

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

June 25, 2013

7:00 P.M.

A. CALL TO ORDER

B. ROLL CALL

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – Sabrina Fellows, a rising 3rd grade student at Matoaka Elementary School and a resident of the Berkeley District

E. PRESENTATIONS

F. PUBLIC COMMENT

G. BOARD REQUESTS AND DIRECTIVES

H. CONSENT CALENDAR

1. Minutes –
 - a. June 11, 2013, Regular Meeting
2. Dedication of Rural Street Additions in the Williamsburg West Subdivision
3. Memorandum of Agreement (MOA) for Participation in the Hampton Roads Regional Stormwater Management Program
4. Grant Award – Virginia Department of Agriculture and Consumer Services Agriculture and Forestry Industries Development (AFID) Fund Grant – \$40,000
5. Appropriation – Legal Services

I. PUBLIC HEARINGS

1. Ordinance to Amend and Reordain Chapter 2, Administration, by Amending Section 2-4. Election Precincts and Polling Places Established
2. Ordinance to Amend and Reordain Chapter 13, Motor Vehicles and Traffic, Article I, In General, Section 13-7, Adoption of State Law; and Article II, Driving Automobiles, Etc. While Intoxicated or Under the Influences of Any Drug, Section 13-28, Adoption of State Law, Generally
3. Ordinance to Amend the County Code, Chapter 18, Solicitation for Noncharitable Purposes, by Amending Section 18-3, Permit-Application Generally, Section 18-4, Standards for Granting; Issuance or Denial, Section 18-5, Same – Applicant's Photograph, References and Fingerprints, Section 18-12, Permit Denial; Application for Relief
4. Disposition of Property in the Forest Heights Neighborhood Improvement Project Area and the Neighbors Drive/Richmond Road Neighborhood Improvement Project Area

J. BOARD CONSIDERATIONS

1. Neighbors Drive/Richmond Road Community Development Block Grant (CDBG) Agreement and Appropriation of Funds

2. Community Development Block Grant (CDBG) Local Business and Employment Plan
3. Neighbors Drive/Richmond Road Housing Rehabilitation Program Design and Residential Anti-Displacement and Relocation Plan
4. Section 504 Grievance Procedure for Disability Nondiscrimination
5. Greenspace Easement Acquisition - Regjag, LLC and Leigh Ann Gilley, Trustee
6. Greenspace Easement and Land Acquisition - Jamestown Building Corporation, Inc, 71 Acres, LLC, C. Lewis and Phyllis Waltrip, and PL, LLC

K. PUBLIC COMMENT

L. REPORTS OF THE COUNTY ADMINISTRATOR

M. BOARD REQUESTS AND DIRECTIVES

N. ADJOURNMENT – to 7 p.m. on July 9, 2013 for the Regular Meeting

062513bos_age

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 11TH DAY OF JUNE 2013, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

John J. McGlennon, Chairman, Roberts District
Mary K. Jones, Vice Chairman, Berkeley District
James G. Kennedy, Stonehouse District
James O. Icenhour, Jr., Jamestown District
M. Anderson Bradshaw, Powhatan District

Robert C. Middaugh, County Administrator
Lola R. Perkins, Assistant County Attorney

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – Sa'tia Jones, a 3rd grade student at J.B. Blayton Elementary School and a resident of the Stonehouse District, led the Board and citizens in the Pledge of Allegiance.

E. PRESENTATION - None

F. PUBLIC COMMENTS

1. Mr. Robert Venable, 9212 Diascund Road, led the Board and citizens in an invocation.
2. Ms. Betty Walker, 101 Locust Place, addressed the Board in regard to sustainable development and Agenda 21.
3. Mr. Keith Sadler, 9929 Mountain Berry Court, addressed the Board in regard to Rural Lands and comments made during the Work Session on May 28, 2013.
4. Ms. Sue Sadler, 9929 Mountain Berry Court, addressed the Board in regard to Rural Lands and the role of government in property rights.
5. Mr. Jeremy Johnson, the 4-H Extension Agent through Virginia Cooperative Extension, provided information on upcoming programs on Rural Lands.

6. Ms. Brenda Bearny, 3608 Braddington Court, addressed the Board in regard to the growth in the County. She also voiced her concerns about the overgrowth of trees in the common areas in the Brandon Woods subdivision.

7. Ms. Marjorie Ponziani, 4852 Bristol Circle, addressed the Board in regard to Agenda 21 and sustainable development.

8. Mr. Ed Oyer, 139 Indian Circle, addressed the Board in regard to attracting tourists to Williamsburg and not pricing the people out of the market.

G. BOARD REQUESTS AND DIRECTIVES

Mr. Kennedy stated that Route 199 is laden with trash and asked that it be taken care of. He also stated that the area around the water towers needs to be maintained and cleaned up to protect the sidewalks and asphalt. He stated that in the area of the Anderson-Hughes House and the abandoned hotel, several of the man-hole covers do not have proper collars on them and have become large potholes.

Mr. Icenhour stated that last Wednesday he attended the Clean Business Forum and the Clean County Business Award was given to the Suntrust Bank on Monticello Avenue. He stated that he sent the Virginia Department of Transportation (VDOT) an e-mail in regard to the same area that Mr. Kennedy was mentioning. He stated that the concrete median between Target and Rite-Aid on News Road needs to be addressed as well.

Mr. McGlennon stated that he attended the NAACP Scholarship Award Program where community organizations presented more than \$40,000 in scholarships to students in the community. He stated that he also attended the GED Graduation Ceremony at Lafayette High School. He stated that this coming Saturday the County's three local high schools will be having graduation ceremonies as well.

H. CONSENT CALENDAR

Mr. Kennedy asked that Item 4 be pulled from the Consent Calendar and voted on separately.

Mr. Kennedy made a motion to approve Items 1, 2, 3, 5, 6, and 7.

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

Mr. Kennedy stated that in regard to Item 4, he would like an individual vote on this Item so that he may remain consistent with earlier votes.

Mr. Icenhour made a motion to approve Item 4.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Bradshaw, Mr. McGlennon, (3). NAY: Mr. Kennedy, Ms. Jones (2).

1. Minutes –
 - a. May 28, 2013, Work Session
 - b. May 28, 2013, Regular Meeting

2. Establishment of Full-Time Physician Position, Olde Towne Medical Center (OTMC)

RESOLUTION

ESTABLISHMENT OF FULL-TIME PHYSICIAN POSITION,

OLDE TOWNE MEDICAL CENTER (OTMC)

WHEREAS, the James City County Board of Supervisors has the authority to establish County full-time positions; and

WHEREAS, the Board of Directors of the Williamsburg Area Medical Assistance Corporation (WAMAC) desires to establish a full-time Physician position at Olde Towne Medical Center (OTMC) and has allocated funds for the position effective July 1, 2013.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of James City County, Virginia, hereby approves the establishment of a full-time (2,080 hours/year) Physician position for OTMC, effective July 1, 2013, to support its mission of providing preventative care and early intervention services to a vulnerable and disadvantaged population with services to children and their families a priority.

3. Dedication of Streets in Monticello Woods Phases 1 and 2

RESOLUTION

DEDICATION OF STREETS IN MONTICELLO WOODS PHASES 1 AND 2

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

WHEREAS, the Residency Administrator for the Virginia Department of Transportation advised the Board that the streets meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; 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 the Virginia Department of Transportation to add the streets described in the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to § 33.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED that 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.

4. Budget Transfer for Compensation Consultant - \$25,000

RESOLUTION

BUDGET TRANSFER FOR COMPENSATION CONSULTANT - \$25,000

WHEREAS, at its November 27, 2012, meeting, the Board of Supervisors authorized issuance of a Request for Proposals (RFP) to identify a consultant to assist with the County's review of compensation practices; and

WHEREAS, the County Administrator stated that following identification of a recommended consultant, the Board of Supervisors would be asked to approve a budget adjustment; and

WHEREAS, following a thorough review by a five-person panel that included written response, reference checks, and telephone interview, the County has selected a consultant.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of James City County, Virginia, hereby authorizes a budget transfer in the amount of \$25,000 from the contingency fund to Human Resources (001-019-0203) and awards RFP 13-5820 to Towers Watson.

5. Service Agreement for Drop-off Recycling Services – Virginia Peninsulas Public Service Authority (VPPSA)

RESOLUTION

SERVICE AGREEMENT FOR DROP-OFF RECYCLING SERVICES –

VIRGINIA PENINSULAS PUBLIC SERVICE AUTHORITY (VPPSA)

WHEREAS, the Virginia Peninsulas Public Service Authority (VPPSA) provides services to James City County for collection of drop-off recyclable materials at County convenience centers; and

WHEREAS, VPPSA provides these services through a Service Agreement with the County each fiscal year; and

WHEREAS, it is necessary to approve a service agreement to cover the FY 14 program.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to sign the FY 14 Drop-Off Recycling Service Agreement between the County and VPPSA.

6. VACORP Line of Duty Act (LODA) Trust

RESOLUTION

VACORP LINE OF DUTY ACT (LODA) TRUST

WHEREAS, As part of the 2012 Appropriations Act, the Virginia General Assembly adopted budget language authorizing the creation of trust funds to finance the cost of Line of Duty Act (LODA) claims; and

WHEREAS, the VACORP Supervisory Board has taken action to create the VACORP LODA Trust.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes the County Administrator to execute on behalf of James City County the VACORP LODA Trust Agreement.

7. Amended Contract for the Williamsburg Regional Library

RESOLUTION

AMENDED CONTRACT FOR THE WILLIAMSBURG REGIONAL LIBRARY

WHEREAS, the Williamsburg Regional Library Board of Trustees, the James City County Administrator, the York County Administrator, and the Williamsburg City Manager have drafted an amended and restated contract for the Williamsburg Regional Library; and

WHEREAS, the Williamsburg Regional Library Board of Trustees will consider the draft contract on June 19, 2013.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby authorize and direct the County Administrator to execute the documents necessary for the Williamsburg Regional Library's 5th Amended and Restated Contract.

I. PUBLIC HEARINGS

1. Case No. SUP-0003-2013. Route 199 Water Tank Hampton Roads Sanitation District (HRSD) Pressure Reducing Station

Ms. Leanne Reidenbach, Senior Planner, addressed the Board giving a summary of the staff report included in the Agenda Packet. Ms. Reidenbach noted that a representative from the HRSD was in attendance to answer any questions the Board might have.

Mr. Icenhour asked if the pumps would run consistently or on a more "on demand" type of schedule.

Ms. Reidenbach stated that her understanding is that they will run on an as needed basis.

Mr. Icenhour asked if the pumps are above ground and if anyone knew what the noise level might be.

Ms. Reidenbach stated that the pump specifications list a decibel level of 60 decibels which is equivalent to an electric shaver.

Mr. Matthew Poe, from HRSD, addressed the Board stating that he would be happy to answer any additional questions the Board might have.

As there were no other questions for staff, Mr. McGlennon opened the Public Hearing.

As no one wished to speak, Mr. McGlennon closed the Public Hearing.

Mr. Bradshaw made a motion to adopt the resolution.

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

RESOLUTION

CASE NO. SUP-0003-2013. ROUTE 199 WATER TANK HAMPTON ROADS

SANITATION DISTRICT (HRSD) PRESSURE REDUCING STATION

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

WHEREAS, Mr. Matthew Poe has applied for an SUP to allow construction of a pressure reducing station, diesel fuel tanks, and related piping (the "Project"); and

WHEREAS, the proposed Project is depicted on the plan prepared by the Hampton Roads Sanitation District (HRSD), dated March 2013 and entitled "Williamsburg Temp. PRS Conceptual Site Layout;" and

WHEREAS, the proposed Center is located in its entirety on property zoned R-8, Rural Residential, further identified as Parcel No. (1-6A) on James City County Real Estate Tax Map Parcel No. (49-2) (the "Property"); and

WHEREAS, the Board of Supervisors issued SUP-0024-1986, James City Service Authority (JCSA)/Water Storage Facilities, for the existing water tank on the Property on September 8, 1986, which conditions are not replaced by this SUP and will still remain in effect on the Property; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. SUP-0003-2013; and

WHEREAS, the Planning Commission, following its public hearing on May 1, 2013, voted 6-0 to recommend approval of SUP-0003-2013.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve SUP-0003-2013, as described herein, pursuant to the following conditions:

1. **Master Plan and Use:** This SUP shall be valid for the installation of a pressure reducing station, diesel fuel tanks and related piping and facilities (the "Project"). The Project shall

- be generally located as shown on the master plan titled “Williamsburg Temp. PRS Conceptual Site Layout,” drawn by HRSD, and dated March 2013 (the “Master Plan”).
2. **Deed Conditions and Restrictions:** The applicant shall supply the Planning Division with a signed copy of a deed that shows that construction of the Project on Property is permissible and acceptable to the Colonial Williamsburg Foundation and JCSA prior to final site plan approval.
 3. **Tree Clearing:** Tree clearing on the Property shall be limited to the minimum necessary to accommodate the proposed Project as shown on the Master Plan as determined by the Planning Director or his designee.
 4. **Landscaping:** A landscaping plan that is generally consistent with the type and location of landscaping depicted on the Master Plan shall be approved by the Planning Director or his designee prior to final site plan approval for this Project. When the landscaping is installed, trees shall be a minimum of 8 feet tall and shrubs shall be a minimum of 2.5 feet tall. HRSD shall be responsible for replacing any trees or shrubs planted as a result of the Project for the lifetime of the Project.
 5. **Color Scheme:** The color of any above-ground portion of the Project shall be muted, similar to the paint color used for the existing water tank on the Property, and designed to minimize visual impacts. If painting is not feasible for any aspect of the Project, that portion shall be screened by additional landscaping or fencing. A color scheme and fencing plan shall be submitted to, and approved by, the Planning Director or his designee for consistency with this condition prior to final site plan approval for the Project.
 6. **Lighting.** No new lighting associated with the Project shall be installed on the Property.
 7. **Commencement.** A Land Disturbing Permit shall be obtained within 24 months from the date of the issuance of this SUP, or this SUP shall be void.
 8. **Severance Clause.** This SUP is not severable. Invalidity of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

2. Case Nos. Z-0001-2013/SUP-0002-2013. Williamsburg Landing, Boatwright Circle

Ms. Leanne Reidenbach, Senior Planner, addressed the Board giving a summary of the staff report included in the Agenda Packet. Ms. Reidenbach noted that representatives of the applicant were in attendance as well to answer any questions the Board might have.

As there were no questions for staff, Mr. McGlennon opened the Public Hearing.

1. Mr. Will Holt, from the Law Office of Kauffman and Canoles and a representative of the applicant, addressed the Board stating that he would be happy to answer any questions.

2. Mr. Ed Oyer, 139 Indian Circle, addressed the Board stating that recently there was an incident involving a plane crashing into the Williamsburg Landing housing area. He stated that the property in question seems very close to the airport and questioned whether or not Williamsburg Landing had consulted with the airport.

As no one else wished to speak, Mr. McGlennon closed the Public Hearing.

Mr. McGlennon asked if staff or the applicant could address the comments made by Mr. Oyer.

Ms. Reidenbach stated that staff has been in contact with the airport and with the Department of Aviation and Air Safety. She stated that the airport has been in operation since 1970, and in 1983 all accidents began being recorded. She stated that since 1983 there have been a total of five accidents involving aircraft landing or taking off from the Jamestown Airport. She stated that they were not concerned with the addition of another home in that area. She stated that the airport is complying with the County’s requirements for an airport overlay district.

Mr. Holt stated that he did not have anything else to add except that Condition No. 3 of the resolution requires that residents of the Williamsburg Landing be notified that they are residing in an airport approach overlay district.

Mr. Bradshaw made a motion to approve the resolutions.

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

RESOLUTION

CASE NO. Z-0001-2013. WILLIAMSBURG LANDING, BOATWRIGHT CIRCLE

WHEREAS, in accordance with §15.2-2204 of the Code of Virginia and Section 24-13 of the James City County Zoning Ordinance, a public hearing was advertised, adjacent property owners notified, and a hearing was scheduled for Case No. Z-0001-2013 for amending the proffers for approximately 15.79 acres from R-5, Multi-family Residential, with proffers, to R-5, Multi-family Residential with amended proffers; and

WHEREAS, the property is located at 5550 Williamsburg Landing Drive and can be further identified as James City County Real Estate Tax Map Parcel No. 4810100063; and

WHEREAS, the Planning Commission, following its public hearing on May 1, 2013, voted 6-0 to recommend approval of this application.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing, does hereby approve Case No. Z-0001-2013 as described herein.

RESOLUTION

CASE NO. SUP-0002-2013. WILLIAMSBURG LANDING, BOATWRIGHT CIRCLE

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

WHEREAS, Mr. Paul Gerhardt has applied on behalf of Williamsburg Landing, Inc. to allow one additional independent living unit; and

WHEREAS, the proposed development is shown on a plan titled "Williamsburg Landing Boatwright Circle Modification Conceptual Plan" prepared by AES Consulting Engineers and dated March 14, 2013; and

WHEREAS, the property is located at 5550 Williamsburg Landing Drive and can be further identified as James City County Real Estate Tax Map Parcel No. 4810100063 (the "Property"); and

WHEREAS, the Planning Commission, following its public hearing on May 1, 2013, voted 6-0 to recommend approval of this application; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0002-2013 as described herein with the following conditions:

1. Master Plan: This SUP shall be valid for the proposed development, existing buildings and accessory structures, the addition of one unit approximately 2,500 square feet, and other minor improvements on properties located at 5550 Williamsburg Landing Drive and further identified as James City County Real Estate Tax Map Parcel No. 4810100063. Development of the Property shall be generally in accordance with the Master Plan entitled "Williamsburg Landing Boatwright Circle Modification Conceptual Plan" prepared by AES Consulting Engineers, dated March 14, 2013 (the "Master Plan") with such minor changes as the Planning Director, or his designee, determines does not change the basic concept or character of the development. In the event the Planning Director finds that the proposed change alters the basic concept or character of the development the applicant may appeal the Planning Director's determination to the Development Review Committee.
2. Landscaping: An area of 100 feet from the edge of the existing Lake Powell Road right-of-way shall be left as buffer area and remain in its natural state except for necessary utility crossings or construction road entrances. A landscaping plan shall be approved by the Planning Director prior to final site plan approval for this project. The landscaping plan shall include landscaping approximately 15 feet in width starting at the existing fence found approximately 70 feet from the front property line and running the length of Williamsburg Landing Drive for 150 feet on the side adjacent to the proposed unit to help screen vehicular traffic from the entrance. Per Section 24-96 of the James City County Code, the applicant shall supplement the existing trees and shrubs with upright evergreen shrubs of a species that will achieve a height of at least 10 feet.
3. Notification: All potential residents of the residential structures shall be formally notified by the developer and/or seller the development's proximity to the Airport Approach (AA) Overlay District.
4. Architectural Review: Prior to site plan approval, the Planning Director shall review and approve the final architectural design of the building. Such building shall be generally consistent, as determined by the Planning Director, with the surrounding units.
5. Lighting: All new exterior light fixtures, including building lighting, on the Property shall have recessed fixtures with no lens, bulb, or globe extending below the casing. In addition, a lighting plan shall be submitted to and approved by the Planning Director or his designee which indicates no glare outside the property lines unless otherwise approved by the Planning Director or his designee. All light poles shall not exceed 20 feet in height unless otherwise approved by the Planning Director or his designee prior to final site plan approval. "Glare" shall be defined as more than 0.1 foot-candle at the boundary of the Property or any direct view of the lighting source from the adjoining properties.
6. Commencement of Construction: If construction has not commenced on the project within 24 months from the issuance of the SUP, it shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections for the new unit.
7. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

3. Case No. SUP-0004-2013. Jones Family Subdivision

Mr. Scott Whyte, Senior Landscape Planner, addressed the Board giving a summary of the staff report included in the Agenda Packet. Mr. Whyte noted that the applicant and his extended family is in attendance and available to answer any questions.

As there were no questions for staff, Mr. McGlennon opened the Public Hearing.

As no one wished to speak, Mr. McGlennon closed the Public Hearing.

Mr. Icenhour made a motion to approve the resolution.

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

RESOLUTION

CASE NO. SUP-0004-2013. JONES FAMILY SUBDIVISION

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

WHEREAS, the applicants have requested an SUP to allow for a family subdivision with a lot less than three acres in size in an A-1, General Agricultural District, located at 2981 John Tyler Highway, further identified as on James City County Real Estate Tax Map Parcel No. 4510100010; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0004-2013 as described herein with the following conditions:

1. **Plan.** This SUP is valid for a family subdivision for the creation of one new parcel, with one parent lot, shall be generally as shown on the plan drawn by HIS Land Surveying Inc, titled "Subdivision of Property Known as Pine Dell," and dated October 3, 2012.
2. **Access.** Only one entrance serving all lots through an existing shared driveway shall be allowed onto John Tyler Highway. This driveway shall also be accessible to the owner of the recently subdivided three acre parcel located in the northeast corner of the parent parcel. The entrance shall meet all appropriate Virginia Department of Transportation (VDOT) requirements.
3. **Commencement.** Final subdivision approval must be received from the County within 12 months from the issuance of this SUP or the permit shall become void.
4. **Severance Clause.** The SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

J. BOARD CONSIDERATION - None

K. PUBLIC COMMENTS

1. Ms. Brenda Bearny, 3609 Braddington Court, addressed the Board in regard to the lack of continuous sidewalks along Ironbound Road leading up to Mid-County Park or toward the Five Forks Shopping area. She stated that the area lacks shelters for bus riders and sidewalks for pedestrians like other areas of the County have.

2. Ms. Marjorie Ponziani, 4852 Bristol Circle, addressed the Board continuing her previous comments about Agenda 21 and sustainable development. She also stated that in regard to the Work Session comments, the forums should be kept open to allow citizens to speak and be heard by all in attendance.

3. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board in regard to comments made during the Work Session on May 28, 2013. He stated that he remembered that citizens were opposed to Regional Comprehensive Planning.

4. Mr. Ed Oyer, 139 Indian Circle, addressed the Board stating that citizens should pick up a newspaper and see how many times the word “power” is used.

L. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Middaugh stated that James City County has recently re-launched the Citizen Services web page, jamescitycountyva.gov/citizens. The updated page highlights County services and programs for citizens and neighborhoods. It features an electronic version of the updated Citizens’ Guide to Services, neighborhood resources, online services and more. He stated that the James City Service Authority (JCSA) is currently replacing approximately 2,600 linear feet of the existing 12-inch water main along Jamestown Road. Periodic lane closures will occur on Jamestown Road in the area of Neck-O-Land Road beginning the week of June 10. For more information, visit jamescitycountyva.gov/jcsa or call 757-229-7421. He also urged citizens to visit the Parks and Recreation website for a listing of community events and activities coming up this month and throughout the summer.

M. BOARD REQUESTS AND DIRECTIVES

Mr. Icenhour stated that he attended the annual Clean the Bay Day on June 1. He stated that he would be attending the VACo Region 2 Meeting this Friday. He asked to Board to please notify him of any questions or issues that they would like brought up at the Region 2 Meeting. He stated he would bring back information to the Board following the meeting.

Mr. McGlennon stated that Mr. Kennedy had mentioned before about the Business, Professional and Occupational License (BPOL) tax and the machinery and tool tax.

Mr. Icenhour stated that he knew several big localities had the same concerns and it would be a topic for discussion.

Mr. Kennedy stated that his concern is that both candidates for governor are talking about this issue, but neither candidate has stated how they plan to pay for it.

Mr. McGlennon stated that VACo and VML have taken the position that they would oppose any action that would restrict local government’s revenues without some provision to off-set from the state level.

Mr. Kennedy stated that he looks back at the Car Tax and it has been eroded over time. He stated that the BPOL tax is a significant source of revenue for the localities.

O. ADJOURNMENT – 4 p.m. on June 25, 2013, for the Work Session.

Mr. Icenhour made a motion to adjourn.

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

At 7:50 p.m., Mr. McGlennon adjourned the Board.

Robert C. Middaugh
Clerk to the Board

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MEMORANDUM COVER

Subject: Dedication of Rural Street Additions in the Williamsburg West Subdivision

Action Requested: Shall the Board approve the resolution that dedicates the streets and associated right-of-way for the Williamsburg West Subdivision to the Virginia Department of Transportation (VDOT)?

Summary: The following submittal contains the necessary documents for the rural addition street dedication process. Included are the Board memorandum, Board resolution, location map of the proposed roads, and a plat of the subdivision.

Staff recommends adoption of the attached resolution.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution
3. Location Map
4. Plat

Agenda Item No.: H-2

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: Scott J. Thomas, Director of Engineering and Resource Protection

SUBJECT: Dedication of Rural Street Additions in the Williamsburg West Subdivision

Attached is a resolution requesting acceptance of streets into the State Secondary Highway System. The streets proposed for acceptance are within the Williamsburg West Subdivision. These streets were platted in 1968, but never taken into the Virginia Department of Transportation (VDOT) system and are eligible for acceptance into the State system through the Rural Addition Process.

The Rural Addition Process is intended to facilitate adoption of older streets which require improvement that is funded by both the State and the locality. Roads will need to be formally added to the system prior to the improvements, which include reconstruction of Country Club Court, Country Club Drive, and Lexington Drive to address poor pavement quality and drainage issues. State law prohibits use of funds administered by VDOT on roads that are not in the system. The project will be funded through Revenue Sharing Allocations which consist of \$200,000 in County allocated funds and \$200,000 in State match. Once the resolution is approved and funding supplied to VDOT, they will administer the improvements.

Staff recommends adoption of the attached resolution.


Scott J. Thomas

SJT/nb
WWestStAdd_mem

Attachments

RESOLUTION

DEDICATION OF RURAL STREET ADDITIONS IN THE

WILLIAMSBURG WEST SUBDIVISION

WHEREAS, the streets described below currently serve at least three families and were established prior to July 1, 1992, at which time they were used by motor vehicles as a public access; and

WHEREAS, the County has determined its subdivision ordinance satisfies Subsection B of §33.1-72.1, Code of Virginia, and is therefore eligible to make qualifying additions to the secondary system of State highways maintained by the Virginia Department of Transportation, (The "Department") and fund necessary improvements as setout therein, except as otherwise prohibited by Subsection B of §33.1-72.2, Code of Virginia; and

WHEREAS, after examining the ownership of all property abutting these streets, including the deeds and related plats, this Board finds no restriction on the use of public funds for improving of the roads; and

WHEREAS, after examining the ownership of all property abutting these streets, this Board finds that speculative interest does not exist; and

WHEREAS, this Board has identified immediately available funding to make improvements required to qualify the streets for addition to the aforesaid secondary system of State highways, based on the Department's cost estimate of \$400,000; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, pursuant to §33.1-72.1, Code of Virginia, requests the following streets be added to the secondary system of State highways maintained by the Department and hereby guarantees the right-of-way of the street to be clear, unencumbered, and unrestricted, which right-of-way guarantee shall include any necessary easements required for cuts, fills, and drainage:

Name of Subdivision: Williamsburg West

Name and Description of Streets: Lexington Drive from the intersection of Country Club Drive and Lexington Drive to the proposed T turn around for a distance of .21 miles with a 50-foot right-of-way.

Country Club Court from the intersection of Country Club Drive to the cul-de-sac for a distance of .02 miles with a 55-foot right-of-way.

A portion of Country Club Drive from the intersection of Country Club Drive and Country Club Court for a distance of .09 miles with a 80-foot right-of-way.

Right-of-way Instrument Reference - Deed Book26, Page 3, Date Recorded June 28, 1968.

BE IT FURTHER RESOLVED that the Board of Supervisors requests the Department to improve said streets to the prescribed minimum standards, funding said improvements with Revenue Sharing Allocations which consist of \$200,000 County allocated funds and \$200,000 State match.

BE IT FURTHER RESOLVED that the Board of Supervisors agrees to reimburse, within 45 days of receiving an invoice, all costs that the Department incurs to relocate existing utilities within the right-of-way that are discovered during the course of and in conflict with the construction, drawing such funds from resources other than those administered by the Department.

BE IT FURTHER RESOLVED that the Board of Supervisors agrees to reimburse, within 45 days of receiving an invoice, all costs that the Department incurs in the construction of necessary improvements to the road that are over and above the estimated cost of improvements or to otherwise identify an eligible source of funds administered by the Department to cover such costs.

BE IT FURTHER RESOLVED that a certified copy of this resolution and a County check in the amount of \$ 200,000 be forwarded to the Residency Administrator of the Department.

<u>Source of Funds</u>	<u>Amount</u>
James City County	\$200,000
VDOT	<u>200,000</u>
Total	<u>\$400,000</u>

John J. McGlennon
Chairman, Board of Supervisors

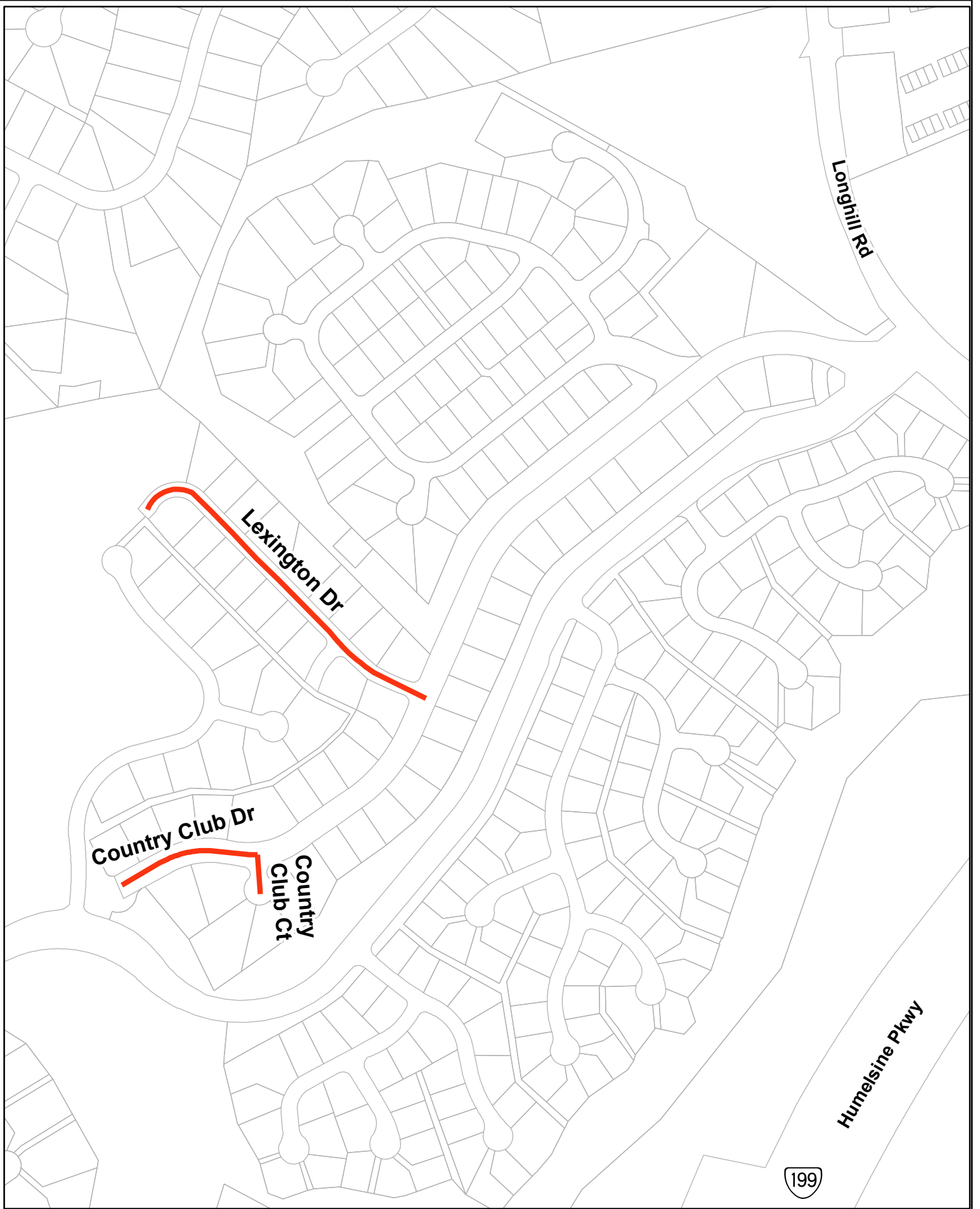
ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____


Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.

WWestStAdd_res



**DEDICATION OF RURAL STREET ADDITIONS
IN THE WILLIAMSBURG WEST SUBDIVISION**

Legend

 Streets to be Dedicated

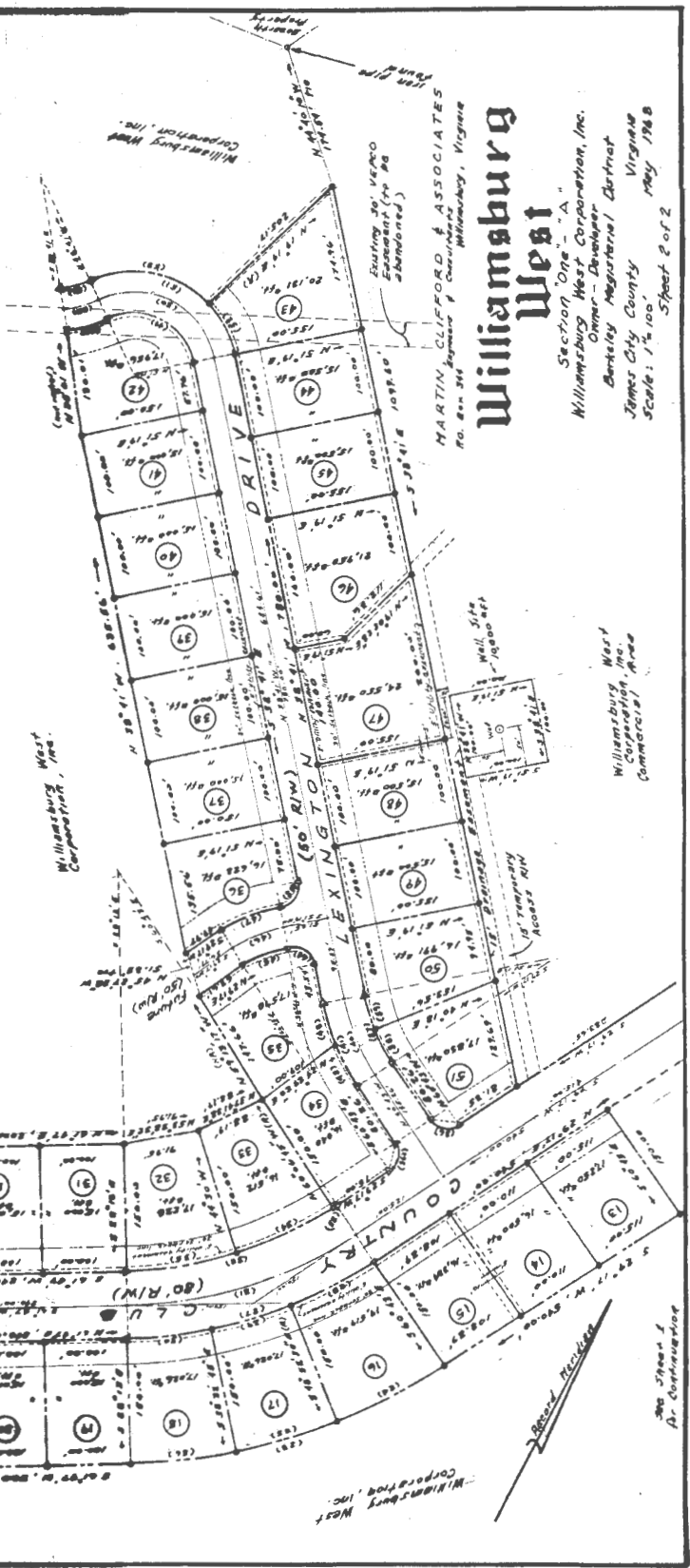
1 inch = 400 feet



Recorded June 28, 1960
Williamsburg West
Corporation, Inc.

CURVE DATA TABLE

No.	Radius	Chord	Chord Bearing	No.	Radius	Chord	Chord Bearing
1	700.00	377.47	208.88	21	700.00	377.47	208.88
2	700.00	377.47	208.88	22	700.00	377.47	208.88
3	700.00	377.47	208.88	23	700.00	377.47	208.88
4	700.00	377.47	208.88	24	700.00	377.47	208.88
5	700.00	377.47	208.88	25	700.00	377.47	208.88
6	700.00	377.47	208.88	26	700.00	377.47	208.88
7	700.00	377.47	208.88	27	700.00	377.47	208.88
8	700.00	377.47	208.88	28	700.00	377.47	208.88
9	700.00	377.47	208.88	29	700.00	377.47	208.88
10	700.00	377.47	208.88	30	700.00	377.47	208.88
11	700.00	377.47	208.88	31	700.00	377.47	208.88
12	700.00	377.47	208.88	32	700.00	377.47	208.88
13	700.00	377.47	208.88	33	700.00	377.47	208.88
14	700.00	377.47	208.88	34	700.00	377.47	208.88
15	700.00	377.47	208.88	35	700.00	377.47	208.88
16	700.00	377.47	208.88	36	700.00	377.47	208.88
17	700.00	377.47	208.88	37	700.00	377.47	208.88
18	700.00	377.47	208.88	38	700.00	377.47	208.88
19	700.00	377.47	208.88	39	700.00	377.47	208.88
20	700.00	377.47	208.88	40	700.00	377.47	208.88
21	700.00	377.47	208.88	41	700.00	377.47	208.88
22	700.00	377.47	208.88	42	700.00	377.47	208.88
23	700.00	377.47	208.88	43	700.00	377.47	208.88
24	700.00	377.47	208.88	44	700.00	377.47	208.88
25	700.00	377.47	208.88	45	700.00	377.47	208.88
26	700.00	377.47	208.88	46	700.00	377.47	208.88
27	700.00	377.47	208.88	47	700.00	377.47	208.88
28	700.00	377.47	208.88	48	700.00	377.47	208.88
29	700.00	377.47	208.88	49	700.00	377.47	208.88
30	700.00	377.47	208.88	50	700.00	377.47	208.88
31	700.00	377.47	208.88	51	700.00	377.47	208.88
32	700.00	377.47	208.88	52	700.00	377.47	208.88
33	700.00	377.47	208.88	53	700.00	377.47	208.88
34	700.00	377.47	208.88	54	700.00	377.47	208.88
35	700.00	377.47	208.88	55	700.00	377.47	208.88
36	700.00	377.47	208.88	56	700.00	377.47	208.88
37	700.00	377.47	208.88	57	700.00	377.47	208.88
38	700.00	377.47	208.88	58	700.00	377.47	208.88
39	700.00	377.47	208.88	59	700.00	377.47	208.88
40	700.00	377.47	208.88	60	700.00	377.47	208.88
41	700.00	377.47	208.88	61	700.00	377.47	208.88
42	700.00	377.47	208.88	62	700.00	377.47	208.88
43	700.00	377.47	208.88	63	700.00	377.47	208.88
44	700.00	377.47	208.88	64	700.00	377.47	208.88
45	700.00	377.47	208.88	65	700.00	377.47	208.88
46	700.00	377.47	208.88	66	700.00	377.47	208.88
47	700.00	377.47	208.88	67	700.00	377.47	208.88
48	700.00	377.47	208.88	68	700.00	377.47	208.88
49	700.00	377.47	208.88	69	700.00	377.47	208.88
50	700.00	377.47	208.88	70	700.00	377.47	208.88
51	700.00	377.47	208.88	71	700.00	377.47	208.88
52	700.00	377.47	208.88	72	700.00	377.47	208.88
53	700.00	377.47	208.88	73	700.00	377.47	208.88
54	700.00	377.47	208.88	74	700.00	377.47	208.88
55	700.00	377.47	208.88	75	700.00	377.47	208.88
56	700.00	377.47	208.88	76	700.00	377.47	208.88
57	700.00	377.47	208.88	77	700.00	377.47	208.88
58	700.00	377.47	208.88	78	700.00	377.47	208.88
59	700.00	377.47	208.88	79	700.00	377.47	208.88
60	700.00	377.47	208.88	80	700.00	377.47	208.88
61	700.00	377.47	208.88	81	700.00	377.47	208.88
62	700.00	377.47	208.88	82	700.00	377.47	208.88
63	700.00	377.47	208.88	83	700.00	377.47	208.88
64	700.00	377.47	208.88	84	700.00	377.47	208.88
65	700.00	377.47	208.88	85	700.00	377.47	208.88
66	700.00	377.47	208.88	86	700.00	377.47	208.88
67	700.00	377.47	208.88	87	700.00	377.47	208.88
68	700.00	377.47	208.88	88	700.00	377.47	208.88
69	700.00	377.47	208.88	89	700.00	377.47	208.88
70	700.00	377.47	208.88	90	700.00	377.47	208.88
71	700.00	377.47	208.88	91	700.00	377.47	208.88
72	700.00	377.47	208.88	92	700.00	377.47	208.88
73	700.00	377.47	208.88	93	700.00	377.47	208.88
74	700.00	377.47	208.88	94	700.00	377.47	208.88
75	700.00	377.47	208.88	95	700.00	377.47	208.88
76	700.00	377.47	208.88	96	700.00	377.47	208.88
77	700.00	377.47	208.88	97	700.00	377.47	208.88
78	700.00	377.47	208.88	98	700.00	377.47	208.88
79	700.00	377.47	208.88	99	700.00	377.47	208.88
80	700.00	377.47	208.88	100	700.00	377.47	208.88



Williamsburg West

Section "One" "A"
Williamsburg West Corporation, Inc.
Owner-Developer
Berkeley Magisterial District
James City County
Virginia
Scale: 1" = 100'
Sheet 2 of 2

Williamsburg West
Corporation, Inc.
Commercial Area

See Sheet 1
for Continuation

MEMORANDUM COVER

Subject: Memorandum of Agreement (MOA) for Participation in the Hampton Roads Regional Stormwater Management Program

Action Requested: Shall the Board authorize the County Administrator to sign the Memorandum of Agreement (MOA)?

Summary Since 2003, James City County and 17 other localities have worked with the Hampton Roads Planning District Commission (HRPDC) to establish a regional stormwater management program. The formation of this program has assisted localities in complying with Virginia Stormwater Management Program Municipal Separate Storm Sewer permits.

To formalize the regional stormwater management program, an MOA needs to be renewed between the HRPDC and the participating localities.

Program costs are allocated on a pro-rata basis based on population. For FY 14, James City County's share is \$18,170.95, which is included in the budget in the annual allocation to the HRPDC.

Staff recommends approval of the resolution authorizing the County Administrator to sign the Regional Stormwater Management MOA.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution

Agenda Item No.: H-3

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: Doug Powell, Assistant County Administrator

SUBJECT: Memorandum of Agreement for Participation in the Hampton Roads Regional Stormwater Management Program

Since 2003, James City County and 17 other localities have worked with the Hampton Roads Planning District Commission (HRPDC) to establish a regional stormwater management program. The formation of this program has assisted localities in complying with Virginia Stormwater Management Program Municipal Separate Storm Sewer permits. It has also saved the participating jurisdictions money by minimizing duplication of effort and allowing for increased information sharing. The resulting standardization has also helped with acceptance of the County's program by the State.

