

RESOLUTION

CREATION OF THE ROUTE 5 TRANSPORTATION IMPROVEMENT DISTRICT

- WHEREAS, the Board of Supervisors of the County of James City, Virginia, ("Board") has received a petition from certain landowners ("Petition") requesting the creation of the Route 5 Transportation Improvement District ("District") pursuant to Virginia Code Section 15.1-791.1 et seq., from landowners representing fifty-one percent (51%) of the acreage or assessed valuation of the unimproved land in the proposed District; and
- WHEREAS, the Petition complies with the requirements of Virginia Code Section 15.1-791.1 et seq.; and
- WHEREAS, notice has been given pursuant to Virginia Code Section 15.1-791.3 and Section 15.1-431, by publication for three successive weeks in a newspaper of general circulation in James City County; a public hearing was held by the Board on the question of whether the residents and owners of real property within the proposed District would benefit from the establishment of the proposed District; and a copy of this proposed resolution was delivered to the attorney-in-fact for the petitioning landowners ("Landowners"); and
- WHEREAS, the Board has determined that the creation of the District is in furtherance of the Comprehensive Plan and furthers the general health, safety, and welfare of James City County by enabling the construction of the Route 5 Bypass; and
- WHEREAS, Route 5 and the proposed Route 5 Bypass are important transportation facilities which will provide vital access to the western portion of James City County ("County"); and
- WHEREAS, Route 5 has been designated as a scenic byway, and because of the historic and environmentally sensitive area which it serves, should only be improved in a manner that maintains a balance between transportation service levels and the highest aesthetic standards; and
- WHEREAS, the principal landowners in the western portion of the County have previously made proffers of approximately \$5.6 Million in cash and in road improvements to the County for improvement of Route 5 to a four-lane divided highway or for the construction of a new two-lane facility to provide an alternative to Route 5 (the "Route 5 Bypass"), and desire to provide for such orderly and appropriate development in a comprehensive and coordinated way so that the desired balance between transportation and environmental, aesthetic and historical considerations can be maintained; and
- WHEREAS, the Landowners wish to join with the Board to forge an important public-private partnership designed to implement a carefully balanced plan for road improvements in the Route 5 corridor with a goal of eliminating the need to widen existing Route 5; and

WHEREAS, creation of the District is essential to realizing these benefits by providing a sound financial plan to fund the costs of these improvements.

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

1. Creates the "Route 5 Transportation Improvement District" for a period of thirty-five (35) years from the date of this resolution or until the District is abolished in accordance with Virginia Code Section 15.1-791.14. The boundaries of the District are shown on Attachment A ("District Boundaries").
2. Declares that the purpose of the District is the financing and construction of the Route 5 Bypass - for the purpose of constructing a new two-lane, limited access highway on a four-lane right-of-way from a point approximately one quarter of a mile east of the entrance to the Governor's Land project on existing Route 5, a distance of approximately five (5) miles to News Road where it will connect with the Virginia Department of Transportation's ("VDOT") proposed improvements for the new Route 199 interchange with adequate access to the property of each Landowner, as shown on Attachment B ("Transportation Improvements"), subject expressly to the design specifications set out in Attachment C ("Design Specifications").
3. Confirms its intention that construction of the Transportation Improvements commence at such time as the average daily traffic count on existing Route 5 reaches 13,000 vehicles as provided in Attachment D ("Threshold").
4. Proposes that the Virginia Department of Transportation ("VDOT") construct an additional two lanes parallel to those constructed pursuant to the scope of work set out in Attachment B as a part of its highway construction program at such time as VDOT deems appropriate and at no expense to the District or to the County.
5. Appoints Donald E. Priest, Dominion Lands, Inc., 901 E. Byrd Street, Richmond, VA 23219; C. Lewis Waltrip, Jr., C. Lewis Waltrip, Inc., P.O. Box 3522, Williamsburg, VA 23187; Marc B. Sharp, Bush Companies, 4029 Ironbound Road, Suite 200, Williamsburg, VA 23188; John J. Digges, Bush Companies, 4029 Ironbound Road, Suite 200, Williamsburg, VA 23188; Lawrence Beamer, Beamer Construction Corp., 13441 Warwick Blvd, Newport News, VA 23602; and Robert M. Saunders, P.O. Box 1037, 11048 Warwick Blvd., Newport News, VA 23601; as members to the District Advisory Board ("Advisory Board"); and Jack D. Edwards, Berkeley District Supervisor; Judith N. Knudson, Jamestown District Supervisor; Perry M. DePue, Powhatan District Supervisor; David L. Sisk, Roberts District Supervisor; and Stewart U. Taylor, Stonehouse District

Supervisor, or such individual's successors in office, to the District Commission ("District Commission").

