
☐	Final Ordinance	Ordinance

REVIEWERS:

Department	Reviewer	Action	Date
Attorney	Kinsman, Adam	Approved	3/26/2019 - 1:05 PM
Publication Management	Burcham, Nan	Approved	3/26/2019 - 1:37 PM
Legal Review	Kinsman, Adam	Approved	3/27/2019 - 9:01 AM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 11:58 AM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 1:51 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 1:58 PM

MEMORANDUM

DATE: April 9, 2019
TO: The Board of Supervisors
FROM: Grace Boone, Director of General Services
SUBJECT: An Ordinance to Enact a User Fee for Curbside Recycling Collection Service

Background

James City County offers a curbside recycling collection service to County residents. The County contracts with Virginia Peninsulas Public Service Authority (“VPPSA”) to provide this service. Since its inception in 1995, the curbside recycling collection service has been funded entirely by the County’s general fund. Market conditions have drastically increased the cost to provide this service to County residents.

Current Service Costs and Proposed User Fee

1. The Fiscal Year (FY) 2020 curbside recycling service contract is \$1.8 million and will serve approximately 25,000 County households.
2. The FY 2020 County budget allocates \$500,000 for the curbside recycling service contract.
3. The allocated funds are not adequate to cover the operational and administrative expenses for the curbside recycling service.
4. Customers do not currently pay a user fee for the service.
5. The proposed user fee per household is \$7 per month for a total of \$84 per year.
6. To arrive at the proposed user fee, the total expense of the curbside recycling service, including costs associated with customer service and billing, was divided by the number of curbside recycling customers.
7. The proposed user fee would go into effect October 1, 2019.

Considerations

1. The proposed user fee is estimated to have a net zero impact on the County budget.
2. Approval of the proposed Ordinance is needed at this time so the County can include the user fee revenue in its FY 2020 budget and General Services can begin promotion and institute operational, administrative, staffing, and billing changes necessary to implement the fee on October 1, 2019.

Recommendation

Adopt the proposed Ordinance to allow the County to impose a user fee for curbside recycling collection service.

GB/md
CurbsdRecycServ-mem

Attachment

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 10, GARBAGE AND REFUSE, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 10-2, DEFINITIONS; AND ADDING ARTICLE III, RECYCLING, SECTION 10-31, OPTIONAL RECYCLING COLLECTION SERVICE, FEES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 10, Garbage and Refuse, is hereby amended and reordained by amending Section 10-2, Definitions; and adding Article III, Recycling, Section 10-31, Optional recycling collection service, fees.

Chapter 10. Garbage and Refuse

Article I. In General

Sec. 10-2. Definitions.

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

Ashes. The residue resulting from the burning of wood, coal, coke or other combustible material.

County administrator. The county administrator of James City County.

Director. The director of general services of James City County.

Garbage. All animal and vegetable waste resulting from the handling, preparation, cooking or consumption of food.

Litter. All waste material, including, but not limited to, disposable packages or containers, but not including the wastes of the primary processes of mining, logging, sawmilling, farming or manufacturing.

Manager. The county administrator or his designee.

Recycling collection service area. The residential parcels within the county designated by the director for optional curbside recycling collection service.

Refuse. All solid waste products having the character of solids rather than liquids and which are composed wholly or partially of materials such as garbage, trash, litter, residues from cleanup of spills or contamination or other discarded materials.

Refuse remover. Any person, firm or corporation or any agent or employee thereof engaged in removing and transporting refuse for compensation from two or more residential, commercial or industrial establishments, or any combination thereof, in the county.

Refuse vehicle. Any truck or trailer used for transporting refuse from the premises from which it is collected to the point of refuse disposal.

Residential recyclable material. Certain glass, plastic, metal, paper products, and other materials authorized by the director to be placed in an authorized recycling container which have been generated by occupants of a residential dwelling unit, specifically excluding hazardous waste.

Article III. Recycling

Sec. 10-31. Optional recycling collection service, fees.

- a) *The county may offer an optional curbside recycling collection service to residential properties located within the recycling collection service area.*
- b) *Residents who subscribe to the optional curbside recycling collection service shall use an authorized container approved by the director and shall pay a user fee.*
- c) *The optional curbside recycling collection service shall provide for the collection of residential recyclable material according to a schedule approved by the director.*
- d) *Residential recyclable material that is inaccessible to collection vehicles or located outside of an authorized container shall not be collected.*
- e) *Material that does not meet the definition of residential recyclable material shall not be collected.*
- f) *The user fee for curbside recycling collection service shall be no more than seven dollars (\$7.00) per container per month.*
- g) *The county may offer a discounted user fee to property owners' associations.*
- h) *The director may terminate curbside recycling collection service to any dwelling upon failure of its owner(s) or occupant(s) to comply with the provisions of this Article.*

State Law reference - Code of Va., § 15.2-928.

James O. Icenhour, Jr.
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Deputy Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
HIPPLE	___	___	___
LARSON	___	___	___
SADLER	___	___	___
MCGLENNON	___	___	___
ICENHOUR	___	___	___

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April, 2019.

CurbsdRecycServ-ord

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 10, GARBAGE AND REFUSE, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 10-2, DEFINITIONS; AND ADDING ARTICLE III, RECYCLING, SECTION 10-31, OPTIONAL RECYCLING COLLECTION SERVICE, FEES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 10, Garbage and Refuse, is hereby amended and reordained by amending Section 10-2, Definitions; and adding Article III, Recycling, Section 10-31, Optional recycling collection service, fees.

Chapter 10. Garbage and Refuse

Article I. In General

Sec. 10-2. Definitions.

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

Ashes. The residue resulting from the burning of wood, coal, coke or other combustible material.

County administrator. The county administrator of James City County.

Director. The director of general services of James City County.

Garbage. All animal and vegetable waste resulting from the handling, preparation, cooking or consumption of food.

Litter. All waste material, including, but not limited to, disposable packages or containers, but not including the wastes of the primary processes of mining, logging, sawmilling, farming or manufacturing.

Manager. The county administrator or his designee.

Recycling collection service area. The residential parcels within the county designated by the director for optional curbside recycling collection service.

Refuse. All solid waste products having the character of solids rather than liquids and which are composed wholly or partially of materials such as garbage, trash, litter, residues from cleanup of spills or contamination or other discarded materials.

Refuse remover. Any person, firm or corporation or any agent or employee thereof engaged in removing and transporting refuse for compensation from two or more residential, commercial or industrial establishments, or any combination thereof, in the county.

Refuse vehicle. Any truck or trailer used for transporting refuse from the premises from which it is collected to the point of refuse disposal.

Residential recyclable material. Certain glass, plastic, metal, paper products, and other materials authorized by the director to be placed in an authorized recycling container which have been generated by occupants of a residential dwelling unit, specifically excluding hazardous waste.

Article III. Recycling

Sec. 10-31. Optional recycling collection service, fees.

- a) The county may offer an optional curbside recycling collection service to residential properties located within the recycling collection service area.
- b) Residents who subscribe to the optional curbside recycling collection service shall use an authorized container approved by the director and shall pay a user fee.
- c) The optional curbside recycling collection service shall provide for the collection of residential recyclable material according to a schedule approved by the director.
- d) Residential recyclable material that is inaccessible to collection vehicles or located outside of an authorized container shall not be collected.
- e) Material that does not meet the definition of residential recyclable material shall not be collected.
- f) The user fee for curbside recycling collection service shall be no more than seven dollars (\$7.00) per container per month.
- g) The county may offer a discounted user fee to property owners' associations.
- h) The director may terminate curbside recycling collection service to any dwelling upon failure of its owner(s) or occupant(s) to comply with the provisions of this Article.

State Law reference - Code of Va., § 15.2-928.

CurbsdRecycServ-ord-final

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Tori Haynes, Planner

SUBJECT: C-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD

ATTACHMENTS:

	Description	Type
☐	Staff Report	Staff Report
☐	Attachment 1. Resolution finding the proposal consistent with the criteria established by Section 15.2-4313 of the Code of Virginia	Resolution
☐	Attachment 2. Resolution finding the proposal not consistent with the criteria established by Section 15.2-4313 of the Code of Virginia	Resolution
☐	Attachment 3. Location Map	Backup Material
☐	Attachment 4. Adopted Carter's Grove AFD Ordinance	Backup Material
☐	Attachment 5. HRSD Report dated December 12, 2018	Backup Material
☐	Attachment 6. Supplemental HRSD Report dated January 15, 2019	Backup Material
☐	Attachment 7. Letter from representatives of Carter's Grove Associates, LLC dated January 10, 2019	Backup Material
☐	Attachment 8. Request to DCR from representatives of Carter's Grove Associates, LLC dated January 10, 2019	Backup Material
☐	Attachment 9. Unapproved Minutes of the January 24, 2019 AFD Advisory Committee Meeting	Backup Material
☐	Attachment 10. Unapproved Minutes of the February 6, 2019 Planning Commission Meeting	Backup Material
☐	Attachment 11. State Code § 15.2-4313	Backup Material
☐	Attachment 12. Letter from DCR dated January 17, 2019	Backup Material
☐	Attachment 13. Letter from National Trust for Historic Preservation dated February 6, 2019	Backup Material

- ▣ Attachment 14. Letter from HRSD, dated March 6, 2019 Backup Material
- ▣ Attachment 15. Letter from Representatives of Carter's Grove Associates, LLC, dated March 8, 2019 Backup Material
- ▣ Attachment 16. Letter from Carter's Grove Associates, LLC, received March 11, 2019 Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/22/2019 - 4:21 PM
Development Management	Holt, Paul	Approved	3/22/2019 - 4:21 PM
Publication Management	Burcham, Nan	Approved	3/22/2019 - 4:25 PM
Legal Review	Kinsman, Adam	Approved	3/22/2019 - 4:33 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2019 - 1:34 PM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 1:52 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 1:59 PM

CONCEPTUAL PLAN-18-0123. HRSD Treatment Plant Expansion within Carter’s Grove AFD

Staff Report for the April 9, 2019, Board of Supervisors Meeting

SUMMARY FACTS

Applicant: Mr. Ted Henifin, Hampton Roads Sanitation District (HRSD)

Land Owner: Carter’s Grove Associates, LLC

Location: 250 Ron Springs Drive

Tax Map/Parcel No.: 5820100002

Parcel Acreage: ± 76.10 acres

Agricultural & Forestal District (AFD): Carter’s Grove

Zoning: R-2, General Residential

Comprehensive Plan: Federal, state, and county land

Primary Service Area: Inside

Staff Contact: Tori Haynes, Planner

PUBLIC MEETINGS

AFD Advisory Committee: January 24, 2019, 4:00 p.m.

Planning Commission: February 6, 2019, 6:00 p.m.

Board of Supervisors: March 12, 2019, 5:00 p.m.
(deferred by applicant)
April 9, 2019, 5:00 p.m.

SUMMARY STAFF RECOMMENDATION

Staff recommends that the Board of Supervisors find the proposal necessary to provide service to the public in the most economical and

practical manner and that it will not have an unreasonably adverse effect upon state or local policy.

AFD ADVISORY COMMITTEE RECOMMENDATION

At its January 24, 2019 meeting, the AFD Advisory Committee voted 5-1-1 to recommend that the proposal is not necessary to provide service to the public in the most economic and practical manner and that it would have an unreasonably adverse effect upon state or local policy.

PLANNING COMMISSION RECOMMENDATION

At its February 6, 2019 meeting, the Planning Commission voted 5-2 to recommend that the proposal is necessary to provide service to the public in the most economic and practical manner and that it would not have an unreasonably adverse effect upon state or local policy.

PROPOSED CHANGES MADE SINCE THE PLANNING COMMISSION MEETING

The applicant has reduced the request from ± 76 acres to ± 53 acres.

PROJECT DESCRIPTION

The HRSD has stated it requires additional land adjacent to its Williamsburg Treatment Plant (WTP), located at 300 Ron Springs Drive, to add advanced treatment facilities to support alternative disposal of wastewater. Specifically, adding advanced water treatment and aquifer recharge facilities will allow HRSD to divert over 90% of the treated wastewater that is currently being discharged from the WTP into the James River to a beneficial reuse as a sustainable groundwater supply. This work has been proposed in response to a federal enforcement action taken by the United States Environmental Protection Agency (US EPA) and the Department of Justice (DOJ) against HRSD.

CONCEPTUAL PLAN-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD

Staff Report for the April 9, 2019, Board of Supervisors Meeting

HRSD has stated there is insufficient property at 300 Ron Springs Drive for the construction of such facilities. In accordance with State Code § 25.1-106 and § 15.2-4313, HRSD has stated its intent to acquire ± 53 acres of Parcel No. 5820100002 by condemnation for public utility purposes. This parcel is currently within the AFD.

While HRSD is pursuing ownership of ± 53 acres, it has stated that it is not HRSD's intention to develop or remove all acreage from the Carter's Grove AFD. It is anticipated that approximately seven acres within the AFD will ultimately need to be cleared to support the new facilities. The undeveloped portions of the property will continue to serve as a buffer between the WTP and adjacent properties.

HRSD plans to minimize the impact to the District by designing and locating facilities in as compact a footprint as possible and utilizing tree surveys to preserve the most valuable specimens. The undisturbed portion of the parcel will be preserved and protected in accordance with the requirements of the AFD. HRSD has stated it is willing to dedicate a permanent conservation easement over the undeveloped portion of the parcel.

PARCEL AND DISTRICT HISTORY

- The site of the current HRSD WTP, 300 Ron Springs Drive, was acquired by HRSD from the Colonial Williamsburg Foundation prior to the creation of the Carter's Grove AFD. The parcel created at that time was carved out of 250 Ron Springs Drive, which wholly surrounds the HRSD property. 300 Ron Springs Drive is not part of the AFD.
- The Carter's Grove AFD was created in 2002 for a term of four years and originally consisted of three parcels totaling ± 320 acres.
- In 2006, the District was renewed for a four-year term. At this time, a 2.26-acre portion was withdrawn.

- The District was renewed for four-year terms in 2010 and 2014 with no additions or withdrawals.
- In 2015, a 1.56-acre parcel owned by Colonial Williamsburg Foundation was withdrawn.
- In 2018, the District was renewed for a four-year term with no additions or withdrawals.

DISTRICT DESCRIPTION

Carter's Grove AFD consists of ± 316 acres which were originally part of historic Carter's Grove Plantation. The District is mostly wooded with wetlands located near the river. The mansion and areas immediately surrounding it, including the gardens and entrance road, are not included in the AFD.

ANALYSIS AND REASON FOR THE BOARD OF SUPERVISORS REVIEW

The applicant is not requesting a withdrawal of the property at this time. Rather, per State Code, utilities may acquire interests in properties within an AFD provided the local governing body, in consultation with the AFD Advisory Committee and Planning Commission, reviews the proposal and specifically examines the following criteria found in § 15.2-4313 (staff comments in *italics*):

- (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and the policy of this chapter;

The applicant has stated it will reduce clearing impacts to approximately seven acres. Acquisition of the entire parcel will allow flexible siting of the new facilities to mitigate impacts to the forestal resources. Undeveloped portions of the parcel and the

CONCEPTUAL PLAN-18-0123. HRSD Treatment Plant Expansion within Carter’s Grove AFD

Staff Report for the April 9, 2019, Board of Supervisors Meeting

resources therein would be preserved in the AFD and would be subject to AFD regulations.

Currently, there are no active agricultural or forestal activities occurring on the subject parcel, and it is not receiving land use tax exemptions. The Carter’s Grove AFD would be able to maintain the minimum required acreage for a district should some or all of the 76-acre parcel be withdrawn. No changes to the current AFD Ordinances or policies would result from this action.

- (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner;

Per the applicant, the proposed action is in response to a federal enforcement action taken by the US EPA and the DOJ and will provide necessary service to the public by alleviating groundwater shortages in the Hampton Roads region. The proposed acquisition will allow the project to be completed in the most economical and practical manner possible, as the new facilities can be constructed on property directly adjacent to the existing facilities and HRSD will be able to control the perimeter buffer and maintain the existing slopes and shorelines from erosion.

- (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

An alternative 24-acre parcel adjacent to the Carter’s Grove AFD, located at 200 Ron Springs Drive, was evaluated as a potential site. Per the applicant, use of this site would increase capital costs by over \$1,000,000, not including land acquisition costs. There would also be increased operation and maintenance costs due to the separation between the existing facilities and the 24-acre site.

This alternative site would not eliminate impacts to the AFD, as HRSD would need to construct an access and utility corridor through the Carter’s Grove AFD to reach the non-contiguous

parcel. Given the landlocked nature of the HRSD parcel, staff finds there is no practical way to avoid action within this District if the project is to be completed in the most economical and practical manner possible.

The evaluation and analysis of the proposal against these three criteria are a State Code mandated process that is required when acquisition of a parcel by a political subdivision of the state is proposed. Once this step is concluded, HRSD will continue with its acquisition efforts.

At a future point in time, and prior to constructing any of the referenced improvements, HRSD must return to the County to apply to withdraw the property from the AFD and for any legislative approvals required for the plant expansion. Accordingly, the Board of Supervisors will consider those items at that time. The requested action today should be a determination as to whether the proposed action is necessary to provide service to the public in the most economical and practical manner, and whether it will have an unreasonably adverse effect upon state or local policy, based on the three criteria above.

COMPREHENSIVE PLAN

The Comprehensive Plan designates this parcel as federal, state, and County land. Public Facilities Action PF 3.7 states the County shall “support alternative water supply and conservation projects, such as collection and use of stormwater, reuse of gray water and reclamation of wastewater, where practical and financially feasible.” Further, PF 3.8 states the County shall “explore opportunities to develop regional reclamation and reuse technologies and infrastructure in conjunction with neighboring jurisdictions and Hampton Roads Sanitation District.”