To formalize the regional stormwater management program, a Memorandum of Agreement (MOA) needs to be renewed between the HRPDC and the participating localities. The MOA, which is in the Board's Reading File, documents the rationale for the regional program, outlines the responsibilities of the HRPDC and participating local governments, and establishes the funding mechanism for the program.

Program costs are allocated on a pro-rata basis based on population. For FY 14, James City County's share is \$18,170.95, which is included in the budget in the annual allocation to the HRPDC.

Staff recommends approval of the resolution authorizing the County Administrator to sign the Regional Stormwater Management MOA.



Doug Powell

DP/gb
MOA-StomWtr_mem

Attachment

RESOLUTION

MEMORANDUM OF AGREEMENT (MOA) FOR PARTICIPATION IN THE

HAMPTON ROADS REGIONAL STORMWATER MANAGEMENT PROGRAM

WHEREAS, the Hampton Roads Planning District Commission has been requested to continue its support of local stormwater management programs; and

WHEREAS, working in cooperation with other local governments has resulted in cost efficiencies, increased information sharing, and program consistency that increases the acceptance of the County's program at the State level.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that James City County continues to support and participate in the Hampton Roads Regional Stormwater Management Program Memorandum of Agreement.

BE IT FURTHER RESOLVED that the Board of Supervisors authorizes the County Administrator to sign the Hampton Roads Regional Stormwater Management Program Memorandum of Agreement.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.

MOA-Stomwtr_res

MEMORANDUM COVER

Subject: Grant Award – Virginia Department of Agriculture and Consumer Services Agriculture and Forestry Industries Development (AFID) Fund Grant – \$40,000

Action Requested: Shall the Board approve the resolution that appropriates grant funds awarded from the Virginia Department of Agriculture and Consumer Services?

Summary: The Office of Economic Development and the Planning Division have been awarded an Agriculture and Forestry Industries Development (AFID) Fund grant for \$40,000 (\$20,000 State funds, \$20,000 local match) from the Virginia Department of Agriculture and Consumer Services.

The AFID Fund is a new program designed to encourage efforts by local governments to support their agriculture- and forestry-based businesses and to give greater voice to the local farm and forestland owners and their interests. The grant program provides matching funds for the development of projects that advance the interests of agriculture and/or forestry in the locality.

Staff recommends approval of the attached resolution.

Fiscal Impact: A \$20,000 match is available in the grant matching funds account.

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution

Agenda Item No.: H-4

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: Russell C. Seymour, Director of Economic Development

SUBJECT: Grant Award – Virginia Department of Agriculture and Consumer Services Agriculture and Forestry Industries Development (AFID) Fund Grant – \$40,000

The Office of Economic Development and the Planning Division have been awarded an Agriculture and Forestry Industries Development (AFID) Fund grant for \$40,000 (\$20,000 State funds, \$20,000 local match) from the Virginia Department of Agriculture and Consumer Services.

The grant program provides matching funds for the development of projects that advance the interests of agriculture and/or forestry in the locality, including creating increased markets for products or providing value-added services to those products. James City County was awarded the grant for the purpose of developing a comprehensive strategy for rural economic development. The goal of the project is to identify projects that support and expand existing agriculture- and forestry-based businesses and diversify our local economy in the areas of agriculture; timbering; aquaculture; local food production, distribution, and value-added opportunities; agri-tourism and eco-tourism; specialized animal husbandry; specialty crops; expanded winery enterprises and new farm brewery/farm distillery operations, as well as other sustainable rural economic uses.

The grant requires a 50 percent match of \$20,000, which is available in the FY 2013 grants match account. Up to \$10,000 is allowed as an in-kind match.

Staff recommends adoption of the attached resolution to appropriate funds.


Russell C. Seymour

RCS/nb
GA-Agriculture_mem

Attachment

RESOLUTION

GRANT AWARD – VIRGINIA DEPARTMENT OF AGRICULTURE AND

CONSUMER SERVICES AGRICULTURE AND FORESTRY INDUSTRIES DEVELOPMENT

(AFID) FUND GRANT – \$40,000

WHEREAS, the Office of Economic Development and the Planning Division have been awarded an Agriculture and Forestry Industries Development (AFID) Fund grant for \$40,000 (\$20,000 State funds, \$20,000 local match) from the Virginia Department of Agriculture and Consumer Services; and

WHEREAS, the funds are to be used for projects that advance the interests of agriculture and/or forestry in the locality; and

WHEREAS, the grant requires a 50 percent match of \$20,000, which is available in the FY 2013 grants match account.

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

Revenues:

AFID Grant	\$20,000
Transfer from General Fund	<u>20,000</u>
Total	<u>\$40,000</u>

Expenditure:

AFID Grant	<u>\$40,000</u>
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BE IT FURTHER RESOLVED that the Board of Supervisors authorizes the County Administrator to sign the Agriculture and Forestry Industries Development Fund Memorandum of Agreement and such other documents as may be necessary to effectuate the project.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.

GA-Agriculture_res

MEMORANDUM COVER

Subject: Appropriation – Legal Services

Action Requested: Shall the Board transfer \$15,000 from Contingency and appropriate \$70,000 from other sources to support the opposition to Dominion Virginia Power's proposed electric transmission line over the James River?

Summary: As the Board is aware, the County is engaged in a State Corporation Commission (SCC) hearing process regarding the location of a proposed electric transmission line in the County. To date, the Board has appropriated \$300,000 for the legal and expert witness costs on the matter. The County has retained the firm Sands Anderson to lead our defense and also the Engineering firm of RLC as our principal expert. We have also had to retain an expert on photo simulation to support our case. When we started this matter, the Board was advised that our expenses would likely exceed the initial appropriation. Our expenses to date are approximately \$373,000.

The Board has previously appropriated \$50,000 pledged to the County by the Save the James Alliance. That pledge has increased and we have other partners that have helped to offset the case costs. To date approximately \$120,000 has been committed (\$60,000 from the Save the James Alliance, \$20,000 from BASF, \$10,000 from Kingsmill Properties, \$5,000 from the Chamber, and \$25,000 from the City of Williamsburg). Therefore, contributions in the amount of \$70,000 are also proposed to be appropriated.

<u>Funding:</u>		<u>Spending:</u>	
County	\$260,000	Legal	\$302,000
Save the James Alliance	60,000	Engineering Consultant	54,000
City of Williamsburg	25,000	Visual Modeling/Testimony	<u>17,000</u>
BASF	20,000		<u>\$373,000</u>
Kingsmill Properties	10,000		
Chamber	<u>5,000</u>		
	<u>\$380,000</u>		

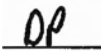
I recommend approval of the attached resolution.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell



County Administrator

Robert C. Middaugh



Attachments:

1. Memorandum
2. Resolution

Agenda Item No.: H-5

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: Robert C. Middaugh, County Administrator

SUBJECT: Appropriation – Legal Services

As the Board is aware, the County is engaged in a State Corporation Commission (SCC) hearing process regarding the location of a proposed electric transmission line in the County. To date, the Board has appropriated \$300,000 for the legal and expert witness costs on the matter. The County has retained the firm Sands Anderson to lead our defense and also the Engineering firm of RLC as our principal expert. We have also had to retain an expert on photo simulation to support our case. When we started this matter, the Board was advised that our expenses would likely exceed the initial appropriation. Our expenses to date and as a final estimate are approximately \$373,000.

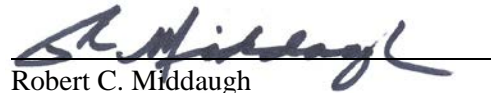
The Board has previously appropriated \$50,000 pledged to the County by the Save the James Alliance. That pledge has increased and we have other partners that have helped to offset the case costs. To date approximately \$120,000 has been committed (\$60,000 from the Save the James Alliance, \$20,000 from BASF, \$10,000 from Kingsmill Properties, \$25,000 from the City of Williamsburg and \$5,000 from the Chamber). Therefore, additional contributions in the amount of \$70,000 are also proposed to be appropriated.

There will be a small reserve of \$7,000 in the event other unknown expenses are incurred.

With the change proposed in the attached resolution, the following is a summary of funding and spending:

<u>Funding:</u>		<u>Spending:</u>	
County	\$260,000	Legal	\$302,000
Save the James Alliance	60,000	Engineering Consultant	54,000
City of Williamsburg	25,000	Visual Modeling/Testimony	<u>17,000</u>
BASF	20,000		
Kingsmill Properties	10,000		<u>\$373,000</u>
Chamber	<u>5,000</u>		
	<u>\$380,000</u>		

I recommend approval of the attached resolution.


Robert C. Middaugh

RCM/nb
AppLegalSrv_mem
Attachment

RESOLUTION

APPROPRIATION – LEGAL SERVICES

WHEREAS, the County is engaged in a State Corporation Commission (SCC) hearing process regarding the location of a proposed electric transmission line in the County and the costs to the County may be approximately \$385,000; and

WHEREAS, the Board of Supervisors has previously appropriated \$300,000 for these expenses, including \$50,000 pledged to the County by the Save the James Alliance and needs to appropriate an additional \$70,000 to legal services; and

WHEREAS, other partners have helped to offset the costs and approximately \$120,000 has been committed, \$60,000 from the Save the James Alliance, \$20,000 from BASF, \$5,000 from the Williamsburg Area Chamber and Tourism Alliance, \$25,000 from the City of Williamsburg, and \$10,000 from Kingsmill Properties, requiring an additional appropriation of \$70,000 from contributors.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby execute the following appropriation and budget amendment in the FY 2013 operating budget:

Revenue:

Contributions to Legal Services	<u>\$70,000</u>
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Expenditures:

Legal Services	<u>\$70,000</u>
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John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.

AppLegalSrv_res

MEMORANDUM COVER

Subject: Ordinance to Amend and Reordain Chapter 2, Administration, by Amending Section 2-4, Election Precincts and Polling Places Established

Action Requested: Shall the Board adopt an ordinance to amend Chapter 2, Administration, Section 2-4, to change the Stonehouse A polling place from Cross Walk Community Church to Hickory Neck Episcopal Church?

Summary: Cross Walk Community Church, which currently serves as the polling place for the Stonehouse A precinct, also known as Precinct 0401, has chosen not to renew its contract after the June 2013 Primary Election.

The Electoral Board determined that Hickory Neck Episcopal Church, located at 8300 Richmond Road, Toano, VA 23168, is the most suitable alternative. The attached ordinance amends Section 2-4 of the County Code to replace Cross Walk Community Church with Hickory Neck Episcopal Church as the Stonehouse A polling place.

Staff recommends approval of the attached ordinance.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Ordinance

Agenda Item No.: I-1

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: Alan J. (A. J.) Cole, General Registrar

SUBJECT: Ordinance to Amend and Reordain Chapter 2, Administration, by Amending Section 2-4. Election Precincts and Polling Places Established

Cross Walk Community Church currently serves as the polling place for the Stonehouse A precinct, also known as Precinct 0401. The County's contract with Cross Walk Community Church expires after the June 2013 Primary Election and the church has indicated that it does not want to renew the contract.

The Electoral Board has researched other possible polling place locations and determined that Hickory Neck Episcopal Church, located at 8300 Richmond Road, Toano, VA 23168, is the most suitable alternative. It is in a favored location within the boundaries of the Stonehouse A precinct, it meets all the legal criteria and its Rector and Vestry are enthusiastic to locate the Stonehouse A Precinct in their facility.

The attached ordinance amends Section 2-4 of the County Code to replace Cross Walk Community Church with Hickory Neck Episcopal Church as the Stonehouse A polling place.

Staff recommends approval of the attached ordinance.

Alan J. Cole

CONCUR:

Leo P. Rogers

AJC/LPR/nb
StonehouseA_mem

Attachment

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 2, ADMINISTRATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 2-4, ELECTION PRECINCTS AND POLLING PLACES ESTABLISHED.

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 2-4, Election precincts and polling places established.

Chapter 2. Administration

Sec. 2-4. Election precincts and polling places established.

(a) Pursuant to authority contained in the Code of Virginia, Chapter 24.2, the precincts and their respective polling places for the county are hereby created and established as set forth in this section.

(b) The precincts for each election district and the polling place for each precinct shall be set forth below:

Berkeley Election District 01:

Precinct 0101 – Jamestown High School polling place.

Precinct 0102 – Clara Byrd Baker Elementary School polling place.

Precinct 0103 – Matoaka Elementary School polling place.

Jamestown Election District 02:

Precinct 0201 – Legacy Hall polling place.

Precinct 0202 – James City-Williamsburg Community Center polling place.

Precinct 0203 – Greensprings Chapel polling place.

Precinct 0204 – James City-Williamsburg Community Center polling place.

Powhatan Election District 03:

Precinct 0301 – Hornsby Middle School polling place.

Precinct 0302 – Lafayette High School polling place.

Precinct 0303 – Toano Middle School polling place.

Precinct 0304 – Warhill High School polling place.

Stonehouse Election District 04:

Precinct 0401 – ~~Cross-Walk Community~~ *Hickory Neck Episcopal* Church polling place.

Precinct 0402 – Norge Elementary School polling place.

Precinct 0403 – Stonehouse Elementary School polling place.

Roberts Election District 05:

Precinct 0501 – James River Elementary School polling place.

Precinct 0502 – Mt. Gilead Baptist Church polling place.

Precinct 0503 – Grace Baptist Church polling place.

Precinct 0504 – Rawls Byrd Elementary School polling place

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.

StonehouseA_ord

MEMORANDUM COVER

Subject: Ordinance to Amend and Reordain Chapter 13, Motor Vehicles and Traffic, Article I, In General, Section 13-7, Adoption of State Law; and Article II, Driving Automobiles, Etc. While Intoxicated or Under the Influences of Any Drug, Section 13-28, Adoption of State Law, Generally.

Action Requested: Shall the Board approve an Ordinance amending Chapter 13, Motor Vehicles and Traffic, Article I, In General, Section 13-7, Adoption of State Law; and Article II, Driving Automobiles, Etc. While Intoxicated or Under the Influence of Any Drug, Section 13-28, Adoption of State Law, Generally?

Summary: Section 13-7, Adoption of State Law and Section 13-28, Adoption of State Law, Generally incorporate the 2013 amendments made by the General Assembly to the Driving Under the Influence (D.U.I.) traffic laws. County police officers are charging traffic offenders under the County Code, which must be readopted each year to reflect the current Virginia Code.

Staff recommends adoption of the attached ordinance.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Ordinance

Agenda Item No.: I-2

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: Adam Young, County Attorney Law Clerk

SUBJECT: Ordinance to Amend and Reordain Chapter 13, Motor Vehicles and Traffic, Article I, In General, Section 13-7, Adoption of State Law; and Article II, Driving Automobiles, Etc. While Intoxicated or Under the Influences of Any Drug, Section 13-28, Adoption of State Law, Generally.

The attached Ordinance incorporates, by reference in the James City County Code (County Code), the 2013 amendments made by the General Assembly to the Driving Under the Influence (D.U.I.) and traffic laws. County police officers are charging traffic offenders under the County Code, which must be updated to reflect the General Assembly's changes that become effective on July 1, 2013. It is necessary that the County Code be amended in order to be in compliance with the changes to State law.

Staff recommends adoption of the attached ordinance.

Adam Young

CONCUR:

Leo Rogers

AY/gb
Chp12-DUIAmd_mem

Attachment

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 13, MOTOR VEHICLES AND TRAFFIC OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 13-7, ADOPTION OF STATE LAW; AND ARTICLE II, DRIVING AUTOMOBILES ETC., WHILE INTOXICATED OR UNDER THE INFLUENCE OF ANY DRUG, SECTION 13-28, ADOPTION OF STATE LAW, GENERALLY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 13, Motor Vehicles and Traffic, is hereby by amended and reordained by amending Section 13-7, Adoption of state law; and Section 13-28, Adoption of state law, generally.

Chapter 13. Motor Vehicles and Traffic

Article I. In General

Sec. 13-7. Adoption of state law.

(a) Pursuant to the authority of section 46.2-1313 of the Code of Virginia, as amended, all of the provisions and requirements of the laws of the state contained in title 46.2 of the Code of Virginia, as amended, and in force on July 1, ~~2012~~ **2013**, except those provisions and requirements the violation of which constitutes a felony, and those provisions and requirements which by their very nature can have no application to or within the county, are hereby adopted and incorporated in this chapter by reference and made applicable within the county. Such provisions and requirements are hereby adopted, mutatis mutandis, and made a part of this chapter as fully as though set forth at length herein, and it shall be unlawful for any person within the county to violate or fail, neglect or refuse to comply with any provision of title 46.2 of the Code of Virginia which is adopted by this section; provided, that in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under title 46.2 of the Code of Virginia.

(b) It is the intent of the board of supervisors that all future amendments to sections of the Code of Virginia incorporated by reference in the provisions of this article be included in this article automatically upon their effective date, without formal amendment of this article by the board of supervisors.

State law reference-Authority to adopt state law on the subject, Code of Va., § 46.2-1313.

Article II. Driving Automobiles, Etc.,
While Intoxicated or Under the Influence of any Drug

Sec. 13-28. Adoption of state law, generally.

Article 9 (section 16.1-278 et seq.) of chapter 11 of title 16.1 and article 2 (section 18.2-266 et seq.) of chapter 7 of title 18.2, Code of Virginia, as amended and in force July 1, ~~2012~~ 2013, are hereby adopted and made a part of this chapter as fully as though set out at length herein. It shall be unlawful for any person within the county to violate or fail, neglect or refuse to comply with any section of the Code of Virginia as adopted by this section

State law reference-Authority to adopt state law on the subject, Code of Va., § 46.2-1313.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.

MEMORANDUM COVER

Subject: Ordinance to amend Chapter 18, Solicitation for Noncharitable Purposes, by amending Section 18-3 through Section 18-12

Action Requested: Shall the Board approve an ordinance to amend and reordain Chapter 18, Solicitation for Noncharitable Purposes?

Summary: Attached is an ordinance revising Chapter 18, Solicitation for Noncharitable Purposes, of the County Code. This Chapter has not been updated since July 1982. Most of the changes have been made to revise the County Code to align with other area localities where the Sheriff or Chief of Police process Solicitation Permits. The changes will also make the process of obtaining a Noncharitable Permit easier for citizens. The proposed ordinance eliminates extra and unnecessary steps and travel for citizens.

Staff recommends adoption of the ordinance.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Ordinance
3. Solicitation Permit Application

Agenda Item No.: I-3

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: Adam Young, County Attorney Law Clerk

SUBJECT: Ordinance to Amend Chapter 18, Solicitation for Noncharitable Purposes, by Amending Section 18-3 through Section 18-12

Attached for your consideration is an ordinance revising Chapter 18, Solicitation for Noncharitable Purposes, of the County Code. This Chapter has not been updated since September 1982. Most of the changes have been made to revise the County Code to align with other area localities where the Sheriff or Chief of Police process Solicitation Permits. In addition, the changes will also make the Noncharitable Permit process easier for citizens. The proposed ordinance eliminates extra and unnecessary steps and travel for citizens.

Staff recommends adoption of the ordinance.

Adam Young

CONCUR:

Leo P. Rogers

AY/gb
Chp18-NonCha_mem

Attachment

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 18, SOLICITATION FOR NONCHARITABLE PURPOSES OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 18-3, PERMIT-APPLICATION GENERALLY, SECTION 18-4, STANDARDS FOR GRANTING; ISSUANCE OR DENIAL, SECTION 18-5, SAME – APPLICANT’S PHOTOGRAPH, REFERENCES AND FINGERPRINTS, AND SECTION 18-12, PERMIT DENIAL; APPLICATION FOR RELIEF.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 18, Solicitation for Noncharitable Purposes, is hereby amended and reordained by amending Section 18-3, Permit-Application generally, Section 18-4, Standards for granting, issuance or denial, Section 18-5, Same – Applicant’s photograph references and fingerprints, AND Section 18-12, Permit denial, application for relief.

Chapter 18

SOLICITATION FOR NONCHARITABLE PURPOSES

Sec. 18-3. Permit-Application generally.

(a) An application for a permit required by this chapter shall be made to the *James City County Police Department administrator*. Such application shall be sworn to and filed with the *James City County Police Department administrator*, ~~or his designee~~, at least 15 days prior to the time at which the permit applied for shall become effective. The application shall contain the following information, or in lieu thereof, a detailed statement of the reasons why such information cannot be furnished:

- (1) The name, address or headquarters of the person applying for the permit.
- (2) If the applicant is not an individual, the names and addresses of the applicant's principal officers and managers and a copy of the resolution, if any, authorizing such solicitation, certified to as a true and correct copy of the original by the office having charge of the applicant's records.
- (3) The make, model and license plate of any vehicle used in conducting the solicitation.
- (4) The kinds of goods, wares, merchandise offered for sale and whether such applicant, upon any such order obtained, will demand, accept or receive payment or deposit of money in advance of final delivery.
- (5) The period of time the applicant wishes to solicit to take orders in the county, giving the preferred dates for the beginning and ending of such solicitation.
- (6) The names and addresses of the person who will be in direct charge of conducting the solicitation and the names of all promoters connected or to be connected with the proposed solicitation.
- (7) An outline of the method or methods to be used in conducting the solicitation.

- (8) A statement to the effect that, if a permit is granted, it will not be used or represented in any way as an endorsement by the county, or by any department or officer thereof.
- (9) A statement as to whether the applicant has ever been convicted of a felony or a misdemeanor involving moral turpitude and, if so, under what circumstances.
- (10) Such other information as may be reasonably required by the *James City County Police Department administrator* in order to determine the kind and character of the proposed solicitation and whether such solicitation is in the interest of and not inimical to the public welfare.

