

# **BOARD OF SUPERVISORS WORK SESSION**

## **GOVERNMENT CENTER BOARD ROOM**

**NOVEMBER 23, 2010 - 4 P.M.**

**A. Call to Order**

**B. Roll Call**

**C. Board Discussions**

1. Lake Powell Service District ([Attachment](#)) ([Memorandum](#))  
([Attachment 2](#))
2. Legislative Agenda ([Attachment](#))

**D. Break**

MEMORANDUM

DATE: November 23, 2010  
TO: The Board of Supervisors  
FROM: John E. McDonald, Manager of Financial and Management Services  
SUBJECT: Lake Powell Service District

---

Staff has reviewed the Lake Powell Service District proposal and has some specific comments.

The dam blew out in a 1999 storm, taking the Jamestown Road bridge with it. The bridge was redesigned and rebuilt and the lake owners, with financial assistance from a few waterfront property owners, did some remedial repairs to the dam. In October 2006, another storm took out the dam and the lake disappeared. A pedestrian/bike trail system that went the length of Lake Powell Road also disappeared. The Board of Equalization reduced the assessed values of land for both lakefront and lake view properties by an average of 35 percent, a total value reduction of over \$4 million, in recognition that the lake did not exist. The owners of the dam and lakebed properties originally did not want to sell the property but the owners are now considering a sale. The Army Corps of Engineers has advised that a nationwide general permit to restore the dam will require that construction commence by July 1, 2011. If it does not, the application to build the dam will be considered as a new permit request and the requirements will be more stringent.

A petition has been presented by 60 property owners with lots that would front on Lake Powell if it existed. The property owners want the County to buy the property and rebuild the dam, which would restore the lake. The property owners would like to partner with the County and help pay for the restoration. This financial contribution would consist of either a one-time payment by lot or by paying a 12-cent real property tax imposed only within the District for 20 years. The proposal is designed to make the property owner payments reimburse half of the estimated \$1.4 million cost. Appreciation of land values, caused by the lake, for lakefront and lake view homes, is projected to generate the other half of the \$1.4 million cost.

The petitioners suggest that the restoration of Lake Powell has both public and private benefits.

The public benefits include an improved vista for the traveling public on Jamestown Road, the reestablishment of a popular bike trail/greenway and recreation access to the lake. The lake has been one reason for the community character designation and the County has previously invested Greenspace money to preserve vistas on historic Jamestown Road. The restoration of the lake should also be a credit for stormwater management purposes, which could be beneficial for the County's Chesapeake Bay Total Maximum Daily Load (TMDL) issues. Property values should also increase for properties both within and outside of the District, lakefront and lake view, and the County would be reimbursed over 20 years for the total cost of the project.

There are also challenges in pursuing this project. The restoration project cost is estimated by the petitioners to be \$1.4 million. Revenue forecasts by the petitioners indicate that half would be reimbursed to the County from the 12-cent District tax rate on lakefront properties and half would be reimbursed by taxes from increasing land values in lake view properties outside of the District. There is no money projected as interest on the original County investment nor are there funds to maintain the dam and/or the lake.

The cost to restore the dam, including design and permitting, is unknown at this time. The petitioners estimate the costs at \$1 million based on a similar dam recently constructed in Gloucester. Under this proposal, costs exceeding \$1 million would be borne by the County, rather than the property owners.

The cost of the land itself is estimated at \$400,000, but a final price has not yet been agreed to by the property owners. Since both the lake and dam would be owned by the County, maintenance costs would also become a County responsibility and future changes to Federal and State regulations could make this problematic.

The project as proposed places risks on the County, which are not typical of other capital projects. As proposed, any costs over the estimated \$1.4 million would be the obligation of the County to pay and future tax collections based on increased property values are not fixed and will fluctuate according to market conditions. In each instance the County is at risk for either or both increased expenditures or potentially insufficient revenue collections to cover project expenses. Addressing these risks in part or in whole would make the project financing much stronger and would also provide consistency with the County strategic direction to manage our finances wisely.

The \$1.4 million would be fronted by the County from existing Greenspace funds and while the County would see the immediate benefit of the 12-cent District tax and any one-time payments by property owners, increases in property assessments resulting from a restored lake would not become effective until January 1, 2014, or FY 2015. The lake will not be restored in time to improve assessments as of January 1, 2012.

Developing a legally definitive deed for the lake property may also be challenging. Current residential deeds state that the property lines shall extend to the ordinary high water mark on Lake Powell. The petition wants to increase the high water elevation by two inches, which would flood private property.

The schedule presented for design, permitting, and construction is aggressive and may not be realistic. Seeking out Army Corps of Engineers (Corps) and State Dam Safety permits can be time consuming and the public procurement process is at least a 90-day process. Extending the current Corps deadline, that construction must commence no later than July 1, 2011, may be possible after negotiating with the Corps, but it is far from certain the Corps will agree.

There are few points for public access to the lake for boating or fishing except where the dam is located and access points would be limited for parking. The most likely properties may be lakefront just before the bridge as one heads to Jamestown, a parcel owned by the James City Service Authority (JCSA) on the right-hand side of the road and an undeveloped parcel with Resource Protection Area (RPA) restrictions on the left-hand side. There may also be access on the Gospel Spreading Church farm side of the dam. In all cases, parking and access would be limited.

Provisions in the petition indicate a preference by a few property owners to build piers, docks, or boat launches and to clear vegetation and otherwise cleanup the shoreline. Any initiatives would have to be done in compliance with RPA and Chesapeake Bay restrictions. The County's Environmental staff would have to be involved in both the planning process and in overseeing the execution of these initiatives. Protecting the shoreline would need to be both a private and public objective and property owner preferences may not prevail.

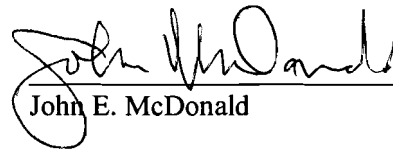
If the Board of Supervisors is willing to pursue this, it needs to authorize staff to proceed with three parallel initiatives: negotiating the design and permit process for the dam that leads to the preparation of construction documents; finalizing the acquisition of the lakebed and dam properties; and developing the ordinance creating the District for a public hearing. These three initiatives are interdependent but the timeline suggests that they proceed concurrently. The critical path is probably the permit process. If the Board concurs these initiatives should begin immediately, but all three would need to be successful or the project will not proceed.

Lake Powell Service District

November 23, 2010

Page 3

Staff is looking for guidance and if there is any Board interest in restoring Lake Powell as outlined in the petition, staff will need to begin work immediately.



John E. McDonald

JEM/nb

LakePowSD\_mem

Attachment

## Petition to Create the Lake Powell Service District

### Preamble. The Petitioners

5 We, the Owners of at least thirty-one (31), ~ 51%, of the sixty-one (61) non-exempt tax parcels within the proposed Lake Powell Service District (LPSD) hereby request that the Board of Supervisors of James City County, Virginia, adopt an ordinance to create a service district as specified in the "Lake Powell Service District", including Appendices A through E, hereinafter. The undersigned petitioners request that following aspects of our petition be enacted by the Board of Supervisors:

- 10
- the Ordinance creating the Lake Powell Service District is adopted no later than December 31, 2010;
  - the Lake Powell Service District tax rate will be no higher than 12¢/\$100 of assessed LPSD tax parcel value and be levied for no longer than 20 fiscal years;
  - 15 - the Lake Powell Service District tax will be terminated following the fiscal year during which the cost of the project to restore Lake Powell has been collected by this tax plus any other JCC real estate taxes collected on the JCC assessed lakeview premium on the LPSD properties, if this occurs sooner than the 20th fiscal year;
  - 20 - the planned level of Lake Powell is to be set by a spillway at the height of the existing spillway plus 2";
  - the lakebed and physical property of the dam are purchased by James City County from the present owners for the prices of \$TBD and \$TBD, to be included as part of the cost of the project to restore Lake Powell.

25

Tax Parcel	Owner Petitioner	Signature(s)	Date
------------	------------------	--------------	------

*[The signature sheet(s) of the petitioning LPSD tax parcel owners.]*

DRAFT (10-16-10) LPSD Signature Pages

<b>Tax Parcel</b>	<b>Owner Petitioner</b>	<b>Signature(s)</b>	<b>Date</b>
-------------------	-------------------------	---------------------	-------------

*[The signature sheet(s) of the petitioning LPSD tax parcel owners.]*

**Summary of Key Provisions of the LPSD Petition/Ordinance**

5 The Board of Supervisors of James City County creates, by ordinance, the Lake Powell Service District (LPSD) including 61 taxable real property parcels. These LPSD tax parcels about Lake Powell or about a tax parcel owned by a homeowners association that abuts Lake Powell. The ordinance establishing the LPSD is to be adopted by December 31, 2010.