6. Indicates its intent that the District Commission and the Board of Supervisors enter into a contract with the Commonwealth Transportation Board ("CTB") pursuant to Virginia Code Section 15.1-791.6, generally consistent with the draft contract attached as Attachment E ("Contract") with the advice and comments of the District Advisory Board, to provide for the design, planning, construction, financing, and any other undertakings necessary to complete the Transportation Improvements. It is the Board's intent that the following provisions be agreed to and implemented in the Contract by and between the CTB, District Commission and Board of Supervisors:
 - a. The CTB shall advance funds over a two-year period from the Revenue Sharing Program, commencing in the 1998-1999 construction year (or such time as the Threshold is met, whichever occurs later) to provide a portion of Phase I construction costs of the initial two lanes of a realigned Route 5, not to exceed \$1 Million, in accordance with the provision of the CTB Resolution attached as Attachment F, the terms of which are incorporated herein by reference.
 - b. The County shall join in the Contract for the purpose of making all previously proffered funds within its control available for construction of the Transportation Improvements on a timely basis, including, without limitation funds received from Governor's Land Associates ("GLA") or its successors in interest, pursuant to the GLA Funding Plan Outline attached as Attachment G ("GLA Plan"), which funds shall constitute the matching funds required to be provided by the County under the CTB Resolution. In addition, the District shall execute a Subordinated Note in favor of GLA in the form attached as Attachment H in order to provide for the repayment of funds advanced under the GLA Plan. The Commission shall seek the advice and comments of the Advisory Board prior to finalizing the contract. The CTB shall designate an officer to manage the design and construction of those portions of Transportation Improvements not previously constructed by a landowner in the district in accordance with and to the standards set forth in proffered conditions applicable to the landowner.
 - c. The initial contracts for construction of the Transportation Improvements shall be let within 180 days of the date upon which the Threshold has been met. The Contract will further provide that the District shall have no further obligation of any kind or nature if the Transportation Improvements are not completed and opened to vehicular traffic in all directions within 48 months of the

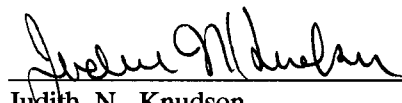
commencement of construction thereof, subject only to delays caused by force majeure events.

- d. Subject to the provisions herein, the District shall obligate itself under the Contract to reimburse the CTB for all construction funds advanced pursuant to (a) hereinabove in annual payments calculated on the basis of a repayment over eight (8) years commencing in the year after all CTB funds have been expended; provided that any amount unpaid after said eight (8) years shall bear interest at the rate of eight percent (8%) per year.
 - e. The District shall obligate itself under the Contract to reimburse the County for any funds expended by the County for Transportation Improvements.
7. Agrees that in order that the construction of the Transportation Improvements shall proceed in a timely and cost-effective manner, the Virginia Department of Transportation and County shall work expeditiously with respect to the acquisition of all right-of-ways and easements necessary for construction of the Transportation Improvements in the District to the County. The Landowners shall dedicate all required right-of-way through their respective properties within sixty (60) days of receipt of a written request to do so from the County.
8. States that upon the written request of the District Commission, the Board shall impose an annual special improvements real estate tax ("Tax") not to exceed in any year \$.10 per \$100 ("Maximum Rate") of the assessed value of any real estate, or the assessable value of taxable leasehold interest, of all real property within the District which was unimproved at the time the District was created; provided that the Tax shall be initially set, effective on the date hereof, at \$.01 per \$100 of assessed value until the later of (a) January 1 of the year following the year in which the CTB advances funds under the Contract for construction as provided hereinabove; or (b) January 1, 1998. The County will not levy any additional special improvement tax or impact fee of any kind or nature relating to transportation on the properties within the District so long as the Tax is imposed; provided, however, that nothing herein shall restrict the County's ability to negotiate proffers with any landowner. The Tax thereafter collected from the District shall be used by the District Commission in accordance with the Virginia Code Section 15.1-791.1 et seq., as amended solely for the annual payments required under the Contract, and related costs, for services performed in connection with the implementation of the Transportation Improvements. The Tax shall be set annually at the lowest rate required to provide adequate revenues to the District to make its payment under the Contract, and related costs, as determined by an annual audit.