CONCEPTUAL PLAN-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD

Staff Report for the April 9, 2019, Board of Supervisors Meeting

STAFF RECOMMENDATION

In consideration of the criteria discussed above, staff recommends that the Board of Supervisors adopt the written findings of this staff report and find the proposal necessary to provide service to the public in the most economical and practical manner and that it will not have an unreasonably adverse effect upon state or local policy.

TH/nb
CP18-0123HRSDCGrove

Attachments:

1. Resolution finding the proposal consistent with the criteria established by Section 15.2-4313 of the Code of Virginia
2. Resolution finding the proposal not consistent with the criteria established by Section 15.2-4313 of the Code of Virginia
3. Location Map
4. Adopted Carter's Grove AFD Ordinance
5. HRSD Report dated December 12, 2018
6. Supplemental HRSD Report dated January 15, 2019
7. Letter from Representatives of Carter's Grove Associates, LLC dated January 10, 2019
8. Request to Virginia Department of Conservation and Recreation (DCR) from Representatives of Carter's Grove Associates, LLC dated January 10, 2019
9. Unapproved Minutes of the January 24, 2019 AFD Advisory Committee meeting
10. Unapproved Minutes of the February 6, 2019 Planning Commission meeting
11. State Code § 15.2-4313
12. Letter from DCR dated January 17, 2019
13. Letter from National Trust for Historic Preservation dated February 6, 2019

14. Letter from HRSD, dated March 6, 2019
15. Letter from Representatives of Carter's Grove Associates, LLC, dated March 8, 2019
16. Letter from Carter's Grove Associates, LLC, Undated, Received March 11, 2019

RESOLUTION

CASE NO. C-18-0123, HAMPTON ROADS SANITATION DISTRICT TREATMENT PLANT

EXPANSION WITHIN CARTER'S GROVE AGRICULTURAL AND FORESTAL DISTRICT

- WHEREAS, Hampton Roads Sanitation District ("HRSD") owns property located at 300 Ron Springs Drive, further identified as James City County Real Estate Tax Map Parcel No. 5820100003, on which it operates the Williamsburg Treatment Plant; and
- WHEREAS, Carter's Grove Associates, LLC owns property located at 250 Ron Springs Drive, further identified as James City County Real Estate Tax Map Parcel No. 5820100002 (the "Parcel"), which is located within the Carter's Grove Agricultural and Forestal District (the "Carter's Grove AFD"); and
- WHEREAS, HRSD has entered into a Consent Decree with the United States of America for the purpose of fulfilling the objectives of the Clean Water Act; and
- WHEREAS, HRSD has stated it requires land adjacent to its Williamsburg Treatment Plant to add advanced water treatment facilities to support alternative disposal of wastewater; and
- WHEREAS, HRSD has stated there is insufficient property at 300 Ron Springs Drive to accommodate the construction of such facilities; and
- WHEREAS, in accordance with Sections 25.1-106 and 15.2-4313 of the Code of Virginia, 1950, as amended (the "Virginia Code"), HRSD has filed notice of its intent to acquire ±53 acres of the Parcel by condemnation for public utility purposes; and
- WHEREAS, the Board of Supervisors, in consultation with the Planning Commission and Agricultural and Forestal District Advisory Committee, finds that the proposed action is consistent with the criteria established by Section 15.2-4313 of the Virginia Code as shown on Attachment No. 11 of the staff report.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby adopt the written findings presented in the staff report and affirmatively find that: i) the proposed action will not have an unreasonable effect upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the District and the policy of Chapter 43 of Title 15.2 of the Virginia Code; ii) the proposed action is necessary to provide service to the public in the most economical and practical manner; iii) there are no reasonable alternatives to the proposed action that are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district; and iv) the proposed action will not have an unreasonable adverse effect upon either state or local policy.

James O. Icenhour, Jr.
Chairman, Board of Supervisors

ATTEST:

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
HIPPLE	___	___	___
LARSON	___	___	___
SADLER	___	___	___
MCGLENNON	___	___	___
ICENHOUR	___	___	___

Teresa J. Fellows
Deputy Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April, 2019.

CP18-123HRSDApp-res

RESOLUTION

CASE NO. C-18-0123, HAMPTON ROADS SANITATION DISTRICT TREATMENT PLANT

EXPANSION WITHIN CARTER'S GROVE AGRICULTURAL AND FORESTAL DISTRICT

WHEREAS, Hampton Roads Sanitation District ("HRSD") owns property located at 300 Ron Springs Drive, further identified as James City County Real Estate Tax Map Parcel No. 5820100003, on which it operates the Williamsburg Treatment Plant; and

WHEREAS, Carter's Grove Associates, LLC owns property located at 250 Ron Springs Drive, further identified as James City County Real Estate Tax Map Parcel No. 5820100002 (the "Parcel"), which is located within the Carter's Grove Agricultural and Forestal District (the "Carter's Grove AFD"); and

WHEREAS, HRSD has entered into a Consent Decree with the United States of America for the purpose of fulfilling the objectives of the Clean Water Act; and

WHEREAS, HRSD has stated it requires land adjacent to the Williamsburg Treatment Plant to add advanced water treatment facilities to support alternative disposal of wastewater; and

WHEREAS, HRSD has stated there is insufficient property at 300 Ron Springs Drive to accommodate the construction of such facilities; and

WHEREAS, in accordance with Sections 25.1-106 and 15.2-4313 of the Code of Virginia, 1950, as amended (the "Virginia Code"), HRSD has filed notice of its intent to acquire ±53 acres of the Parcel by condemnation for public utility purposes; and

WHEREAS, the Board of Supervisors, in consultation with the Planning Commission and Agricultural and Forestal District Advisory Committee, finds that the proposed action is not consistent with the criteria established by Section 15.2-4313 of the Virginia Code as shown on Attachment No. 11 of the staff report.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby find that: i) the action would have an unreasonable effect upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the District and the policy of Chapter 43 of Title 15.2 of the Virginia Code; ii) the proposed action is not necessary to provide service to the public in the most economical and practical manner; iii) reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the District; and iv) the proposed action might have an unreasonably adverse effect upon either state or local policy.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia does hereby issue an ORDER that HRSD is not to take the proposed action for a period of 150 days from the date the notice was filed and does hereby direct staff to schedule and advertise a public hearing, as prescribed by law, concerning the proposed action.

James O. Icenhour, Jr.
Chairman, Board of Supervisors

ATTEST:

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
HIPPLE	_____	_____	_____
LARSON	_____	_____	_____
SADLER	_____	_____	_____
MCGLENNON	_____	_____	_____
ICENHOUR	_____	_____	_____

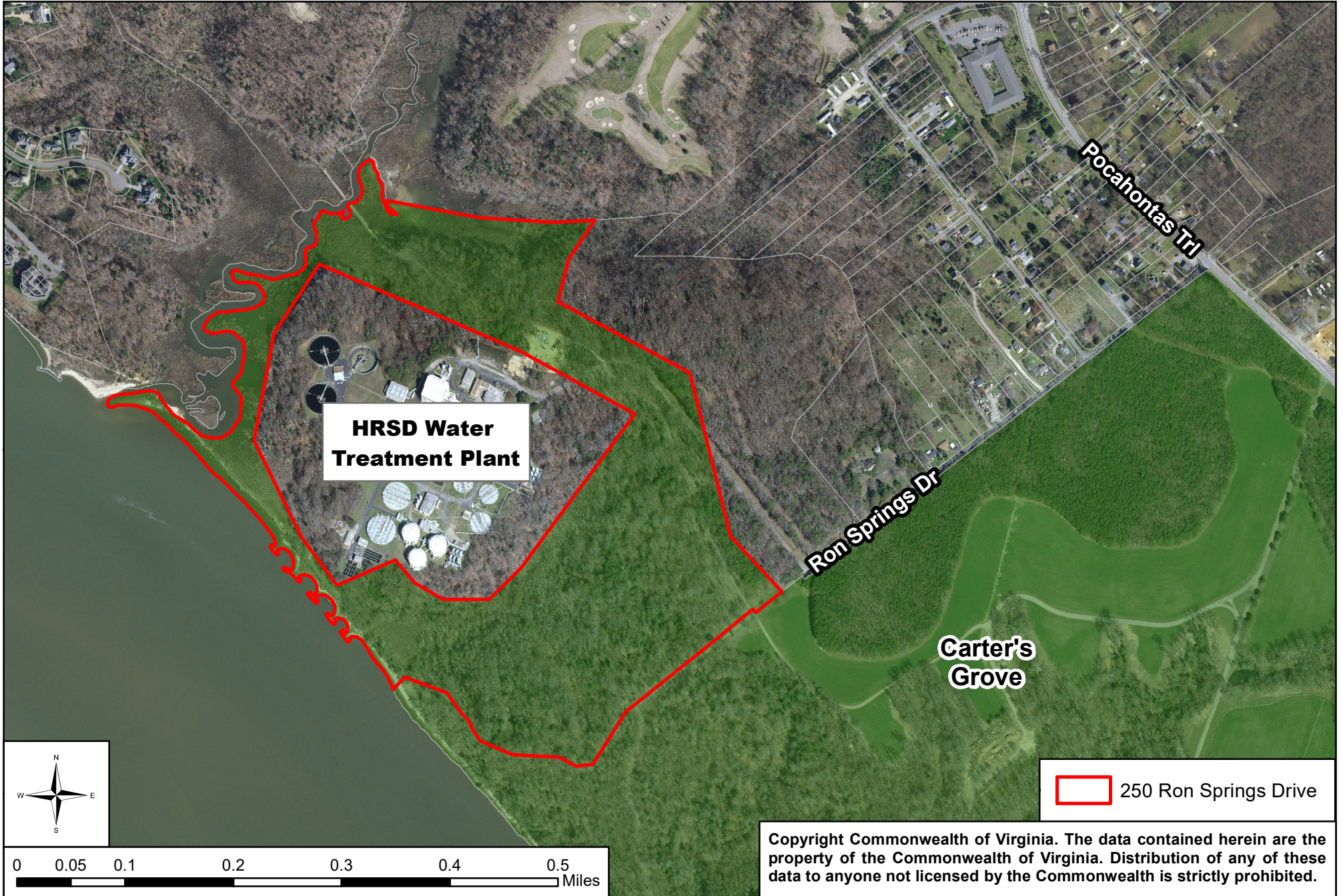
Teresa J. Fellows
Deputy Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April, 2019.

CP18-123HRSDDen-res

JCC C-18-0123

HRSD Treatment Plant Expansion Within Carter's Grove AFD



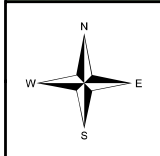
HRSD Water Treatment Plant

Pocahontas Trl

Ron Springs Dr

Carter's Grove

 250 Ron Springs Drive



Copyright Commonwealth of Virginia. The data contained herein are the property of the Commonwealth of Virginia. Distribution of any of these data to anyone not licensed by the Commonwealth is strictly prohibited.

CORRECTED

ADOPTED

SEP 11 2018

ORDINANCE NO. 197A-5

Board of Supervisors
James City County, VA

AGRICULTURAL AND FORESTAL DISTRICT-1-02-1-2018

CARTER'S GROVE 2018 RENEWAL

WHEREAS, James City County has completed a review of the Carter's Grove Agricultural and Forestal District (the "District"); and

WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, 1950, as amended (the "Virginia Code"), property owners have been notified, public notices have been filed, public hearings have been advertised, and public hearings have been held on the continuation of the District; and

WHEREAS, the Agricultural and Forestal District (AFD) Advisory Committee at its meeting on June 21, 2018, voted 9-0 to recommend renewal of the District; and

WHEREAS, the Planning Commission following its public hearing on August 1, 2018, concurred with the recommendation of staff and the AFD Advisory Committee and voted 5-0 to recommend renewal of the District with the conditions listed below.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of James City County, Virginia, that:

1. The Carter's Grove Agricultural and Forestal District (the "District") is hereby continued to October 31, 2022 in accordance with the provisions of the Virginia Agricultural and Forestal District Act, Virginia Code Section 15.2-4300 et. seq. (the "Act").
2. That the District shall include the following parcels, provided, however, that all land within 25 feet of road right-of-ways is excluded from the District:

<u>Owner</u>	<u>Parcel No.</u>	<u>Acres</u>
Carter's Grove Associates	5820100002	76.10
Carter's Grove Associates	5910100030	<u>240.04</u>
	Total:	<u>316.14</u>

3. That pursuant to Sections 15.2-4312 and 15.2-4313 of the Act, the Board of Supervisors requires that no parcel in the District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:
 - a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City

County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCFs), provided: a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.

- b. No land outside the Primary Service Area and within the District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.
- c. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for WCFs on properties in the District that are in accordance with the County's policies and Ordinances regulating such facilities.

Ruth M. Larson

Ruth M. Larson
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Teresa J. Fellows
Deputy Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ICENHOUR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SADLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HIPPLE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LARSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of September, 2018.

AFDCtrrsGrvRenw-res



PLANNING DIVISION

December 12, 2018

DEC 17 2018

Paul Holt, Director
Community Development/Planning
James City County
PO Box 8784
Williamsburg, VA 23185

RECEIVED

Subject: Notice of proposed acquisition of land within Agricultural and Forestal District (AFD) 1-02-1-2018 in James City County, Ordinance No, 197A-5, Parcel No. 5820100002

Dear Mr. Holt:

This letter report is provided in accordance with Virginia Code §25.1-106 and §15.2-4313 as notice of the intent of Hampton Roads Sanitation District (HRSD) to acquire real property by condemnation for public utility purposes located within the Agricultural and Forestal District 1-02-1-2018 (AFD). The following information is provided pursuant to the requirements of Code of Virginia:

1. HRSD requires additional land adjacent to its Williamsburg Treatment Plant in James City County to add advanced treatment facilities to support alternative disposal of treated wastewater. The HRSD Williamsburg Treatment Plant (WTP) was constructed on property acquired from the Colonial Williamsburg Foundation in James City County. The parcel created at that time was carved out of a larger parcel that completely surrounds the HRSD property. There is insufficient property on the current parcel to support HRSD requirements for construction of advanced treatment facilities and the associated aquifer recharge wells that will minimize surface water discharge. This work has been proposed by HRSD in response to a federal enforcement action taken by the United States Environmental Protection Agency and the Department of Justice against HRSD. The proposed schedule requires construction of these facilities to be complete by 2023. To meet that completion schedule, site investigation and surveying must begin no later than April 1, 2019.
2. HRSD is a political subdivision of the Commonwealth of Virginia created in 1940 to protect the waters of Hampton Roads from pollution, "in all respects for the benefits of the inhabitants of the Commonwealth and for the promotion of their safety, health, welfare, convenience and prosperity." (Acts of the Assembly 1960, c. 66). Adding advanced water treatment facilities and recharge wells will allow HRSD to divert over 90 percent of the treated wastewater that is currently discharged to the James River and ultimately the Chesapeake Bay from the Williamsburg Treatment Plant to a beneficial reuse as a sustainable groundwater supply. The demand for groundwater to support Virginians in Eastern Virginia is outpacing the natural recharge rate and this beneficial

PO Box 5911, Virginia Beach, VA 23471-0911 • 757.460.7003

Commissioners: Frederick N. Elofson, CPA, Chair • Maurice P. Lynch, PhD, Vice-Chair • Vishnu K. Lakdawala, PhD
Michael E. Glenn • Stephen C. Rodriguez • Willie Levenston, Jr. • Ann W. Templeman • Elizabeth A. Taraski, PhD
www.hrzd.com

reuse will ensure adequate supply for future generations. The diversion from the surface water discharge will improve the health of the James River and help Virginia meet its federally mandated nutrient reductions more cost effectively and faster than otherwise possible.

3. HRSD intends to take by condemnation the entire parcel 5820100002 shown on the attached map. In June 2017 HRSD conducted a public hearing concerning its need to acquire this parcel. As part of that process, HRSD provided notice to Carter's Grove Associates, LLC, the landowner of record, and a representative of Carter's Grove appeared and spoke at the public hearing. In July 2017, the HRSD Commission formally adopted a resolution approving the acquisition of the property through condemnation or other means. Since that time, HRSD has been in negotiations with the owner to reach an agreement to purchase parcel 5820100002 but negotiations have stalled. Given the current stalled status of negotiations after more than a year of effort, the pressing schedule to begin on-site survey, soil borings and related investigations, and the authorization by the HRSD Commission to acquire parcel 5820100002 by condemnation, HRSD intends to proceed with condemnation upon receiving the required AFD impact approvals from James City County.
4. It is possible that HRSD could avoid impact to the 6.10 acres within parcel 5820100002 that are listed in the ordinance as being within the AFD but that cannot be determined without a detailed survey showing the specific limits of the AFD within parcel 5820100002. Assuming HRSD cannot avoid impacting the acreage within the AFD, the short term impacts include clearing and land disturbing activities associated with construction of the new HRSD facilities. It is anticipated that approximately 7 acres will need to be cleared to support the new facilities. Clearing will be kept to the absolute minimum. No impact to agricultural operations is anticipated as there are none immediately adjacent to the existing HRSD facilities. Long term impacts will be the loss of approximately 7 acres of forestal land. Impact will be minimized through designing and locating facilities in as compact a footprint as possible and utilizing detailed tree surveys to avoid impact and preserve the most valuable specimens. The undisturbed portion of parcel 5820100002 will be preserved and protected in accordance with the requirements of the AFD. HRSD would be willing to discuss the establishment of a permanent conservation easement over the remaining portion of parcel 5820100002 once the specific limits of our required impact has been identified.
5. Due to the location of the current WTP facility, totally surrounded by parcel 5820100002 some or all of which is located in the AFD, there are no feasible alternatives that will not require action within this AFD. The current plant cannot be relocated and the proposed new facilities must be immediately adjacent to the existing facility to be viable.
6. The proposed facilities have the potential to resolve groundwater shortages for the residents of Eastern Virginia, including the residents of James City County.