10 The LPSD is created to acquire, restore and maintain Lake Powell by constructing a new Lake Powell Dam in the same approximate location as the existing breached dam. The planned level of the restored Lake Powell is to be set by a new spillway at the height of the present spillway plus 2".

15 The present owners of the lakebed and dam have agreed to sell their properties to James City County for prices of \$TBD and \$TBD respectively. The LPSD Petitioners agree to the acquisition of the lakebed and dam at these agreed prices as part of the cost of the Lake Powell Restoration Project.

20 The Board of Supervisors shall create an advisory council, the LPSD Council, comprised of three or five members, the majority of which shall be nominated by the owners of taxable LPSD properties. The purpose of the LPSD Council is to make recommendations to the Board of Supervisors on proposed expenditures of funds from LPSD levies, requests for services, and to advise on changes to lake usage policies. The LPSD Council will provide a means for continuing LPSD property owner involvement in decisions affecting Lake Powell.

25 The facilities constructed, operated and maintained by the LPSD will belong to one of three categories: (1) Lake Powell Restoration Project, (2) Post-Restoration Capital Improvements, or (3) On-going Operations and Maintenance. All revenue that James City County acquires through the LPSD tax shall be used exclusively for Lake Powell Restoration Project facilities.

30 The project to restore Lake Powell will commence with the design phase by February 1, 2011. Construction must begin by July 1, 2011.

35 Fishing, on a 'catch and release' basis, will be permitted by the public from boats, the dam or other public access lands. Boats are limited to canoes, kayaks, rowboats and johnboats of no more than 16 feet in length. Mechanical propulsion is limited to electric trolling motors. Swimming and bathing are not permitted in the Lake.

40 Property owners subject to the LPSD tax (LPSD Owners) are permitted to fish from their own property and to build boat launch platforms of natural material no more than eight feet in length along the shoreline. LPSD Owners shall not have the right to build docks or piers into the Lake or bulkheads along the shoreline. LPSD Owners whose property deeds presently provide the right to construct docks or piers may be "grandfathered" a continuing right to construct or maintain such structures as provided in their present deeds.

45 The LPSD Council will petition each Homeowners' Association (HOA) having lakefront buffer lands within the LPSD, to authorize, in writing, the right of the LPSD Owners within their HOA the right to cross their lakefront buffer property to fish and launch boats, to construct a permitted boat launch platform, and to clear vegetation to provide a better view, as may be permitted by the JCC Environmental Division. At the time of petition this applies only to the  
50 Settlers Mill Association.

James City County shall write and administer all contracts for constructing the LPSD facilities and shall operate and maintain them thereafter.

5 Funds to finance the Lake Powell Restoration Project will be provided by a combination of (1) the entire amount of an LPSD tax levy against the full assessed value of each of the tax parcels within the LPSD, (2) funds from James City County that derive from Lake Powell related lakeview premiums assessed by JCC Real Estate Division against any tax parcels, (3) state and federal funding for water and wildlife conservation purposes, and (4) contributions from private sources of funding. Post-restoration Capital Improvements may be  
10 funded by James City County as the Board of Supervisors deems appropriate.

The tax parcels of the Lake Powell Service District will be assessed an annual tax, the LPSD tax, to be paid twice yearly and collected by James City County at the same time as the James City County real property tax. The LPSD tax will be levied against the full assessed  
15 value of each tax parcel as determined by James City County for each fiscal year. Improvements to LPSD properties will be taxed as they are made and assessed by the JCC Real Estate Assessments Division.

The LPSD tax will be levied at the fixed rate of 12¢ per \$100 of assessed value. The LPSD  
20 tax levy will commence for the first half JCC fiscal year following the adoption of the LPSD enabling ordinance. The LPSD levy will be collected for 20 consecutive full fiscal years, including the commencing fiscal year, at which time the tax will be terminated. The LPSD levy may not be increased during, or extended beyond, this twenty fiscal year period.

25 The Cost of the Lake Powell Restoration Project will be determined by the JCC Board of Supervisors at the time of the restoration of the Lake to the planned water level. The LPSD levy will be terminated before the end of the twenty fiscal year period if the Cost of the Lake Powell Restoration Project has been repaid by the conclusion of an earlier fiscal year.

30 The Cost of the Restoration Project is estimated to be approximately \$1.4 M. It is intended to raise half the cost of restoring Lake Powell from the service district tax. This amount of tax revenue will be raised in 2010 dollars at the 12¢/\$100 rate if the average annual real estate appreciation of LPSD properties is equal to or higher than the cost of JCC of long-term debt. The remaining funds will be raised by the JCC real estate taxes paid by LPSD property  
35 owners on the re-assessed lakeview premium values that were rescinded in 2008.

Funds to restore Lake Powell may be raised from the Commonwealth of Virginia, the US Federal Government or from private sources. Such funds as may be raised specifically for the Restoration Project, through the efforts of JCC alone, or in concert with the LPSD  
40 Owners, or from public or private sources, will be applied against the Cost of the Restoration Project.

JCC will derive substantial new tax revenues through the general real estate tax on LPSD property improvements that would not be realized absent lake restoration.  
45

Upon the termination of the Lake Powell Service District levy, the Lake Powell Service District may be dissolved and the continuing operation, maintenance and improvements, if any, carried out by departments of James City County as the Board of Supervisors chooses.



**Petition to Create the Lake Powell Service District**

	<b>Page</b>
5 <b>Preamble. The Petitioners Summary</b>	<b>i 1</b>
 <b>Lake Powell Service District</b> 	
10 <b>Section 1. Creation and Boundaries</b>	<b>4</b>
<b>Section 2. Purposes and Benefits</b>	<b>4</b>
<b>Section 3. General Provisions and Powers</b>	<b>5</b>
15 <b>Section 4. Facilities</b>	<b>5</b>
4.1 Lake Powell Restoration Project	<b>5</b>
4.2 Post-Restoration Capital Improvements	<b>6</b>
4.3 On-going Operations and Maintenance	<b>6</b>
20    4.4 Schedule for Lake Powell Restoration Project	<b>7</b>
<b>Section 5. Services</b>	<b>7</b>
5.1 Stormwater Management	<b>7</b>
5.2 Public Recreational Uses	<b>8</b>
25    5.3 LPSD Property Owner Uses	<b>8</b>
<b>Section 6. LPSD Management</b>	<b>9</b>
<b>Section 7. Finance</b>	<b>9</b>
30    7.1 Lake Powell Service District Tax Levy	<b>10</b>
7.2 James City County Funding	<b>10</b>
7.3 State, Federal and Private Funding	<b>11</b>
<b>Section 8. Termination of the Lake Powell Service District</b>	<b>11</b>
35 <b>Appendix A. LPSD Tax Parcel List</b>	<b>12</b>
<b>Appendix B. LPSD Tax Parcel Map</b>	<b>14</b>
<b>Appendix C. LPSD Council and Property Owner Participation</b>	<b>15</b>
<b>Appendix D. LPSD Financial Analysis</b>	<b>16</b>
40 <b>Appendix E. Description of Proposed Dam</b>	<b>19</b>

## Lake Powell Service District

### Section 1. Creation and Boundaries.

5           The Board of Supervisors of James City County in the Commonwealth of Virginia hereby  
creates the Lake Powell Service District pursuant to the authority of Virginia Code § 15.2-2400,  
et seq. and the Charter of James City County, § 2.4. The Lake Powell Service District (LPSD)  
10 shall include the real property tax parcels listed in Appendix A of this ordinance. These real  
properties, the LPSD tax parcels, abut Lake Powell or abut a tax parcel owned by a property  
owners association that abuts Lake Powell. Prior to the breach of the dam, the land values of  
the taxable properties included were assessed a lakeview premium by the JCC Real Estate  
Assessments Division. The portions of the Settlers Mill Association tax parcels that abut Lake  
Powell are included in the LPSD. Three tax parcels that are owned by the James City Service  
15 Authority (JCSA) that either abut Lake Powell or are surrounded by LPSD tax parcels are also  
included in the LPSD. The LPSD tax parcels owned by the Settlers Mill Association or by the  
JCSA are exempt from taxation by the LPSD.

The LPSD tax parcels comprise the majority of the shoreline of Lake Powell. Lakefront  
properties that have not been included in the LPSD: a portion of tax parcel ID# 4830100035,  
20 owned by the Gospel Spreading Church, a portion of tax parcel ID# 4722600001B owned by the  
Rolling Woods Owners Association, a portion of tax parcel ID# 4830900001A owned by the  
Lake Powell Forest Owners Association and a portion of tax parcel ID# 4722600001B to be  
owned by the Marywood Owners Association. The Jamestown Road right-of-way and causeway  
are excluded from the LPSD. Tax parcel ID# 4830100035 is currently included in the Gospel  
25 Spreading Church Agricultural and Forestal District, AFD 12-86. This AFD tax parcel is  
excluded from the LPSD at the present time. If, in the future, the portion of this tax parcel  
located north of Lake Powell Road is subdivided and withdrawn from the AFD, then any newly  
subdivided tax parcel or parcels abutting the Lake or directly adjacent the Lake through a  
narrow property owners association parcel which abuts the Lake, will be added to the LPSD.