9. States that pursuant to Virginia Code Section 15.1-791.3, and such other zoning authority as the Board possesses, the Board of Supervisors hereby extends, for a period of twenty (20) years, commencing on the effective date of the creation of the District ("Protected Period"), that:
 - a. That all properties within the District shall be entitled to pursue all by right and special uses heretofore granted and permitted by the Zoning Ordinance, as modified by proffers and/or approved master plans or other plans of development approved by the County at the request of the landowners, on the date the District is created, and any additional by right uses as may be added to the relevant classifications of the Code during the Protected Period. The Board will continue to grant or deny rezoning and special use permit requests according to law and legislative prerogative.
 - b. All development shall occur in accordance with the adopted Comprehensive Plan in force at the date of adoption of this resolution. Designation of Zoning district categories and classifications shall be as set forth in the adopted Zoning Ordinance in force at the date of adoption of this resolution.
 - c. The foregoing shall be subject to the superseding exceptions of Virginia Code Section 15.1-791.3C.
10. Reconfirms the County's ability to update its Comprehensive Plan, Zoning Ordinance, and related regulations throughout the life of the District; provided, however, that notwithstanding any other provision herein, no such amendment shall in any way eliminate, reduce or restrict permissible uses or densities, save and except upon the written request or approval of the owner of any property affected by a change or except as specifically required to comply with the Chesapeake Bay Preservation Act or other state law. The foregoing provisions shall be subject to the superseding exceptions of Virginia Code Section 15.1-791.3C.
11. Confirms that nothing herein shall be construed to delete, nullify or void conditions proffered or included in an approved master plan pursuant to Virginia Code Section 15.1-491 et seq approved prior to the date of the Petition in which certain uses, densities or other development criteria were deleted, reduced or otherwise restricted as a part of the rezoning process, nor shall it prevent the same from occurring during any future rezoning case with the concurrence of the effected landowner, save and except as superseded hereunder.
12. Directs the Commission to reimburse the Landowners for reasonable costs and expenses incurred in the formation of the District pursuant to Virginia Code Section 15.1-791.2, including, without limitation, legal, consulting and engineering fees, provided that the aggregate reimbursement to be paid

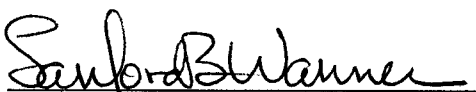
hereunder shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00).

13. a. Declares that the execution of the Contract shall satisfy all applicable transportation proffers related to Route 5 contained in Paragraph 19 of the Governor's Land Proffer Agreement dated September 10, 1992, shall constitute a "Funding Plan" as required thereunder and shall release The Governor's Land of all limitation on the approval of site plan and/or subdivisions contained therein.
- b. Declares that the execution of the Contract constitutes fulfillment of the transportation proffers contained in paragraph 15(e) of the Amended and Restated Greensprings Proffer Agreement dated April 30, 1992, and a release of any building restrictions relating thereto.
14. States that upon abolition of the District pursuant to State law, title to all funds and properties owned by the District at the time of dissolution shall vest in the County for expenditure on transportation improvements within the District. In the event the Route 5 Bypass, construction has not been initiated unused revenues of the District shall be returned to the County, and such funds would be distributed on a pro rata basis to the landowners who paid the tax. In addition, the District shall return any borrowed funds, including but not limited to the \$1.3 million under the Governors Land Funding Plan adopted February 1, 1993, to the Lender.



Judith N. Knudson
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner
Deputy Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
TAYLOR	AYE
EDWARDS	AYE
DEPUE	AYE
SISK	AYE
KNUDSON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 1st day of February, 1993.

trandist.res