Mr. Paul Holt
Page 3
December 12, 2018

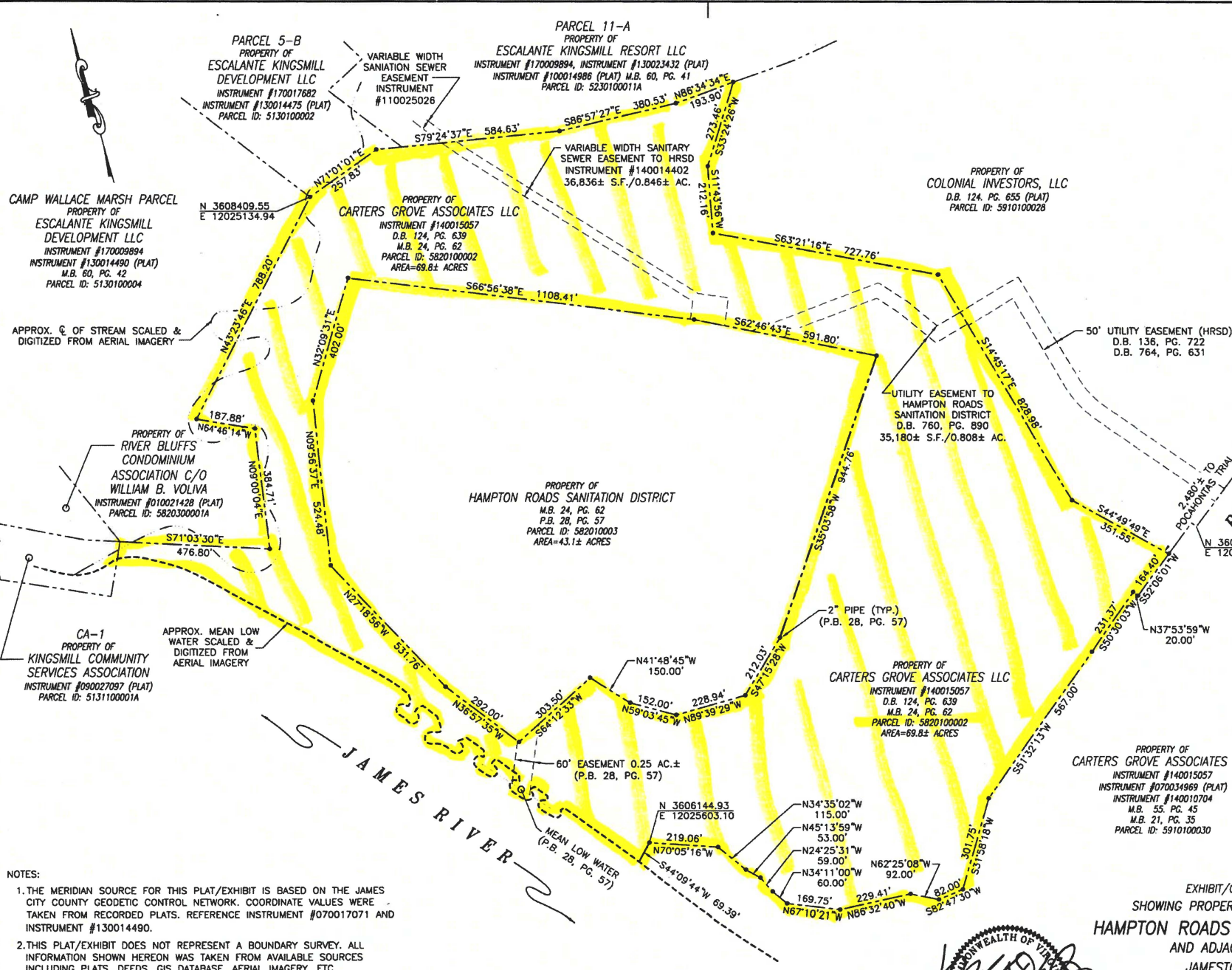
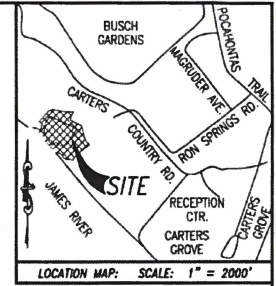
Time is of the essence and we would appreciate action by the County as quickly as possible within the requirements of the Code of Virginia and local ordinance. We are providing notice to Carter's Grove Associates, LLC, the landowner of our filing of this proposed action with your office as required by §15.2-4313. Please let me know if you need additional information.

Sincerely

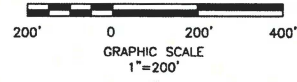
A handwritten signature in black ink, appearing to read "Ted Henifin". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Ted Henifin, P.E.
General Manager

c. Doug Powell, General Manager JCSA



- NOTES:
1. THE MERIDIAN SOURCE FOR THIS PLAT/EXHIBIT IS BASED ON THE JAMES CITY COUNTY GEODETIC CONTROL NETWORK. COORDINATE VALUES WERE TAKEN FROM RECORDED PLATS. REFERENCE INSTRUMENT #070017071 AND INSTRUMENT #130014490.
 2. THIS PLAT/EXHIBIT DOES NOT REPRESENT A BOUNDARY SURVEY. ALL INFORMATION SHOWN HEREON WAS TAKEN FROM AVAILABLE SOURCES INCLUDING PLATS, DEEDS, GIS DATABASE, AERIAL IMAGERY, ETC.
 3. THIS PLAT/EXHIBIT WAS PREPARED WITHOUT FIELD LOCATION OF SURVEY MONUMENTS OR PROPERTY CORNERS.
 4. THE PLAT/EXHIBIT WAS PREPARED WITHOUT THE USE OF A CURRENT TITLE REPORT AND MAY NOT SHOW ALL MATTERS AFFECTING THE PROPERTY.
 5. AREAS SHOWN HEREON ARE APPROXIMATE AND ARE BASED ON AVAILABLE RECORDED INFORMATION. SEE NOTE 2.



PROPERTY OF
CARTERS GROVE ASSOCIATES LLC
 INSTRUMENT #140015057
 INSTRUMENT #070034969 (PLAT)
 INSTRUMENT #140010704
 M.B. 55, PG. 45
 M.B. 21, PG. 35
 PARCEL ID: 5910100030

EXHIBIT/COMPOSITE PLAT
 SHOWING PROPERTY AND EASEMENTS OF
HAMPTON ROADS SANITATION DISTRICT
 AND ADJACENT PROPERTIES
 JAMESTOWN DISTRICT
 JAMES CITY COUNTY, VIRGINIA
 SCALE: 1" = 200' - NOVEMBER 3, 2017
 SHEET 1 OF 1





January 15, 2019

Paul Holt, Director
Community Development/Planning
James City County
PO Box 8784
Williamsburg, VA 23185

Subject: Notice of proposed acquisition of land within Agricultural and Forestal District (AFD) 1-02-1-2018 in James City County, Ordinance No, 197A-5, Parcel No. 5820100002

Dear Mr. Holt:

This letter provides additional information requested as a result of the meeting with HRSD staff on Friday, January 11, 2019. We appreciate the opportunity to discuss this proposed action with you and your staff and remain available to address other questions or provide additional information as needed. We also appreciate the clarification and correction of the scrivener's error in the ordinance and understand the entire parcel is within the AFD, not just the 6.1 acres referred to in the printed ordinance and referenced in our original notification. The references to the 6.1 acres have been struck through in our original notification language.

This additional information is focused on this specific notification and the statutory elements to be addressed with our notification to assist James City County in making a determination as to whether this proposed action is necessary to provide service to the public in the most economic and practical manner and will not have an unreasonably adverse effect upon state or local policy.

Some context may be helpful before addressing your specific request. HRSD acquired the land for the Williamsburg Treatment Plant in 1971 to meet the wastewater treatment needs of a growing Williamsburg/James City County population and support the development of a brewery in James City County. HRSD provides a vital public service to the residents of James City County, treating their wastewater to exacting standards, protecting public health and the water quality of the James River and the Chesapeake Bay. The HRSD parcel has been in continuous use as a wastewater treatment plant for more than 40 years immediately adjacent (actually totally surrounded) to the AFD, which was established after HRSD began operations. There have been no concerns relayed to HRSD regarding our operations adjacent to the AFD.

During the meeting on Friday we agreed to provide additional information to supplement our responses related to minimizing impact and investigation of alternatives. I have appended the supplemental information to the language provided in the original notification (repeated herein (italicized) to provide the complete response in one document). Supplemental text is bolded for easier reference.

PO Box 5911, Virginia Beach, VA 23471-0911 • 757.460.7003

1. *HRSD requires additional land adjacent to its Williamsburg Treatment Plant in James City County to add advanced treatment facilities to support alternative disposal of treated wastewater. The HRSD Williamsburg Treatment Plant (WTP) was constructed on property acquired from the Colonial Williamsburg Foundation in James City County. The parcel created at that time was carved out of a larger parcel that completely surrounds the HRSD property. There is insufficient property on the current parcel to support HRSD requirements for construction of advanced treatment facilities and the associated aquifer recharge wells that will minimize surface water discharge. This work has been proposed by HRSD in response to a federal enforcement action taken by the United States Environmental Protection Agency and the Department of Justice against HRSD. The proposed schedule requires construction of these facilities to be complete by 2023. To meet that completion schedule, site investigation and surveying must begin no later than April 1, 2019.*

2. *HRSD is a political subdivision of the Commonwealth of Virginia created in 1940 to protect the waters of Hampton Roads from pollution, "in all respects for the benefits of the inhabitants of the Commonwealth and for the promotion of their safety, health, welfare, convenience and prosperity." (Acts of the Assembly 1960, c. 66). Adding advanced water treatment facilities and recharge wells will allow HRSD to divert over 90 percent of the treated wastewater that is currently discharged to the James River and ultimately the Chesapeake Bay from the Williamsburg Treatment Plant to a beneficial reuse as a sustainable groundwater supply. The demand for groundwater to support Virginians in Eastern Virginia is outpacing the natural recharge rate and this beneficial reuse will ensure adequate supply for future generations. The diversion from the surface water discharge will improve the health of the James River and help Virginia meet its federally mandated nutrient reductions more cost effectively and faster than otherwise possible.*

3. *HRSD intends to take by condemnation the entire parcel 5820100002 shown on the attached map. In June 2017 HRSD conducted a public hearing concerning its need to acquire this parcel. As part of that process, HRSD provided notice to Carter's Grove Associates, LLC, the landowner of record, and a representative of Carter's Grove appeared and spoke at the public hearing. In July 2017, the HRSD Commission formally adopted a resolution approving the acquisition of the property through condemnation or other means. Since that time, HRSD has been in negotiations with the owner to reach an agreement to purchase parcel 5820100002 but negotiations have stalled. Given the current stalled status of negotiations after more than a year of effort, the pressing schedule to begin on-site survey, soil borings and related investigations, and the authorization by the HRSD Commission to acquire parcel 5820100002 by condemnation, HRSD intends to proceed with condemnation upon receiving the required AFD impact approvals from James City County.*

- 4. It is possible that HRSD could avoid impact to the 6.10 acres within parcel 5820100002 that are listed in the ordinance as being within the AFD but that cannot be determined without a detailed survey showing the specific limits of the AFD within parcel 5820100002. Assuming HRSD cannot avoid impacting the acreage within the AFD, The short term impacts include clearing and land disturbing activities associated with construction of the new HRSD facilities. It is anticipated that approximately 7 acres will need to be cleared to support the new facilities. Clearing will be kept to the absolute minimum. No impact to agricultural operations is anticipated as there are none immediately adjacent to the existing HRSD facilities. Long term impacts will be the loss of approximately 7 acres of forestal land. Impact will be minimized through designing and locating facilities in as compact a footprint as possible and utilizing detailed tree surveys to avoid impact and preserve the most valuable specimens. The undisturbed portion of parcel 5820100002 will be preserved and protected in accordance with the requirements of the AFD. HRSD would be willing to discuss the establishment of a permanent conservation easement over the remaining portion of parcel 5820100002 once the specific limits of our required impact has been identified.*

HRSD has been unable to perform a detailed survey and analysis of the specific impacts as we have no right to access the privately owned parcel that surrounds our existing treatment facilities. Once we have full access to the parcel, our surveyors and engineers can develop a detailed plan that will clearly identify exact impacts on the parcel and the amount of land that would be available to be placed in a permanent conservation easement. Without the ability to perform the required detailed survey including subsurface exploration, HRSD cannot commit to a specific portion or acreage on the existing parcel and thus must acquire the entire parcel to provide the maximum flexibility to design and site facilities to minimize impact on rare species and other valuable natural resources. Acquisition of the entire parcel provides the most flexibility and the greatest ability to minimize impacts to the AFD.

A significant portion of the parcel is unsuited for plant expansion or any development due to steep slopes and the presence of wetlands, James River tributaries and the associated Resource Protection Area (RPA). When these areas are considered, the actual land available to support HRSD's needed new facilities is reduced to approximately 30 acres. The remaining acreage would provide buffer from the adjacent remaining AFD as well as buffer from the other adjacent uses. HRSD ownership of this perimeter ensures safe operation of the plant, protection of our investment of public funds by maintaining the slopes and shore lines, and providing full access to critical infrastructure in existing easements.

In summary, the proposed acquisition includes the entire parcel to allow flexible siting of new facilities to minimize impacts to the forestal resources; to allow HRSD to control and maintain buffer around the entire plant site; to avoid creation of residue that has no dedicated access and limited value; and to protect the investment of public funds by ensuring slopes and shorelines are adequately maintained in the future by HRSD.

It should be noted, this is not a request to remove parcel 582010002 from the AFD. This is only the notification of HRSD's intent to acquire this parcel by condemnation. A future request to remove a portion of parcel 582010002 will be made by HRSD once exact impacts can be determined. HRSD will work with James City County staff and the AFD Advisory Committee to ensure the request to remove a portion of parcel 582010002 meets the needs of the JCC AFD program.

- 5. Due to the location of the current WTP facility, totally surrounded by parcel 582010002 some or all of which is located in the AFD, there are no feasible alternatives that will not require action within this AFD. The current plant cannot be relocated and the proposed new facilities must be immediately adjacent to the existing facility to be viable.*

To maximize the benefits to the Chesapeake Bay (through reduction of discharged nutrients) the advanced water treatment facilities will be designed to treat the entire average daily flow from the existing facilities at the Williamsburg Treatment Plant. Preliminary analysis indicates this will be approximately 8 million gallons per day. Fully treated effluent from the existing treatment facilities will be piped to the advanced treatment process facilities where the water is treated to meet drinking water standards. Each process has some backwash system that must be piped back to the existing wastewater plant for treatment and discharge. Additionally there are critical control points throughout the advanced water treatment system that will divert water back to the wastewater plant if real-time monitoring shows it fails to meet specific parameters. Proximity to the existing plant is critical to controlling capital costs (pumps and piping required to move water back and forth from the existing treatment processes to the advanced treatment processes) and on-going operation and maintenance costs associated with moving more than 8 million gallons daily between two facilities separated by any distance. Staffing costs will also increase with separation of the advanced treatment facilities from the existing plant. Current financial forecasts are based on sharing operators and maintenance staff on the same plant site.

HRSD evaluated the potential use of a 24 acre site at 200 Ron Springs Road. Use of this site increased capital costs by over \$1,000,000 (not including land

acquisition costs) and would increase operation and maintenance costs due to the separation between the existing facilities and the 24 acre site. The parcel proposed to be acquired through condemnation (582010002) would still be impacted as a significant pipe/utility and access corridor would need to be constructed between the existing facilities and the 24 acre parcel. Thus, use of the 24 acre parcel would still require disturbing land within the AFD on parcel 582010002. Based on our unsuccessful negotiations with the owner of parcel 582010002, condemnation would likely still be required to obtain the pipe/utility and access corridor across parcel 582010002, so this notification and process would still be necessary. Additionally, condemnation of a non-contiguous parcel appears to be an over-reach of authority when the only reason would be to minimize impact in an AFD, especially considering the 24 acre parcel is nearly identical from both a current land use and from a flora and fauna perspective to the adjacent parcel within the AFD.

6. The proposed facilities have the potential to resolve groundwater shortages for the residents of Eastern Virginia, including the residents of James City County.

Thanks again for meeting to discuss this notification. Please let me know if you need additional information.

Sincerely

A handwritten signature in black ink, appearing to read "Ted Henifin", with a long horizontal flourish extending to the right.

Ted Henifin, P.E.
General Manager

KAUFMAN & CANOLES
attorneys at law

Kristan B. Burch
(757) 624.3343
kbburch@kaufcan.com

Kaufman & Canoles, P.C.
150 West Main Street
Suite 2100
Norfolk, VA 23510

Mailing Address
Post Office Box 3037
Norfolk, VA 23514

T (757) 624.3000
F (888) 360.9092

kaufCAN.com

January 10, 2019

HAND DELIVERY

Paul Holt, Director
Community Development/Planning
James City County
101 Mounts Bay Road
Building A
Williamsburg, VA 23185

Re: Landowner Response and Written Request for Department of Conservation and Recreation Involvement with HRSD's Notice of proposed acquisition of land within Agricultural and Forestal District (AFD) 1-02-1-2018 in James City County, Ordinance No, 197A-5 Parcel No. 5820100002

Dear Mr. Holt:

We serve as counsel for Carter's Grove Associates, LLC ("Carter's Grove" or "Landowner") regarding the above-referenced matter.

This letter responds to Hampton Roads Sanitation District's ("HRSD") letter to James City County ("County"), dated December 12, 2018 ("Letter Report"), requesting the County's approval to proceed with the condemnation of seventy-six (76) acres of property within an Agricultural and Forestal District owned by Carter's Grove at 250 Ron Springs Drive, Williamsburg, Virginia 23185, Tax Map ID No. 582-01-00-002 ("76 Acre Parcel").