(b) If, while any application is pending, or during the term of any permit granted thereon, there is any change in fact, policy, or method that would alter the information given in the application, the applicant shall notify the administrator in writing thereof within 24 hours after such change.

Sec. 18-4. Standards for granting; issuance or denial.

(a) A certificate of registration shall be granted unless the *James City County Police Department administrator* finds:

- (1) That the criminal record of the applicant shows that he has been convicted (including pleas of nolo contendere and forfeitures) of a crime involving moral turpitude or of a felony.
- (2) That the applicant has been convicted (including pleas of nolo contendere and forfeitures) of more than one misdemeanor, excluding motor vehicle code violations.
- (3) That the applicant has made a false, fraudulent or misleading material statement in his application.
- (4) That the applicant has been convicted (including pleas of nolo contendere and forfeitures) of a violation of the laws of any jurisdiction relating to selling, vending, soliciting, peddling, hawking or canvassing.
- (5) That the applicant has been convicted of a crime involving a fraud upon any person, whether or not such fraud was perpetrated in the course of his conducting a solicitation activity.

(b) The *James City County Police Department administrator* shall file in *its* his office, for public inspection, and shall serve upon the applicant, by registered mail, a written statement of facts and his decision upon each application.

Sec. 18-5. Same - Applicant's photograph, references and fingerprints.

(a) All applications for a permit under this chapter shall be accompanied by a photograph of the applicant, and two written references as to his, or their, good character; the photograph shall *have been taken within 60 days of submitting application and shall* be attached to the application.

(b) All applicants for a permit under this chapter shall be fingerprinted by the James City County police department, which department shall send the prints to the Federal Bureau of Investigation for checking.

Sec. 18-12. Permit denial; application for relief.

(a) Upon denying a permit applied for under this chapter, the *James City County Police Department county administrator* shall promptly notify the permit applicant.

(b) Within five days after receiving notification that the application for a permit to solicit under this chapter has been denied, the applicant may file a written request for a hearing on the application before the board of

supervisors, together with written exceptions to the findings of fact upon which the *James City County Police Department* ~~county administrator~~ based the denial. Upon the filing of such a request, the board of supervisors shall fix a time and place for the hearing and shall notify the applicant thereof. The hearing shall be held within 30 days after the request is filed. At the hearing, the applicant may present evidence in support of the application. Any interested person may, in the discretion of the board of supervisors, be allowed to participate in the hearing and present evidence in opposition to or support of the application.

(c) Within 21 days after the conclusion of the hearing provided for in subsection (b), the board of supervisors shall either grant or deny the application for a permit.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.



Application Form for Non-Charitable Solicitation Permit

Application for permit to solicit under Section 18-2 of the James City County Solicitation Ordinance.

1. Name of ~~applicant~~ ~~the organization/person~~ _____
Address ~~or Headquarters~~ of applicant _____
Name of Firm/Organization _____
Address of Firm/Organization _____

2. Names of applicant's principal officers, managers, and ~~or~~ directors:

<u>Name</u>	<u>Office</u>	<u>Address</u>	<u>Phone #</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. Have you attached to this application a true and correct copy of the resolution (if any) authorizing the applicant to undertake the proposed solicitation covered by the application?
(Answer Yes or None): _____

4. The following goods, wares or merchandise will be offered for sale during this solicitation:

5. a. Will you demand, accept or receive payment or deposit of money in advance of final delivery of the goods offered in this solicitation? _____
b. If payment will be made in advance of final delivery of the goods offered in this solicitation, does a bond or certified check in the amount of \$500.00 accompany this application in accordance with Section 18-6 of the James City County code? _____

6. The proposed dates for the beginning and ending of the solicitation are:

Beginning date: _____ Ending date: _____

7. The following persons will be in direct charge, conducting the solicitation:

<u>Name</u>	<u>Phone #</u>	<u>Title</u>	<u>Address</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

8. The following promoters and professional solicitors or advisors are connected, or will be connected with the solicitation:

<u>Name</u>	<u>Title</u>	<u>Address</u>	<u>Phone Number</u>
-------------	--------------	----------------	---------------------

9. The method or methods to be used in conducting the solicitations are as follows: (Explain in detail)

10. Has the applicant or any officer, agent, professional fundraiser or professional solicitor thereof ever been convicted of a felony? (If yes, explain each conviction in detail, supplying dates.)

11. Has the applicant or any officer, agent, professional fundraiser or professional solicitor thereof ever been convicted of a misdemeanor excluding motor vehicle violations? (If yes, explain each conviction in detail, supplying dates.)

12. Has the applicant or any officer, agent, professional fundraiser or professional solicitor thereof ever been convicted of a misdemeanor in any jurisdiction relating to selling, vending, soliciting, peddling, hawking or canvassing? (If yes, explain each conviction in detail, supplying dates.)

13. Has the applicant or any officer, agent, professional fundraiser or professional solicitor thereof ever been convicted of a misdemeanor in any jurisdiction relating to a crime involving fraud? (If yes, explain each conviction in detail, supplying dates.)

14. Does applicant certify that if a permit is granted, it will not be used or represented in any way as an endorsement of the County of James City or by any department or officer thereof?

--

15. The following is additional information believed by the applicant to be useful to the County Administrator in determining the kind and character of the proposed solicitation:

List the following information for all vehicles to be used in the solicitation:

Make/Year Color License Number and State

16. All of the above statements are true to the best of my knowledge, information and belief. I, as applicant, have attached a photograph and two letters of character reference to be filed with this application. I, as applicant, consent to be fingerprinted and have a record check made by the James City County Police Department in accordance with Section 18-5(b) of the James City County Solicitation Ordinance. I, as applicant, have reviewed Ordinance 146A-1 of the James City County Code regarding solicitation.

Applicant's Signature: _____

Print Name

Address

Date

Notary Certification

COMMONWEALTH OF VIRGINIA

County of James City, to wit:

Subscribed and sworn to before me, this _____ day of _____, 20_____,
by the above-named _____.

My commission expires: _____

Notary Public

Notary Registration No.: _____

_____ For Office Use _____

Application support documentation:

Application: _____
Date Received

Application Fee: _____
Amount Date Paid

Photo: _____ Other _____
Date Received

Two Letters of Reference: _____
Date Received

Fingerprints taken on: _____ / _____
Date Results

Criminal History Check: _____ / _____
Date Received Results

Application Approved by: _____ Date _____
Name/JCC Police Department

Permit No.: _____

Permit issued on: _____

Permit expires on: _____

NonCharSolPerApp

MEMORANDUM COVER

Subject: Disposition of Property in the Forest Heights Neighborhood Improvement Project Area and the Neighbors Drive/Richmond Road Neighborhood Improvement Project Area

Action Requested: Shall the Board approve the resolution that authorizes the County Administrator to dispose of County owned property?

Summary: The disposition of County owned property in the Forest Heights and Neighbors Drive/Richmond Road Neighborhood Improvement Project Areas was previously approved by the Board of Supervisors. After the Board approval of properties owned at that time and pursuant to the Board resolution on December 14, 2010, authorizing acquisition of the real property needed to complete the Forest Heights Road and Neighbors Drive Concept Plan, the County purchased additional properties, which will need to be conveyed pursuant to an Amended Lots Sales Plan.

Staff recommends approval of the attached resolution for disposing of the properties purchased after the original resolution.

Fiscal Impact: The lot sales will provide approximately \$175,000 in revenue to the Community Development Fund.

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution
3. Forest Heights Concept Plan
4. Exhibit A ("The County Property")
5. Exhibit B-Revised Neighbors Drive Concept Plan
6. Exhibit C- Amended Forest Heights and Neighbors Drive/Richmond Road Neighborhood Improvement Projects Lot Sales and Housing Production Plan

Agenda Item No.: I-4

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: A. Vaughn Poller, Housing and Community Development Administrator

SUBJECT: Disposition of Property in the Forest Heights Neighborhood Improvement Project Area and the Neighbors Drive/Richmond Road Neighborhood Improvement Project Area

The Board of Supervisors approved by resolution on December 14, 2010, the acquisition of real property (the “Acquisition Resolution”) necessary to complete the Forest Heights Road and Neighbors Drive Concept Plan (“Concept Plan”).

On December 13, 2011, the Board of Supervisors approved by resolution the disposition of 11 properties (the “Disposition Resolution”) that had been acquired pursuant to the Acquisition Resolution. One of the acquired properties was listed with an incorrect parcel number. The disposition of that parcel, correct Parcel No. 3220100091, is therefore included in this resolution.

Pursuant to the Acquisition Resolution but after the Disposition Resolution, the County purchased five properties needed to accomplish the Concept Plan. These additional properties and the corrected parcel number are listed on the attached Exhibit A (the “County Property”).

The Concept Plan presented to the Board on December 14, 2010, created 11 new or redrawn lots. A revised plan, the (“Neighbors Drive Conceptual Resubdivision Plat – Revised 6/13/2013”) has been developed for the Neighbors Drive/Richmond Road Neighborhood Improvement Project area only (“Revised Neighbors Drive Concept Plan”) attached as Exhibit B. The Revised Neighbors Drive Concept Plan includes five new lots, which have been redrawn and/ or relocated from those shown on the prior Concept Plan.

The County Property will be used for road right-of-way and attendant infrastructure, a stormwater drainage pond, conservation area, and for the new single-family lots (the “Lots”). The Lots will be disposed of in accordance with the Amended Forest Heights and Neighbors Drive/Richmond Road Neighborhood Improvement Projects Lot Sales and Housing Production Plan (the “Amended Lot Sales Plan”) attached as Exhibit C.

The Proffers for the Forest Heights, Neighbors Drive, Richmond Road Improvements Rezoning, Case No. Z-0001-2011 stated, “... a minimum of four lots shall be sold to Habitat for Humanity Peninsula and Greater Williamsburg (“Habitat”) on which Habitat will construct dwellings for low-income households which qualify for Habitat’s homeownership program. A minimum of two dwelling units shall be reserved and offered to buyer at or below the VHDA income limits.”

The sales prices for the Lots will range between \$35,000 and \$45,000. The price for each lot shall be determined by the desirability of the lot, cost to develop the lot, and market factors. The County paid between \$28,400 and \$37,000 for the approximately 4,500- to 5,000-square-foot lots purchased in the Project Areas.

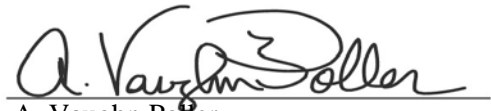
The net proceeds of all lot sales will provide funds to address the County’s affordable housing needs.

Staff recommends approval of the attached resolution which would authorize the sale or disposition of all or a portion of the listed 16 Properties.

Disposition of Property in the Forest Heights Neighborhood Improvement Project Area and the Neighbors
Drive/Richmond Road Neighborhood Improvement Project Area

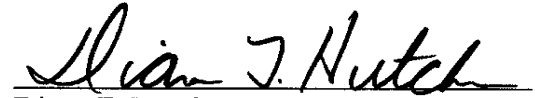
June 25, 2013

Page 2

A handwritten signature in cursive script, reading "A. Vaughn Poffler", written over a horizontal line.

A. Vaughn Poffler

CONCUR:

A handwritten signature in cursive script, reading "Diana F. Hutchens", written over a horizontal line.

Diana F. Hutchens

AVP/nb
NDRR-LotSales_mem

Attachments

RESOLUTION

DISPOSITION OF PROPERTY IN THE FOREST HEIGHTS NEIGHBORHOOD IMPROVEMENT

PROJECT AREA AND THE NEIGHBORS DRIVE/RICHMOND ROAD

NEIGHBORHOOD IMPROVEMENT PROJECT AREA

WHEREAS, on December 14, 2010, the Board of Supervisors of James City County, Virginia, authorized the acquisition of real property (the “Acquisition Resolution”) necessary to complete the Forest Heights Road and Neighbors Drive Concept Plan (“Concept Plan”); and

WHEREAS, on December 13, 2011, the Board of Supervisors of James City County, Virginia, authorized the disposition of 11 parcels of real property (the “Disposition Resolution”) that had been acquired pursuant to the Acquisition Resolution; and

WHEREAS, pursuant to the Acquisition Resolution but after the Disposition Resolution, the County purchased the properties known as James City County Parcel Nos. 3220400002, 3220400004, 3220400005, 3220400007, and 3220400020 (the Additional “County Property”); and

WHEREAS, the Disposition Resolution incorrectly stated one parcel number, which parcel should have been named as Parcel Number 3220100091 (the “Corrected Parcel Number Property”); and

WHEREAS, the Concept Plan and the “Neighbors Drive – Conceptual Resubdivision Plat – Revised 6/13/2013” include development of residential lots to be used for single-family dwellings; and

WHEREAS, the Board of Supervisors has considered and approved the Amended Forest Heights and Neighbors Drive/Richmond Road Neighborhood Improvement Projects Lot Sales and Housing Production Plan (the “Amended Lot Sales Plan”); and

WHEREAS, the Board of Supervisors held a public hearing on June 25, 2013, to receive public comment on the sale of all or portions of the Additional County Property and the Corrected Parcel Number Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to sign on behalf of the County, any sale contract, development agreement, deed, and all other documents consistent with the Amended Lot Sales Plan to enable the County to develop and convey, in whole or in part, ownership of the Additional County Property and the Corrected Parcel Number Property in the Forest Heights Neighborhood Improvement Project Area and the Neighbors Drive/Richmond Road Project Areas.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June,
2013.

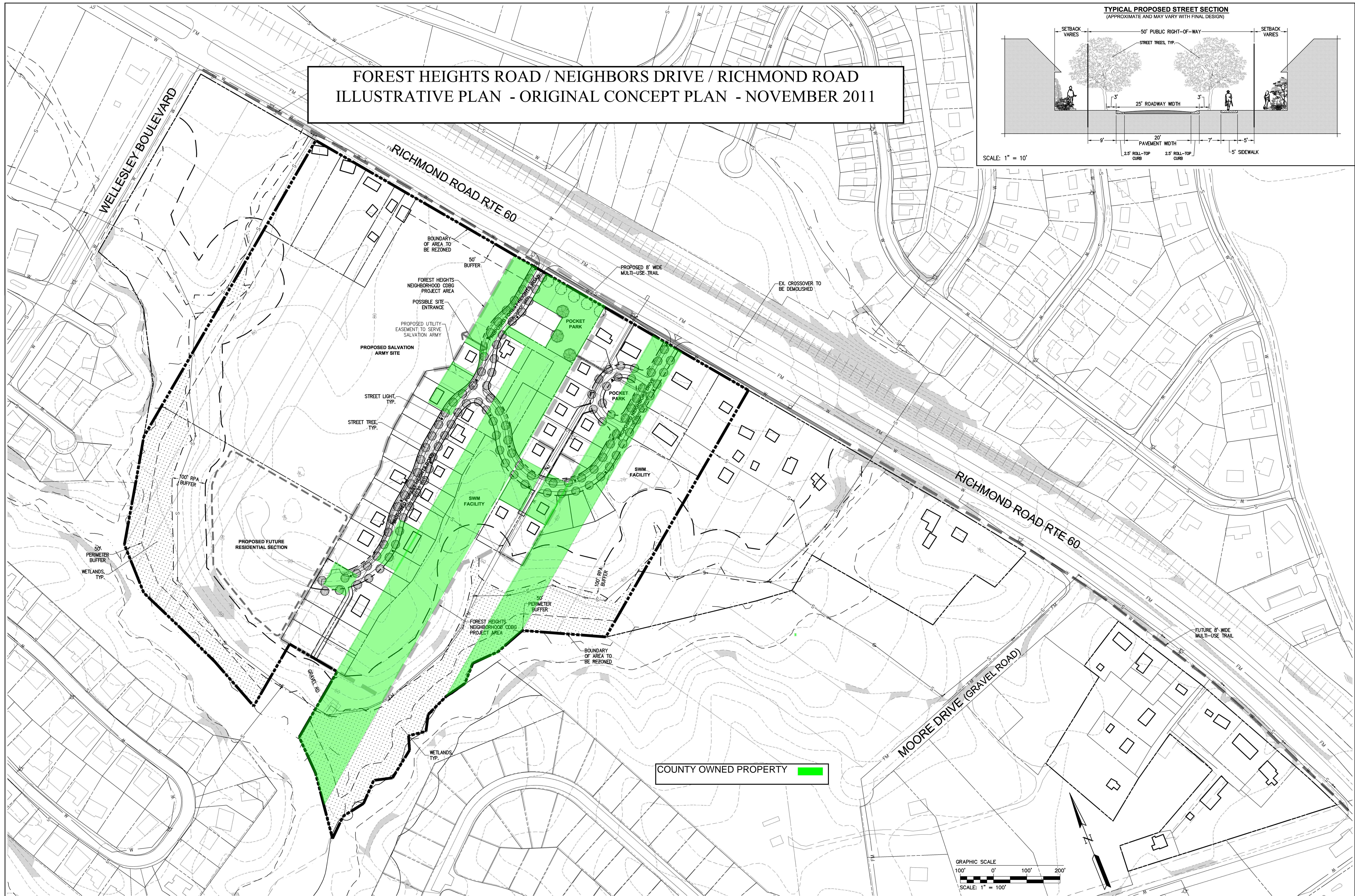
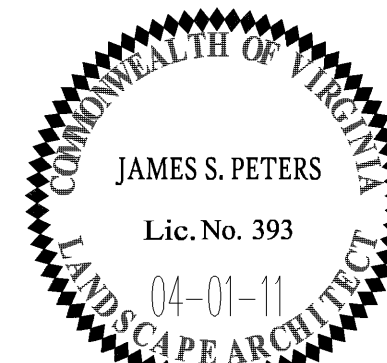
NDRR-LotSales_res

TYPICAL PROPOSED STREET SECTION
 (APPROXIMATE AND MAY VARY WITH FINAL DESIGN)

The diagram illustrates a cross-section of a street with the following dimensions and components:

- SETBACK VARIES**: Indicated on both sides of the street.
- 50' PUBLIC RIGHT-OF-WAY**: The total width of the street.
- STREET TREES, TYP.**: Two trees are shown in the center of the street.
- 3'**: The distance from the trees to the curb on each side.
- 25' ROADWAY WIDTH**: The width of the paved area.
- 20' PAVEMENT WIDTH**: The width of the paved area, including the 2.5' roll-top curbs.
- 7'**: The distance from the curb to the sidewalk on each side.
- 5' SIDEWALK**: The width of the sidewalk on each side.
- 2.5' ROLL-TOP CURB**: The width of the curb on each side.
- 9'**: The distance from the curb to the edge of the right-of-way on each side.

SCALE: 1" = 10'

[illegible]

5248 Olde Towne Road, Suite
Williamsburg, Virginia 23188
Phone: (757) 253-0040
Fax: (757) 220-8994
www.aesva.com

Hampton Roads | Central Virginia | Middle Peninsula

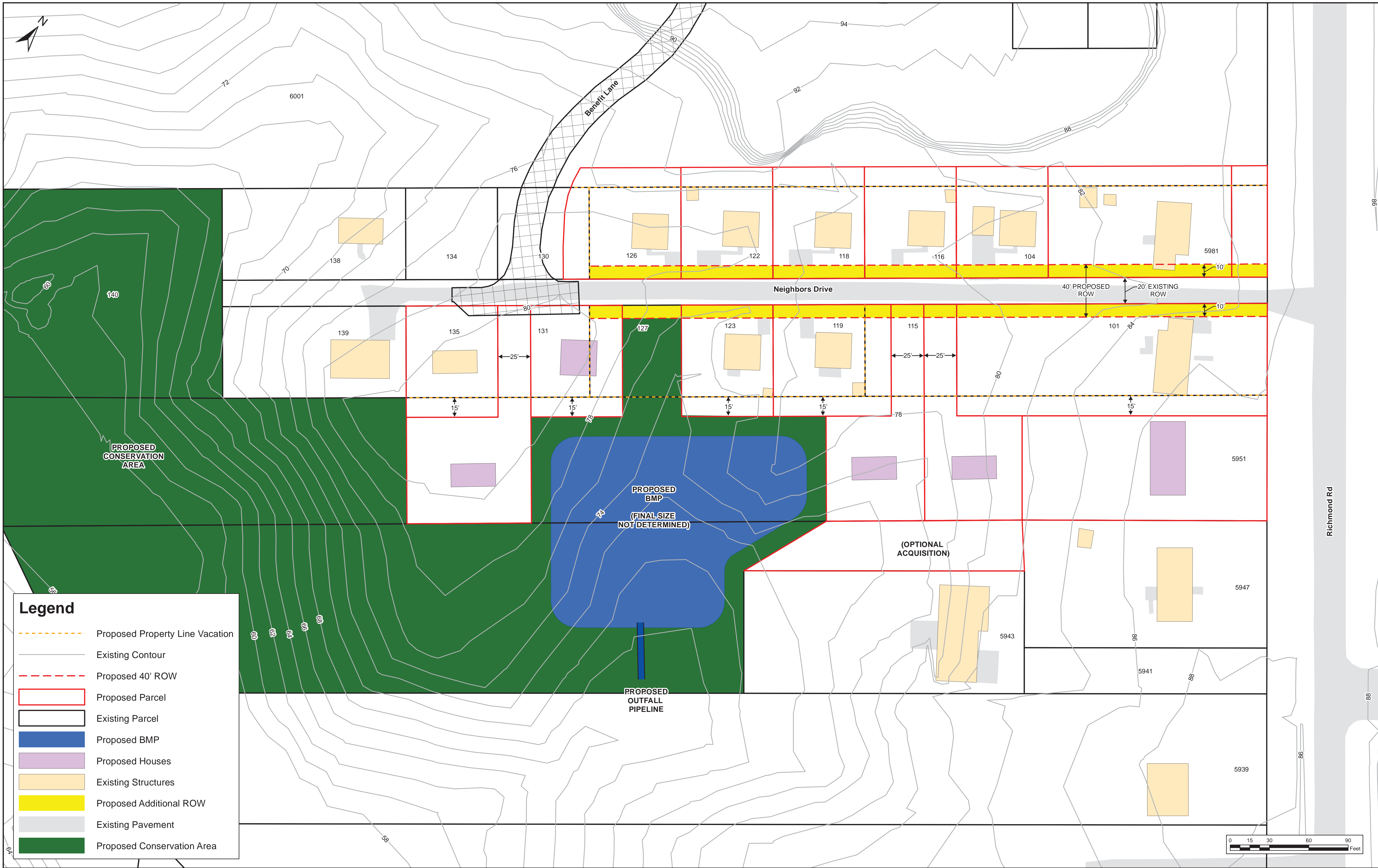
ILLUSTRATIVE PLAN
FOREST HEIGHTS ROAD / NEIGHBORS DRIVE /
RICHMOND ROAD AREAS
MASTER PLAN FOR REZONING

Project Contacts: ABS/JSP/GRR	
Project Number: W10119-E-03	
Scale: 1:100_XREF	Date: 04-01-11
Sheet Number	

EXHIBIT A

County Property Purchased in the
Forest Heights and Neighbors Drive/Richmond Road
Neighborhood Improvement Project Areas

JCC Parcel Number	Street Address
3220400002	113 FOREST HEIGHTS RD
3220400004	116 FOREST HEIGHTS RD
3220400005	120 FOREST HEIGHTS RD
3220400007	125 FOREST HEIGHTS RD
3220400020	146 FOREST HEIGHTS RD
3220100091	5951 RICHMOND RD



Neighbors Drive - Conceptual Resubdivision Plat - Revised 6/13/13

EXHIBIT C

AMENDED LOT SALES AND HOUSING PRODUCTION PLAN FOR THE FOREST HEIGHTS AND THE NEIGHBORS DRIVE/RICHMOND ROAD NEIGHBORHOOD IMPROVEMENT PROJECTS

The Board of Supervisors for the County of James City, Virginia, authorized property acquisition for the Forest Heights and the Neighbors Drive/Richmond Road Neighborhood Improvement Projects ("Projects"). The Projects will provide public roads, other infrastructure, and affordable housing on parcels of land owned by or to be purchased by the County. This Lot Sales Plan sets forth the guidelines for the development and sale of lots and homes in the Project areas. Financing for the development of site and infrastructure improvements is being provided from the James City County Community Development Fund, the Housing Development Fund and Community Development Block Grant funds.