30           The LPSD properties are illustrated as "LPSD Tax Parcel Map, LPSD Petition" that may be  
found in Appendix B of this ordinance.

### Section 2. Purposes and Benefits

35           The Lake Powell Service District (LPSD) is created to acquire, restore and maintain Lake Powell  
by constructing a new Lake Powell Dam (the Dam) in the same approximate location as the  
existing breached dam which was destroyed on October 7<sup>th</sup>, 2006, by the upstream runoff of  
extraordinarily heavy rains. The publicly owned and restored Lake Powell will conserve a  
40 natural open space and abundant wildlife, manage storm water runoff for the Mill Creek  
watershed, create new recreation opportunities for the public and restore real property value to  
LPSD property owners and significant real estate tax revenue to James City County. The LPSD  
will provide substantial additional conservational, recreational and surface water management  
services for James City County as a whole. The restoration of Lake Powell will provide a body  
45 of water that beautifies the County along the Jamestown corridor, a destination that is heavily  
traveled by both County residents and visitors to the historic triangle.

**Section 3. General Provisions and Powers**

The James City County Board of Supervisors shall be the governing body of the Lake Powell Service District. The Board of Supervisors shall exercise any and all of those powers and duties with respect to service districts set forth in Virginia Code § 15.2-2400, et seq.

The Board of Supervisors shall create an advisory council, the LPSD Council, comprised of three or five members, the majority of which shall be nominated by the owners of taxable LPSD properties. The purpose of the LPSD Council is to make recommendations and advice to the Board of Supervisors on proposed expenditures of funds from LPSD levies, requests for services, and to identify and secure sources of state, federal and private funding for the facilities and services of the LPSD. The members of the LPSD Council will be entitled to all contract information, reports, and any other communications with respect to the activities of the LPSD, except for personnel matters involving James City County or LPSD employees. The LPSD Council will be established within 90 days of the enactment of this ordinance. Further discussion of the LPSD Council and the participation of LPSD property owners may be found in Appendix C of this Ordinance.

**Section 4. Facilities**

The facilities constructed, operated and maintained by the LPSD will belong to one of three categories: (1) Lake Powell Restoration Project, (2) Post-Restoration Capital Improvements, or (3) On-going Operations and Maintenance. All revenue that James City County acquires through the LPSD tax shall be used exclusively for the Lake Powell Restoration Project as delimited in Section 4.1. James City County shall hold sole and exclusive responsibility for all other Capital Improvements and On-going Operations and Maintenance as indicated in Sections 4.2 and 4.3. The County shall grant a one time shoreline cleanup permit to all LPSD property owners who wish to clean up their shoreline. The County will provide guidance as to what may be done consistent with the policies of the Environmental Division and Chesapeake Bay Act restrictions. Shoreline cleanup costs will be the sole responsibility of each property owner and not part of the LPSD project.

**4.1 Lake Powell Restoration Project**

**A. Purchase of dam and lake bed property**

James City County shall secure the documents transferring the Lake from the current owners in exchange for the agreed price of \$TBD. James City County shall secure the documents transferring the physical property of the existing Lake Powell Dam, as necessary to construct the new Dam, from the current owners for the agreed price of \$TBD. The documents transferring the Lake from current owners to the county shall contain language setting the lake level at a nominal height of 2" higher than the present spillway, defining shoreline property lines of the LPSD parcels as the edge of the waters of Lake Powell and giving riparian rights to LPSD lakefront parcels.

**B. Design and building of new Lake Powell Dam**

1. Professional Services (for example, as outlined by Timmons Group Report of October 24, 2006):

- Field topographic survey and easement plats
- Environmental permitting

- Geotechnical analysis
- Division of Dam Safety coordination
- Design improvements
- Construction administration and observation
- Materials testing during construction

5

2. Construction Services (for example, as outlined by Timmons Group Report of October 24, 2006, and herein Appendix E. Description of Proposed Dam):

- Mobilization
- Dewatering
- Tree Removal
- Repair of cavitation areas in dam
- Replace 100 foot section of dam
- New principal spillway
- Cut-off walls for 2 seepage areas
- New concrete emergency spillway with cut-off wall
- Removal of existing concrete and riprap
- Downstream bank stabilization
- Addressing Unsuitable Fill Material
- Stabilize with seed and matting
- Erosion and sediment control

10

15

20

**4.2 Post-Restoration Capital Improvements**

It is expected that any post-restoration capital improvements undertaken for the purpose of enhancing recreational uses by the public will be planned and undertaken as County recreational projects, separate from the LPSD financed restoration project. However, it is recognized that in designing and executing the restoration of the Dam and Lake it may be prudent to make provision for the cost-effective addition of these post restoration facilities at a later date. For example, the design of the Dam will incorporate necessary features to support a walk and bicycle pathway across the spillway portion without weakening the spillway or catching debris that impedes the release of water from the Lake. Costs for incorporating these features will be separately calculated and alternate funding sought as post-restoration capital improvements. Example post-restoration capital improvements include:

25

30

35

- Protection of the steel foot bridge footings
- Design and construction of public facilities
- Landscaping of disturbed areas
- Roadway improvements
- Bike/hiking trails and bridges
- Canoe launch
- Parking
- Picnic tables
- Restrooms

40

45

**4.3 On-going Operations and Maintenance**

Cleaning and repairs of monitoring equipment  
Regular maintenance of any constructed public access roads, trails, launches, parking lots, restrooms or other recreational areas/facilities.

50

**4.4 Schedule for Lake Powell Restoration Project**

The project to restore Lake Powell will commence with the design phase no later than January 1, 2011. The US Army Corps of Engineers Norfolk District has imposed an effective deadline for the commencement of construction as July 1, 2011. JCC and the LPSD will request a six (6) month extension of the waiver to repair the Lake Powell dam under Nationwide Permit #3. The required duration of project elements are as follows, should this six month waiver extension not be granted. Asterisked project elements\* may be performed concurrently. VA Dam safety approval\*\* will also require approval from the Soil & Water Conservation District Board. This board meets once every other month, starting in January. The reports will need to be provided to the VA Dam Safety Division at least 30 days prior to the meeting in order to be placed on the meeting agenda.

**A. Design Phase**

Field Topographic Survey	1 month*
Geotechnical Analysis	1 month*
Environmental Permitting	3 months*
Design Improvements	3 months
VA Dam Safety Coordination	2 months**
Total for design:	6 months

**B. Construction Phase**

Construction of Repairs and Improvements	9-12 months
--	-------------

**Section 5. Services**

The Lake Powell Service District (LPSD) is created to acquire, restore and maintain Lake Powell by constructing a new Lake Powell Dam in the same approximate location as the existing breached dam which was destroyed on October 7<sup>th</sup>, 2006. The publicly owned and restored Lake Powell will conserve a natural open space and abundant wildlife, manage storm water runoff for the Mill Creek watershed and create recreation opportunities for the public. It is the intention of the Lake Powell Service District that the Lake retain its natural, undeveloped appearance to the maximum extent possible, and that it be maintained primarily as a habitat for birds, fish and animals. The permitted recreational uses of the Lake outlined below are consistent with this goal. It is expected that modification of these permitted uses and restrictions may be adopted with the advisory participation of the LPSD Council.

**5.1 Stormwater Management**

Lake Powell will serve as a primary and secondary storm water buffer for properties in the Mill Creek watershed. The spillway of Lake Powell Dam will be designed to establish a nominal water level that is 2" higher than the level that was typical before the October 7, 2006 breach.

**5.2 Public Recreational Uses**

The following recreational uses of Lake Powell are permitted and restricted to the public, under the management of James City County.

5

**A. Activities Permitted to the Public**

- 1. Fishing: Fishing shall be on a 'catch and release' basis only. Public fishing is permissible only from boats, the dam or other public access lands. No public fishing is permitted on the Jamestown Road causeway or on private land around the Lake.
- 2. Boating: Boats are limited to canoes, kayaks, rowboats and johnboats of no more than 16 feet in length. Mechanical propulsion is limited to electric trolling motors.

10

**B. Restrictions on Public Use**

- 1. Swimming: Swimming and bathing are not permitted in the Lake.
- 2. Hours of Public Use: Public use is limited to 8 a.m. to 5 p.m.
- 3. Boat Rentals: No boat rental concession will be operated or permitted.
- 4. Disturbing Noise: The Lake shall be a quiet zone. No activities that generate disturbing noises are permitted including: loud radio or music playing, shouting, firework or firearms discharges.
- 5. Littering or polluting the Lake is prohibited.