In 2014, the Landowner purchased Carter's Grove plantation from Colonial Williamsburg and in doing so purchased a 400+ acre historic property on which the Carter's Grove Manor Home ("Manor Home") and other improvements, dependencies, and unique archaeological sites are situated along with the subject parcel consisting of 76.10 acres which is the subject of the Letter Report. The 76 Acre Parcel completely surrounds HRSD's existing Water Treatment Plant and provides an important and well planned physical buffer between the Treatment Plant and the remainder of Carter's Grove plantation. HRSD is seeking to acquire the 76 Acre Parcel to build a new SWIFT (Sustainable Water Initiative for Tomorrow) water treatment facility that will treat waste water and inject it into the Potomac Aquifer.

Deficiencies in the Letter Report

HRSD's Letter Report fails to comply with the requirements of Virginia Code § 15.2-4313 and gives the County no substantive information from which it can properly review the proposed condemnation action and make an informed decision.

Section 15.2-4313 requires that, "at least ninety days prior" to any condemnation action affecting property within an Agricultural and Forestal District ("AFD"), HRSD give "[n]otice to the local governing body . . . in the form of a report" which contains the following information:

1. A detailed description of the proposed action, including a proposed construction schedule;
2. All the reasons for the proposed action;
3. A map indicating the land proposed to be acquired or on which the proposed dwellings, commercial or industrial facilities, or water or sewer facilities to serve nonfarm structures are to be constructed;
4. An evaluation of anticipated short-term and long-term adverse impacts on agricultural and forestal operations within the district and how such impacts are proposed to be minimized;
5. An evaluation of alternatives which would not require action within the district; and
6. Any other relevant information required by the local governing body.

Va. Code Ann. § 15.2-4313(A).

The Letter Report submitted by HRSD is on its face deficient and fails to properly address the statutory factors listed above. Specifically, the Letter Report includes (a) little to no evaluation of the short-term and long-term adverse impacts on agricultural and forestal operations within the district and how such impacts are proposed to be minimized; and (b) no analysis of one of the most important factors – potential alternative sites that would not require action within an AFD.

After reviewing HRSD's Letter Report, the County, in consultation with the local planning commission and the advisory committee, is required by statute to make written findings as to the following:

- (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and the policy of this chapter;
- (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and
- (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Va. Code Ann. § 15.2-4313(B). Thus, it is essential for HRSD to provide substantive details and support for the conclusions made in the Letter Report to ensure that County has sufficient information to make the written findings detailed above in subsections (i), (ii) and (iii).

Therefore, the Landowner requests that the County require HRSD to resubmit a more detailed report that properly evaluates and provides substantive and detailed information on all six of the statutory factors described in § 15.2-4313(A).

Request for Advice from the Department of Conservation and Recreation

Pursuant to its statutory right, the Landowner hereby requests that the Director of the Department of Conservation and Recreation advise the County on this proposed action in accordance with § 15.2-4313(B). See Va. Code Ann. § 15.2-4313(B) ("If requested to do so by any owner of land that will be directly affected by the proposed action . . . the Director of the Department of Conservation and Recreation, or his designee, may advise the local governing body on the issues listed in clauses (i), (ii) and (iii) of this subsection").

The involvement of the Department of Conservation and Recreation is particularly important in this case as HRSD has provided (a) minimal to no information on the short-term and long-term adverse impacts on the agricultural and forestal operations and how such impacts are proposed to be minimized and (b) no information on "whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district." *Id.*

Carter's Grove is sending a separate formal request for involvement to the Department of Conservation and Recreation and the County.

HRSD's Rush to Condemn

Section 15.2-4313 contemplates that the locality thoroughly consider all proposals to acquire land in an AFD before issuing its approval, including the potential for a public hearing and the circulation of notice in a newspaper within the affected district. See Va. Code Ann. § 15.2-4313(C). Based on the history of communications to date and the brevity of the Letter Report, Carter's Grove is concerned that HRSD is attempting to inappropriately rush the approval process without engaging in a thorough consideration of the factors relevant to land acquisition in an AFD.

Although HRSD was statutorily required to obtain the County's approval *before* taking any condemnation action in connection with an AFD designated property, HRSD issued a condemnation notice to the Landowner on November 13, 2018 without first obtaining the County's approval. (See notice of condemnation letter attached hereto as Exhibit A). It was not until after Carter's Grove raised the review required by Section 15.2-4313 that HRSD indicated that it was going to follow the requirements of the statute.

After the Landowner contested the condemnation notice and brought Section 15.2-4313 to HRSD's attention, HRSD then failed to give notice to the Landowner that it had filed the Letter Report. Although such notice to the Landowner is statutorily required, and although HRSD's Letter Report to the County explicitly states that it provided notice to the Landowner, ***no such notice was ever provided to Carter's Grove***. See Va. Code Ann. § 15.2-4313(A) ("Notice to landowners shall be sent by first-class or registered mail and shall state that further information on the proposed action is on file with the local governing body."). The Landowner did not learn that HRSD had submitted the Letter Report almost a month ago, on December 12, 2018, until recent inquiry was made with the County regarding whether a letter report had been submitted by HRSD.

Originally, HRSD had no intentions of engaging in the review process required by Section 15.2-4313. Now that HRSD has realized it must submit its request to the County for review, Carter's Grove is concerned that HRSD is attempting to rush the required review process. Based upon the Letter Report, HRSD apparently has agreed to complete construction of the proposed facility by 2023 in order to resolve a federal enforcement action taken by the United States Environmental Protection Agency ("EPA") and the Department of Justice ("DOJ"). The fact that a federal enforcement action was brought against HRSD and that HRSD proposed a schedule requiring construction to be completed by 2023 does not affect the review which otherwise must be completed under Section 15.2-4313.

Substantive Response to the Letter Report

Carter's Grove reiterates its request that the County require HRSD to resubmit its Letter Report in order to provide the detail and analysis outlined above. For the issues already addressed in the Letter Report, the Landowner responds as follows:

1. HRSD does not require 76.10 acres to accomplish its public purpose of providing advanced treatment facilities to support alternative disposal of treated waste water. As pointed out in No. 4 of HRSD's Letter Report, it is anticipated that "approximately 7 acres will need to be cleared to support the new facilities". Taking the entire 76 Acre Parcel, which has served as a necessary part of the historic Carter's Grove plantation since Colonial Williamsburg acquired the property from Sealantic in the 1970s, such that HRSD can build a new Water Treatment Plant with a footprint of approximately 7 acres, is a wholly unnecessary taking of lands within the AFD. The 76 Acre Parcel should continue to provide potential outdoor and recreation value, should be conserved as a natural habitat of rare species of plant life, and serve as a continued buffer between the HRSD Treatment Plant and the Manor Home. HRSD's proposed acquisition will effectively eliminate the historic Country Road between the Manor Home and Grove Creek. This means Carter's Grove no longer will have a secondary access to its property to be used as an emergency access and access for large tractor trailers and farm equipment. Condemnation of the 76 Acre Parcel completely alters the current Landowner's use and enjoyment of Grove Creek and the beach along the James River (including one of the only flat portions of the James River beach).

Significantly, the AFD is populated with a coastal plain calcareous ravine forest as evidenced by the dominance of American beech (*Fagus grandifolia*), southern sugar maple (*Acer floridanum*), and calcareous soils weathered by Tertiary shell deposits which contain fossils. The coastal plain calcareous ravine forest contains several unusual plant species including, but not limited to, black cohosh (*Actaea racemosa*) and American bellflower (*Campanula americanum*). The forest contains stands of old growth trees, which can seldom be found elsewhere in Virginia, the only place in the world which harbors this natural community. There will be significant impact to the AFD and effectively to the Commonwealth of Virginia by the potential damage and loss of this rare flora.

2. While HRSD is a political subdivision of the Commonwealth of Virginia with some limited quick take condemnation powers, there is a substantial legal question as to whether it has the power to condemn the 76 Acre Parcel by a Certificate of Take based on its own Charter. See Hampton Roads Sanitation Dist. Comm'n, Va. Acts 1960, c. 66 as

amended, §11(b). Therefore, there are a number of legal issues associated with HRSD's proposed acquisition by condemnation.

3. As addressed in No. 1 above, HRSD seeks to condemn the entire 76 Acre Parcel. **All 76 acres fall within the AFD** – not just 6.10 acres as HRSD suggests.

HRSD seeks to take advantage of a clear scrivener's error in the ordinance addressing the 2018 AFD renewal which inadvertently transposes "76.10 acres" as "6.10 acres." The Landowner previously brought this error to HRSD's and the County's attention, and the County corrected such error. (See File Memo and Corrected Ordinance, attached hereto as Exhibit B.)

A copy of a drawing which shows the AFDs is attached as Exhibit C. Carter's Grove owns the property designated in green on Exhibit C which is located within an AFD.

4. HRSD has been in negotiations with the Landowner to reach an agreement on a limited purchase of property to expand the footprint of the existing Water Treatment Plant by approximately 7 acres, but negotiations have stalled with respect to the issue of just compensation.¹ Carter's Grove had suggested that to the extent an agreement on a limited acquisition could be reached (and efforts have been made between HRSD and engineers retained by Carter's Grove who are also specialists in SWIFT initiatives), there remains a question of just compensation under the Virginia Constitution.

According to representations made by HRSD in its Letter Report, HRSD is under a consent decree with the EPA and DOJ and has a proposed schedule to complete the new facility in 2023. However, given the gravity of the taking of the entire parcel, its potential disturbance of lands within the AFD, and its significant adverse impact to the Manor Home parcel - a national historic treasure that is subject to a complex historic conservation easement and that the Landowner is painstakingly restoring for future generations - the proposed acquisition by HRSD requires, at a minimum, a public hearing in order to fully explore the impacts within the AFD.² As noted above, concurrently with this written response, the Landowner also has written to the Director of the Department of Conservation and Recreation, as permitted under Virginia Code §15.2-4313, to request the Director's review, evaluation and assistance to prevent the permanent taking of the 76 Acre Parcel that should be conserved. Because the Commonwealth of Virginia itself, and not just the locality, is involved in this process HRSD's plea to the County for quick approval of its plan should not be accepted.

¹ Through counsel, Carter's Grove has been in contact with HRSD since the summer of 2017, when HRSD first expressed its intention to acquire this property, and has engaged with HRSD in significant discussions since that time through December 2018.

² In 2014, Carter's Grove purchased the Manor Home parcel and the 76 Acre Parcel with the intention of reestablishing agricultural operations. In addition to an extensive historic restoration of the Manor Home and the formal grounds, Carter's Grove has been reclaiming and fencing fields and pastures and is building a large farm complex to store hay, shelter livestock, and maintain the necessary farming equipment. Reestablishing agricultural operations is a multi-year undertaking, and Carter's Grove continues to take steps to accomplish this goal.

Instead, the proposed taking of Agricultural and Forestal lands for industrial use requires deliberate and thoughtful evaluation.

5. HRSD recites, that it can "avoid impact to the 6.10 acres" [*sic*]. As stated above, the actual parcel size is 76.10 acres per the corrected Ordinance. However, HRSD acknowledges that without a detailed survey showing the specific limits of the AFD within the parcel it cannot advise the County as to whether even a limited acquisition will not disturb the forests within the AFD.

HRSD should not have submitted a Letter Report in which it is unable to identify for the County the extent of the areas affected within the AFD. To simply take the 76 Acre Parcel and avoid its requirements under the statute to properly analyze, assess and report to the locality why it is taking the property *in toto*, does not comply with Section 15.2-4313.

HRSD has not provided the County with any information, attachments, exhibits or analysis of exactly what acreage within the AFD its expansion will impact. Further, while HRSD expects no short-term impact to agricultural operations, its long-term impacts will be more than 7 acres of forestal land.

HRSD also has failed to identify the impact from building injection wells on the 76 Acre Parcel. It takes approximately 1 acre to clear and build injection wells. HRSD has not explained to the County whether injection wells will be placed on the existing Water Treatment Plant or on the expanded footprint of 7 acres, or elsewhere in the AFD. Each injection well site will require a permanent site of at least one-half acre of land, resulting in further loss of forest within the AFD and potentially rare plant life as described above. The long-term impacts are far more than the approximate 7 acres of forestal land. The impact to existing trees and plants can be significant and certainly no analysis has been made by HRSD as to impact on those rare species, as HRSD admits it does not know the limits of the AFD within the 76 Acre Parcel.

HRSD is obligated under the statute to present the County with a true report. Its vague assertion that it is "willing to discuss" the establishment of a permanent conservation easement over the remaining unused portion is not in any way a defined plan.

6. The Landowner disagrees with HRSD's statement that "there are no feasible alternatives that will not require action within this AFD" as there are alternatives. For example, there is an approximately 24 acre parcel located at 200 Ron Springs Drive. Unlike the 76 Acre Parcel, the 24 acre parcel presents few environmental constraints for use by HRSD for its plant expansion.

Regulatory restrictions on the 76 Acre Parcel are primarily due to jurisdictional waters of the United States (wetlands) that border its western and northern boundaries. These resources are subject to a 100 foot RPA buffer in the County which leaves a much smaller percentage of developable land outside the RPA and situated above the 50 foot elevation in the 76 Acre Parcel.

The 24 acre parcel is not part of an AFD and therefore is not subject to the same land use change requirements as the 76 Acre Parcel. Again, it is important to consider that

there is old growth forest in the 76 Acre Parcel, which requires continued protection of this area under an AFD. As stated, the coastal plain calcareous ravine forest is itself a rare habitat type which is found only in several places in Virginia and contains several species which are uncommon for the area including but not limited to black cohosh and American bellflower.

In addition to its clear physical features and topographical advantages, the 24 acre parcel, provides significant and compelling advantages over the current proposed acquisition parcel owned by Carter's Grove, to include without limitation:

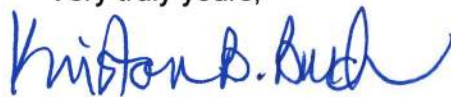
- i. Larger buildable footprint;
- ii. Flatter terrain and anticipated reduced earth moving costs;
- iii. More adjacent space for future expansion;
- iv. More space for construction staging;
- v. Convenient access adjacent to Log Cabin Beach Road;
- vi. Adequate area for the stormwater management features that will be required to account for increased impervious area;
- vii. Additional area for injection wells;
- viii. Potential lower land cost for HRSD;
- ix. Potential for lower construction cost for HRSD; and
- x. No overlap with resource protection areas and buffer zones.

Any concerns by HRSD as to security could be easily accommodated on the 24 acre parcel.

HRSD is incorrect when it states no alternatives exist. It appears that no analysis has been done by HRSD as to whether there are feasible alternatives that will not require action within this AFD.

For the reasons stated above, the Landowner requests that the County require HRSD to resubmit a more detailed report that properly evaluates and provides substantive and detailed information on all six of the statutory factors described in § 15.2-4313(A). In addition, the Landowner requests the involvement of the Department of Conservation and Recreation in the County's review of the Letter Report.

Very truly yours,



Kristan B. Burch

Paul Holt, Director
Community Development/Planning Director
January 10, 2019
Page 8

KBB:wr
Enclosures

cc (w/encls.): Scott Stevens, County Administrator (scott.stevens@jamescitycountyva.gov)
Adam Kinsman, County Attorney (adam.kinsman@jamescitycountyva.gov)
Jim Icenhour, Chair, Board of Supervisors (james.icenhour@jamescitycountyva.gov)
Brad Baskette, Assistant Director of Stewardship, Virginia Outdoors Foundation
(bbaskette@vofonline.org)
Robyn Hylton Hansen, Esq. (rhansen@jwbwk.com)

RAYMOND H. SUTTLE
RALPH M. GOLDSTEIN
JOHN T. TOMPKINS, III
CONWAY H. SHEILD, III
HERBERT V. KELLY, JR.
ALLEN C. TANNER, JR.
RICHARD B. DONALDSON, JR.
ROBYN HYLTON HANSEN
RAYMOND H. SUTTLE, JR.
MATTHEW D. MEADOWS
C. PATRICK TENCH

Jones, Blechman, Woltz & Kelly, P.C.
Attorneys and Counselors at Law

701 TOWN CENTER DRIVE, SUITE 800
POST OFFICE BOX 12888
NEWPORT NEWS, VIRGINIA 23612-2888
(757) 873-8000
FACSIMILE: (757) 873-8103

ALLAN D. JONES, 1875-1954
DANIEL SCHLOSSER, 1915-1977
F.O. BLECHMAN, 1905-1986
ARTHUR W. WOLTZ, 1905-1993
THOMAS N. DOWNING, 1919-2001
SVEIN J. LASSEN, 1947-2006
HERBERT V. KELLY, 1920-2007
B.M. MILLNER, 1929-2011

REBECCA L. SHWAYDER AMAN
JENNIFER L. MUSE
BLAIR M. MATHIAS

Direct Dial No. (757) 873-8125
E-Mail Address: mmeadows@jwbkw.com

November 13, 2018

**VIA CERTIFIED MAIL RETURN RECEIPT
REQUESTED
AND US MAIL FIRST CLASS**

Carter's Grove Associates, LLC
Attn: Samuel M. Menco
70 West Madison, Suite 4600
Chicago, IL 60602-4215

Dear Mr. Menco:

Re: 250 Ron Springs Drive, Williamsburg, Virginia 23185
Tax Map ID No. 582-01-00-002
Filing of Certificate of Take Pursuant to Va. Code § 25.1-300 et seq.

As you are aware, this firm represents the Hampton Roads Sanitation District ("HRSD"). Please accept this letter as notice pursuant to Virginia Code § 25.1-306 that HRSD will file a Certificate of Take within thirty (30) to forty-five (45) days in the James City County Circuit Court condemning the above referenced property owned by Carter's Grove Associates, LLC. If you have any questions or concerns, please feel to contact me.