Eligible Builders

Construction and sale of homes in the Project area will be restricted to a limited number of builders. At least five (5) lots will be reserved for sale to Habitat for Humanity Peninsula and Greater Williamsburg (Habitat), pursuant to the Real Estate Purchase contract between Habitat and the County dated March 27, 2013. Housing Partnerships, Inc. (HPI) may purchase up to four (4) lots provided a Memorandum of Understanding is executed between HPI and the County no later than August 31, 2013. Habitat and HPI shall sell homes built on their lots to Eligible Buyers as defined below.

Additional qualified builders shall be solicited by an advertised Request for Qualification. Builders shall be selected based on the Office of Housing and Community Development's (OHCD) evaluation of responses to the advertisement. Selection criteria shall include value, price, unit design, and qualifications and experience of the builder.

Eligible Buyers

Homebuyer(s) must apply to the OHCD which will determine their eligibility to purchase a home on a County owned lot in the Project areas. Homebuyers must meet the underwriting criteria for a purchase-money mortgage loan program approved by OHCD.

Lot Sales Prices

Sales price for the lots will range between \$35,000 and \$45,000. The price for each lot shall be determined by the desirability of the lot, cost to develop the lot and market factors.

Home Sales Prices

Habitat will construct and sell dwellings on any lots they purchase for prices affordable to low and moderate income households who qualify for Habitat's homeownership program. The remaining dwelling units shall be sold at a price not to exceed the then published Virginia Housing Development Authority ("VHDA") maximum sales price. Builders will be required to enter into a development agreement for each lot purchased which shall specify the house plan and maximum sales price of the home to be built.

Down Payment and Closing Cost Assistance

Homebuyers may be eligible for loans to assist with financing required closing costs, down payment, and/or interest rate buy-down. OHCD will make a preliminary determination of the availability of and homebuyer's qualification for these loans. All loans will be secured by a deed of trust.

All homebuyers will be required to pay a minimum of \$3,000 in cash toward the expense of purchasing the home. All homebuyers will be required to complete a VHDA Homebuyer Education Class.

2013 TAX MAP
FOREST HEIGHTS AND NEIGHBORS DRIVE/
RICHMOND ROAD NEIGHBORHOOD
IMPROVEMENT PROJECTS

DISPOSITION AUTHORIZED BY
RESOLUTION DATED:
JUNE 26, 2013
DECEMBER 13, 2011



(included to
correct
parcel
number)

MEMORANDUM COVER

Subject: Neighbors Drive/Richmond Road Community Development Block Grant (CDBG) Agreement and Appropriation of Funds

Action Requested: Shall the Board approve the resolution that authorizes the County Administrator to sign the Community Development Block Grant (CDBG) Agreement and appropriate funds for the project?

Summary: The Neighbors Drive/Richmond Road Neighborhood Improvement Project CDBG is the second of a two-phase project intended to improve the Forest Heights Road/Neighbors Drive/Richmond Road CDBG Planning Grant study area (the "Forest Heights Planning Grant"). The Forest Heights Planning Grant was authorized by the Board on November 10, 2009. The study area was subsequently divided into two project areas because of cost and funding constraints. The Neighbors Drive/Richmond Road CDBG will complete the improvements identified in the Forest Heights Planning Grant study by assisting with funding to improve substandard housing conditions, primarily on Richmond Road, provide a new street, attendant neighborhood infrastructure such as stormwater drainage control, and preserve Neighbors Drive/Richmond Road as a viable residential neighborhood.

CDBG funds of \$1,070,000 along with \$965,486 in local funds, \$71,370 of County in-kind services, and \$38,400 of other Federal funds will be used to complete the project activities specified in the CDBG Application and Agreement.

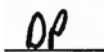
Staff recommends approval of the attached resolution for entering into agreement to accept CDBG funds and appropriate funds for the Forest Heights CDBG project and expenditure of appropriated funds for the acquisition of property needed for the project.

Fiscal Impact: The CDBG funds will provide \$1,070,000 for use in this project. The local funds are available from program income and fund balance in the County's Community Development Fund and the Housing Rehabilitation Revolving Loan Funds.

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell



County Administrator

Robert C. Middaugh



Attachments:

1. Memorandum
2. Resolution
3. Summary of Changes to Budget
4. Grant Budget
5. Revised Concept Plan

Agenda Item No.: J-1

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: A. Vaughn Poller, Housing and Community Development Administrator

SUBJECT: Neighbors Drive/Richmond Road Community Development Block Grant (CDBG) Agreement and Appropriation of Funds

In February 2009 the residents of Forest Heights Road met with the Office of Housing and Community Development ("OHCD") to discuss the need to pave Forest Heights Road which prompted OHCD to research the needs in the area. OHCD held public meetings and began to develop a plan to apply for Community Development Block Grant funding to assist with improving the housing and road conditions on Forest Heights Road, Neighbors Drive, and the nearby Richmond Road areas. On November 10, 2009, the Board of Supervisors approved the Forest Heights Road Project Planning Grant awarded by the Virginia Department of Housing and Community Development (the "VDHCD") to assist in funding engineering studies, conceptual design, and cost estimates for infrastructure improvements in the project area. The Forest Heights Planning Grant Area included 61.6 acres fronting on Forest Heights Road, Neighbors Drive, and nearby portions of Richmond Road.

The engineer's preliminary cost estimate to pave Forest Heights Road and Neighbors Drive, create the legally mandated attendant infrastructure, and rehabilitate substandard homes for the project exceeded \$4 million. The maximum CDBG fund available for a single project was \$1,400,000; therefore upon the advice of VDHCD, it was determined that the project would be divided into two distinct phases, the Forest Heights Neighborhood Improvement Project (the "Forest Heights CDBG"), and the Neighbors Drive/Richmond Road Neighborhood Improvement Project (the "Neighbors Drive CDBG").

Advertised Public Hearings were held January 21, 2010, and March 16, 2010, to request the public's input on the Forest Heights CDBG and March 23, 2010, the Board was asked to authorize the CDBG application for the Forest Heights CDBG and was informed that the project would be divided into two phases.

Additional advertised public hearings were held December 7, 2011, and February 7, 2012, to request the public's input on the Neighbors Drive CDBG and on March 13, 2013, the Board authorized OHCD to submit an application for \$1,070,000 in CDBG funding. In February 2013 the Governor notified the Board of Supervisors that the County's application for the Neighbors Drive/Richmond Road Neighborhood Improvement Community Development Block Grant (CDBG) Project had been approved.

The Neighbors Drive CDBG will improve substandard housing conditions, primarily on Richmond Road, pave Neighbors Drive, construct attendant infrastructure such as stormwater drainage control, and preserve Neighbors Drive/Richmond Road as a viable residential neighborhood. CDBG funds of \$1,070,000 and leverage funds of \$1,075,256 will be expended to undertake the following activities as specified in the CDBG Agreement:

1. Rehabilitation of eight substandard homes for low- to moderate-income (LMI) owner.
2. Replacement of two substandard homes in condition beyond repair.
3. Energy audits and weatherization will be performed on the eight rehabilitated homes.
4. Development of three or more new lots for sale to LMI home buyers.
5. Construction of 600 linear feet of paved public street.
6. Construction of 600 linear feet of sidewalk.

Neighbors Drive/Richmond Road Community Development Block Grant (CDBG) Agreement and
Appropriation of Funds

June 25, 2013


Page 2

7. Construction of 650 linear feet of paved multi-use path.
8. Construction of 300 linear feet of sewer line.
9. Construction of 300 linear feet of waterline.
10. Installation of street lights and street trees, and upgrade of one existing fire hydrant.
11. Construction of one stormwater detention pond.
12. Construction of a storm sewer collection system.
13. Removal of debris from private properties and areas within the Resource Protection Area.

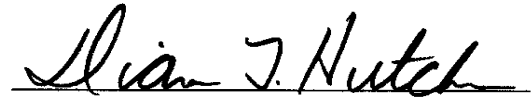
The \$1,075,256 leverage funds required to match the CDBG award will include previously appropriated funds of \$38,400 from the Environmental Protection Agency Climate Showcase Communities Grant ("EPA") and \$190,000 appropriated in the FY 14 Community Development Fund Budget, and \$732,486 recommended to be appropriated from the Community Development Fund, \$43,000 recommended to be appropriated from the Housing Rehabilitation Revolving Loan Fund and \$71,370 of in-kind contribution of staff time and permit fee waivers. There was \$30,000 in grant funding for this project appropriated in FY 13.

The proposed project budget in for the March 2012 CDBG application included leverage funds of \$856,730 comprised of EPA funds of \$38,400 and a local match of \$818,330. After the CDBG award was announced, the proposed budget was reviewed, revised, and updated. The project engineer determined that the cost estimate in the application for the construction of the Best Management Practice (BMP), the Storm Sewer, Water and Sewer and Streets was substantially accurate. However, there were other cost variances requiring an additional capital outlay of local funds of \$218,526, available within the Community Development Fund as shown in the attached table.

Staff recommends approval of the attached resolution authorizing the County Administrator to sign the CDBG agreement, and to appropriate the CDBG funds and the additional funds from the County's Community Development Fund and the Housing Rehabilitation Revolving Loan Fund to support the project.


A. Vaughn Poffler

CONCUR:


Diana F. Hutchens

AVP/nb

NDRR-CDBGAgree_mem

Attachments:

1. Revised Concept Plan
2. Summary of Budget Changes
3. Grant Budget

RESOLUTION

NEIGHBORS DRIVE/RICHMOND ROAD COMMUNITY DEVELOPMENT BLOCK GRANT

(CDBG) AGREEMENT AND APPROPRIATION OF FUNDS

WHEREAS, on March 13, 2012, the Board of Supervisors of James City County, Virginia, authorized the County Administrator to submit an application to the Virginia Department of Housing and Community Development (DHCD) for a Community Development Block Grant (CDBG) for the Neighbors Drive/Richmond Road Neighborhood Improvement Project; and

WHEREAS, James City County has been notified of the award of \$1,070,000 of CDBG funds and has completed all actions required by DHCD to enter into an agreement to receive the CDBG funding; and

WHEREAS, the Board of Supervisors has previously authorized establishment of the Housing Rehabilitation Revolving Loan Fund for housing rehabilitation loans; and

WHEREAS, the Board of Supervisors had appropriated \$30,000 in CDBG funding in FY 13; and

WHEREAS, sufficient funds are available in the County's Community Development Fund and in the Housing Rehabilitation Revolving Loan Fund to provide local funds, not previously appropriated, which are required to complete the activities under the Neighbors Drive/Richmond Road Neighborhood Improvement Project contract.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to sign the Neighbors Drive/Richmond Road Neighborhood Improvement Project CDBG Agreement and contract with the Virginia DHCD.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the Budget, as adopted for the fiscal year ending June 30, 2014, as follows:

Revenues:

Neighbors Drive/Richmond Road Neighborhood Improvement Project Community Development Block Grant	\$1,040,000
Community Development Fund Balance	<u>732,486</u>
	<u>\$1,772,486</u>

Expenditures:

Neighbors Drive/Richmond Road CDBG	\$1,040,000
Neighbors Drive/Richmond Road Local Share	<u>732,486</u>
	<u>\$1,772,486</u>

Housing Rehabilitation Revolving Loan Fund:

Revenues:

Housing Rehabilitation Revolving Loan Fund Balance	<u>\$43,000</u>
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Expenditures:

Housing Rehabilitation Revolving Loans	<u>\$43,000</u>
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John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.

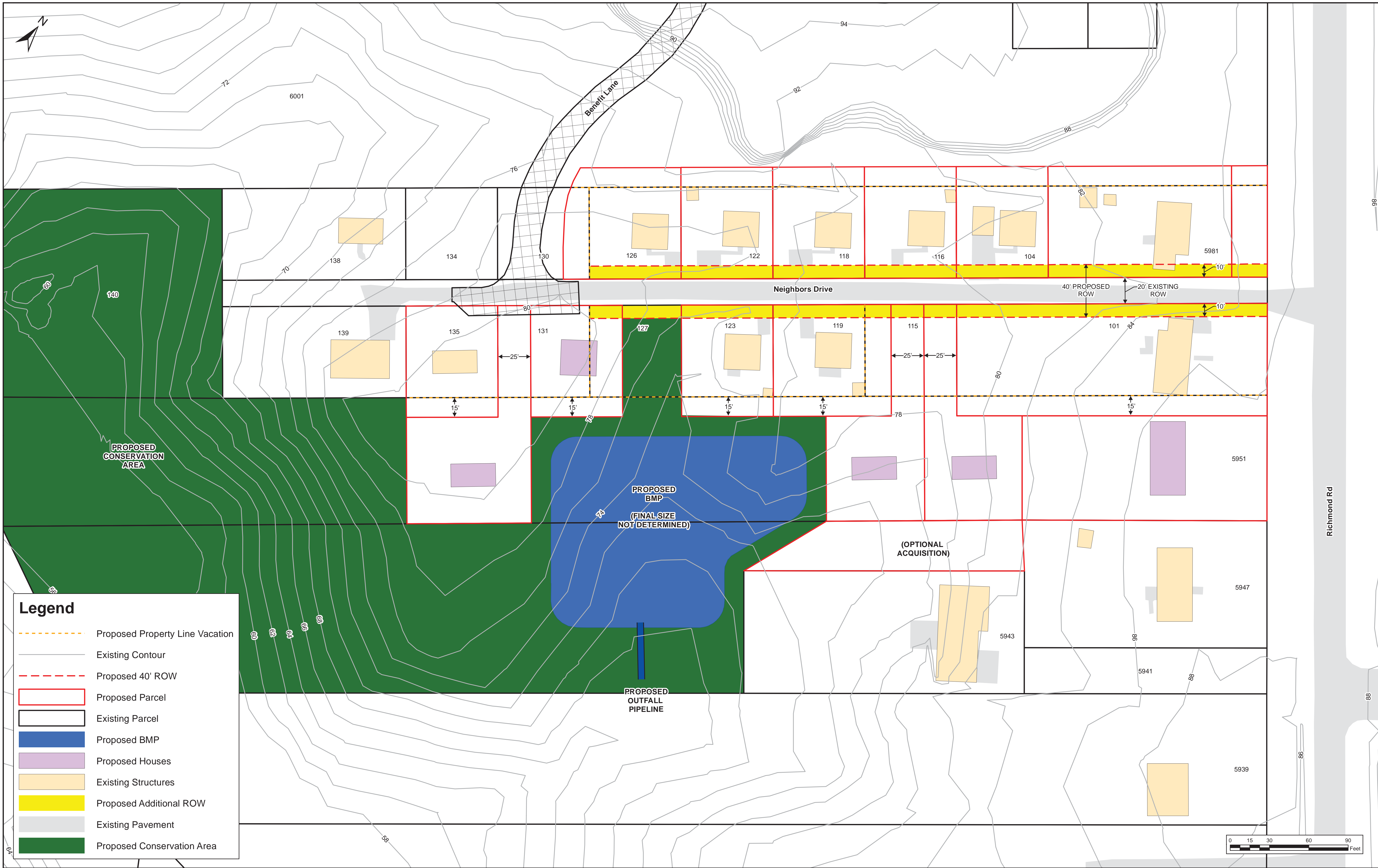
NDRR-CDBGAgree_res

NEIGHBORS DRIVE / RICHMOND ROAD NEIGHBORHOOD IMPROVEMENT PROJECT

SUMMARY OF BUDGET CHANGES

BUDGET ITEM	AMOUNT OF CHANGE	REASON FOR CHANGE
Acquisition	-\$ 28,000	Fewer acquisitions
Clearance & Demolition	\$ 4,500	Potential asbestos removal
Owner-Occupied Housing Rehabilitation	\$ 45,600	Increases in construction costs to Rehabilitate 8 houses based on Forest Heights experience
Substantial Reconstruction	\$ 83,000	Accessibility improvements and larger houses because of increased household size due to live-in caregivers for 2 homes for disabled, elderly residents
Underground Utilities		
Underground Utilities	\$ 57,300	Revised cost estimate from utility companies
Electric Service Changes	\$ 9,000	Based on actual costs incurred in Forest Heights
Field Inspections		
Locate Subsurface Utilities	\$ 5,000	Based on actual costs incurred in Forest Heights
Geotech	\$ 11,000	Based on actual costs incurred in Forest Heights
Construction Administration and Periodic Inspections	\$ 31,126	Based on actual costs incurred in Forest Heights
TOTAL	<u>\$218,526</u>	

BUDGET LINE ITEM	TOTAL	CDBG	NON-CDBG
	BUDGET	BUDGET	BUDGET
ADMINISTRATION			
Execution of DHCD Contract	\$ 15,000.00		
Execution of Project Contract(s)	\$ 27,500.00		
Contract Monitoring	\$ 10,000.00		
Construction Completion	\$ 27,500.00		
Achievement of Benefits	\$ 15,000.00		
Administrative Project Closeout	\$ 5,000.00		
Subtotal	\$ 100,000.00	\$ 100,000.00	\$ -
INTERIM ASSISTANCE	\$ 10,000.00	\$ -	\$ 10,000.00
ACQUISITION	\$ 90,000.00	\$ -	\$ 90,000.00
CLEARANCE & DEMOLITION	\$ 12,500.00	\$ -	\$ 12,500.00
OWNER-OCCUPIED HOUSING REHABILITATION			
Owner-Occupied Construction	\$ 280,000.00	\$ 240,000.00	\$ 40,000.00
Rehabilitation Specialist	\$ 24,000.00	\$ 24,000.00	
HMEP	\$ 2,000.00	\$ -	\$ 2,000.00
Subtotal	\$ 306,000.00	\$ 264,000.00	\$ 42,000.00
SUBSTANTIAL RECONSTRUCTION			
Clearance & Demolition	\$ 25,000.00	\$ -	\$ 25,000.00
Owner-Occupied Construction	\$ 320,000.00	\$ 120,000.00	\$ 200,000.00
Rehabilitation Specialist	\$ 12,000.00	\$ 12,000.00	
Temporary Relocation	\$ 30,000.00	\$ -	\$ 30,000.00
HMEP	\$ 500.00	\$ -	\$ 500.00
Subtotal	\$ 387,500.00	\$ 132,000.00	\$ 255,500.00
STORMWATER MANAGEMENT/BMP			
Architect/Engineer/Design	\$ 38,830.00	\$ -	\$ 38,830.00
Inspection	\$ 21,180.00	\$ -	\$ 21,180.00
Acquisition (Easements Only)	\$ 4,500.00	\$ -	\$ 4,500.00
Permits/Fees	\$ 7,060.00	\$ -	\$ 7,060.00
Construction/Improvements	\$ 352,910.00	\$ 323,900.00	\$ 29,010.00
Subtotal	\$ 424,480.00	\$ 323,900.00	\$ 100,580.00
STORMWATER MANAGEMENT/STORM SEWER			
Architect/Engineer/Design	\$ 13,560.00	\$ -	\$ 13,560.00
Inspection	\$ 8,850.00	\$ -	\$ 8,850.00
Permits/Fees	\$ 2,950.00	\$ -	\$ 2,950.00
Construction/Improvements	\$ 147,350.00	\$ 147,350.00	
Subtotal	\$ 172,710.00	\$ 147,350.00	\$ 25,360.00
WATER/SEWER			
Architect/Engineer/Design	\$ 12,810.00	\$ -	\$ 12,810.00
Inspection	\$ 6,990.00	\$ -	\$ 6,990.00
Permits/Fees	\$ 2,330.00	\$ -	\$ 2,330.00
Construction/Improvements	\$ 116,380.00	\$ 102,750.00	\$ 13,630.00
Subtotal	\$ 138,510.00	\$ 102,750.00	\$ 35,760.00
STREETS			
Architect/Engineer/Design	\$ 25,710.00	\$ -	\$ 25,710.00
Inspection	\$ 16,770.00	\$ -	\$ 16,770.00
Permits/Fees	\$ 5,590.00	\$ -	\$ 5,590.00
Construction/Improvements	\$ 279,360.00	\$ -	\$ 279,360.00
Subtotal	\$ 327,430.00	\$ -	\$ 327,430.00
MISC			
Underground Utilities	\$ 120,000.00	\$ -	\$ 120,000.00
Electric Service Changes	\$ 9,000.00		\$ 9,000.00
Locate Subsurface Utilities	\$ 5,000.00		\$ 5,000.00
Geotech	\$ 11,000.00		\$ 11,000.00
Constr Admin and Periodic Inspections	\$ 31,126.00		\$ 31,126.00
TOTAL	\$ 2,145,256.00	\$ 1,070,000.00	\$ 1,075,256.00



Neighbors Drive - Conceptual Resubdivision Plat - Revised 6/13/13

MEMORANDUM COVER

Subject: Community Development Block Grant (CDBG) Local Business and Employment Plan

Action Requested: Shall the Board approve the resolution adopting the Community Development Block Grant (CDBG) Local Business and Employment Plan?