15

20

**5.3 LPSD Property Owner Uses**

25

Property owners subject to the LPSD tax (LPSD Owners, hereinafter) are permitted all of the recreational uses that are permitted to the public, and must abide by the same restrictions, unless exempted by the following additional uses permitted to such LPSD Owners and their Guests. LPSD Owners will be exempt from any Lake Powell usage fees that may be imposed on the general public.

30

**A. Activities Permitted to LPSD Owners and their Guests**

- 1. Hours of LPSD Owner Use: LPSD Owners and their guests have the right to access the Lake at all times. Passes may be provided to LPSD Owners by the County which affirms this permission.
- 2. Fishing: LPSD Owners and their guests may fish from their own property.
- 3. Boat Launch Platforms: LPSD Owners may build boat launch platforms of natural material such as rocks, logs or sticks of no more than eight feet in length along the shoreline. JCC Environmental Division to ensure compliance with Chesapeake Bay Act provisions.
- 4. Irrigation: LPSD Owners shall have the right to withdraw water from the Lake, without fee, for non-potable uses on their property.

35

40

**B. Restrictions on the Additional LPSD Owner Uses**

- 1. Docks and Piers: LPSD Owners shall not have the right to build docks or piers into the Lake. LPSD Owners whose property deeds presently provide the right to construct docks or piers may be "grandfathered" a continuing right to construct or maintain such structures, provided they be no more than 600 sq. ft. in surface area and extend less that 30 feet from shore.
- 2. Bulkheads: LPSD Owners may not build bulkheads or any artificial construction along the shore to launch boats, control erosion or other use, except as permitted above under "boat launch platforms".

45

50

3. Boat Mooring and Storage: Boats may not be moored on the Lake. Boats not in use shall be stored on land at least fifteen feet from the water's edge and hidden as much as possible from view from the Lake. However, LPSD owners having grandfathered docks or piers may keep up to 2 permitted watercraft moored to their dock or pier.

5

**C. Access for LPSD Owners Adjacent Homeowner Association Land Buffers**

The LPSD Council will petition each Homeowners' Association (HOA's) having lakefront buffer lands within the LPSD, to authorize, in writing, the right of the LPSD Owners within their HOA the right to cross their lakefront buffer property to fish and launch boats, to construct a permitted boat launch platform, and to clear vegetation to provide a better view, as may be permitted by the JCC Environmental Division. The LPSD Council further will rely on the County to support and encourage the granting of these rights by Homeowner Associations to the LPSD Owners within their HOA. It will be the responsibility of the LPSD Owner to obtain these special LPSD rights from their respective HOA Board of Directors.

10

15

**Section 6. LPSD Management**

20

James City County shall write and administer all contracts for constructing the facilities specified in above Section 4. James City County shall operate and maintain the facilities specified in above Section 4. James City County will develop, publish and enforce the rules and restrictions of Lake Powell use. The LPSD Council shall make recommendations and advice to the Board of Supervisors on changes in or requests for new services within the District or changes in the policies of lake usage.

25

**Section 7. Finance**

30

Virginia Code § 15.2-2403, grants the LPSD the authority:

6. To levy and collect an annual tax upon any property in such service district subject to local taxation to pay, either in whole or in part, the expenses and charges for providing the governmental services authorized by subdivisions 1, 2 and 11 and for constructing, maintaining, and operating such facilities and equipment as may be necessary and desirable in connection therewith.... In addition to the taxes and assessments described herein, a locality creating a service district may contribute from its general fund any amount of funds it deems appropriate to pay for the governmental services authorized by subdivisions 1, 2, and 11 of this section.

35

40

7. To accept the allocation, contribution or funds of, or to reimburse from, any available source, including, but not limited to, any person, authority, transportation district, locality, or state or federal agency for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, expansion, and the operation or maintenance of any facilities and services in the district.

45

Funds to finance the Lake Powell Restoration Project will be provided by a combination of (1) the entire amount of an LPSD tax levy against the full assessed value of each of the tax parcels within the LPSD, (2) funds from James City County, (3) state funding for water and wildlife conservation purposes, (4) federal funding for water and wildlife conservation purposes and (5)

50

contributions from private sources of funding. Funds to finance Post-restoration Capital Improvements and On-going Operation and Maintenance activities will be provided by a combination of the above sources of funds, except that the LPSD tax levy will be entirely devoted to Lake Powell Restoration Project expenses. In addition, Post-restoration Capital Improvements may be funded by James City County as the Board of Supervisors deems appropriate.

An analysis of the projected revenues that will be derived from the LPSD tax over the next twenty years or longer may be found in Appendix D of this petition.

### 7.1 Lake Powell Service District Tax Levy

The tax parcels of the Lake Powell Service District will be assessed an annual tax, the LPSD tax, to be paid twice yearly and collected by James City County at the same time as the James City County real property tax. The LPSD tax will be levied against the full assessed value of each tax parcel as determined by James City County for each fiscal year. Improvements to LPSD properties will be taxed as they are made and assessed by the JCC Real Estate Assessments Division. Substantial real property value will be added to the LPSD by the construction of residences on the LPSD tax parcels that are currently unimproved and by renovations and additions to existing improved properties.

The LPSD tax will be levied at the fixed rate of 12¢/\$100 of assessed value. The LPSD tax levy will commence for the first full JCC fiscal year following the adoption of this Ordinance. This is expected to be FY 2011. The LPSD levy will be collected for 20 consecutive fiscal years, including the commencing fiscal year, at which time the tax will be terminated. The LPSD levy may not be increased during, or extended beyond, this twenty fiscal year period.

The LPSD tax may be paid in full within 90 days of the adoption of the LPSD Ordinance. LPSD owners who elect the full payment option will have no further LPSD tax liability. The full payment amount will be based on formulas for (1) presently improved and (2) presently unimproved tax parcels. An LPSD tax parcel having an improvement value (IV) of less than 25% of the land value (LV) will be considered unimproved for the purpose of the full payment calculation.

The full payment amount will be based on the assumption that each tax parcel's land value (LV) returns to the 2006 tax year value,  $LV_{2006}$ . For improved parcels this means that the assessed value considered for the full payment calculation will be the 2010 improvement assessed value ( $IV_{2010}$ ) plus the restored 2006 land value, ( $LV_{2006}$ ).

$$\text{Improved parcels: Full LPSD Tax Payment} = (20)(.0012)(IV_{2010} + LV_{2006})$$

The full payment amount for unimproved parcels assumes that a future improvement will be made having a value of twice the 2006 land value. Since it is not known when such improvement may take place over the 20 year taxing period of the LPSD tax, the lake restoration project budget has been based on the assumption that future improvements of the many unimproved parcels will be made uniformly over the 20-year timeframe and that each unimproved parcel will contribute tax revenues as if the improvement was taxable for half the period. Therefore, the improvement value will be estimated, for full LPSD tax payment purposes, as being equal to the 2006 land value ( $LV_{2006}$ ). Hence, for unimproved tax parcels, the full payment amount will be based, effectively, on the twice 2006 land value.

$$\text{Unimproved parcels: Full LPSD Tax Payment} = (20)(.0012)(LV_{2006} + LV_{2006})$$



5 The Cost of the Lake Powell Restoration Project will be determined by the JCC Board of  
Supervisors and published by the Lake Powell Service District Council at the time of the  
restoration of the Lake to the planned water level. The current year and cumulative amount of  
revenues collected by the LPSD tax will be reported annually to the LPSD Council. The LPSD  
tax levy will be terminated following the first fiscal year during which the cumulative amount of  
10 revenue collected by the LPSD levy and other cumulative contributions as discussed below  
have repaid the Cost, if this occurs before the twentieth fiscal year of the LPSD tax levy.  
Petitioners believe this provision is needed given the uncertainty of the cost of the restoration  
project at this time and the possibility that the safety requirements driving the dam  
reconstruction project costs may be re-visited by new Virginia Commonwealth legislation.

**7.2 James City County Funding**

15 James City County will provide the additional funds and financing necessary to complete the  
Lake Powell Restoration Project which are not provided by the LPSD tax or raised from other  
sources. In 2008 JCC Real Estate Assessment Division reduced the land values of the LPSD  
parcels to remove a substantial portion of the lakeview premium. This value, ~ \$4.5 M, will be  
re-assessed for the tax year 2011 and beyond. The general JCC RE tax revenue thereby  
20 generated will be applied to the Cost of the Lake Powell Restoration Project until such time as  
the Cost is repaid. James City County will also provide the funds and financing necessary to  
make any post-restoration capital improvements and to operate and maintain the LPSD  
facilities, which are not raised from other sources.