Very truly yours,
JONES, BLECHMAN, WOTLZ & KELLY, P.C.

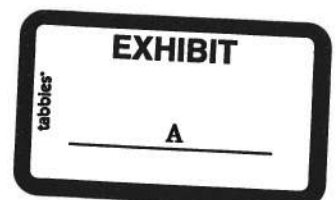
Matthew D. Meadows

MDM/jlm

cc: R. Barrow Blackwell, Esq. (via email rbblackwell@kaufcan.com)
Paul W. Gerhardt, Esq. (via email pwgerhardt@kaufcan.com)
Conway H. Sheild, III, Esq.
Edward G. Henifin, P.E., General Manager, HRSD (via email)
John Dano, Project Manager, HRSD (via email)

619393

Please visit our website at www.jwbkw.com





County Attorney's Office
101-D Mounts Bay Road
P. O. Box 8784
Williamsburg, VA 23187-8784
757-253-6612
jamescitycountyva.gov

FILE MEMORANDUM

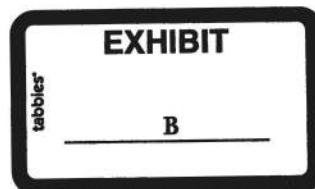
To: File
From: Adam Kinsman, County Attorney
Date: December 18, 2018
Re: Ordinance No. 197A-5

ISSUE:

It has come to my attention that Ordinance No. 197A-5 adopted by the Board of Supervisors on September 11, 2018 (the "Ordinance") contains an error in Ordinance section number two. This section indicates that the Carter's Grove Agricultural and Forestal District (the "AFD") includes two parcels: James City County Real Estate Tax Map Parcel No. 5820100002 ("Parcel No. 1") and James City County Real Estate Tax Map Parcel No. 5910100030 ("Parcel No. 2"). It appears that an error occurred when listing the total acreage of Parcel No. 1, which is listed as being 6.10 acres in size, rather than 76.10 acres.

FACTS:

1. The Staff Report to the Board of Supervisors dated September 11, 2018 (the "Report") states that the AFD was created in 2002 and originally consisted of three parcels totaling approximately 320 acres. In 2006, a 2.26-acre portion was withdrawn from the AFD. In 2015, a 1.56-acre parcel was withdrawn, leaving the AFD with two parcels totaling 316.14 acres.
2. The Report notes that there have been no withdrawals of land from the AFD since 2015.
3. The Report indicates that the entire 76.10-acre Parcel No. 1 was to be included in the AFD.
4. The AFD map presented to the Board of Supervisors on September 11, 2018 (the "Map") shows the entire 76.10-acre Parcel No. 1 as being included in the AFD.
5. The legal newspaper advertisement listed the AFD as including "approximately 316 acres of land."
6. Section number two in the Ordinance lists the total acreage of the AFD as 316.14.



ANALYSIS:

A scrivener's error is an error that tends to occur singularly and is one that is "demonstrably contradicted by all other documents." Westgate at Williamsburg Condo Ass'n, Inc. v. Philip Richardson Co., Inc., 270 Va. 566, 575 (2002). Every document associated with this AFD renewal, including the newspaper advertisement, the Report, the Map, and the total acreage listed in the Ordinance, indicates that the entire 76.10-acre Parcel No. 1 was to be included in the AFD, not just a 6.10-acre portion of it. There is no evidence showing an intent to remove 70 acres from the AFD and not one single reference to a total AFD size of 246.14 rather than the oft-repeated total of 316.14.

CONCLUSION:

It is my opinion that the 6.10-acre notation in the Ordinance constitutes a scrivener's error. A new page one stamped "CORRECTED" should be slip-sheeted and should indicate that Parcel No. 1 is 76.10 acres.

CORRECTED

ADOPTED

SEP 11 2018

ORDINANCE NO. 197A-5

Board of Supervisors
James City County, VA

AGRICULTURAL AND FORESTAL DISTRICT-1-02-1-2018

CARTER'S GROVE 2018 RENEWAL

WHEREAS, James City County has completed a review of the Carter's Grove Agricultural and Forestal District (the "District"); and

WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, 1950, as amended (the "Virginia Code"), property owners have been notified, public notices have been filed, public hearings have been advertised, and public hearings have been held on the continuation of the District; and

WHEREAS, the Agricultural and Forestal District (AFD) Advisory Committee at its meeting on June 21, 2018, voted 9-0 to recommend renewal of the District; and

WHEREAS, the Planning Commission following its public hearing on August 1, 2018, concurred with the recommendation of staff and the AFD Advisory Committee and voted 5-0 to recommend renewal of the District with the conditions listed below.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of James City County, Virginia, that:

1. The Carter's Grove Agricultural and Forestal District (the "District") is hereby continued to October 31, 2022 in accordance with the provisions of the Virginia Agricultural and Forestal District Act, Virginia Code Section 15.2-4300 et. seq. (the "Act").
2. That the District shall include the following parcels, provided, however, that all land within 25 feet of road right-of-ways is excluded from the District:

<u>Owner</u>	<u>Parcel No.</u>	<u>Acres</u>
Carter's Grove Associates	5820100002	76.10
Carter's Grove Associates	5910100030	<u>240.04</u>
	Total:	<u>316.14</u>

3. That pursuant to Sections 15.2-4312 and 15.2-4313 of the Act, the Board of Supervisors requires that no parcel in the District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:
 - a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City

County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCFs), provided: a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.

- b. No land outside the Primary Service Area and within the District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.
- c. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for WCFs on properties in the District that are in accordance with the County's policies and Ordinances regulating such facilities.

Ruth M. Larson

Ruth M. Larson
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Teresa J. Fellows
Deputy Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCLENNON	✓	—	—
ICENHOUR	✓	—	—
SADLER	✓	—	—
HIPPLE	✓	—	—
LARSON	✓	—	—

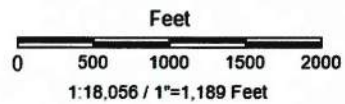
Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of September, 2018.

AFDCtrrsGrvRenw-res

James City County, Virginia

Legend

- Parcels
- Agricultural & Forestal Districts AFD**
- Armistead
- Barnes Swamp
- Carter's Grove
- Christenson's Corner
- Cranston's Pond
- Croaker
- Gordon Creek
- Gospel Spreading Church
- Hill Pleasant Farm
- Mill Creek
- Pates Neck
- Wrights Island
- Yarmouth Island



Title:

Date: 4/25/2018

DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be.

KAUFMAN & CANOLES
attorneys at law

Kaufman & Canoles, P.C.
150 West Main Street
Suite 2100
Norfolk, VA 23510

Mailing Address
Post Office Box 3037
Norfolk, VA 23514

T (757) 624.3000
F (888) 360.9092

kaufCAN.com

Kristan B. Burch
(757) 624.3343
kbburch@kaufcan.com

January 10, 2019

Via Email (paul.holt@jamescitycountyva.gov)

Paul Holt, Director
Community Development/Planning
James City County
P.O. Box 8784
Williamsburg, VA 23185

Via Federal Express and Email (clyde.cristman@dcr.virginia.gov)

Clyde Cristman, Director
Department of Conservation and Recreation
600 E. Main St., 24th Floor
Richmond, VA 23219

Via Federal Express and Email (tyler.meader@dcr.virginia.gov)

Tyler Meader, Locality Liaison
Department of Conservation and Recreation
Division of Natural Heritage
600 East Main Street; 24th Floor
Richmond, VA 23219

Re: Request Pursuant to Virginia Code § 15.2-4313

Dear Mr. Holt, Mr. Cristman, and Mr. Meader:

On December 12, 2018, Hampton Roads Sanitation District ("HRSD") submitted a report ("Report") to James City County pursuant to Virginia Code § 15.2-4313, as notice of its intent to acquire real property by condemnation for public utility purposes located within an Agricultural and Forestal District ("AFD"). Carter's Grove Associates, LLC owns the property at issue in the Report.

Enclosed is a copy of the Report by HRSD. Also enclosed is a copy of the letter in response to the Report which Carter's Grove Associates, LLC is sending to James City County today.

Virginia Code § 15.2-4313(B) states as follows:

B. Upon receipt of a notice filed pursuant to subsection A, the local governing body, in consultation with the local planning commission and the advisory committee, shall review the proposed action and make written findings as to (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and the policy of this chapter; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district. **If requested to do so by any owner of land that will be directly affected by the proposed action of the agency, corporation, or political subdivision, the Director of the Department of Conservation and Recreation, or his designee, may advise the local governing body on the issues listed in clauses (i), (ii) and (iii) of this subsection.**

(emphasis added).

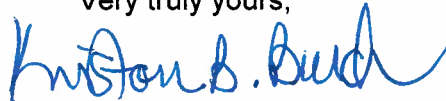
Through this letter, Carter's Grove Associates, LLC, as owner of the property at issue in the Report, requests that the Director of the Department of Conservation and Recreation or his designee ("DCR") advise James City County regarding the following issues listed in Section 15.2-4313(B):

- (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and the policy of this chapter;
- (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and
- (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Carter's Grove Associates, LLC assumes James City County will take all steps necessary with DCR, including completing any forms or making any payments required, in order for DCR to advise James City County on the issues outlined above.

To the extent that additional information is needed, please contact me as counsel for Carter's Grove Associates, LLC.

Very truly yours,



Kristan B. Burch

KBB:wr
Enclosures

Paul Holt, Director
Community Deveioption/Planning Director
January 10, 2019
Page 3

cc: Brad Baskette, Assistant Director of Stewardship, Virginia Outdoors Foundation (via email) (w/o encls.)
Robyn Hylton Hansen, Esq. (via email) (w/o encls.)

Unapproved Minutes of the January 24, 2019 AFD Advisory Committee Meeting
C-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD

Ms. Tori Haynes stated Hampton Roads Sanitation District currently operates the Williamsburg Treatment Plant located at 300 Ron Springs Drive. This is a landlocked parcel that is wholly surrounded by 250 Ron Springs Drive and the Carter's Grove AFD.

HRSD has stated that it requires a facility expansion adjacent to the Williamsburg Treatment Plant. This expansion is in response to federal enforcement action taken by the EPA and Dept. of Justice. HRSD has stated there is insufficient property on their current parcel to accommodate the facility expansion, and as such has stated its intent to acquire 250 Ron Springs Drive by condemnation for public utility purposes.

HRSD is not requesting a withdrawal of the property from the AFD at this time. Rather, per State Code, utilities may acquire interests in properties within an AFD provided that the Board of Supervisors, in consultation with the AFD Advisory Committee and Planning Commission, reviews the proposal and specifically examines the following criteria found in §15.2-4313: (i) the effect the action would have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district.

The evaluation and analysis of the proposal against these three criteria are a State-Code mandated process that is required when acquisition of a parcel by a political subdivision of the state is proposed.

Ultimately, the Board of Supervisors will consider the above criteria and make a determination as to whether the proposed action might have an unreasonably adverse effect upon state or local policy.

This review does not withdraw any portion of the parcel from the AFD or grant any sort of approval for the facility expansion itself. Should HRSD be successful in acquiring ownership of the subject parcel, they would then need to apply separately for those items, and accordingly, the AFD Advisory Committee would consider the withdrawal request at that time.

Staff recommends that each of the above criteria be discussed individually to make clear the findings of the Committee to the Planning Commission and Board of Supervisors.

In consideration of the criteria, staff ultimately found that the proposal was necessary to provide service in the most economical and practical manner, and that it will not have an unreasonably adverse effect upon state or local policy.

Mr. Taylor disclosed to the Committee and staff that he is affiliated with companies represented by Kaufman and Canoles law firm. However, he does not feel this will sway

his opinion or recommendations while serving on the Committee.

Mr. Taylor then asked staff to clarify whether the Committee would be voting to agree or disagree with the HRSD proposal.

Ms. Haynes stated the Committee would not be considering any AFD withdrawal at this time but needed to determine if the action of taking the parcel would have an adverse effect on State or local policy. She said this is an automatic review of three criteria triggered or prompted by the intent stated by HRSD to acquire the parcel by condemnation for public utility purposes. Their findings will then go to the Planning Commission and Board of Supervisors.

Ms. Haynes suggested discussion of the three criteria found in §15.2-4313 and stated that representatives of HRSD and Carter's Grove Associates, LLC are available to answer questions.

Ms. Haynes then shared staff's understanding of the proposal. HRSD is looking to expand beyond their current borders into the Carter's Grove AFD. They propose clearing approximately 7 acres, but a final site has not been located yet.

Mr. Wanner stated HRSD is under Federal mandate to make improvements to the facility.

Ms. Haynes confirmed there is a Federal action against HRSD, and existing lands cannot accommodate the necessary expansion. They require an additional seven acres.

Mr. Taylor stated HRSD is attempting to acquire 76 acres.

Ms. Haynes stated HRSD is pursuing ownership of the entire parcel but not necessarily withdrawal of all 76 acres from the AFD. She reiterated that this review is prompted by the intent to condemn lands within an AFD by a political subdivision.

Mr. Hitchens asked staff why HRSD would need to withdraw land from the AFD if they are a public entity.

Ms. Haynes answered that a Special Use Permit (SUP) is not allowed in an AFD unless it is related to farming practices. If HRSD takes ownership of the parcel, and a use is permitted with a SUP, they will need to withdraw that portion of land from the AFD.

Mr. Abbott asked the HRSD representative for an explanation of their plan.

Ted Henifin, General Manager at HRSD, addressed the Committee and began with a discussion on the impact of topography in the subject parcel. He explained the land has steep slopes, wetlands and Resource Protection Area and is largely undevelopable. He stated that of the 76 acres, maybe only 30 acres are buildable. He showed the Committee on a map the area of the parcel most likely suitable for their facility expansion and access points. Mr. Henifin stated there have been many discussions with the property owner

regarding alternatives to condemnation in the past year with no resolution. Regarding the consent order, Mr. Henifin stated the federal enforcement action is driving the timeline tied to the project.

Mr. Henifin explained HRSD requires the 76 acres because of the unusual, unique residual that would be created by the project and buildout. The mostly unbuildable, remaining land would serve as a buffer between the WTP and surrounding properties to protect the investment and property, in case slopes erode. He said they have an outfall through an easement on the beach and have already had to make improvements on the beach for erosion. Mr. Henifin said they would like to have control long-term and do not find much residual value in the remaining property beyond the buildable acres. He stated it would be difficult to assess the value of the residual property, and there is also potential for further expansion requirements in the future. He noted HRSD has stated it is willing to dedicate a permanent conservation easement over the remaining portion of the parcel. He said they do not know the exact project location until they can access the land and survey.

Mr. Abbott asked about the purpose of the project or facility improvements.

Mr. Henifin stated this will be the first of several projects whereby HRSD is adding advanced water treatment capability and drinking water standards to their current treatment plants. Of the 22 million gallons of wastewater treated per day, 8 million gallons will be treated in this manner and discharged into the Potomac aquifer instead of the James River.

Mr. Henifin stressed HRSD does not currently have room to expand within their current site as it is mostly built out. He stated the proposal will protect their ability to advance wastewater treatment in as compact a footprint and most economical way as possible. The water will need to move through several process and control points, so use of an alternative or nearby property would still impact the AFD with easement connections. From a cost perspective, Mr. Henifin said sharing a property and fence line allows for the sharing of other resources such as operators and security.

Mr. Taylor asked about the purpose of owning the residual property if it is largely unusable.

Mr. Henifin expressed the difficulty in defining both the acquisition of land required and also the value of the residual property. A one-time take would avoid these issues and allow for additional land use if needed in the future.

Mr. Tim Trant, attorney with Kaufman and Canoles, introduced his law partner also present at the meeting, Mr. Paul Gerhardt. Mr. Trant said they represent Mr. Sam Menco, owner of Carter's Grove Associates, LLC and the 76-acre parcel located at 250 Ron Springs Drive in the Carter's Grove AFD which surrounds the HRSD WTP. Mr. Menco also owns the adjacent 400-acre Carter's Grove parcel. Mr. Trant said Mr. Menco's intent when purchasing the property was to fulfil the County and community interest in restoration and preservation of the historic Carter's Grove property, and he has since invested heavily in the property.

Mr. Trant said they object to HRSD's request at this time, stating the HRSD intent to take 76 acres and develop a small portion of seven acres does not meet the statutory criteria. He said Mr. Mencoﬀ desires to keep the buffer, the take is larger than it needs to be, the proposal is not the most practical way to provide the service, and there are reasonable alternatives. Mr. Trant stated they request that the Committee defer action on this item until they can continue their conversation with HRSD, and they do not support any plan to take the entire property.

Mr. Trant said HRSD approached them last year about the need for some additional land and felt there was constructive dialogue. However, he said, HRSD required them to enter into a Nondisclosure Agreement in connection with those conversations so he cannot disclose any details. Mr. Trant said they would like those conversations to continue. Regarding the compulsory timeline for HRSD, Mr. Trant said they did not create this sense of urgency and noted HRSD has been under the consent decree since 2010 to implement the changes.

Mr. Wanner noted all of Hampton Roads is under the same consent.

Mr. Trant said the timeline is a proposal, and as a landowner invested in historic property, his client would like the opportunity for thoughtful dialogue to reach a reasonable resolution.

Mr. Hitchens asked Mr. Trant if a survey would be possible.

Mr. Trant referenced the Nondisclosure Agreement but stated there is a willingness to engage in reasonable conversation about what is needed. He said the threat of condemnation of 76 acres is an attempt to short-circuit the process as a negotiating tactic.

Mr. Wanner asked the staff how long it might be possible to defer.

Ms. Haynes stated that, on counsel from the County Attorney's Office, deferral is not an option because of the State code requirements. The March 12, 2019 Board of Supervisor's meeting is the ninety day deadline from the date the original report was filed. If the Board determines there is an unreasonably adverse effect upon state or local policy, they may then hold a public hearing within the next 60 days.