Summary: As an administrator and recipient of CDBG, James City County is expected to adhere to the requirements of a variety of Federal laws and regulations. One such law is Section 3 of the Housing and Urban Development Act. This law requires that a locality which receives CDBG funds adopt for each new CDBG, a written plan which sets forth steps the locality will take to identify and then notify minority-, female-, and locally-owned businesses of goods and services to be purchased with grant funds. This plan also describes procedures that will be followed to notify lower-income James City County residents of training and employment opportunities. The County has adhered to these Section 3 requirements in its previous CDBG projects, and these requirements are consistent with the affirmative action policies within the County's purchasing and employment regulations.

Staff recommends approval of the attached resolution to adopt the CDBG Local Business and Employment Plan.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution
3. Community Development Block Grant Local Business and Employment Plan

Agenda Item No.: J-2

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors


FROM: A. Vaughn Poller, Housing and Community Development Administrator

SUBJECT: Community Development Block Grant (CDBG) Local Business and Employment Plan


As an administrator and recipient of Community Development Block Grants (CDBG), James City County is obliged to adhere to the requirements of a variety of Federal laws and regulations in areas such as environmental protection, equal opportunity, and labor standards. One such law is Section 3 of the Housing and Urban Development Act. This law requires that a locality which receives CDBG funds adopt for each new CDBG, a written plan which sets forth steps the locality will take to identify and then notify minority-, female-, and locally-owned businesses of goods and services to be purchased with grant funds. This plan also describes procedures that will be followed to notify lower-income James City County residents of training and employment opportunities. The County has adhered to these Section 3 requirements in its previous CDBG projects, and these requirements are consistent with the affirmative action policies within the County's purchasing and employment regulations.

The attached Local Business and Employment Plan is based on the model plan suggested by the Virginia Department of Housing and Community Development which administers the CDBG funds.

Staff recommends approval of the attached resolution to adopt the Community Development Block Grant Local Business and Employment Plan.


A. Vaughn Poller

CONCUR:


Diana F. Hutchens

AVP/nb
NDRRLocalBusPl_mem

Attachments

RESOLUTION

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)

LOCAL BUSINESS AND EMPLOYMENT PLAN

WHEREAS, James City County has been awarded a Community Development Block Grant of \$1,070,000 for the Neighbors Drive/Richmond Road Neighborhood Improvement Project; and

WHEREAS, Section 3 of the Housing and Urban Development Act of 1968 specifies that low-income project area residents and businesses should be utilized to the greatest extent feasible and further requires that recipients of Community Development Block Grant funds must adopt and act in accordance with a written Local Business and Employment Plan Funds.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the attached Local Business and Employment Plan.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.

NDRRLocalBusPl_res

JAMES CITY COUNTY

COMMUNITY DEVELOPMENT BLOCK GRANT SECTION 3, LOCAL BUSINESS AND EMPLOYMENT PLAN

1. The County of James City, Virginia (the “County”) designates as its Section 3 Business and Employment Project Area the boundaries of the County of James City, Virginia.
2. The County, its contractors, and designated third parties shall, in utilizing Community Development Block Grant (CDBG funds, utilize businesses and lower income residents of the County in carrying out all activities, to the greatest extent feasible.
3. In awarding contracts for construction, non-construction, materials, and supplies the County, its contractors, and designated third parties shall take the following steps to utilize businesses which are located in or owned in substantial part by persons residing in the County:
 - (a) The County shall identify the contracts required to conduct the CDBG activities.
 - (b) The County shall identify through various and appropriate sources including *The Daily Press*, published in Newport News, Virginia the business concerns within the County which are likely to provide construction contracts, non-construction contracts, materials, and services which will be utilized in the activities funded through the CDBG.
 - (c) The identified contractors and suppliers shall be included on bid lists used to obtain bids, quotes or proposals for work or procurement contracts which utilize CDBG funds.
 - (d) To the greatest extent feasible the identified business and any other project area business concerns shall be utilized in activities which are funded with CDBG funds.
4. The County and its contractors and subcontractors shall take the following steps to encourage the hiring of lower income persons residing in the County:
 - (a) The County in consultation with its contractors (including design professionals) shall ascertain the types and number of positions for both trainees and employees which are likely to be used to conduct CDBG activities.

- (b) The County shall advertise through the following sources *The Daily Press* the availability of such positions with the information on how to apply.
 - (c) The County, its contractors, and subcontractors shall be required to maintain a record of inquiries and applications by project area residents who respond to advertisements, and shall maintain a record of the status of such inquiries and applications.
 - (d) To the greatest extent feasible, the County, its contractors, and subcontractors shall hire lower income project area residents in filling training and employment positions necessary for implementing activities funded by the Community Development Block Grant (CDBG).
5. In order to document compliance with the above affirmative actions and Section 3 of the Housing and Community Development Act of 1974, as amended, the County shall keep, and obtain from its contractors and subcontractors, Registers of Contractors, Subcontractors and Suppliers and Registers of Assigned Employees for all activities funded by the CDBG. Such listings shall be completed and shall be verified by site visits and employee interviews, crosschecking of payroll reports and invoices, and through audits if necessary.

MEMORANDUM COVER

Subject: Neighbors Drive/Richmond Road Housing Rehabilitation Program Design and Residential Anti-Displacement and Relocation Plan

Action Requested: Shall the Board approve the resolution adopting the Neighbors Drive/Richmond Road Housing Rehabilitation Program Design and Residential Anti-Displacement and Relocation Plan?

Summary: The Neighbors Drive/Richmond Road Neighborhood Improvement Housing Rehabilitation Program Design and the Residential Anti-Displacement and Relocation Plan are proposed to govern provision of housing rehabilitation, replacement housing, and relocation assistance for the Neighbors Drive/Richmond Road Neighborhood Improvement Project Community Development Block Grant (CDBG) Project.

The Housing Rehabilitation Program Design describes housing rehabilitation program oversight and staffing, applicant and property eligibility requirements, housing rehabilitation standards, permanent and temporary relocation assistance, terms of financial assistance, contracting procedures, and dispute resolution procedures.

The Residential Anti-Displacement and Relocation Plan describes actions to be taken to avoid displacement of households and when demolition is unavoidable, actions which will assure one-for-one replacement of dwellings occupied by low- and moderate-income households.

Staff recommends approval of the attached resolution to adopt the Housing Rehabilitation Program Design and the Residential Anti-Displacement and Relocation Plan.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution
3. CDBG Housing Rehabilitation Program Design
4. Residential Anti-Displacement and Relocation Plan

Agenda Item No.: J-3

Date: June 25, 2013

M E M O R A N D U M

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: A. Vaughn Poller, Housing and Community Development Administrator


SUBJECT: Neighbors Drive/Richmond Road Housing Rehabilitation Program Design and Residential Anti-Displacement and Relocation Plan

The Neighbors Drive/Richmond Road Housing Rehabilitation Program Design and Residential Anti-Displacement and Relocation Plan govern housing rehabilitation and replacement, and relocation assistance for the Neighbors Drive/Richmond Road Neighborhood Improvement Project Community Development Block Grant (CDBG) Project. The Housing Rehabilitation Program Design describes housing rehabilitation program oversight and staffing, applicant and property eligibility requirements, housing rehabilitation standards, permanent and temporary relocation assistance, terms of financial assistance, contracting procedures, and dispute resolution procedures.

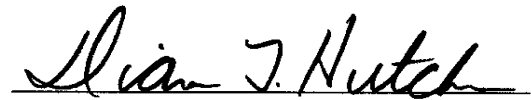
The Residential Anti-Displacement and Relocation Plan specify actions to be taken to avoid displacement of households and to assure one-for-one replacement dwellings occupied by low- and moderate- income households when demolition of an occupied home is unavoidable. The Plan enumerates the assistance available, in accordance with the Federal relocation assistance requirements, to the two owner-occupied household which will be temporarily relocated while replacement homes are built.

The County has adhered to these Section 3 requirements in its previous CDBG projects, and these requirements are consistent with the affirmative action policies within the County's purchasing and employment regulations.

Staff recommends approval of the attached resolution to adopt the Neighbors Drive/Richmond Road Housing Rehabilitation Program Design and the Residential Anti-Displacement and Relocation Plan.


A. Vaughn Poller

CONCUR:


Diana F. Hutchens

AVP/nb
NDRRRehabPr_mem

Attachments

RESOLUTION

NEIGHBORS DRIVE/RICHMOND ROAD HOUSING REHABILITATION PROGRAM

DESIGN AND RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION PLAN

WHEREAS, James City County has been awarded a Community Development Block Grant of \$1,070,000 for the Neighbors Drive/Richmond Road Neighborhood Improvement Project; and

WHEREAS, the Virginia Department of Housing and Community Development requires that a locality that utilizes Community Development Block Grant Funds for housing rehabilitation, replacement housing, and relocation assistance have program policies and procedures adopted by its governing body.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the attached Neighbors Drive/Richmond Road Housing Rehabilitation Program Design and the Residential Anti-Displacement and Relocation Plan as the policies that shall govern the provision of housing rehabilitation, replacement housing, and relocation assistance for the Neighbors Drive/Richmond Road Neighborhood Improvement Project.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.

NDRRRRehabPr_res

HOUSING REHABILITATION PROGRAM DESIGN

James City County

Neighbors Drive/Richmond Road Neighborhood Improvement Project

CIG No. 12-40

PROGRAM PURPOSE AND OBJECTIVE

James City County (the “County”) will improve housing and infrastructure conditions in the Neighbors Drive/Richmond Road area, including construction of 600 linear feet of public street, with attendant sidewalk, storm sewer, and drainage basin. Housing improvements in the project will include rehabilitation of eight homes owned and occupied by Low- to Moderate-Income (“LMI”) households and substantial reconstruction of two homes that are unsuitable for rehabilitation, which are owned and occupied by LMI households, and the demolition of one dilapidated vacant structure. The project will also create five lots for new affordable homes for LMI purchasers.

Upon adoption by the James City County Board of Supervisors the housing rehabilitation program design contained in this document shall apply to all housing rehabilitation assistance provided from the Neighbors Drive/Richmond Road Neighborhood Improvement Community Development Block Grant (CDBG).

With the exception of the guidelines that specify Neighbors Drive/Richmond Road Neighborhood Improvement Project, these guidelines shall also apply to rehabilitation assistance provided from program income derived from this and previous CDBG projects.

OVERSIGHT AND STAFFING

Housing Rehabilitation Oversight Board

The James City County Office of Housing and Community Development (OHCD) will administer the Neighbors Drive/Richmond Road Neighborhood Improvement Project. The Housing Rehabilitation Oversight Board (the “Rehab Board”) shall consist of the County Administrator and Assistant Administrator, the Director and Assistant Director of Community Services, and the OHCD Administrator. The Rehab Board will review individual rehabilitation applications, contractors’ qualifications, bid results, and contracts. OHCD prepares a package for each applicant containing a cover memorandum, application summary, loan/grant commitment form, rehab contract and work write-up. The package is reviewed and signed by a minimum of three of the Rehab Board members. The package is also reviewed by County Financial and Legal departments to verify the availability of budgeted funds and adherence to legal requirements.

Review and approval by a minimum of three Rehab Board members of contractor’s applications is required for inclusion on the pre-qualified bidders list.

Housing Rehab Program Administrator

The OHCD Administrator will serve as the Program Administrator and shall supervise the Neighbors Drive/Richmond Road Neighborhood Improvement Project team. The Program Administrator will:

- Conduct an initial and final DHCD HQS inspection;
- Oversee the work of the Rehabilitation Specialist;
- Review and approve all pay requests and change orders;
- Receive all complaints and investigate and make recommendations to resolve them; and
- Oversee the application process and the rehabilitation loan process.

Rehabilitation Specialist

The OHCD Housing Project Coordinator will serve as the Housing Rehabilitation Specialist (the “Rehab Specialist”). The Rehabilitation Specialist will:

- Schedule an initial inspection of the property with the homeowner.
- Conduct a thorough inspection of the property with the homeowner to determine the deficiencies of the property using the DHCD Housing Quality Standards, and the DHCD’s Section 8 Field Inspection Checklist.
- Prepare a work write-up and itemized cost estimate.
 - The work write-up will specify equipment, materials, and installation procedures and reference the Manufacturer’s Recommended Installation Standards.
 - The cost estimate will reflect cost calculations based on current local rates.
 - The work write-up will be reviewed and signed by the homeowner.
- Bid the rehabilitation/reconstruction project.
 - Invite three or more pre-qualified contractors, taken consecutively from the Rehab Board's approved list, to attend a pre-bid meeting.
 - Provide and review bid documents with contractors.
 - Conduct a walk-through of the home for the contractors.
 - Review the bids and award the contract to the lowest responsive bidder. Acceptable bids will normally not exceed cost estimates by 10 percent.
- Control the construction project.
 - Conduct progress and quality assurance inspections during construction.
 - Conduct percentage of contract payment inspections, which will be reviewed and approved by the Administrator.
 - Document problems with photographs and notes in an inspection log.
 - Conduct final inspections with the homeowner.

Risk Assessor

The Rehabilitation Specialist will oversee the Lead Based Paint Assessment process, which shall be conducted as follows:

- The owner(s) of homes built prior to 1978 shall be informed of the possible presence of Lead Based Paint (LBP) and provided with the pamphlet “Protect Your Family from Lead in Your Home.”

- The Rehabilitation Specialist will conduct a preliminary visual inspection to determine painted surface condition and paint history, and determine whether an Inspection, Risk Assessment, or Lead Hazard Screen is necessary.
- If needed, a Lead Hazard Screen will be conducted by a certified Lead Paint Risk Assessor.
- When an Environmental Intervention Blood Lead Level (EIBLL) child is in the home, a lead inspection will be required to identify the presence of lead in the home. In homes with a child or children under age 6, X-Ray Fluorescence Analyzer (XRF) testing of all painted surfaces to be disturbed during paint stabilization will be conducted by a certified Lead Paint Risk. This prevents unnecessary use of materials and time if paint is identified as “not lead based paint” and ensures that areas are identified properly and proper precautions are used during repairs prior to cleaning and clearance.
- Renovation firms certified under EPA's Renovation, Repair and Painting Rule will be employed to complete the paint stabilization and cleaning after which a clearance test will be conducted by an approved lead paint inspection company.

Intake Surveyor

The OHCD Housing Specialist will serve as the Intake Surveyor. The Intake Surveyor will:

- Receive preliminary applications, which may be taken over the phone, screen applicants, and inform them of the program requirements.
- Interview the applicants and obtain required financial and ownership documentation.
- Prepare the rehabilitation assistance application for the applicants' signature.
- Submit verification forms to employers, financial institutions, utilities, and social service agencies.
- Obtain property information, tax payment status, and assessed value.
- Obtain credit reports on loan applicants.
- Assist the Rehabilitation Specialist with scheduling inspections.
- Complete the final application and obtain the applicants' signatures.

Loan Servicer

The OHCD Housing Assistant will serve as the Loan Servicer. The Loan Servicer will:

- Collect and record monthly payments and prepare periodic reports of loan payments and delinquencies.
- Maintain records of loan balances and final payment due dates.
- Issue annual statements to beneficiaries regardless of ability to pay, and make a good faith effort to collect delinquent loans.
- Prepare Certificates of Satisfaction for signature by Trustee.

Financial Manager

The County's Director of Accounting will serve as the Financial Manager. The Financial Manager will ensure that all Grant expenditures are adequately budgeted and tracked in accordance with DHCD Financial Management requirements as outlined in the Grant Management Manual.

PROJECT AREA BOUNDARIES

The Neighbors Drive/Richmond Road Neighborhood Improvement Project Area is located between Wellesley Boulevard and Premium Outlets in the Forest Heights Road, Neighbors Drive, and Richmond Road CDBG Planning Grant Study Area. The boundaries of the 13-acre project area are indicated on the map attached as Exhibit A.

APPLICANT ELIGIBILITY

Allowable Income and Asset Limits for the Applicant

CDBG housing rehabilitation funds may be used only to directly benefit LMI households; LMI households are defined as households whose income does not exceed 80 percent of the area median household income as determined by HUD. All income and assets will be counted and verified according to DHCD requirements.

Fairness and Equitable Distribution of Benefits

- Moderate-income households will not benefit to the exclusion of low-income households. Low-income households are defined as those whose aggregate income by household size is below 50 percent of the area median household income.
- Minority, elderly, or female-headed households will not be denied reasonable benefits through the Rehabilitation Program's guidelines or loan structuring.
- Funds shall not be set aside or goals specified that adversely affect the benefits to low-income, minority, elderly, or female-headed households.

Prioritization of Applicants

- Applications shall be processed on a first-come, first-served basis.
- All persons whose homes were inspected and who provided financial information required for preparing the CDBG application will be informed at neighborhood meetings or by personal contact of the procedures for applying for housing rehabilitation assistance.
- If it is determined that an applicant does not meet eligibility criteria, the applicant shall be informed in writing prior to suspending or terminating processing of their application.

PROPERTY ELIGIBILITY

Suitable for Rehabilitation

An LMI-occupied unit that can be rehabilitated to DHCD Housing Quality Standards (HQS) with a base CDBG investment of \$25,000 or less is considered suitable for rehabilitation. If extra bedrooms, a bathroom, well, septic, or handicap accessible structures are required they will be considered "exceptions" to the base \$25,000 CDBG limit. These exceptions may allow OHCD to allocate up to an additional \$20,000 to the base construction cost.

Unsuitable for Rehabilitation

An LMI occupied unit that has major structural deficiencies which cause the estimated rehabilitation costs to exceed \$25,000, not including the cost of "exceptions," is considered

unsuitable for rehabilitation. Properties deemed unsuitable for rehabilitation may be addressed as Permanent Relocations or Substantial Reconstructions.

Loan-To-Value Limit

The projected cost of rehabilitation plus the current balance on existing liens on the property may not exceed the greater of the current real estate tax assessment or the projected value of the property after rehabilitation. This loan-to-value limit may be waived if the applicant has been current with all loan payments on the secured debt for the preceding six months.

Eligible Property Types

Housing Rehabilitation Assistance funded through the CDBG will be available for properties owned by LMI households, as defined by HUD. Eligible properties include the following:

- Properties which are owner-occupied. “Ownership” shall be determined pursuant to “Property Ownership” below. An “occupant” is one whose principal place of residence has been at the property for at least 180 days.
- Vacant Properties are not eligible for rehabilitation with CDBG funding unless the house has a history of being consistently occupied over the last five years and was rented for at least six months of the preceding year, the unit was purchased or inherited by an LMI household who agrees to occupy the house when rehabilitation is complete, or the unit is owned by a locality, housing authority, or nonprofit and will be sold to or lease-purchased by an LMI household.

Prior written approval will be requested from DHCD

- Manufactured (Mobile) Homes will be eligible pursuant to the CDBG Mobile Home Cost Limits and policy requirements. There are no known Mobile Homes in the project area.

Property Ownership and Clear Title

Property ownership and eligibility will be determined as follows:

Owner-Occupied Properties. Properties occupied by LMI owners with record title are eligible for rehabilitation.

Heir Properties. The applicant must reside at the property at the time of application, prove he/she is an heir, and have control over the property. DHCD does not require that the occupant own the property in fee simple, but the County must verify ownership status and determine the applicant is likely to continue to occupy the property. If the property is owned by more than one heir, the County must make reasonable attempts to ensure the lien of the Deed of Trust will be valid and enforceable by:

- Making a reasonable effort to identify all heirs and documenting attempts to contact each heir in writing to request transfer of their interest to the applicant. Where co-heirs agree to transfer title, appropriate deeds to the applicant must be recorded in the Clerk’s Office of the Circuit Court for James City County.

- If obtaining fee simple for the applicant is impossible because the co-owners are unwilling, unable, or believe it is unwise to convey the property to the applicant, a life estate for the applicant may be recorded. If a life estate is created the requirements in “Life-Rights” below must be met.
- Where title to the property is not clear and marketable OHCD will assist applicants in attempting to obtain clear title. If the cloud on the title cannot be removed at an insignificant cost, or signatures cannot be obtained from all heirs to the property, then OHCD will not rehabilitate the property.