**7.3 State, Federal and Private Funding**

25 Funds to restore Lake Powell may be raised from the Commonwealth of Virginia or the US  
Federal Government from monies set aside for water and wildlife conservation purposes. In  
addition, funds may be raised from private sources, especially non-profit groups interested in  
wild life conservation, the preservation of open spaces or the use of Lake Powell by the  
30 members of the several property owner associations having property abutting Lake Powell.  
Such funds as may be raised specifically for the Restoration Project, through the efforts of JCC  
alone, or in concert with the LPSD Owners, or from public sources, will be applied against the  
Cost of the Restoration Project, thereby having the effect of lowering the Cost of the Restoration  
Project or completing repayment of the Restoration Project Cost at an earlier fiscal year.

**8.0 Termination of the Lake Powell Service District**

35 Upon the termination of the Lake Powell Service District Levy, as specified above in subsection  
7.1, the Lake Powell Service District may be dissolved and the continuing operation,  
40 maintenance and improvements, if any, carried out by departments of James City County as the  
Board of Supervisors chooses. Alternately, the Board of Supervisors may decide to maintain  
the LPSD and the LPSD Council to give advice with respect to the use and operation of Lake  
Powell.

## Appendix A. LPSD Parcel List

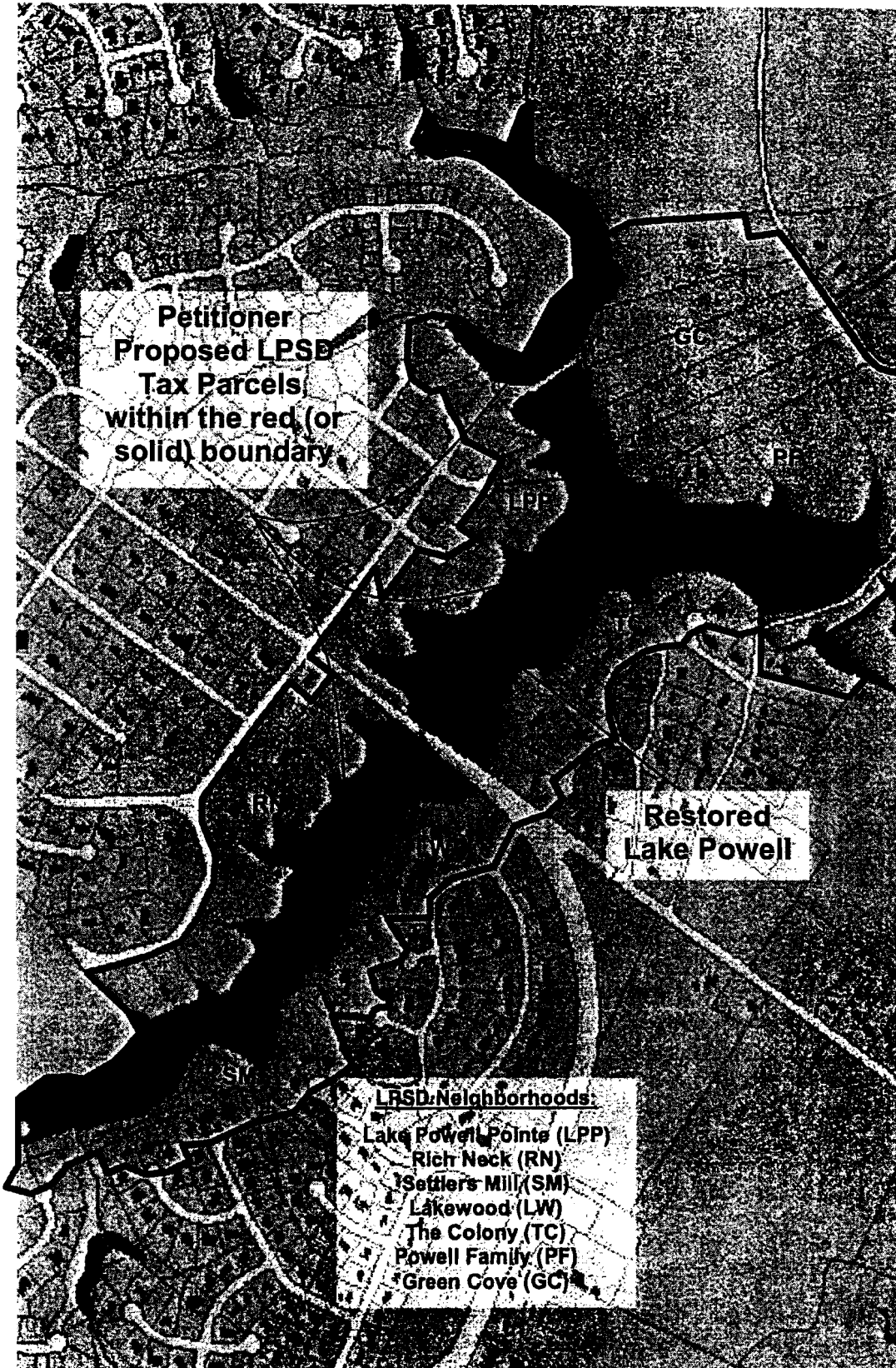
Parcel ID	Address	Total Value <sup>1</sup> , TV <sub>2010</sub>	Lakeview Premium <sup>2</sup> , LVP	Future Improvement Value <sup>3</sup> , FIV	Petition Signer <sup>4</sup>
4741000006	2808 DURFEY'S MILL RD	\$106,400	\$45,600	\$304,000	
4741000007	2804 DURFEY'S MILL RD	\$478,300	\$42,000		
4741000008	2800 DURFEY'S MILL RD	\$98,000	\$42,000		
4741200050	2808 BLUE LAKE COURT	\$647,100	\$54,800		
4741200053	2841 DURFEY'S MILL RD	\$97,300	\$54,700	\$304,000	
4741200054	2840 DURFEY'S MILL RD	\$710,900	\$57,600		
4741200055	2836 DURFEY'S MILL RD	\$97,300	\$54,700	\$304,000	
4741200057	5109 SHORELINE COURT	\$158,700	\$89,300	\$496,000	
4741200058	5112 SHORELINE COURT	\$966,500	\$109,400		
4741200059	5108 SHORELINE COURT	\$158,700	\$89,300	\$496,000	
4741200064	5209 SCENIC COURT	\$158,700	\$89,300	\$496,000	
4741200065	5208 SCENIC COURT	\$158,700	\$89,300	\$496,000	
4741200066	5204 SCENIC COURT	\$128,000	\$72,000	\$400,000	
4830700049	2812 BLUE LAKE COURT	\$492,100	\$54,800		
4721200001	110 RICH NECK RD	\$275,100	\$117,200		
4721200002	114 RICH NECK RD	\$164,300	\$195,700	\$720,000	
4721200003	116 RICH NECK RD	\$278,300	\$117,100		
4721200004	118 RICH NECK RD	\$102,500	\$89,500	\$384,000	
4721200005	120 RICH NECK RD	\$110,000	\$82,000	\$384,000	
4740100002	106 RICH NECK RD	\$257,900	\$110,000		
4740100004	104 RICH NECK RD	\$651,700	\$176,000		
4721200001A	108 RICH NECK RD	\$149,100	\$34,600		
4722000030	129 HARVEST CIRCLE	\$562,100	\$40,500		
4722000031	128 HARVEST CIRCLE	\$504,700	\$40,500		
4722000032	124 HARVEST CIRCLE	\$459,000	\$28,500		
4722000038	141 HEARTHSIDE LANE	\$458,700	\$40,500		
4722000039	144 HEARTHSIDE LANE	\$533,600	\$40,500		
4722000040	140 HEARTHSIDE LANE	\$539,300	\$40,500		
4722400015	335 MILL STREAM WAY	\$523,800	\$42,700		
4722400016	336 MILL STREAM WAY	\$99,800	\$69,000	\$337,600	
4740900015	121 MILL VIEW CIR	\$428,900	\$55,500		
4740900016	124 MILL VIEW CIR	\$528,600	\$97,800		
4740900017	120 MILL VIEW CIR	\$509,200	\$70,000		
4740200008	106 LAKE DRIVE	\$474,500	\$97,700		

DRAFT (10-16-10)