Ms. Haynes stated the Committee needs to determine if the action of taking the parcel would have an adverse effect on State or local policy then forward their finding to the Planning Commission for their February meeting before the Board of Supervisor's March meeting.

Mr. Trant said HRSD could also withdraw their request, continue the conversation with Mr. Mencoﬀ and return with a proposal that meets the criteria.

Ms. Sue Sadler asked Mr. Henifin about the status of the Sustainable Water Initiative for Tomorrow (SWIFT) project.

Mr. Henifin said the SWIFT research center is putting water in the ground, and the aquifer is 400-500 feet below the surface. He said the issue with surveying is having relative assurance against the potential waste of money surveying land not yet acquired. Mr. Henifin mentioned the challenges of negotiations and said the Nondisclosure Agreement was actually a requirement of Mr. Trant's client. He said condemnation includes compensation for the legal value of the land, and they are seeking a willing partner.

Mr. Trant noted one of the County's articulated benefits for landowners in joining an AFD is a layer of protection from condemnation. He said the County would offend that commitment by recommending or condoning the action by HRSD.

Mr. Wanner stated he believes the public good is served by condemnation of some amount of land in this situation.

Mr. Abbott said he believes a buffer should be maintained and owned by the original owner.

Mr. Trant asked for a recommendation of deferral until an agreement is made between HRSD and the landowner.

Ms. Sulouff and Ms. Haynes stated that as long as there is an application, the Board is required to make a determination within 90 days. If HRSD chooses not to withdraw, the process moves forward in accordance with State code. The Committee may tailor its recommendation to reflect the discussion.

Mr. Henifin said with HRSD surrounded by the AFD, it will be impacted but any withdrawal will be brought forward later and separately. He said the full 76-acre parcel is required to protect the facility, slopes and beachfront.

Mr. Trant said there is a mutual interest in protecting the property and facility, and there have been no problems addressing any issues on the property to date.

Ms. Haynes suggested addressing each of the three criteria being considered. Regarding criteria (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies, Ms. Haynes noted to the Committee there is some planned, intended agricultural activities but no formal activity, and they are not receiving land use valuation. Ms. Haynes did note that Carter's Grove Associates, LLC representatives did appeal to the Department of Conservation and Recreation (DCR) to advise the County on this proposed action. DCR was not able to provide a full report based on access and timeline, but there are some known natural resource heritage areas there.

Ms. Sulouff stated this Committee review and recommendation is significant as an extra board hearing and part of the extra protection provided to landowners in an AFD.

Ms. Haynes then read to the Committee criteria (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and criteria (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Taylor said the third criteria is most troubling when considering how much of the parcel is required by HRSD and the Committee's commitment to AFD landowners.

Mr. Henifin stated he has little confidence an agreement could be made, given the proposals already rejected by the landowner.

Mr. Trant said they are also frustrated and feel there have been reasonable counter-offers.

Mr. Wanner asked how soon HRSD could reapply, if they were to withdraw their application.

Ms. Haynes answered the 90-day clock would start again upon resubmittal.

Mr. Hitchens said the landowner has made a great investment in the County and feels uncomfortable with HRSD taking the entire parcel.

Mr. Abbott motioned, based on the Committee's consideration of the three criteria found in §15.2-4313, that the proposed action by HRSD to acquire 250 Ron Springs Drive, located in the Carter's Grove AFD, by condemnation for public utility purposes might have an unreasonably adverse effect upon state or local policy. The proposed action (i) would have an unreasonably adverse effect upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and associated policies; (ii) there is no necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) there could be reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Mr. Harcum seconded the motion.

On a voice vote of 5-1-1, the motion was approved.

Ms. Garrett, Mr. Hitchens, Mr. Harcum, Mr. Abbott, and Mr. Taylor voted yes, the proposed action might have an unreasonably adverse effect upon state or local policy. Mr. Wanner voted against the motion, and Ms. Sadler abstained from the vote.

**Unapproved Minutes of the February 6, 2019
Planning Commission Regular Meeting**

C-18-0123. HRSD Treatment Plant Expansion within Carter's Grove AFD

Ms. Tori Haynes, Planner, stated that the Hampton Roads Sanitation District (HRSD) currently operates the Williamsburg Treatment Plant located at 300 Ron Springs Drive. Ms. Haynes stated that this is a landlocked parcel that is wholly surrounded by 250 Ron Springs Drive and the Carter's Grove AFD.

Ms. Haynes stated that HRSD has stated that it requires a facility expansion adjacent to the Williamsburg Treatment Plant. Ms. Haynes further stated that this expansion is in response to federal enforcement action taken by the Environmental Protection Agency (EPA) and the Department of Justice. Ms. Haynes stated that HRSD has stated there is insufficient property on their current parcel to accommodate the facility expansion, and as such has stated its intent to acquire 250 Ron Springs Drive by condemnation for public utility purposes.

Ms. Haynes stated that HRSD is not requesting a withdrawal of the property from the AFD or any approvals for the facility itself at this time. Rather, per State Code, utilities may acquire interests in properties within an AFD, provided that the Board of Supervisors, in consultation with the AFD Advisory Committee and Planning Commission, reviews the proposal and specifically examines the following three criteria: the effect the action would have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; the necessity of the proposed action to provide service to the public in the most economical and practical manner; and whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district.

Ms. Haynes stated that ultimately, the Board of Supervisors will make a determination as to whether the proposed action is necessary to provide service to the public in the most economical and practical manner, and whether it will have an unreasonably adverse effect upon state or local policy.

Ms. Haynes stated that in consideration of the State Code criteria, HRSD has stated that they will reduce clearing impacts to approximately 7 acres, and would not need to remove the entire parcel from the AFD. Ms. Haynes stated that undeveloped portions of the parcel and the resources therein would be preserved in the AFD and subject to AFD regulations. Ms. Haynes stated that the proposed action is in response to a federal enforcement action taken against HRSD and the proposed facilities would provide necessary service to the public by alleviating groundwater shortages in the Hampton Roads region. Ms. Haynes stated that given the landlocked nature of the HRSD parcel, staff finds there is no practical way to avoid action within the Carter's Grove AFD if the project is to be completed in the most economical and practical manner possible. Ms. Haynes stated that should HRSD pursue a nearby non-contiguous parcel, they would still need an access and utility corridor through the subject parcel, and per HRSD's estimate, this would increase capital costs.

Ms. Haynes stated that staff recommends that the Planning Commission find the proposal necessary to provide service to the public in the most economical and practical manner and that it will not have an unreasonably adverse effect upon state or local policy.

Ms. Haynes stated that at its January 24, 2019 meeting, the AFD Advisory Committee voted 5-1-1 that the proposal is not necessary and would have an unreasonably adverse effect upon state or local policy.

Mr. Krapf inquired if there had been any recent developments on the discussion of the conservation easement

Ms. Haynes stated that HRSD does not own the parcel at this time so there have been no formal talks. Ms. Haynes stated that HRSD has indicated that they would be willing to put some of that land in a conservation easement.

Mr. Holt stated that those details would come as part of a later decision. Mr. Holt further stated that the Commission's recommendation should focus around the three specific criteria. Mr. Holt stated the Commission would have an opportunity to consider legislative applications at a later time that would allow the Commission to consider those design details.

Mr. Krapf stated that he believed the question was germane to the three criteria, particularly Criteria No. 1, the effect the action would have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies. Mr. Krapf stated that he was looking at the case from both the standpoint of the criteria as well as from the historic perspective of a landmark case which would affect the Carters Grove property which would be affected by activities taking place within the buffer.

Mr. Haldeman noted that acquiring more acreage than is actually needed would affect the economic viability of the project. Mr. Haldeman noted that the additional costs would potentially affect water rates.

Mr. Krapf commented that at this time the action is for a taking of the property since HRSD and the property owner have not been able to agree on a purchase price.

Ms. Haynes stated that this was staff's understanding as well.

Mr. O'Connor inquired if there is a market value attached to the property as part of the condemnation process.

Mr. Max Hlavin, Deputy County Attorney, stated that there are a number of steps that there are a number of steps that a political subdivision or municipality must take as part of the condemnation process. Mr. Hlavin further stated that at the time the taking is finalized, there must be a valuation attached to the property. Mr. Hlavin stated that assessing the valuation is part of a separate process than what the Commission is considering at this time. Mr. Hlavin

stated that what the Commission is making a recommendation on is the effect of the purchase or taking of the property on the district as a whole.

Mr. O'Connor stated that his concern with the valuation is to compare the cost with the cost of acquiring a portion of 200 Ron Springs Road in order to determine if it fits the criteria of a reasonable alternative.

Mr. Polster stated that he understands that the reason for acquiring the entire 76 acres is because HRSD has not been allowed to make a site visit to determine where the project could reasonably be located which would result in acquiring something substantially less. Mr. Polster further stated that if HRSD did pursue the alternative site, they would still need an easement across 250 Ron Springs Drive to access the project. Mr. Polster stated that if they cannot reach an agreement on acquisition of a portion of the property, then they likely will not be able to acquire the easement either.

Ms. Leverenz inquired if the property required for the easement would have to be negotiated or could it be condemned rather than taking the entire property.

Mr. Schmidt noted that this is not a public hearing case and inquired if letting the applicant speak would then require opening the floor for others to speak.

Mr. Hlavin stated that it is within the Commission's prerogative to ask questions of the applicant on this matter.

Mr. Hlavin noted that an easement or any other property right can be acquired by condemnation.

Ms. Robyn Hansen, of Jones, Blechman, Woltz & Kelly, P.C., stated that she serves as counsel for HRSD. Ms. Hansen stated that HRSD has considered the parcel at 200 Ron Springs Drive; however, the current HRSD facility is completely surrounded by the 76 acre AFD parcel. Ms. Hansen further stated that to develop and operate the new facility, the facility must be able to work with the existing treatment plant. Ms. Hansen further stated that the AFD will be impacted no matter which parcel is acquired.

Ms. Hansen stated that HRSD is committed to developing as little of the parcel as necessary to accomplish what is required. Ms. Hansen further noted that much of the parcel is undevelopable. Ms. Hansen stated that the remainder of the parcel would be used to protect its facilities. Ms. Hansen stated that acquiring the parcel is the most economical option.

Ms. Lauren Zuravnsky, PE, stated that by seeking approval for a more open-ended plan at this time, it would allow HRSD to find the best location for the new facility without having to return to the Commission multiple times. Ms. Zuravnsky stated that HRSD seeks have the flexibility to layout the site in the most cost effective manner with one action and put the remaining land in a preservation easement.

Mr. Polster inquired about the location of the existing easement across the AFD parcel.

Ms. Zuravnsky stated that the easement runs where the force mains exist. Ms. Zuravnsky stated that those easement would not be available for the new facility.

Mr. Polster inquired if there were any other easements on the property.

Ms. Zuravnsky stated that she was not aware of other easements.

Mr. Polster inquired about the footprint of the HRSD Sustainable Water Infrastructure for Tomorrow (SWIFT) research facility in Suffolk.

Ms. Zuravnsky stated that the facility in Suffolk is a research and public outreach center which is of a different character and size than the full scale facility.

Mr. Polster inquired if the treatment processes are the same.

Ms. Zuravnsky stated that the process is the same; however, the intent with the research facility was to have a flexible design to support all of the permitting and development going forward.

Mr. Polster stated that he was looking for an idea of the scale and footprint of the facilities on the proposed site and how the SWIFT facility interacted with the existing treatment plant.

Ms. Zuravnsky explained the flow of the process through the existing facility. Ms. Zuravnsky noted that there would be some additional facilities constructed on the existing site to support the SWIFT process. Ms. Zuravnsky stated that HRSD hopes to nest the new facility on a potentially buildable area close to the existing influent force mains. Ms. Zuravnsky further stated that the additional wells to support the process would primarily be scattered throughout the existing site with one or two located on the new site.

Mr. Polster inquired about the reason for the increased cost of locating the new facility on the alternate parcel.

Ms. Zuravnsky stated that some of the wells would be relocated as not all of them can be on the same site. Ms. Zuravnsky further stated that it is more efficient for the new facility to be located as close to the existing facility as possible.

Mr. Polster inquired if there was a plan to monitor subsidence.

Ms. Zuravnsky stated that there are associated monitoring wells; however, they are not monitoring subsidence. Ms. Zuravnsky further stated that there is an extensometer at the Nansmond facility in Suffolk through a partnership with the U.S. Geological Survey (USGS).

Mr. O'Conner inquired about the approximate cost of the project.

Ms. Zuravnsky stated that the construction cost for the treatment works is approximately \$120,000,000. Ms. Zuravnsky further stated that she believes that figure includes the recharge and monitoring wells.

Mr. O'Connor inquired about the \$1,000,000 additional cost to locate the new facility on the 200 Ron Springs parcel.

Ms. Hansen stated that the cost comes from creating the necessary utility corridor for the water to move back and forth between the existing and new facility. Ms. Hansen further stated that even under this option the AFD would be impacted. Ms. Hansen noted that the \$1,000,000 does not factor in the cost of acquiring the 24 acre parcel.

Ms. Zuravnsky stated that the \$1,000,000 is related to construction cost alone; however, there are other greater costs associated with using the 24 acre parcel.

Ms. Leverenz noted that the cost to acquire 24 acres is likely less than the cost to acquire 76 acres.

Ms. Hansen stated the 24 acre parcel is developable whereas the 76 acre parcel is not and would, therefore, have a greater land value.

Mr. Polster noted that HRSD has been working for two years to find a suitable location on the parcel. Mr. Polster inquired why they have not yet been successful.

Ms. Hansen stated that they do not own the property. Ms. Hansen further stated that HRSD has been denied access to the property. Ms. Hansen stated that negotiations to purchase the property or acquire an easement have failed, which has led to the condemnation action.

Mr. Polster inquired about the deadline imposed by the consent decree.

Ms. Hansen stated that this is one of the major projects that HRSD must complete under the Consent Decree. Ms. Hansen further stated that HRSD filed the condemnation action as a last resort to meet those obligations.

Ms. Hansen stated that the request tonight is to consider the three criteria and determine if the proposal meets those criteria.

Mr. O'Connor inquired about the easements currently in place. Mr. O'Connor inquired about any easements at the shore line.

Ms. Zuravnsky stated that there are no easements in that location and that is part of the reason HRSD wants to acquire the entire 76 acres to protect its assets. Ms. Hansen stated that the only existing easements are over the influent force mains.

Mr. O'Connor inquired about the size of the lines needed to access the wells.

Ms. Zuravnsky stated that the wells are 24 inches and the supply lines would be approximately the same size.

Mr. Krapf inquired if there have been any adverse effects on water quality in the aquifer in other locations where the water is injected when it does not meet purity standards. Mr. Krapf further inquired if there was any evidence of land movement where water has been injected in the aquifer.

Ms. Zuravnsky stated that there is an extensometer in Suffolk which has shown subsidence and recovery when flushing the wells and recharging waste water. Ms. Zuravnsky further stated that these measurements were, however, only millimeters. Ms. Zuravnsky stated that there is some evidence that the project could impact subsidence in a positive way.

Ms. Zuravnsky stated that there is a full suite of critical control sensors monitoring the water quality in the aquifer on a continual basis. Ms. Zuravnsky stated that each sensor monitors a particular set of parameters. Ms. Zuravnsky further stated that any one of those sensors can trip and divert the water.

Mr. Polster stated that this project represents a vast public benefit, particularly to the County as it will put water back in the aquifer. Mr. Polster further stated that the ability of the aquifer to provide water for the County is critical based on the County's growth rate. Mr. Polster stated that if only a portion of the property is ultimately withdrawn from the AFD and the remainder stays in the AFD or is put in a conservation easement, the impact on the AFD is minimal and is far outweighed by the public benefit.

Ms. Zuravnsky stated that this project also represents a benefit to rate payers as an economical method of effluent management.

Mr. Polster further noted that there is a benefit also from the Total Maximum Daily Load (TMDL) credits. Mr. Polster noted that the TMDL credits can be sold and represent an economic benefit.

Mr. Schmidt noted that he did discuss the matter with Mr. Trant. Mr. Krapf, Mr. Haldeman and Ms. Leverenz stated that they also spoke with Mr. Trant. Mr. Polster stated that Mr. Trant contacted him but he did not return the call.

Mr. Schmidt noted that this is a complicated matter. Mr. Schmidt noted that the environmental benefit is there. Mr. Schmidt noted that his main concern is any impact on cultural resources in that area.

Mr. Haldeman inquired if the Commission was making a recommendation on the matter.

Mr. Holt clarified that the request was for the Commission to find whether the proposal provides service to the public in the most economical and practical manner and that it will not have an unreasonably adverse effect upon state or local policy.

Mr. Polster noted that AFDs only bind the property for a limited time and that property can be withdrawn for development during the renewal period. Mr. Polster noted that the subject property is zoned for residential development. Mr. Polster noted that the property would be better protected if it were in a conservation easement.

Ms. Leverenz noted that the majority of the parcel is not developable due to topographical constraints. Ms. Leverenz stated that if the impact is only the seven acres with the remainder preserved, then it would meet the criteria of minimal effect on the AFD.

Mr. Krapf stated that he believes the proposal meets all three criteria and that he would support the application.

Mr. Polster made a motion that the proposed action set forth in C-18-0123, HRSD Treatment Plant Expansion within Carter's Grove AFD would not have an adverse impact have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; proposed action is necessary to provide service to the public in the most economical and practical manner; there are no reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district.

On a roll call vote the Commission voted that the proposed action set forth in C-18-0123, HRSD Treatment Plant Expansion within Carter's Grove AFD would not have an adverse impact have upon the preservation and enhancement of agricultural and forestal resources within the district and associated policies; proposed action is necessary to provide service to the public in the most economical and practical manner; there are no reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts within the district (5-2).