Life Estates. Occupants with a life estate in the property are eligible applicants if the property is otherwise eligible for rehabilitation. All of the co-owners must sign the Deed of Trust, and agree that the remaindermen will repay the loan balance when the life estate terminates, whether by the death or removal of the life tenant. However, when the life estate terminates, if one or more of the remaindermen meets the program qualifications, they may assume the obligations of the loan and Deed of Trust, provided they occupy the property and the other owners agree in writing.

REHABILITATION STANDARDS

Eligible Improvements

All homes financed through the Neighbors Drive/Richmond Road Neighborhood Improvement Project CDBG will meet Section 8 Housing Quality Standards and DHCD's Supplemental Rehabilitation Standards (collectively “DHCD HQS”) after rehabilitation is completed. Any improvements, which are necessary in order for a property to meet DHCD HQS, are eligible property improvements.

DHCD HQS include:

- All properties must be inspected for termite and other structural infestation by a licensed exterminator (if infestation is discovered, treatment must be provided);
- All chimneys must be inspected thoroughly for structural damage, including loose masonry units and open mortar joints, and for blockage of flue. All damaged chimneys must be repaired. Chimneys with substantial blockage must be cleaned;
- All debris, abandoned vehicles, and derelict buildings must be removed from property. The owner should remove whatever he or she is physically able to remove;
- All electrical components including service, meter, wiring, and fixtures must be inspected by a qualified electrical inspector. Unsafe components must be replaced. All exposed wiring, switches, and light bulbs in living areas must be encased;
- All homes must be equipped with a smoke detector installed in conformance with the one and two family dwelling code;
- All homes must be weatherized with at least R-30 ceiling insulation and all windows and doors be caulked and weather stripped;
- All homes to be rehabilitated must be tested before and after rehabilitation for air infiltration by means of a Blower Door. Air infiltration through sidewalls must be mitigated where found. Weatherization measures should be designed to meet the minimum air flow of 1,500 CFM and weatherization targets established by the Weatherization Guidelines;

- Homes inhabited by handicapped or elderly persons must be analyzed as to the special physical needs of such persons. Improvements such as widened doorways, ramps, level entry and doorways, and grab bars in bath areas must be installed if appropriate;
- Houses built prior to 1978 will be presumed to contain lead-based paint (LBP). All repairs will be designed to eliminate these hazards using interim controls to any defective paint surface, and any breached friction, impact, or chewable surface showing excessive dust and/or deterioration e.g., window sill, window trough, flooring, or stair treads. All rehabilitation involving the elimination of LBP hazards shall receive a passing Clearance Examination documented by a licensed Risk Assessor; and Section 8 HQS requirements.

The following types of improvements and repairs will also be eligible:

- Improvements required to meet Virginia Weatherization Assistance Program Installation Standards including insulation, window and door caulking and/or weather stripping, and storm windows or insulated replacement windows as needed;
- Window Screens;
- Repair, replacement, or provision of one storage shed not to exceed 64 square feet;
- Hall and bedroom closets where adequate space exists;
- Air conditioning may be added when needed for health reasons as confirmed by a physician or if replacement heating system includes air conditioning as a standard feature;
- Acquisition of property for a replacement dwelling or to meet setback and minimum lot size requirements of the County's zoning ordinance for rehab beneficiaries.

Ineligible Improvements.

Cosmetic repairs and improvements are ineligible rehabilitation expenses.

PERMANENT RELOCATION

No permanent relocations are required by this project.

TEMPORARY RELOCATION

Two households will be temporarily relocated during the substantial reconstruction of their homes. These families will be provided with temporary relocation assistance, including moving costs, if necessary, to pay for rent in a temporary home while their home is being rebuilt. Temporary housing, for up to three months, is available within one to seven miles of the neighborhood in furnished apartments and extended stay hotels.

FINANCIAL ASSISTANCE TERMS AND AVAILABILITY

Ability-to-Pay Calculation

Ability-to-pay calculations will be completed for all applicants in accordance with the guidance outlined in the CDBG Grant Management Manual. Every owner-occupied household with an ability to pay above \$20 per month will pay at least the amount calculated as its ability-to-pay.

Types of Financial Assistance

All rehabilitations will be financed by a loan, secured by a note and deed of trust lien recorded against the property. The loan(s) must cover the cost of all improvements, including any exceptions and demolition. Construction related soft costs, home maintenance education program, temporary relocation, and administrative costs will not be included in the loan. All loans made to secure the expenditure of CDBG funds shall be an installment loan as follows:

Installment loans shall be provided to eligible low- and moderate-income households. Total projected housing expenses, including the proposed rehab installment loan, shall not exceed 30 percent of the applicant's household income and total projected debt shall generally not exceed 40 percent of income. Installment loans shall be secured by a Note and Deed of Trust. There will be no pre-payment penalty on installment loans.

The rate of interest on all installment loans made to owner-occupants shall be zero percent. The maximum loan term shall be 15 years. A 15-year term will apply when total CDBG assistance exceeds \$15,000 and a 10-year term will apply when total CDBG assistance is less than or equal to \$15,000. Shorter repayment terms shall be applied if the required payment is affordable.

A late fee of 10 percent of the required payment, rounded to the nearest dollar, shall be assessed for any installment loan payment not made by the 15th of the month.

Additional rehabilitation loans, secured by a Note and Deed of Trust lien recorded against the property may be created for funding provided by the County.

Loan Closing and Servicing

Note(s) secured by a Deed(s) of Trust lien on the property will be required on all loans. The County Attorney, assisted by OHCD, will prepare all loan documents and conduct closings.

The County may charge a maximum of \$5 per month, per loan service fee, to offset the cost of loan collection. This fee shall be taken from inactive program income. The loan servicing fee is in addition to the 10 percent of annual inactive program income that may be used for actual administrative costs, at the time the program income is expended.

The County shall issue an Annual Payment History Statement to the primary borrower for each loan.

Collection of delinquent loans will be conducted in accordance with County policy, up to and including foreclosure, and will adhere to all applicable State and Federal laws.

OHCD maintains a record of loan maturity dates. When a loan reaches maturity, OHCD staff verifies that all loan conditions have been met, and prepares and records a Certificate of Satisfaction. The original note marked paid and a copy of the Certificate of Satisfaction is mailed to the client.

CONTRACTING PROCEDURES

James City County adopted and implemented a Local Business and Employment Plan after required advertisements and notice to listed contractors. Additional advertisements, listings, and referrals will be undertaken as required.

James City County will encourage contractors and sub-contractors to contact those appropriate project area minority- and female-owned firms on OHCD's solicitation list and provide such firms reasonable opportunities to compete for procurement contracts.

The following process will be used in selecting and qualifying contractors, and bidding, awarding, and managing projects:

Contractors will be pre-qualified as follows:

- Advertisements will be posted in local papers to inform contractors of the opportunity to pre-qualify for participation in bid opportunities.
- A list of Williamsburg area Class A and B contractors may be obtained from the Department of Professional and Organizational Regulations or other sources and letters sent informing them of the opportunity to be placed on a pre-qualified contractors list.
- Contractors will complete contractor pre-qualification form.
- References will be called and other sources (e.g. building inspectors) will be checked to verify contractor's previous performance.

Contractors will be selected for each home as follows:

- At least three contractors, taken consecutively from the Housing Rehabilitation Board's approved list of pre-qualified contractors, will be invited bid and given the bid package with instructions. If the rehabilitation cost estimate is more than \$30,000, at least four contractors will be invited to bid.
- No more than two contracts will be awarded to a contractor at any given time.

Contracts will be managed by the Rehabilitation Specialist as follows:

- The contractor may request an initial payment after at least 30 percent of the contracted work is complete.
- The contractor may then make additional requests as needed for payment as work is completed (suggested intervals are 50, 95, and 100 percent's).
- All payment requests are reviewed with and verified by the homeowner and balanced with the original itemized bid from the contractor. Payment requests and payment calculation worksheets are reviewed and approved by the homeowner, contractor, and program administrator.
- Final payments are processed in the same manner, but must include Code Compliance inspection approval tickets, equipment documentation; register of contractors, sub-contractors and suppliers, materialman's affidavit, lien waivers, and certification by the homeowner that all work has been satisfactorily completed.
- All change orders will be prepared and submitted by the Rehabilitation Specialist and will contain a detailed description of the work to be completed along with an itemized cost list. All change orders will be reviewed and approved by the homeowner, contractor, and program administrator and submitted to the assigned DHCD

representative for final approval. Payment for completed change order items will be made during the next scheduled draw.

- The contractor and the homeowner will enter into a written agreement requiring the work to be completed within 60 days from the approved start date.
- Early completion is encouraged by requesting homeowner remove furniture and personal belongings from the house or moved to rooms where work will not be done. Homeowner is also requested to ensure contractor has access to the property during approved work hours. The Rehabilitation Specialist works closely with the contractor and the homeowner during the project to ensure compliance with the agreement. Extensions are discouraged by requiring documentation for justified delays and monetary fines are charged for undocumented delays. All extensions must be approved by the Program Administrator.
- During the initial HQS inspection, the Rehabilitation Specialist and the homeowner, identify and record on the HQS form, all items that must be removed. The homeowner will be responsible for disposing of these items according to his/her ability. Assistance to the homeowner will be provided as needed to ensure compliance with this requirement.
- All construction debris, waste, and excess material may be maintained in an approved area on site, but must be disposed of weekly unless a container (e.g., dumpster, trailer, truck) is provided by the contractor.
- No hazardous materials or materials that pose a threat to health or safety may be left on site for any period of time.
- Upon completion of construction the site must be clear of construction debris and left in broom-clean condition.
- Damage to the yard/property due to delivery or storage of material/construction debris will be corrected by the contractor at no additional charge.

HOME MAINTENANCE EDUCATION PROGRAM

The Rehabilitation Commitment Agreement, signed by the applicant prior to closing, shall include a requirement that the homeowners will attend the Home Maintenance Education training. All housing rehabilitation recipients will be required to participate in home maintenance education training.

Maintenance Training will be conducted by the Housing Project Coordinator including an explanation of how the heating, plumbing, electrical systems, and water heater function; a description of the proper use of these systems; and a description of common problems and solutions. Proper routine, annual, and seasonal cleaning and maintenance of these systems, will be demonstrated and energy conservation measures will be discussed. Each training session shall be “hands-on” and take at least four hours, including one hour on budgeting.

A certified Virginia Housing Counselor will teach household budgeting and personal financial management. This training will explain how to establish and use checking and savings accounts, how to select and purchase insurance coverage, how to establish and follow a household budget, and how to recognize and avoid predatory lenders.

CONFLICT OF INTEREST

No work will be done on the property of any person, or his/her immediate family, who has or had decision-making power in the Neighbors Drive/Richmond Road Neighborhood Improvement Project from the time the application was planned, developed, and submitted to DHCD to the grant's execution and implementation without DHCD's prior written approval, regardless of any prior approval of a Program Design. This includes any elected and appointed officials, employees of James City County, or Rehabilitation Board members, in accordance with Virginia and Federal conflict of interest requirements.

COMPLAINT AND APPEALS PROCEDURES

Informal Resolution

Complaint Regarding Contractor: A person who receives assistance and who has a dispute with a contractor will be encouraged to enlist the assistance of the Housing Rehabilitation Specialist to resolve any problem. Should the dispute remain unresolved, either the homeowner or the contractor shall proceed in accordance with the arbitration clause included in the Construction Contract.

Complaint on Denial of Application: A person whose application is denied or suspended shall be encouraged to contact the Housing Specialist who handled his/her application if that person has questions regarding the denial or suspension.

Formal Resolution

If an informal resolution is unsuccessful, the following steps shall be taken to reach a formal resolution.

1. The complaint must be put in writing and forwarded to the Housing Rehabilitation Program Administrator. However, contractor complaints, disputes, or appeals may involve the use of local building code review committees, as outlined in the Invitation to Bid. If the complainant requires assistance in putting his or her complaint in writing, the Housing Rehabilitation Program Administrator must make assistance available. The same is true for any appeals.
2. The Housing Rehabilitation Program Administrator is required to investigate the complaint and respond to it, in writing, in a timely manner. The response must include an explanation of the reason(s) for the decision reached, information on how the decision can be appealed, and how many days from receipt of notice the complainant has to appeal the decision.
3. Appeals of the Housing Rehabilitation Program Administrator's decision should be addressed, in writing, to the Housing Rehabilitation Oversight Board (Rehab Board).
4. All written appeals must be addressed within 15 days of receipt and resolved within 30 days of the appeal and retained for review. All appeals are to be responded to in writing. The response must include an explanation of the reason(s) for the decision reached, information on the next step in the appeals process, and how many days from receipt of notice the complainant has to appeal any decision.
5. Final appeals may be addressed, in writing, to DHCD. The appeal should include a copy of all correspondence that has taken place to this point. The appeal should identify the

problem and the desired solution. DHCD will review the complaint and respond, in writing, in a timely manner. All involved parties will be copied.

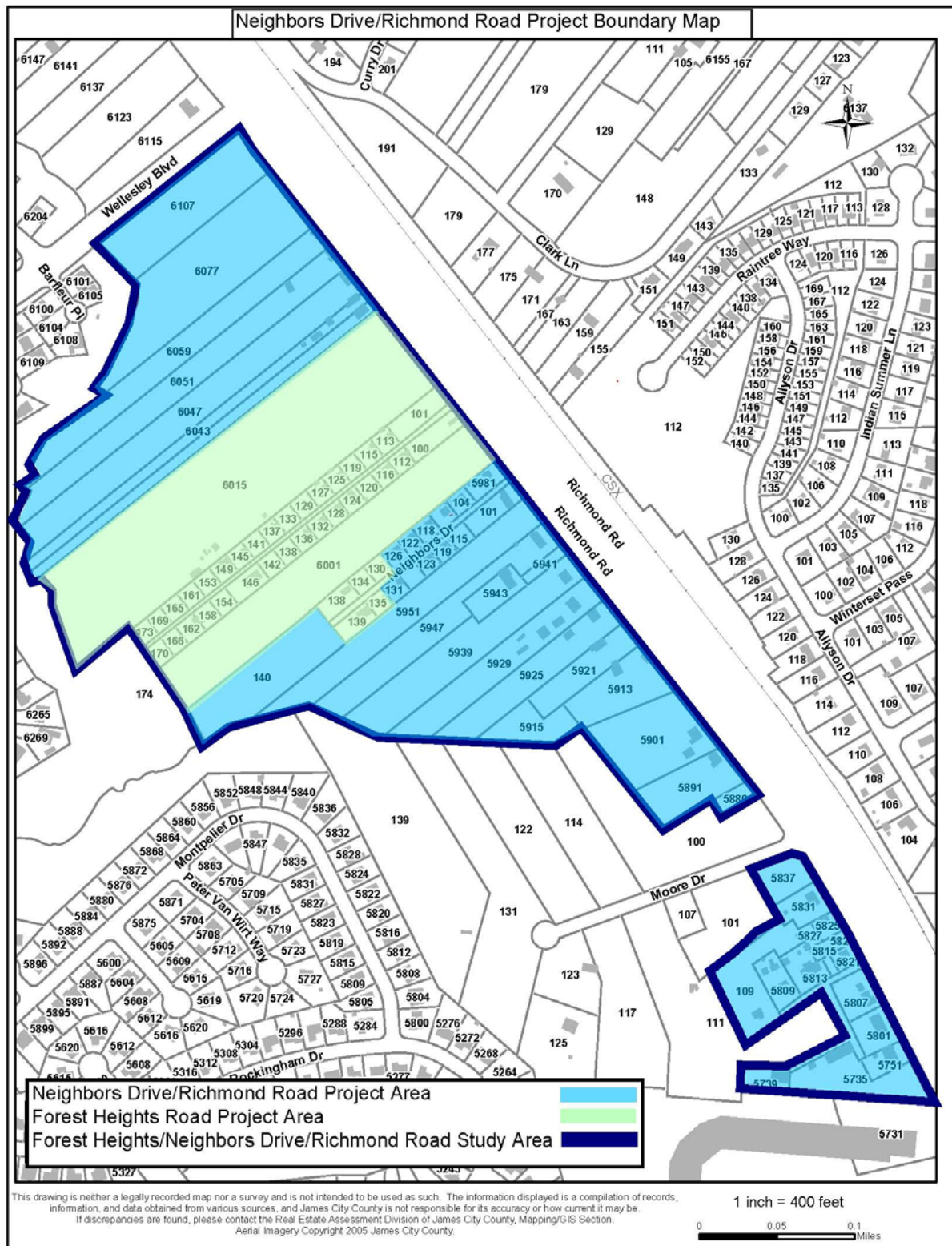
REVISING THE PROGRAM DESIGN

Notwithstanding the provisions of the Program Design, all Federal, State, and Local laws, ordinances, and regulations shall strictly apply to this project. Any portion of this Program Design found to be inconsistent or incompatible with applicable laws, ordinances, or regulations shall be deemed to be severed from the Program Design without effect to the remaining provisions.

Because the Program Design is an official contract document, all revisions must be reviewed and approved by DHCD and amended by formal action by the local governing body.

Date adopted by the Board of Supervisors: _____

EXHIBIT A



**JAMES CITY COUNTY
RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN**

The County of James City, Virginia will replace all occupied and vacant occupiable dwelling units for low/moderate-income household which are demolished or converted to a use other than as a dwelling unit for a low/moderate income household as a direct result of activities assisted with funds provided under the Housing and Community Development Act of 1974, as amended. All replacement housing will be provided within three (3) years of the commencement of the demolition or rehabilitation relating to conversion.

Before obligating or expending funds that will directly result in such demolition or conversion, the County of James City, Virginia will make public and advise the state that it is undertaking such an activity and will submit to the state, in writing, information that identifies:

1. A description of the proposed assisted activity;
2. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
5. The source of funding and a time schedule for the provision of replacement dwelling units;
6. The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy; and
7. Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units is consistent with the housing needs of low- and moderate-income households in the jurisdiction.

The County of James City, Virginia will provide relocation assistance to each low/moderate – income household displaced by the demolition of housing or by the direct result of assisted activities. Such assistance shall be that provided under Section 104 (d) of the Housing and Community Development Act of 1974, as amended, or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

The James City County Neighbors Drive/Richmond Road Neighborhood Improvement CIG 12-40, includes the following activities:

1. Rehabilitation of 8 substandard homes for LMI owner
2. Replacement of 2 substandard homes in condition beyond repair
3. Energy audits and weatherization will be performed on the 8 rehabilitated homes
4. Development of 3 new lots for sale to LMI home buyers
5. Construction of 600 linear feet of paved public street
6. Construction of 600 linear feet of sidewalk
7. Construction of 650 linear feet of paved multi-use path
8. Construction of 300 linear feet of sewer line
9. Construction of 300 linear feet of water line
10. Installation of street lights and street trees, and upgrade of one existing fire hydrant
11. Construction of one storm water detention pond
12. Construction of a storm sewer collection system
13. Removal of debris from private properties and areas within the Resource Protection Area

The activities as planned will not cause any permanent displacement from or conversion of occupiable structures. The project, as planned, will use existing right-of-way; County-owned property and acquisition of portions of properties that do not contain housing. There will not be any acquisition of occupied or occupiable structures.

The County of James City, Virginia will work with the grant management staff, engineers, project area residents, and the Department of Housing and Community Development to insure that any changes in project activities do not cause any displacement from or conversion of occupiable structures.

In all cases, an occupiable structure will be defined as a dwelling that meets local building codes or a dwelling that can be rehabilitated to meet code for \$25,000 or less.

Signature of Authorized Official

Date

MEMORANDUM COVER

Subject: Section 504 Grievance Procedure for Disability Nondiscrimination

Action Requested: Shall the Board approve the resolution adopting the Section 504 Grievance Procedure for Disability Nondiscrimination?

Summary: As an administrator and recipient of Community Development Block Grants (CDBG), James City County is required to adhere to the requirements of a variety of Federal laws and regulations in areas such as environmental protection, equal opportunity, and labor standards.

The attached Section 504 Grievance Procedure for Disability Nondiscrimination provides for prompt and equitable resolution of complaints alleging any action prohibited by the Department of Housing and Urban Development's (HUD) (24 CFR 8.53(b) implementing Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794).

Section 504 states, in part, that "no otherwise qualified handicapped individual . . . shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. . . ."

The County has adhered to these Section 504 requirements in its previous CDBG projects, and these requirements are consistent with the non-discrimination policies within the County's regulations.

Staff recommends approval of the attached resolution to adopt the Section 504 Grievance Procedure for Disability Nondiscrimination.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution
3. Section 504 Grievance Procedure for Disability Nondiscrimination

Agenda Item No.: J-4

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: A. Vaughn Poller, Housing and Community Development Administrator


SUBJECT: Section 504 Grievance Procedure for Disability Nondiscrimination

As an administrator and recipient of Community Development Block Grants, James City County is required to adhere to the requirements of a variety of Federal laws and regulations in areas such as environmental protection, equal opportunity, and labor standards.

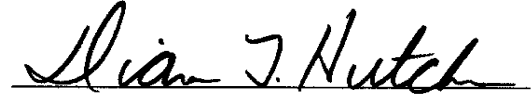
The attached Section 504 Grievance Procedure for Disability Nondiscrimination has been adapted from a sample grievance procedure developed by the U.S. Treasury, Office of Revenue Sharing based on material prepared by the U. S. Department of Health and Human Services, Office of Civil Rights Regional Technical Assistance Staff. This internal grievance procedure provides for prompt and equitable resolution of complaints alleging any action prohibited by the Department of Housing and Urban Development's (HUD) (24 CFR 8.53(b) implementing Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794).