LPSD Proposed Ordinance, 12/14/2010

Parcel ID	Address	Total Value <sup>1</sup> , TV <sub>2010</sub>	Lakeview Premium <sup>2</sup> , LVP	Future Improvement Value <sup>3</sup> , FIV	Petition Signer <sup>4</sup>
4740200009	104 LAKE DRIVE	\$374,500	\$97,700		
4740200010	102 LAKE DRIVE	\$333,400	\$104,500		
4740200011	100 LAKE DRIVE	\$277,000	\$82,200		
4740300024	103 MALVERN CIRCLE	\$348,700	\$88,800		
4740300028	3 BRANDON CIRCLE	\$415,100	\$97,700		
4740400001	210 THE COLONY	\$361,400	\$0		
4740400002	208 THE COLONY	\$115,200	\$64,800	\$360,000	
4740400003	132 THE COLONY	\$300,000	\$0	\$600,000	
4740400006	112 THE COLONY	\$226,400	\$61,200		
4740400007	116 THE COLONY	\$373,000	\$64,800		
4740400008	118 THE COLONY	\$282,000	\$61,200		
4740400009	122 THE COLONY	\$259,500	\$64,800		
4740400010	124 THE COLONY	\$480,900	\$72,000		
4740400011	126 THE COLONY	\$305,700	\$64,800		
4740600001	130 LAKESIDE CIRCLE	\$482,200	\$72,000		
4740600002	132 LAKESIDE CIRCLE	\$128,000	\$72,000	\$400,000	
4740600004	131 LAKESIDE CIRCLE	\$217,700	\$54,000		
4740100029	2148 LAKE POWELL RD	\$307,400	\$0		
4740100032	2249 LAKE POWELL RD	\$247,600	\$77,000		
4740100034	2245 LAKE POWELL RD	\$105,600	\$54,400	\$320,000	
4740100035	2243 LAKE POWELL RD	\$132,000	\$68,000	\$400,000	
4740100036	2187 LAKE POWELL RD	\$137,000	\$68,000	\$410,000	
4831000001	2253 LAKE POWELL RD	\$233,500	\$116,500	\$700,000	
4831000002	2261 LAKE POWELL RD	\$233,500	\$116,500	\$700,000	
4831000003	2269 LAKE POWELL RD	\$233,500	\$116,500	\$700,000	
4831000004	2273 LAKE POWELL RD	\$573,000	\$116,500		
4831000005	2277 LAKE POWELL RD	\$233,500	\$116,500	\$700,000	
4740100005	1567 JAMESTOWN ROAD (JCSA)	\$0			
4740300024A	105 MALVERN CIRCLE (JCSA)	\$0			
4740400001A	1594 JAMESTOWN ROAD (JCSA)	\$0			
4711900001A	SETTLERS MILL ASSOCIATION	\$0			
4711600001A	SETTLERS MILL ASSOCIATION	\$0			
4740900001B	SETTLERS MILL ASSOCIATION	\$0			
LPSD Totals		\$19.785 M	\$4.503 M	\$10.412 M	

<sup>1</sup> 2010 total JCC assessed value. <sup>2</sup> JCC assessed land value difference: (2006 – 2010) = Land value premium. <sup>3</sup> The future improvement value @ twice 2006 land value. <sup>4</sup> Approved the LPSD petition



Appendix B - LPSD Tax Parcel Map, LPSD Petition, 12-14-2010

**Appendix C. LPSD Council and Property Owner Participation**

5 The JCC Board of Supervisors shall create an advisory council, the LPSD Council,  
comprised of three or five members, the majority of which shall be nominated by the owners  
of taxable LPSD properties. The purpose of the LPSD Council is to make recommendations  
and advice to the Board of Supervisors on proposed expenditures of funds from LPSD levies,  
requests for services, changes to lake usage policies, and to identify and secure sources of  
state, federal and private funding for the facilities and services of the LPSD. The members of  
10 the LPSD Council will be entitled to all contract information, reports, and any other  
communications with respect to the activities of the LPSD, except for personnel matters  
involving James City County or LPSD employees.

15 It is anticipated that all aspects of the Lake Powell restoration, additional capital  
improvements, on-going operations and future use policies cannot be determined at the time  
of the adoption of the LPSD ordinance. The LPSD property owners expect to participate in  
making future decisions affecting the LPSD via their participation on the LPSD Council. For  
example, it may be necessary to develop guidelines for boat launch platforms and for the  
"one-time shoreline" clean-up with the JCC Environmental Division. If the allowance of some  
docks or piers is considered, the LPSD Owners will be involved in the decision through the  
20 LPSD Council. The placement of public access post-restoration capital improvements,  
especially car parking, rest room and boat launching facilities, will also be of great interest to  
LPSD Owners. No LPSD Owners properties should be acquired by condemnation for post-  
restoration capital improvements.

25 If changes in the properties that comprise the LPSD are made, the LPSD Council would offer  
its advice as to any needed changes in the policies of lake use or in the enforcement of rules  
and restrictions.

30 It may be necessary to develop specific policies for the use of the Lake by the members of  
the Homeowners Associations (HOA's) that abut Lake Powell. LPSD Owners, whose  
properties are buffered by HOA lands, may be assisted by the LPSD Council in advocating,  
with the relevant HOA Boards and the JCC Environmental Division, access and vista  
improvements that cross the HOA lakefront land buffers. HOA's may want to provide Lake  
access from their lakefront land buffers to all members of their Associations. The LPSD  
35 Council would offer its advice as to any needed changes in the policies of lake usage, the  
collection of fees, or in the enforcement of rules and restrictions that might be involved.

**Appendix D. LPSD Financial Analysis****LPSD Real Estate Tax Payments**

5 The tax parcels of the Lake Powell Service District (LPSD) will be levied an annual tax, the LPSD tax, to be collected twice yearly by James City County (JCC) at the same time as the James City County general real estate tax.

10 Estimating the amount of revenue that will be collected by the LPSD tax over the next twenty years requires several assumptions to be made about the future. The property values assessed by the James City County Real Estate Assessments Division for the JCC fiscal year (FY) 2010 will be used as a "base" for estimating future revenues that will be collected. The FY 2010 total assessed values for each LPSD property are given in Appendix A.

15 In addition, the land value estimates for the LPSD properties that were in force at the time of the breach of the Lake Powell dam will be used as the land values representative of the situation that will prevail after the lake is restored. The 2006 land values minus the 2010 land values represents the lakeview premium that the JCC Real Estate Assessments Division recognized as clearly associated with the value of each property's proximity to Lake Powell. The lakeview premiums identified for each LPSD property are given in Appendix A.  
20 These lakeview premiums, totaling \$4.503 M for all LPSD properties, were rescinded for tax years beginning in 2008. JCC has not collected the real estate property tax revenue, ~ \$34,673 per year, since. It is assumed that this lakeview premium value will be re-assessed to each LPSD property beginning with the tax year 2011.

25 Many (22) of the taxable parcels within the LPSD are presently unimproved, having only a land value. These unimproved parcels are held by individuals who intend to build residences themselves or to sell these parcels to builders or others who will build residences, or are held by builders. As new homes are constructed, "improvement value" is added to various LPSD properties, generating additional LPSD tax revenues. For this analysis it is assumed that the  
30 improvements will have a value of twice the land value, including the lakeview premium. The forecast improvement value is given for each unimproved LPSD lot in Appendix A. The total for all LPSD properties is \$10.412 M. The 20 year total revenue arising from these future improvements is modeled by assuming that, on average, these improvements will be made uniformly over the next 20 years. This has the mathematical effect of adding one-half of the  
35 total amount to the LPSD 2010 base value amount.

The 20-year tax revenue of the LPSD tax,  $TR_{LPSD}$ , is modeled using FY 2010 JCC Landbook total value,  $TV_{2010}$ , plus the total lakeview premium, LVP, plus (1/2) the future improvement value, FIV, times an LPSD tax rate,  $r_{LPSD}$ , of 12¢/\$100 times 20 years.

40

$$\begin{aligned} TR_{LPSD} &= (20) (r_{LPSD}) (TV_{2010} + LVP + 0.5 FIV); & (1) \\ TR_{LPSD} &= (20) (.0012) (\$19.785 M + \$4.503 M + (0.5)(\$10.412 M)); & (2) \\ TR_{LPSD} &= \$707,855. & (3) \end{aligned}$$

45 The LPSD special tax is expected to raise \$707,855 over 20 years.

**General JCC Real Estate Tax Revenue**

In addition to the monies raised by the LPSD tax, monies raised from the re-instated lakeview premium by the general JCC tax rate will be devoted to the Cost of the Lake Restoration Project until the debt is retired. Currently the JCC RE tax rate,  $r_{JCC}$ , is 77¢/\$100. This tax rate applied against the \$4.503 M of LPSD lakeview premium will raise \$34,673 per year. Over 20 years the total revenue from the JCC tax,  $TR_{JCC}$  is therefore:

- 5  $TR_{JCC} = 20 (r_{JCC}) (LPV);$  (4)
- 10  $TR_{JCC} = 20 (.0077) (\$4.503 \text{ M});$  (5)
- $TR_{JCC} = \$692,452.$  (6)

**Lake Powell Restoration Project Budget**

15 The budget for the restoration of Lake Powell is bounded by the two above calculated 20 year revenue streams:

Lake Restoration Budget =  $TR_{LPSD} + TR_{JCC} = \$1.400 \text{ M}.$  (7)

20 Additional monies for the lake restoration may be raised from other private or public sources. If so these monies will be spent to reduce the term of repayment to JCC and not increase spending on the project.