§ 15.2-4313. Proposals as to land acquisition or construction within district.

- A. Any agency of the Commonwealth or any political subdivision which intends to acquire land or any interest therein other than by gift, devise, bequest or grant, or any public service corporation which intends to:
- (i.) acquire land or any interest therein for public utility facilities not subject to approval by the State Corporation Commission, provided that the proposed acquisition from any one farm or forestry operation within the district is in excess of one acre or that the total proposed acquisition within the district is in excess of ten acres or
 - (ii.) advance a grant, loan, interest subsidy or other funds within a district for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities to serve nonfarm structures, shall at least ninety days prior to such action notify the local governing body and all of the owners of land within the district. Notice to landowners shall be sent by first-class or registered mail and shall state that further information on the proposed action is on file with the local governing body. Notice to the local governing body shall be filed in the form of a report containing the following information:
 1. A detailed description of the proposed action, including a proposed construction schedule;
 2. All the reasons for the proposed action;
 3. A map indicating the land proposed to be acquired or on which the proposed dwellings, commercial or industrial facilities, or water or sewer facilities to serve nonfarm structures are to be constructed;
 4. An evaluation of anticipated short-term and long-term adverse impacts on agricultural and forestal operations within the district and how such impacts are proposed to be minimized;
 5. An evaluation of alternatives which would not require action within the district; and
 6. Any other relevant information required by the local governing body.
- B. Upon receipt of a notice filed pursuant to subsection A, the local governing body, in consultation with the local planning commission and the advisory committee, shall review the proposed action and make written findings as to
- (i.) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and the policy of this chapter;
 - (ii.) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and
 - (iii.) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

If requested to do so by any owner of land that will be directly affected by the proposed action of the agency, corporation, or political subdivision, the Director of the Department of Conservation and Recreation, or his designee, may advise the local governing body on the issues listed in clauses (i), (ii) and (iii) of this subsection.

- C. If the local governing body finds that the proposed action might have an unreasonably adverse effect upon either state or local policy, it shall
- (i.) issue an order within ninety days from the date the notice was filed directing the agency, corporation or political subdivision not to take the proposed action for a period of 150 days from the date the notice was filed and
 - (ii.) hold a public hearing, as prescribed by law, concerning the proposed action. The hearing shall be held where the local governing body usually meets or at a place otherwise easily accessible to the district. The locality shall publish notice in a newspaper having a general circulation within the district, and mail individual notice of the hearing to the political subdivisions whose territory encompasses or is part of the district, and the agency, corporation or political subdivision proposing to take the action. Before the conclusion of the 150-day period, the local governing body shall issue a final order on the proposed action.

Unless the local governing body, by an affirmative vote of a majority of all the members elected to it, determines that the proposed action is necessary to provide service to the public in the most economic and practical manner and will not have an unreasonably adverse effect upon state or local policy, the order shall prohibit the agency, corporation or political subdivision from proceeding with the proposed action.

If the agency, corporation or political subdivision is aggrieved by the final order of the local governing body, an appeal shall lie to the circuit court having jurisdiction of the territory wherein a majority of the land affected by the acquisition is located. However, if such public service corporation is regulated by the State Corporation Commission, an appeal shall be to the State Corporation Commission.

1977, c. 681, § 15.1-1512; 1979, c. 377; 1987, c. 552; 1997, c. 587; 1998, c. 833; 2000, c. 1069.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Matthew J. Strickler
Secretary of Natural Resources

Clyde E. Cristman
Director



Rochelle Altholz
Deputy Director of
Administration and Finance

Russell W. Baxter
Deputy Director of
Dam Safety & Floodplain
Management and Soil & Water
Conservation

Thomas L. Smith
Deputy Director of Operations

COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

January 17, 2019

Via Email (kbburch@kaufcan.com)

Kristan B. Burch
Kaufman & Canoles, P.C.
150 West Main Street, Suite 2100
Norfolk, VA 23510

Re: Request pursuant to Va. Code §15.2-4313

Dear Ms. Burch:

We have received your letter of January 10, 2019, in which you request, on behalf of the landowner, that the Director of the Department of Conservation and Recreation ("DCR") advise James City County in accordance with Va. Code §15.2-4313. That Code section provides that a landowner within an Agricultural and Forestal District that will be directly affected by a proposal of land acquisition or construction may request that DCR advise the local governing body concerning issues listed in the statute, as you have done on behalf of Carter's Grove LLC.

Our staff have been researching the attributes of the property through our Biotics Data System, and we have identified a number of potential natural resources of concern. According to information currently in our files, the Grove Creek Conservation Site is located within the proposed project site. Conservation sites represent key areas of the landscape that warrant further review because of the natural heritage resources and habitat they support. Natural heritage resources are defined as the habitat of rare, threatened, or endangered plant and animal species, unique or exemplary natural communities, and significant geologic formations. Conservation sites are given a biodiversity significance ranking on a scale of 1 to 5 with 1 being most significant, based on the rarity, quality, and number of resources they contain. The Grove Creek Conservation Site has a biodiversity significance ranking of B2, representing a site of very high significance.

Our records show historical occurrences of two rare plant species and three types of forest and swamp communities on the site. In order to be able to advise James City County, our scientists will need to make a field survey on the site to confirm what our historical records show. We hope you can help us get permission from the landowner to make that visit fairly soon, since the 90-day time period for a response set by the statute is already one-third elapsed.

Please contact us as soon as possible to let us know how we can arrange a site visit. The best contact for that is the Director of our Division of Natural Heritage, Jason Bulluck, at (804) 786-8377.

Sincerely,

A handwritten signature in blue ink that reads "Clyde E. Cristman".

Clyde Cristman

600 East Main Street, 24th Floor | Richmond, Virginia 23219 | 804-786-6124

*State Parks • Soil and Water Conservation • Outdoor Recreation Planning
Natural Heritage • Dam Safety and Floodplain Management • Land Conservation*

Cc: Via Email (paul.holt@jamescitycountyva.gov)

Paul Holt, Director of Community Development/Planning for James City County

Cc: Via Email (ehenifin@hrsdc.com)

Ted Henifin, General Manager, Hampton Roads Sanitation District



**National Trust for
Historic Preservation**
Save the past. Enrich the future.

February 6, 2019

Mr. Paul D. Holt, III
Director of Planning
James City County
101-A Mounts Bay Road
P.O. Box 8784
Williamsburg, VA 23187-8784

Re: C-18-0123, HRSD Treatment Plant Expansion within Carter's Grove AFD

Dear Mr. Holt:

The National Trust for Historic Preservation has recently become aware of a proposal by the Hampton Roads Sanitation District (HRSD) to condemn a parcel of land around Carter's Grove National Historic Landmark to expand water treatment facilities at the Williamsburg Treatment Plant. The National Trust understands that it is essential for James City County to adequately maintain and upgrade its water treatment infrastructure to service community needs, as well as to comply with water quality laws. However, as James City County considers the HRSD condemnation proposal as a means of satisfying these responsibilities, the National Trust wants to ensure that the historic significance of Carter's Grove is fully understood and that consideration of the proposal's impacts to the historic site is part of the decision-making process.

Carter's Grove is one of the best and most significant remaining examples of Georgian architecture in the United States. It represents the pinnacle of private house building prior to the Revolutionary War and has received the distinction of being designated a National Historic Landmark. National Historic Landmark status is a designation that is reserved for properties that are determined by the U.S. Secretary of the Interior to be "essential to understanding American history" and "of surpassing interest to the American people." There is a compelling public interest in protecting Carter's Grove and its surrounding landscape.

For many historic properties, including Carter's Grove, protecting the landscape context where a resource is located is an important part of maintaining the integrity of the resource. The Carter's Grove manor house was deliberately located to take advantage of the site's natural topography by placing it at the top of a hill with a commanding view of its surrounding lands. The Colonial Williamsburg Foundation, which acquired Carter's Grove in 1970 and was the owner of record when land in Parcel No. 5820100002 was

Paul W. Edmondson | INTERIM PRESIDENT & CEO

The Watergate Office Building 2600 Virginia Avenue NW Suite 1100 Washington, DC 20037
E pedmondson@savingplaces.org P 202.588.6101 SavingPlaces.org

originally taken to build the Williamsburg Treatment Plant, understood this context well. As a result, much of the parcel was intentionally retained to remain a part of the historic site and to create a buffer that helps minimize adverse impacts of plant operations on the site. As efforts to address HRSD's expansion plans proceed, finding an approach that continues to maintain a substantial buffer and avoid negative impacts to Carter's Grove should be an important consideration.

The National Trust respectfully requests that James City County carefully review HRSD's condemnation request and consider alternatives or conditions that could effectively serve the water needs of James City County residents, while also minimizing harms to Carter's Grove National Historic Landmark.

Sincerely,

A handwritten signature in blue ink that reads "Paul W. Edmondson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul W. Edmondson
Interim President & CEO



March 6, 2019

Mr. Michael J. Hipple, Vice Chair
Board of Supervisors
James City County
PO Box 8784
Williamsburg, VA 23185

Via Email: Michael.Hipple@jamescitycountyva.gov

Subject: Notice of proposed acquisition of land within Agricultural and Forestal District (AFD) 1-02-1-2018 in James City County, Ordinance No, 197A-5, Parcel No. 5820100002

Dear Mr. Hipple:

Thank you for coordinating a meeting with HRSD, Carter's Grove Associates, LLC ("Carter's Grove") and representatives of James City County to facilitate an agreement between HRSD and Carter's Grove concerning HRSD's proposed acquisition of Parcel No. 5820100002. As you know, HRSD requires additional property adjacent to our Williamsburg Treatment Plant to expand our treatment facilities and has been pursuing a solution with Carter's Grove Associates (owner of the referenced parcel that completely surrounds our Williamsburg Treatment Plant) for more than a year.

As an independent political subdivision of the Commonwealth, it is atypical that any local government is engaged in HRSD land acquisitions, regardless of the method. However, by virtue of this land being within an Agricultural and Forestal District (AFD), the unique requirements of Section §15.2-4313 of the Code of Virginia require the Board of Supervisors of James City County ("Board") to make written findings "as to (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and the policy of this chapter; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district." The necessity for the Board to make these determinations is required for acquisition by any method "other than by gift, devise, bequest or grant" for any acquisition greater than 1 acre on a single property or more than 10 acres within the AFD.

In all options, HRSD requires more than 1 acre from the single parcel that completely surrounds our existing treatment plant. Thus, HRSD would need this determination whether the acquisition was by a mutually agreed upon sale or through a contested condemnation process.

PO Box 5911, Virginia Beach, VA 23471-0911 • 757.460.7003

Commissioners: Frederick N. Eloffson, CPA, Chair • Maurice P. Lynch, PhD, Vice-Chair • Vishnu K. Lakdawala, PhD
Michael E. Glenn • Stephen C. Rodriguez • Willie Levenston, Jr. • Ann W. Templeman • Elizabeth A. Taraski, PhD
www.hrsd.com

Although we maintain it is in HRSD's best long-term interests to acquire the entire 76.1 acre parcel, in the spirit of compromise we are proposing an alternative that addresses many of the issues raised by the AFD Advisory Committee, the Planning Commission and concerns expressed by the property owner.

Throughout this process, nearly everyone involved has expressed support and understanding of HRSD's need to expand its facilities. The focus has been on the total size of the proposed acquisition and the strong desire to maintain a significant buffer between HRSD facilities and the historic Carter's Grove property.

Our alternative proposal would leave an approximate 23-acre forested buffer (approximately 500 feet wide at the narrowest point and running through the entire parcel as shown on the attached map) between HRSD property and Carter's Grove, reducing the proposed acquisition from approximately 76 acres to approximately 53 acres.

This alternative proposal will meet HRSD's needs of providing space for facility expansion and an HRSD-owned and controlled protective buffer. It also preserves a significant forested buffer, which has been the expressed desire of the property owner throughout this process. This revised proposal also addresses many of the issues raised by James City County volunteers (AFD Committee Members and Planning Commissioners) who have thoughtfully considered this issue over the past three months.

Accordingly, HRSD is requesting that the prior notice of acquisition of land within AFD 1-02-1-2018 in James City County, Ordinance No. 197A-5, Parcel No. 5820100002 scheduled for consideration by the James City County Board of Supervisors on March 12, 2019, pursuant to Section §15.2-4313 of the Code of Virginia, be amended to reduce the acreage to be acquired from 76 acres to 53 acres as depicted on the attached map. It is our understanding that this revision, less impacting than the original request, will not require a complete restart of the notification and consideration requirements of Section §15.2-4313 of the Code of Virginia.

Please feel free to reach out directly to me with any questions at 757-274-7904.

Sincerely,



Ted Henifin, P.E.
General Manager

Attachment

c: James City County Board of Supervisors (Board@jamescitycountyva.gov)
Scott Stevens, County Administrator (Scott.Stevens@jamescitycountyva.gov)
Adam Kinsman, Esq. County Attorney (Adam.Kinsman@jamescitycountyva.gov)
Paul Holt, Director of Community (Paul.Holt@jamescitycountyva.gov)
Doug Powell, General Manager, JCSA (Doug.Powell@jamescitycountyva.gov)
Paul W. Gerhardt, Esq. (pwgerhardt@kaufcan.com)
Robyn Hansen, Esq. JBWK (rhansen@JBWK.com)



Williamsburg Treatment Plant



- Parcel Boundary
- Proposed HRSD Portion
- Proposed Carter's Grove Portion

Kristan B. Burch
150 West Main Street
Suite 2100
Norfolk, VA 23510
(757) 624-3343
Fax: (888) 360-9092
kbburch@kaufcan.com

KAUFMAN & CANOLES
attorneys at law

MEMORANDUM

TO: Board of Supervisors

FROM: Kaufman & Canoles, P.C.

DATE: March 8, 2019

RE: Landowner Response to HRSD's Notice of proposed acquisition of land within Agricultural and Forestal District (AFD) 1-02-1-2018 in James City County, Ordinance No, 197A-5 Parcel No. 582010000

This analysis is completed on behalf of Carter's Grove Associates, LLC ("Carter's Grove Associates") to respond to the notice issued by the Hampton Roads Sanitation District ("HRSD") to James City County ("County"), under Virginia Code § 15.2-4313, including the recent amendment to that notice made by HRSD by letter dated March 6, 2019. This memorandum supplements the letter submission previously made by Carter's Grove Associates on January 10, 2019.

In the initial notice in December 2018, HRSD stated it planned to acquire by condemnation the entire 76.1 acre parcel owned by Carter's Grove Associates which surrounds HRSD's existing facility. Through a letter dated March 6, 2019, HRSD stated that it is amending its notice to reduce the acreage acquired from 76 acres to 53 acres.

While HRSD's reduction in acreage is appreciated, Carter's Grove Associates renews its position that the County should find that the proposed action *might* have an unreasonably adverse effect upon either state or local policy. Consistent with Virginia Code § 15.2-4313, Carter's Grove Associates respectfully requests that the County (a) issue an order after its meeting on March 12, 2019 directing HRSD not to take the proposed action for a period of 150 days from the date that the notice was filed and (b) hold a public hearing concerning the proposed action.

In addition to the reasons set forth in its prior communications (specifically the January 10, 2019 submission), Carter's Grove Associates renews its request for the reasons outlined below:

1. 53 acres remains an unreasonable amount of acreage to take.

As stated in HRSD's letters dated December 12, 2018 and January 15, 2019 to the County, HRSD anticipates "that approximately 7 acres will need to be cleared to support the new facilities."

MEMO: Board of Supervisors

DATE: March 8, 2019

PAGE: 2

Nonetheless, HRSD still is seeking to obtain by condemnation 53 acres owned by Carter's Grove Associates.

The only written explanation given to date for why more than 7 acres must be taken by HRSD is what is set forth in HRSD's January 15, 2019 letter to the County:

HRSD cannot commit to a specific portion or acreage on the existing parcel and thus must acquire the entire parcel to provide the maximum flexibility to design and site facilities to minimize impact on rare species and other valuable natural resources. Acquisition of the entire parcel provides the most flexibility and the greatest ability to minimize impacts to the AFD.

While Carter's Grove Associates understands that HRSD wants flexibility, providing such flexibility to HRSD is not in the best interests of the landowner's private property rights or in any way consistent with the status of the property at issue being within an Agricultural and Forestal District.

In 2014, Carter's Grove Associates decided to purchase the Carter's Grove manor home and surrounding property for preservation purposes. Such purchase from Colonial Williamsburg included the Carter's Grove plantation which is a 400+ acre historic property on which the Carter's Grove manor home and other improvements, dependencies, and unique archaeological sites are situated.

Since purchase, Carter's Grove Associates has spent millions of dollars restoring the manor home and surrounding property. Carter's Grove Associates has been working to restore agricultural operations and livestock on the property. It has been practicing responsible forestry on its property in areas which had been neglected for years. Progress is being made on installation of a farm complex in order to further its agricultural objectives. Carter's Grove Associates also is taking steps to increase the bird population and to restore pastures.

Carter's Grove Associates bought this property and chose to make the substantial investment which it has made of both time and money based on the fact that much of the property was protected by a conservation easement under the Open-Space Land Act and based on the fact that the 76 acre parcel was protected within an Agricultural and Forestal District.

To the extent that it is permitted to take the 53 acre parcel, not only would HRSD be taking the buffer that surrounds its facility like a donut to protect Carter's Grove, but HRSD also would be taking important property integral to the overall Carter's Grove restoration plan. The riverfront property (including one of the only flat portions of beach in that area) is something which Carter's Grove Associates planned to protect, use and enjoy, and the same is true for the access to Grove Creek which Carter's Grove Associates also would lose if the property to the north west of HRSD's existing facility is taken as part of the 53 acre request.

MEMO: Board of Supervisors

DATE: March 8, 2019

PAGE: 3

The buffer's donut arrangement indicates that it was intentionally a protective device. Also, the deed from Colonial Williamsburg to HRSD conveying the property inside the donut prohibited any alteration or improvement of the property below Contour 50 whether by construction, the cutting of shrubs, trees or foliage, the digging or dumping of fill, or otherwise without the grantor's approval.

2. The County does not yet have input from DCR.

In the exercise of its state law landowner rights, through a letter dated January 10, 2019, Carter's Grove Associates requested that the Department of Conservation and Recreation ("DCR") advise the County regarding the following issues:

- (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and the policy of this chapter;
- (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and
- (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district.

Carter's Grove Associates made this request under Virginia Code § 15.2-4313(B) which states as follows:

B. Upon receipt of a notice filed pursuant to subsection A, the local governing body, in consultation with the local planning commission and the advisory committee, shall review the proposed action and make written findings as to (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and the policy of this chapter; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district. If requested to do so by any owner of land that will be directly affected by the proposed action of the agency, corporation, or political subdivision, the Director of the Department of Conservation and Recreation, or his designee, may advise the local governing body on the issues listed in clauses (i), (ii) and (iii) of this subsection.

By letter dated January 11, 2019, DCR responded to the request from Carter's Grove Associates and stated that the "Grove Creek Conservation Site has a biodiversity significance ranking of B2, representing a site of very high significance" and that its records show "historical

MEMO: Board of Supervisors
DATE: March 8, 2019
PAGE: 4

occurrences of two rare plant species and three types of forest and swamp communities on the site.” DCR also asked Carter’s Grove Associates to contact DCR “to let us know how we can arrange a site visit.”

After receipt of the letter, Carter’s Grove Associates contacted DCR regarding a site visit, and from those discussions, Carter’s Grove Associates learned that DCR was waiting for maps from HRSD and then later learned that DCR could not immediately begin its work. Specifically, DCR stated that “[c]onsidering a full survey of the property and the rare plant species for which there are records there,” the “fieldwork would need to be delayed until after full leaf out (i.e. May or after).” DCR went on to state that it realizes that “this is probably pushing the timeline for the project and hopefully this is something all parties can make adjustments for.”

Upon receipt of this information from DCR, Carter’s Grove Associates conveyed the information to the County so that the County would know that DCR will not be able to complete the needed field work until May 2019 and asked how the County plans to proceed based on the fact that DCR’s fieldwork needs to be delayed until warmer weather. The response from the County indicated that the County would not wait to hear from DCR based on the 90 day requirement in the statute so the County will have to make its decision without DCR’s input unless DCR’s findings are available before the March 12, 2019 hearing.

State law assures a landowner the ability to request that DCR participate in the review process of HRSD’s request. Carter’s Grove Associates renews its request that its rights as a landowner be respected so as to allow DCR’s review to be completed and considered by the County. One way to ensure this review by DCR is completed and considered is for the County to issue an order directing HRSD not to take any action for 150 days from the date the notice was filed during which time DCR can complete its site inspection, and the County can consider the information from DCR and hold a public hearing.

Section 15.2-4313 states that if the County finds the proposed action even “*might*” have “an unreasonably adverse effect upon either state or local policy,” the County “*shall*” issue an order “directing the agency, corporation or political subdivision not to take the proposed action for a period of 150 days” in order to hold a public hearing and further consider the necessity of the proposed action. In this situation, where DCR has indicated its serious concern that the proposed acquisition affects property with a “very high significance” biodiversity rating, and where DCR has requested additional time for a site visit, Carter’s Grove Associates hopes that the County orders HRSD to take no action for 150 days to allow the further review outlined in the statute.

3. Input from the National Trust for Historic Preservation

By letter dated February 6, 2019, the National Trust for Historic Preservation stated its concerns regarding the condemnation planned by HRSD and the importance of the Carter’s Grove properties which Carter’s Grove Associates is restoring. Such letter is further support for Carter’s Grove Associates’ request for further review by the County.

MEMO: Board of Supervisors

DATE: March 8, 2019

PAGE: 5

4. A conservation easement will not protect any part of the 53 acres from future condemnation.

As part of its January 15, 2019 letter, HRSD stated that it is willing to discuss the establishment of a “permanent conservation easement” on the remaining part of the acreage which it does not use for its facilities. While the concept is favorable, the fact remains that HRSD has the ability to condemn property that is held under certain types of conservation easements. This means that if a conservation easement were established under the Virginia Conservation Easement Act, HRSD still would have the power to later condemn that land. Virginia Code Ann. § 10.1-1010(F) (“This chapter does not affect the power of the court to modify or terminate a conservation easement in accordance with the principles of law and equity, or *in any way limit the power of eminent domain as possessed by any public body.*”) (emphasis added).

While HRSD has claimed that it is better suited to protect the acreage at issue, the track record of Carter’s Grove Associates regarding the property which it purchased in 2014 shows that Carter’s Grove Associates is better suited to protect the acreage at issue and use such land consistently with the intent of the Agricultural and Forestal District.

Also of note is the fact that in 2018, Carter’s Grove Associates attempted to put the entire 76 acres under a conservation easement with Virginia Outdoor Foundation, but Carter’s Grove Associates was prevented from doing so due to the pendency of HRSD’s action. To the extent that Carter’s Grove Associates continues to own the 76 acres, it is committed to placing it under the protection of a conservation easement as soon as it can.

5. The Swift project proposed by HRSD is a pilot program.

HRSD’s Sustainable Water Initiative for Tomorrow (“SWIFT”) regional project is a purified wastewater aquifer injection project that is currently underway as a pilot project in Virginia. Recharge operations at the SWIFT Research Center in Virginia recently have been shut down until some warranty issues are resolved which affected the level of iron in the SWIFT water.

HRSD’s January 15, 2019 letter states that HRSD wants to proceed with site investigation and surveying for the SWIFT facility on the 53 acres no later than April 1, 2019. The timing for HRSD’s work appears to be tied to a federal enforcement action which was filed against HRSD which resulted in a consent order signed by HRSD in 2009. The fact that HRSD is now under a time crunch based on a consent order which it signed almost ten years ago should not in any way affect the landowner’s property rights for Carter’s Grove.

Carter’s Grove remains concerned about extending this pilot program to a portion of the 53 acres which it currently owns and is concerned about the effects which such a pilot project could have on the Carter’s Grove manor home and surrounding properties.

MEMO: Board of Supervisors

DATE: March 8, 2019

PAGE: 6

6. Additional time is needed.

Additional time is needed to permit the County to receive input from DCR as permitted by § 15.2-4313(A). This additional time also will permit the County to better understand the SWIFT pilot program and evaluate any problems which have been seen to date.

Furthermore, this additional time will permit others to comment on HRSD's proposal. This is of particular concern because while HRSD was permitted to speak, Carter's Grove Associates was not permitted to speak at the Planning Commission Meeting. This left the Planning Commission with incomplete information on which to base its vote.

Before the AFD Advisory Committee, both HRSD and Carter's Grove Associates were able to outline their positions. After listening to both positions, the AFD Advisory Committee voted 5-1-1 to recommend that the proposal is not necessary to provide service to the public in the most economic and practical manner and that it would have an unreasonably adverse effect upon state or local policy.

For the reasons stated in this and earlier communications, there is sufficient information at this juncture to warrant a finding by the County under Section 15.2-4313(C) that "the proposed action *might* have an unreasonably adverse effect upon either state or local policy." (emphasis added). Accordingly, Carter's Grove Associates asks that the County issue an order directing HRSD not to take any action for 150 days from the date the notice was filed during which time DCR can complete its site inspection, and the County can consider the information from DCR and hold a public hearing under Section 15.2-4313(C).

**Carter's Grove Associates, LLC
Pocahontas Trail
Williamsburg, Virginia 23185**

VIA EMAIL

Jim Icenhour, Chairman
Board of Supervisors
james.icenhour@jamescitycountyva.gov

Michael J. Hipple, Vice Chairman
Board of Supervisors
michael.hipple@jamescitycountyva.gov

John J. McGlennon, Member
Board of Supervisors
john.mcglennon@jamescitycountyva.gov

Sue Sadler, Member
Board of Supervisors
sue.sadler@jamescitycountyva.gov

Ruth Larson, Member
Board of Supervisors
ruth.larson@jamescitycountyva.gov

Paul Holt, Director
Community Development/Planning
James City County
101 Mounts Bay Road
Building A
Williamsburg, VA 23185

Re:

Landowner Response to HRSD's Notice of proposed acquisition of land within Agricultural and Forestal District (AFD) 1-02-1-2018 in James City County, Ordinance No, 197A-5 Parcel No. 5820100002

Dear Supervisors Icenhour, Hipple, McGlennon, Sadler, and Larson and Mr. Holt:

As the owner and steward of Carter's Grove Plantation, I write to express my deep appreciation for your time and interest in this very important matter, and to convey my thoughts on HRSD's action to condemn 53 acres of our property. A more comprehensive legal analysis is included as Exhibit A.

If allowed to proceed, this action would have a devastating effect on Carter's Grove. Carter's Grove is a National Historic Landmark, the nation's highest historic designation, reflecting its deep significance to American history and culture. It is also the site of Wolstenholme Town, one of the earliest English settlements in the New World, founded in 1619. The land that Carter's Grove occupies was home to millennia of Native Americans, whose material remains are documented and will lie forever undisturbed there, and to generations of enslaved peoples who lived, toiled and died there in a dark period of our nation's past.

For these and other reasons it has been said that Carter's Grove chronicles the history of the New World more fully than any other single place. It is indeed a very special place that goes to the heart of the beginnings of this nation and, more specifically, James City County. It deserves to be protected.

This is the principle that motivated my family and me to acquire Carter's Grove in 2014. It had been neglected for decades and had fallen into serious disrepair. Its very survival was in doubt. Since then, we have been engaged in an extensive project to restore the manor house and the surrounding acreage to the highest possible standards of preservation. We have spared no expense, investing many millions of dollars in James City County to preserve this treasure for generations to come.

Our plan is to re-establish responsible agricultural and forestry operations, and to raise heritage and endangered breeds of livestock once common in the time of this nation's founding. We have been reclaiming and fencing fields and pastures, implementing responsible forestry practices that had been neglected for decades, restoring wetlands, planting hundreds of trees, building a large farm complex to support livestock and the machinery required to run the operation, installing extensive stormwater infrastructure, and restoring the shoreline. It is the most ambitious privately-funded historic preservation project taking place in the United States today.

Thus, the acreage surrounding Carter's Grove is an absolutely essential element of the property. Given our plans, the AFD designation was of great importance to us in buying the property, as was the 76 acres of buffer land surrounding the HRSD facility. We would not have gone forward without these things.

With this as background, HRSD, citing outside time pressure, has moved with great haste and without due deliberation to condemn a large portion of our property, far more than even they say that they need. In their rush to condemn they have failed to satisfy at least two critical statutory requirements.

First, HRSD is required to evaluate the adverse impacts of their action on the agricultural and forestal operations within the AFD and how they could be minimized. This is especially important in this case because the property that they wish to condemn contains old growth forest and rare habitat found only in a few places in Virginia and nowhere else in the world. As the landowner, we have the statutory right to request the Department of Conservation and Recreation to advise on this action, but DCR has been prevented from doing so because it cannot complete the review within 90 days because of the time of year when the request was made.

Second, HRSD is required to evaluate alternatives to the condemnation of our property. Over the last two years, and at considerable expense, we have retained our own wastewater engineers, civil engineers and environmental consultants, and have worked in good faith to identify an alternative that would allow the SWIFT project to move forward with far less damaging effect to Carter's Grove. The great irony in this is that even HRSD agrees that an alternative exists that would in many ways be superior to the condemnation of Carter's Grove's property, yet they have not pursued it vigorously because it does not fit into their schedule. They have apparently concluded that Carter's Grove is the easier mark.

HRSD's efforts to limit this review to 90 days and deny us the thorough review and consideration of alternatives that this matter warrants is unacceptable. We believe that there is ample reason for the County to find that the proposed action might have an unreasonably adverse effect upon either state or local policy. Consistent with Virginia Code § 15.2-4313, we respectfully request that the County (a) issue an order after its meeting on March 12, 2019 directing HRSD not to take the proposed action for a

period of 150 days from the date that the notice was filed and (b) hold a public hearing concerning the proposed action.

Thank you again for your kind attention, and for your consideration of the profoundly damaging effect that HRSD's actions would have upon Carter's Grove.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Samuel M. Mencoff', is written over the typed name.

Samuel M. Mencoff

cc (w/encl.): Scott Stevens, County Administrator (scott.stevens@jamescitycountyva.gov)
Adam Kinsman, County Attorney (adam.kinsman@jamescitycountyva.gov)
Brad Baskette, Assistant Director of Stewardship, Virginia Outdoors Foundation
(bbaskette@vofonline.org)
Robyn Hylton Hansen, Esq. (rhansen@jbwk.com)

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Adam R. Kinsman, County Attorney and Paul D. Holt, Director of Community Development

SUBJECT: Initiating Resolution to Consider Amendments to County Code Section 24-16

ATTACHMENTS:

	Description	Type
☐	memo	Cover Memo
☐	reso	Resolution

REVIEWERS:

Department	Reviewer	Action	Date
Attorney	Kinsman, Adam	Approved	3/22/2019 - 4:33 PM
Publication Management	Daniel, Martha	Approved	3/22/2019 - 4:37 PM
Legal Review	Kinsman, Adam	Approved	3/22/2019 - 4:41 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2019 - 1:34 PM
Board Secretary	Purse, Jason	Approved	4/2/2019 - 1:53 PM
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 2:00 PM

MEMORANDUM

DATE: April 9, 2019

TO: The Board of Supervisors

FROM: Adam R. Kinsman, County Attorney
Paul D. Holt, III, Director of Community Development

SUBJECT: Initiation of Consideration of Amendments to Section 24-16 of the Zoning Ordinance to Accept Residential Proffers

During its 2016 Session, the General Assembly revised the zoning laws in the Code of Virginia in such a manner that on September 13, 2016, the Board adopted Ordinance No. 31A-304 amending James City County Code Section 24-16 to no longer accept proffers for certain applications for residential rezoning.

On March 5, 2019, changes to Section 15.2-2303.4 of the Code of Virginia by the General Assembly were approved by the Governor of Virginia and enacted as Chapter 245 of the Acts of Assembly (“Chapter 245”). We have reviewed Chapter 245 and believe that it appears to address many of the concerns stated by the Board when it adopted Ordinance No. 31A-304.

Should the Board desire to direct staff to more thoroughly consider the effects of Chapter 245 and recommend any warranted changes to James City County Code Section 24-16 to accept proffers associated with any new residential rezoning or zoning map amendment, or any new residential component of a multi-use district rezoning or zoning map amendment, we recommend the adoption of the attached Initiating Resolution.

ARK/PDH/nb
24-16Initiating-mem

Attachment

RESOLUTION

INITIATION OF CONSIDERATION OF AMENDMENTS TO SECTION 24-16

OF THE ZONING ORDINANCE TO ACCEPT RESIDENTIAL PROFFERS

- WHEREAS, the Code of Virginia Section 15.2-2286 and County Code Section 24-13 permit the Board of Supervisors of James City County, Virginia (the “Board”) to, by resolution, initiate amendments to the regulations of the Zoning Ordinance that the Board finds to be prudent; and
- WHEREAS, during its 2016 Session, the General Assembly revised the zoning laws in the Code of Virginia in such a manner that on September 13, 2016, the Board adopted Ordinance No. 31A-304 amending James City County Code Section 24-16 to no longer accept proffers for certain applications for residential rezoning; and
- WHEREAS, on March 5, 2019, changes to Section 15.2-2303.4 of the Code of Virginia by the General Assembly were approved by the Governor of Virginia and enacted as Chapter 245 of the Acts of Assembly (“Chapter 245”); and
- WHEREAS, Chapter 245 appears to address many of the concerns stated by the Board when it adopted Ordinance No. 31A-304; and
- WHEREAS, the Board desires that staff consider the effects of Chapter 245 and recommend any warranted changes to James City County Code Section 24-16 to accept proffers associated with any new residential rezoning or zoning map amendment, or any new residential component of a multi-use district rezoning or zoning map amendment; and
- WHEREAS, the Board is of the opinion that the public necessity, convenience, general welfare, and good zoning practice warrant the consideration of amendments to the Zoning Ordinance.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby initiate staff review of Section 24-16 of the James City County Code to accept proffers associated with any new residential rezoning or zoning map amendment, or any new residential component of a multi-use district rezoning or zoning map amendment and further directs staff to review and prepare any recommended revisions to current or rescinded proffer policies. The Planning Commission shall hold at least one public hearing on the consideration of amendment of said Ordinance and policies and shall forward its recommendation thereon to the Board of Supervisors in accordance with the law.

James O. Icenhour, Jr.
Chairman, Board of Supervisors

ATTEST:

Teresa J. Fellows
Deputy Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
HIPPLE	_____	_____	_____
LARSON	_____	_____	_____
SADLER	_____	_____	_____
MCGLENNON	_____	_____	_____
ICENHOUR	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of April, 2019.

24-16Initiating-res

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Adam R. Kinsman, County Attorney

SUBJECT: 2.2-3711.A(8), Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel; in particular, a right-of-way known as a portion of Overlook Drive in the Kingspoint subdivision.

REVIEWERS:

Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	4/3/2019 - 8:46 AM

ITEM SUMMARY

DATE: 4/9/2019

TO: The Board of Supervisors

FROM: Teresa J. Fellows, Deputy Clerk

SUBJECT: Continue until 6:30 p.m. on April 11, 2019 for the Community Budget Forum at the James City County Recreation Center

REVIEWERS:

Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	4/2/2019 - 4:21 PM