**Real Estate Assessment Value Growth**

25 It is expected that the assessed value of LPSD properties will grow at least as fast as the cost to JCC of long term borrowing. Thus, LPSD property owners will be paying an increased amount each year that assessed values increase. The extra monies thereby generated will pay for any interest charges that JCC carries on the funds extended to restore the dam. In a sense, each LPSD property owner will be borrowing their share of the dam restoration cost and paying back over 20 years at an interest rate that matches the growth in assessed value of their property.

**Lake Powell Related Tax Revenues Retained for General JCC Use**

35 Tax revenues raised by the general JCC real estate tax on LPSD properties will be higher if the lake is restored than if it is allowed to remain as is or converted into a compensatory mitigation bank. The risk that JCC's investment in Lake Powell will be a financial burden is more than offset by at least the following nine factors.

40 Firstly, if the lake is not restored then it is likely that many LPSD property owners will successfully seek further reductions in their assessed values. The lakeview premium reductions of 2008 did not bring these properties into parity with similar non lakeview properties in each respective neighborhood. JCC's loss in lakeview premium revenue would be ~ \$50,000 per year, \$1 M over the next 20 years.

Secondly, after the cost of the dam restoration has been repaid, JCC will recapture, for other county resource needs, the tax revenues deriving from the lakeview premiums.

5 Thirdly, the real estate value growth of LPSD properties may exceed the cost of long term debt, providing faster accumulation of LPSD tax revenue and higher JCC general tax revenues on the improvement values of LPSD properties.

10 Fourthly, the restoration of the lake will encourage earlier building of homes on the unimproved lots and homes of higher value than would be the case without lake restoration. This will generate earlier and higher JCC general tax revenue than would otherwise occur.

Fifth, further improvements and renovations to existing homes within the LPSD will likely occur given lake restoration, raising additional Lake Powell related general tax revenue.

15 Sixth, some unimproved LPSD lots are large enough to be subdivided, thereby increasing both the LPSD tax revenue and the JCC general RE tax revenue. Also the Gospel Spreading Church lakeside parcel may be removed from the AFD and developed into higher value parcels.

20 Seventh, some of the lakeview properties in Lake Powell Forest, Marywood and Rolling Woods may develop a lakeview premium, increasing both LPSD and JCC general RE tax revenues.

25 Eighth, at some point in the future JCC could sell Lake Powell back to the LPSD property owners if it chooses not to retain the lake as a public recreational asset.

Ninth, the Lake Powell asset may become popular as a convenient, "close-in", natural park facility.



## Appendix E. Description of Proposed Dam

5 The proposed dam will be a site-adapted replication of the recently approved and constructed Cow Creek Mill Pond Dam (Gloucester County, VA) constructed in  
10 2007/8. This new Cow Creek Mill Pond Dam replaced a concrete dam that was breached by the same rain event in October, 2006 that caused the breach of the Lake Powell Dam. The Cow Creek Mill Pond impounds approximately the same acre-feet of water as will the restored Lake Powell. There are no known reasons why the Cow Creek Mill Pond dam design approach, materials and construction methods will not serve equally the Lake Powell Dam restoration project. The Cow Creek Mill Pond Dam was approved by all of the same Virginia Commonwealth and US Federal regulatory entities that must approve a new dam structure for Lake Powell.

15 The envisioned dam for this project will consist of the following:

1. Clearing and removing trees and stumps from the existing dam.

20 2. Demolishing the old concrete spillway and placing the large concrete blocks and pieces at the secondary spillway. The concrete blocks and pieces will then be covered with rip rap for beautification and erosion control.

25 3. Constructing an 800-foot long vinyl sheet piling bulkhead to form the face of the new dam. The piling material will be 20 feet in height, extending approximately 12 feet into the lakebed at the dam face.

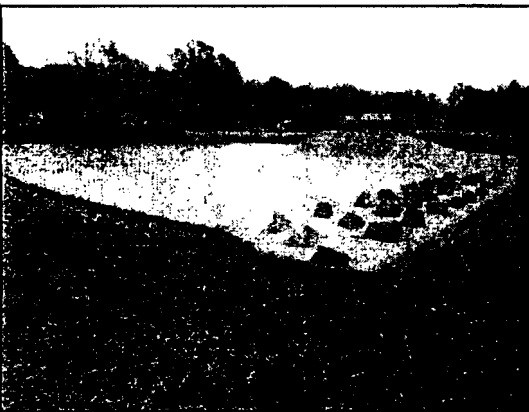
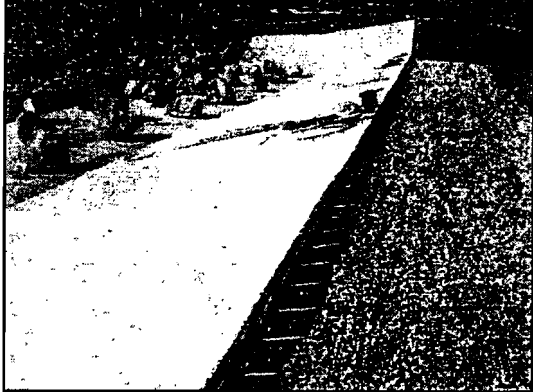
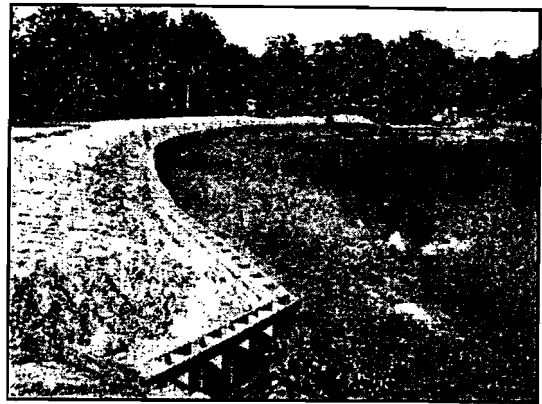
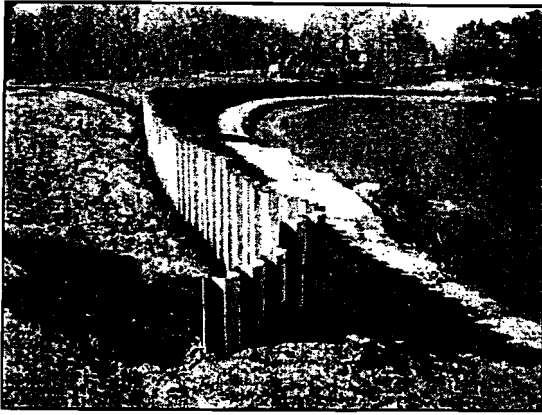
4. Backfilling the vinyl sheet piling wall with earth and a concrete cap to form the dam bulkhead wall.

30 5. Constructing a 100-foot wide concrete spillway. This spillway is six times wider than the spillway mentioned in the Timmons Report as being needed to handle a 100-year rain storm event. In addition a secondary 50 to 60-foot spillway approximately 9 inches higher than the main 100-foot spillway will be provided.

35 6. Constructing an adequate number of concrete supports spanning the two spillways to enable a future pedestrian and bicycle pathway, to be provided by James City County, or other, recreational funding sources.

Following page:

40 Photos of the Cow Creek Mill Pond Dam during construction and as finished. The proposed Lake Powell Dam would be similarly constructed and have a similar appearance.



The following is a brief summary of the status of several other dams located in the County.

#### Warhill District Park

James City County owns three dams at the Warhill District Park that are of such a size that they are subject to the State dam safety regulations:

Western Pond Dam	Impoundment area = 9 acres
Eastern Pond Dam	Impoundment area = 8.3 acres
Warhill Trail Dam	Impoundment area = 46 acres (estimated)

Two of the dams, the Eastern and Western Pond Dams, are fully compliant with the regulations and have active Operation and Maintenance Certificates. The third dam is the Warhill Trail Dam located on the entrance road into the District Park. Given that there is a road over the dam and there are downstream structures (homes and Longhill Road) that would be impacted in the event of a dam failure, the Warhill Trail Dam would be classified by the State as either a Significant or High-Hazard dam; the other two Warhill dams are low-hazard dams. The higher the hazard classification as determined by the State, the greater the cost of compliance as the dams have to meet higher standards. Based on an analysis of the costs involved with upgrading the dam to be compliant with the State's regulations, it has been determined that it would be more cost-effective to "decommission" the dam – modify the structure so that it no longer would be considered a dam. The Stormwater Division is currently in the process of having the modifications designed with construction costs estimated between \$400,000 and \$500,000. There are no other dams that the County owns that are subject to the dam safety regulations; however, the James City Service Authority (JCSA) owns one in Mirror Lake Estates on Point O'Woods Road.

#### Mirror Lake Estates

JCSA owns this dam and has performed a dam analysis, as directed by the State. There is the possibility of a dam classification change, but it is under review based on recent changes to the Dam Safety Regulations. The key issue is the traffic count on Point O'Woods Road over the dam and the Virginia Department of Transportation (VDOT) has been asked to update the counts.

If the dam classification is increased, there are three options:

1. Close the road and breach the dam.
2. Breach the dam and install a culvert to continue use of the road. Estimated cost is \$250,000 to \$300,000.
3. Upgrade the dam to current standards to retain the pond. Estimated cost is \$1 million to \$1.5 million.

There are 17 property owners that directly abut the dam, which impounds nine acres.

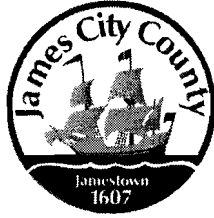
#### Cranstons Mill Pond

A Special Use Permit (SUP) was approved for the Cranstons Mill Pond, which impounds about 50 acres, at your last Board meeting. The inquiry related to this dam was related to the assessment. The bulk of the property in and around Cranstons Mill Pond is owned by the Toano Fish and Hunt Club. They are in an Agricultural and Forestal District (AFD), pay taxes based on land use and did not appeal the market value assessments when the dam was destroyed. There are two homes on separate parcels set back from the pond, but their land values are standard rural home site values – no pond frontage, they do not even have a view of the pond in the summer and the winter view is obscured.

## Jolly Pond Road

Jolly Pond Road has been closed by VDOT after the Conditional Operation and Maintenance permit issued for the dam expired, severing Jolly Pond Road similar to Lake Powell Road. The dam is privately owned and the owner cannot afford the repairs necessary to bring the dam into compliance with the Dam Safety regulations. James City County commissioned an alternatives analysis for the dam which included reinforcement, breaching and full upgrade. Costs ranged from \$900,000 to \$2.5 million (2008 costs). There are no homes with pond frontage. The structure is approximately 700 feet long, 10 feet tall, and has a surface area of about 43 acres. At a minimum, in order to meet new Dam Safety regulations the entire embankment must be cleared of all trees. The spillway must also be significantly upgraded, although the design is somewhat flexible depending upon traffic counts and hazard classification.

DamSummary\_att



**JAMES CITY COUNTY  
2011 LEGISLATIVE PROGRAM**

**Part I. Legislation to be Introduced on Behalf of the County**

1-1. LOCAL CIGARETTE TAX

Amend Virginia Code § 58.1-3831 to authorize counties to levy a tax upon the sale or use of cigarettes to the same extent permitted by cities and towns.

1-2. INCLUDE JAMES CITY COUNTY AMONG THOSE COUNTIES WHICH MAY ENACT ADDITIONAL PROVISIONS REGARDING PROPERTY TAXED UNDER A LAND USE CLASSIFICATION

Amend Virginia Code § 58.1-3237.1 to include James City County among those localities which may exclude certain lands from land use taxation.

1-3. INCLUSION OF JAMES CITY COUNTY AMONG THOSE LOCALITIES WHICH MAY ENACT AGRICULTURAL AND FORESTAL DISTRICTS OF LOCAL SIGNIFICANCE

Amend Virginia Code §§ 15.2-4402 and 15.2-4407 to include James City County among those localities which may establish agricultural and/or forestal districts of local significance.

1-4. VIRGINIA RETIREMENT SYSTEM CONTRIBUTION FOR PUBLIC SAFETY EMPLOYEES

Amend Virginia Code § 51.1-144.F(2) to allow employers the option of paying an equivalent amount in lieu of the required Virginia Retirement System member contributions just for the employer's public safety employees.

1-5. ESTABLISHMENT OF A TAX ON FERTILIZER SOLD IN LOCALITIES SUBJECT TO THE CHESAPEAKE BAY PRESERVATION ACT

Amend the Virginia Code to allow a locality subject to the Chesapeake Bay Preservation Act to establish a local fertilizer tax provided such tax specifically exempts fertilizer used for *bona fide* agricultural uses.

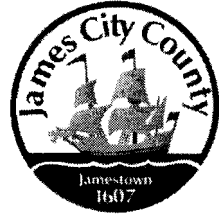
1-6. PERMIT THE USE OF FUNDS CONTAINED IN AN INDIVIDUAL'S VIRGINIA RETIREMENT SYSTEM ACCOUNT FOR RESTITUTION WHEN THE INDIVIDUAL IS CONVICTED OF EMBEZZLING FUNDS FROM A GOVERNMENTAL ENTITY

Amend Virginia Code § 18.2-112.1 to permit the use of money contained in an individual's Virginia Retirement System account as restitution when that individual is convicted of embezzling funds from a governmental entity.

---

DRAFT

**JAMES CITY COUNTY  
2011 LEGISLATIVE PROGRAM**



**Part II. Position/Legislation Supported by the County**

**2-1. STATE FUNDING FOR TOURISM**

The County urges the General Assembly to increase funding for the Virginia Tourism Corporation ("VTC") to promote tourism in Virginia generally, and the Historic Triangle in particular.

**2-2. AUTHORITY TO IMPOSE IMPACT FEES**

Amend Title 15.2, Chapter 22, to authorize localities to impose impact fees in order to fairly fund public infrastructure costs caused by new residential development.

**2-3. JUNE 14, 2011 PRIMARY DATE CHANGE**

James City County supports the extension of the June 14, 2011 primary date to September 13, 2011 in anticipation of the 2011 redistricting process.

**2-4. APPLICATION OF TRANSIENT OCCUPANCY TAX TO TRAVEL COMPANIES AND INTERNET SALES**

James City County supports a clarification of Virginia Code § 58.1-3819 et seq., to make sure that the transient occupancy tax applies to the entire amount charged for rooms by travel companies and on Internet sales regardless of any discounted rates paid by such companies for such rooms. This would provide equal taxing of room sales by Virginia businesses and Internet sales companies.

**2-5. LIGHT RAIL IN SOUTHEAST VIRGINIA**

The County supports the planning for a light rail system from Richmond to Virginia Beach which would connect urban centers for commuters and provide transportation alternatives for tourism.

**2-6. TRANSPORTATION FUNDING**

James City County urges the General Assembly to address critical transportation infrastructure needs. Transportation should be addressed as a statewide issue rather than a regional or local issue.

**2-7. BEHAVIORAL HEALTH AND COMPREHENSIVE SERVICES ACT ("CSA") FUNDING**

James City County urges the General Assembly to: 1) adequately fund the Medicaid waiver program to reduce the waiting list of individuals and families now eligible for services; 2) provide services to children with serious emotional disorders; and 3) to cover reasonable administrative costs for CSA programs. Adequate funding and services will help prevent the mentally ill from being released early from treatment, living on the streets, going to jail, or being inappropriately placed in residential facilities or other government programs.

**2-8. TAX EQUITY BETWEEN CITIES AND COUNTIES**

James City County supports equal taxing authority for cities and counties.

---

2-9. SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT

James City County supports maintaining State funding for mental health and substance abuse treatment in jails and juvenile detention facilities given the overwhelming percentage of adults and juveniles in the system diagnosed with mental health and/or substance abuse conditions.

2-10. STATE FUNDING FOR PUBLIC EDUCATION, PRE-K, K-12 AND HIGHER EDUCATION

The County supports maintaining the gains made in recent years for pre-K and K-12 funding. In addition, the County supports restoring the cuts made to higher education which could cripple some of the most prestigious higher education institutions in the world, including the College of William & Mary.

2-11. ADEQUATE FUNDING FOR PUBLIC LIBRARIES

James City County supports the State maintaining funding to public libraries to make sure that the State and the localities maintain their proportionate share of funding.

2-12. PROVIDE ADEQUATE FUNDING FOR STATE MANDATES

Given the difficult budget year faced by the Commonwealth and localities, James City County calls upon the General Assembly to oppose unfunded mandates and to reduce existing State mandates commensurate with any reduction in State funding to localities.

2-13. RESTRICTION ON IMPOSING REAL ESTATE TAXES

James City County opposes any legislation restricting local taxing authority to establish real estate tax rates or place artificial limits on the assessment of real property at its fair market value.

2-14. THE DILLON RULE

James City County supports legislation consistent with that which exists in the majority of states, to provide counties, cities and towns greater local autonomy over matters within the purview of local governments.

2-15. FULLY FUND STATE-MANDATED RETIREMENT AND EMPLOYMENT BENEFITS, INCLUDING VIRGINIA RETIREMENT SYSTEM AND LINE OF DUTY COSTS

James City County calls on the State to fully fund State mandated retirement and employment benefits, including Virginia Retirement System (VRS) and Line of Duty costs. In particular, the County opposes the establishment of a new unfunded local Line of Duty mandate by converting the current State created and funded benefit to a locally funded program.

2-16. LEGISLATIVE PROGRAMS OF THE VIRGINIA MUNICIPAL LEAGUE AND THE VIRGINIA ASSOCIATION OF COUNTIES

James City County supports the legislative programs of the Virginia Municipal League and the Virginia Association of Counties.

---