Section 504 states, in part, that "no otherwise qualified handicapped individual . . . shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. . . ."

Staff recommends approval of the attached resolution to adopt the Section 504 Grievance Procedure for Disability Nondiscrimination.


A. Vaughn Poller

CONCUR:


Diana F. Hutchens

AVP/nb
NDRRGrievance_mem

Attachments

RESOLUTION

SECTION 504 GRIEVANCE PROCEDURE FOR DISABILITY NONDISCRIMINATION

WHEREAS, James City County has been awarded a Community Development Block Grant of \$1,070,000 for the Neighbors Drive/Richmond Road Neighborhood Improvement Project; and

WHEREAS, Section 504 provides for prompt and equitable resolution of complaints alleging any action prohibited by the Department of Housing and Urban Development's (HUD) (24 CFR 8.53(b) implementing Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794) and states, in part, that "no otherwise qualified handicapped individual . . . shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. . . .".

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the attached Section 504 Grievance Procedure for Disability Nondiscrimination.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.

NDRRGrievance_res

Section 504 Grievance Procedure for Disability Nondiscrimination

The Board of Supervisors for the County of James City, Virginia has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the Department of Housing and Urban Development's (HUD) (24 CFR 8.53(b) implementing Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794). Section 504 states, in part, that "no otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

Complaints should be addressed to:

Doug Powell
101-D Mounts Bay Road
Williamsburg, VA 23185
(757) 253-6604

who has been designated to coordinate Section 504 compliance efforts.

1. A complaint should be filed in writing or verbally, contain the name and address of the person filing it, and briefly describe the alleged violation of the regulations.
2. A complaint should be filed within **(7 days)** after the complainant becomes aware of the alleged violation. (Processing of allegations of discrimination occurring before this grievance procedure was in place will be considered on a case-by-case basis.)
3. An investigation, as may be appropriate, shall follow a filing of a complaint. The investigation will be conducted **by Doug Powell**. These rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint. Under 24 CFR 8.53(b), the **James City County Office of Housing and Community Development** need not process complaints from applicants for employment or from applicants for admission to housing.
4. A written determination as to the validity of the complaint and description of resolution, if any, shall be issued by **Doug Powell** and a copy forwarded to the complainant no later than **30 days** after its filing.
5. The Section 504 coordinator shall maintain the files and records of the **James City County Office of Housing and Community Development** relating to the complaints filed.

6. The complainant can request a reconsideration of the case in instances where he or she is dissatisfied with the resolution. The request for reconsideration should be made within **7 days** to **Doug Powell**.
7. The right of a person to a prompt and equitable resolution of the complaint filed hereunder shall not be impaired by the person's pursuit of other remedies such as the filing of a Section 504 complaint with the Department of Housing and Urban Development. Utilization of this grievance procedure is not a prerequisite to the pursuit of other remedies.
8. These rules shall be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the **James City County Office of Housing and Community Development** complies with Section 504 and the HUD regulations.

MEMORANDUM COVER

Subject: Greenspace Easement Acquisition - Regjag, LLC and Leigh Ann Gilley, Trustee

Action Requested: Shall the Board approve the acquisition of a conservation easement on 242.5 acres for greenspace purposes?

Summary: Regjag, LLC and Leigh Ann Gilley, Trustee, have offered to sell the County a conservation easement on 242.5 acres located on Neck-O-Land Road. The property has significant conservation values as outlined in the attached memorandum. The proposed purchase price for the conservation easement is \$1,175,000. Funds are available in existing Greenspace account balances.

Staff recommends approval of the attached resolution.

Fiscal Impact: Please state fiscal impact, if applicable.

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution
3. Location Map
4. Conceptual Plan
5. Easement

Agenda Item No.: J-5

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: John T.P. Horne, General Services Director

SUBJECT: Greenspace Easement Acquisition - Regjag, LLC and Leigh Ann Gilley, Trustee

After expressions of interest by the property owners and Board of Supervisors members, staff has been discussing with the Gilley family the acquisition of a conservation easement on the Gilley property located on Neck-O-Land Road (see attached map). The property consists of 242.5 acres located between Gatehouse Farms subdivision and Mill Creek. Approximately 124 acres are in tidal marshes along Mill Creek. It is immediately north and adjacent to Peleg's Point subdivision. Approximately 68 acres are zoned R-1 and 173.6 acres are zoned A-1. The entire property is designated Low Density Residential in the Comprehensive Plan. Staff and the Gilley family have agreed on easement terms and negotiated a purchase price. This memorandum explains the details of the proposed purchase and recommends approval by the Board of Supervisors.

Conservation Easement Terms

The attached easement has the following major provisions:

- Elimination of 38 potential R-1 residential lots within the R-1 zoned area. No housing lots would be developed in this area.
- Elimination of 16 by-right lots within the A-1 zoned area
- Remaining rights to subdivide three lots conceptually estimated at 50+ acres each. No further subdivision rights retained. Two lots would be allowed to have a second dwelling unit, but not be further subdivided (see attached map - Easement subdivision plan).
- Remaining land use rights and restrictions are based on the general terms of the County's standard Purchase of Development Rights (PDR) type easement, which addresses structures, agricultural and forestall BMP's, and future land uses.

Conservation Benefits to the County

- Increased water quality protection of Mill Creek, through significantly reduced impervious cover, compared to permitted residential development of the property
- Avoidance of neighborhood drainage issues similar to those experienced in Gatehouse Farms and Peleg's Point. While the property has some areas out of regulatory flood plans and Resource Protection areas, it is generally poorly drained and subject to nuisance flooding.
- Reduction of approximately 500 vehicle trips on Neck-O-Land and Jamestown Roads, both of which have limited additional capacity
- Avoidance of secondary fiscal impacts related to schools and other public facilities required to serve residential development

Easement Value

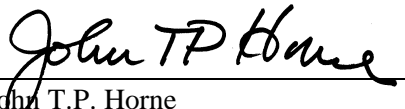
After completion of an appraisal by Simerlein Appraisals, Ltd. that estimated a value of \$1,140,000, staff and the family have negotiated a price of \$1,175,000. There is currently a balance of \$4,571,192 in the Greenspace and PDR accounts.

Greenspace Acquisition - Regjag, LLC and Leigh Ann Gilley, Trustee

June 25, 2013

Page 2

Staff recommends approval of the attached resolution authorizing the purchase of the conservation easement.



John T.P. Horne

JTPH/gb

GreAcq-Gilley_mem

Attachments

RESOLUTION

GREENSPACE EASEMENT ACQUISITION - REGJAG, LLC AND

LEIGH ANN GILLEY, TRUSTEE

WHEREAS, Regjag, LLC and Leigh Ann Gilley, Trustee, have offered to sell a conservation easement and six parcels to James City County; and

WHEREAS, conservation of these parcels would contribute to the goals of the James City County Comprehensive Plan; and

WHEREAS, conservation of these parcels would contribute to the cultural, historic, and scenic characteristics of the County; and

WHEREAS, the conservation of these parcels will protect the water quality of Mill Creek and reduce the traffic on Neck-O-Land and Jamestown Roads.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the purchase of a conservation easement on 241.6 acres owned by Regjag, LLC, consisting of Parcels 4740100040, 4740100041, 4740100042D, 4740100042E, and 4830100042, and .93 acres owned by Leigh Ann Gilley, Trustee, consisting of Parcel 4740100042F, in the amount of \$1,175,000.

John J. McGlennon
Chairman, Board of Supervisors

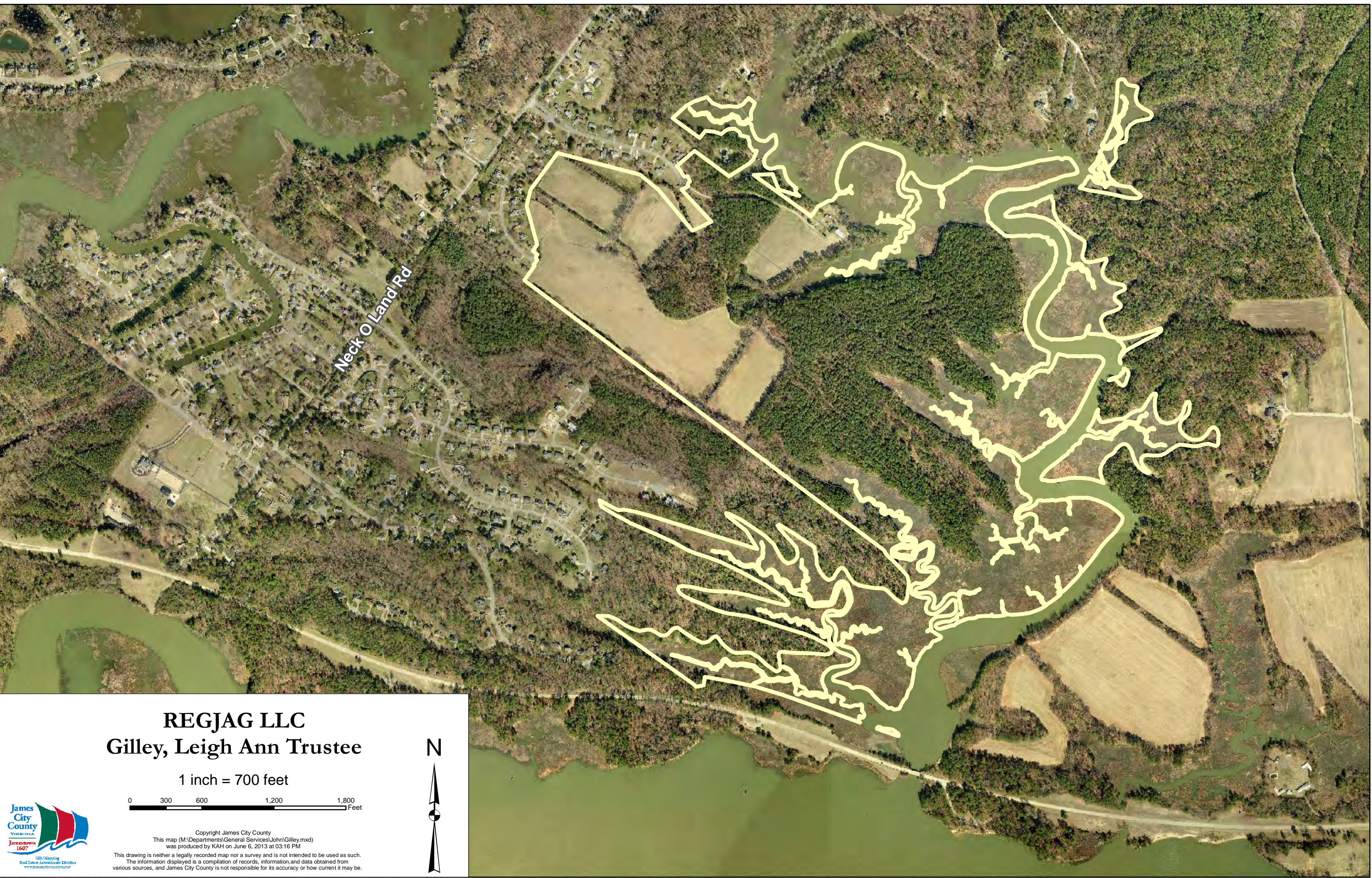
ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.

GreAcq-Gilley_res



REGJAG LLC
Gilley, Leigh Ann Trustee



1 inch = 700 feet



Copyright James City County
This map (M:\Departments\General Services\John\Gilley.mxd)
was produced by KAH on June 6, 2013 at 03:16 PM
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.

Neck O Land Rd

R1 A1

 Zoning Line
 Property Lines



REGJAG, L.L.C. and Gilley
Future Lots

Copyright James City County
This map (M:\Department\General Services\John Gilley\Conceptual_Plan.mxd)
was produced by KAH on June 10, 2013 at 02:18 PM

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.

NOTE TO TITLE EXAMINERS: This conservation and open-space easement contains restrictions on permitted uses and activities on the property described below, which run with the land and are applicable to the property in perpetuity.

_____, 20____

JCC TAX ID NOS: # _____

CONSIDERATION: \$1,175,000

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

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this ____ day of ____, 2013, by and between **REGJAG, L.L.C.**, a Virginia limited liability company (“Regjag”) and Leigh Ann Gilley, Trustee (“Grantors”) and the **COUNTY OF JAMES CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, (the “County” or the “Grantee” and, together with the Grantors, the “Parties”).

WITNESSETH:

WHEREAS, Regjag is the owner in fee simple of a five parcels of property located at 318 and 320 Neck-O-Land Road and 229 and 231 Gatehouse Boulevard in James City County, Virginia and further identified as James City County Real Estate Tax Parcel Numbers 4740100040, 4740100041, 4830100042, 4740100042D, and 4740100042E as more particularly described in Exhibit A; and

WHEREAS, Leigh Ann Gilley, Trustee is the owner in fee simple of one parcel of property located at 227 Gatehouse Boulevard in James City County, Virginia and further identified as James City County Real Estate Tax Parcel Number 4740100042F, as more particularly described in Exhibit A; and

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

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

WHEREAS, the County’s acquisition of the conservation easement identified herein furthers the purposes of the PDR Program in that such acquisition, among other things, assures

that the County's resources are protected and efficiently used, establishes and preserves open space, and furthers the goals of the County's Comprehensive Plan by protecting the County's natural and scenic resources, conserving biological diversity and natural wildlife habitat, promoting the continuation of agricultural and forestal activities, and protecting the quality of the County's surface water and groundwater resources; and

WHEREAS, the Grantors have offered to sell a conservation easement and the County has agreed to pay the Grantors the sum of One Million, One hundred and seventy five thousand dollars (\$1,175,000) for this conservation easement, such sum being based upon the fair market value of the easement, as determined by a qualified appraiser.

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

1. GRANT AND CONVEYANCE OF EASEMENT. The Grantors hereby grant and convey to the Grantee and its successors and assigns, with General Warranty and English Covenants of Title, a conservation easement in gross over the parcels located at 318 and 320 Neck-O-Land Road and 229, 231, and 227 Gatehouse Boulevard in James City County, Virginia and further identified as James City County Real Estate Tax Parcel Number Nos.4740100040, 4740100041, 4830100042, 4740100042D, 4740100042E, and 4740100042F, and as more particularly described in Exhibit A, restricting in perpetuity the use of the Properties in the manner set forth in this Deed of Easement.

2. EXISTING STRUCTURES. Existing structures on the Properties shall be authorized to continue as follows:

(a). *Existing residential structures.* The single-family dwelling that exists on the 227 Gatehouse Boulevard Property shown on and more particularly described in the Baseline Study attached as Exhibit C (the "Existing Dwelling") may be repaired, expanded upon, relocated or replaced with the prior written consent of the Grantee, provided, however, that minor repairs that do not materially alter the existing character of either dwelling (e.g., repair of boards, shutters, stairs, railings, shingles, windows, trim, moldings, gutters, etc.) may be completed without prior consent of the Grantee.

(b). *Existing non-residential structures.* The non-residential structures that exist on the Properties shown on and more particularly described in the Baseline Study attached as Exhibit C (the "Existing Non-Residential Structures") may be maintained, repaired, remodeled, rebuilt or removed. Any expansion or remodeling of an existing non-residential structure that materially alters its existing location or external character may be completed with the prior written consent of the Grantee.

3. FUTURE STRUCTURES AND IMPROVEMENTS. There shall be no construction, placement or maintenance of any structure or other improvement on the Properties unless the

structure or improvement is authorized as follows:

(a). *Residential dwellings.* No more than one (1) residential dwelling shall be permitted on future Lot 1 as shown on Exhibit _____. No more than two (2) residential dwellings shall be permitted on each of future Lots 2 and 3. No subdivision of Lots 2 and 3 shall be permitted in conjunction with the construction of the dwelling units.

(b). *Accessory structures.* Accessory structures, as defined by the County Code and incidental to a Permitted Dwelling(s) or otherwise incidental to a *bona fide* agricultural or forestal use conducted on the Properties shall be permitted. Accessory structures may be maintained, repaired, remodeled, rebuilt, expanded upon or replaced, provided that any expansion or remodeling that materially alters its existing location or external character may be completed with the prior written consent of the Grantee.

(c). *Structure Size.* No single structure on the Properties, whether residential, accessory, or otherwise, may exceed four thousand five hundred (4,500) square feet without the prior written consent of the Grantee. The total area of all impervious surfaces on the Properties shall not exceed ten percent (10%) of the surface area of the Properties.

(d). *Structure Location.* Prior written permission shall be obtained from the Grantee prior to the construction or placement of any structure on the Properties.

(e). *Public or private utilities to serve any existing or future permitted buildings structures or improvements.* Public or private utilities to be constructed in whole or in part to serve other properties shall not be constructed on, under, or over the Properties unless Grantee determines that the construction and maintenance of such utilities will not impair the conservation values of the Properties and gives its prior written approval for such construction and maintenance. Approval or disapproval of such construction and maintenance shall take into consideration the visibility and any other adverse impact of such utilities on the conservation values of the Properties.

4. **FUTURE USES.** No use may be established on the Properties except as approved herein.

(a). *Uses permitted by right.* All agricultural and/or forestal uses of the Properties, as well as uses that are accessory to such agricultural and/or forestal uses, shall be permitted without the prior written approval of the Grantee to the extent such uses are: (1) permitted by the County Code; and (2) otherwise consistent with the terms and purposes of this Deed of Easement.

(b). *Conditionally permitted uses.* The Grantors may petition the Grantee for approval to establish a use other than a use permitted by right pursuant to section 4(a), *infra*, provided the proposed use is: (1) not expressly prohibited by this Deed of Easement; (2) consistent with the primary conservation purpose of this Deed of Easement, which is the preservation of the Properties for use as working farm and/or forest land in perpetuity; and (3) otherwise permitted

on the Properties by the County Code. The County's prior written approval pursuant to this section shall be exclusive of any requirement for a special use permit, if such is required by the County Code.

(c). *Unlisted uses.* The Grantor may petition the Board of Supervisors for approval to establish a use which is: (1) not otherwise prohibited herein, and (2) is consistent with this Deed of Easement, and (3) is otherwise permitted on the Properties by the County Code.

5. CONFIGURATION/SUBDIVISION OF THE PROPERTY. The Properties are currently comprised of six (6) parcels totaling approximately 242.5 acres, as described in Exhibit A. The Parties acknowledge and agree that it is the intent and purpose of this Deed of Easement that the Properties may be subdivided into no more than three (3) parcels, generally as depicted in Exhibit _____. Final parcel boundaries will be set at the time of final subdivision approval. Minor boundary line adjustments are permitted with the prior written approval of the Grantee.

6. GRADING, EXCAVATION, EARTH REMOVAL, BLASTING, AND MINING. Earth removal, except for activities incidental to a *bona fide* agricultural or forestry operation, and blasting are prohibited. The exploration for, or development and extraction of minerals and hydrocarbons by mining or any other method is prohibited. Grading and excavation is allowed but shall not materially alter the topography of the Properties; grading and excavation shall be allowed for dam construction to create private conservation ponds with prior written approval by the Grantee, and grading and excavation shall be allowed during the construction of permitted structures or associated improvements. Common and customary agricultural or forestal activities such as plowing, erosion control and restoration are permitted activities that do not materially alter the topography of the Properties.

7. MANAGEMENT OF AGRICULTURAL AND FORESTAL RESOURCES.

(a). *Management of Forest.* All silvicultural activities on the Properties shall conform to a Forest Stewardship Plan approved by the Grantee. The Forest Stewardship Plan shall include recommended Forest Best Management Practices and other scientifically based recommendations as may be appropriate for protecting the health of the forest, controlling erosion, protecting water quality and providing wildlife habitat. This Plan shall be professionally updated no later than every five years. Grantor shall provide Grantee a copy of the Plan and each subsequent Plan update for review and approval. A Pre-Harvest Plan consistent with the Forest Stewardship Plan shall be submitted to the Grantee, their successors or assigns, for approval no earlier than one year nor later than forty-five (45) days prior to the anticipated commencement of any material timber harvest. If an aspect of the harvest activities is inconsistent with one or more purposes of this conservation easement, the Grantee reserves the right to require modifications to the harvest activities that will minimize such impacts. Without limiting the foregoing requirement regarding submission of pre-harvest plans, Grantee shall be notified no later than 45 days prior to the clearing of over ten acres of forestland for conversion into grassland or crop land or in association with the construction of permitted buildings or the installation of roads or accessory uses.

(b). *Agriculture.* All agricultural activities on the Properties shall conform with a Farm Conservation Plan prepared by a knowledgeable person certified by an appropriate State or Federal agency as approved by the Grantee. This Plan shall include recommended Agricultural Best Management Practices, an implementation schedule and other scientifically based recommendations as may be appropriate for protecting the soil and natural resources and enhancing water quality. The Plan shall be updated no later than every three years by a certified professional and approved as specified above. The Grantor shall provide the Grantee with a copy of the Farm Conservation Plan, including updates.

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

9. NOTICE AND PERMISSION.

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

If to Grantor:

If to County:

County Administrator
101-D Mounts Bay Road
P.O. Box 8784
Williamsburg, VA 23187-8784

With Copy To:

County Attorney
101-D Mounts Bay Road
P.O. Box 8784
Williamsburg, VA 23187-8784

(b). *Permission.* When permission of the Grantee is sought by the Grantors, the Grantee shall submit such request and any supporting documentation in writing to the County. The request shall be considered by the Board of Supervisors at a public meeting as soon as practicable.

10. MISCELLANEOUS PROVISIONS.

(a). *No public right-of-access to Properties.* This Deed of Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Properties or any portion thereof, except as Grantors may otherwise allow in a manner consistent with the terms of this Deed of Easement and the PDR Program.

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

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

1. Monitoring. Employees or agents of Grantee may enter the Properties from time to time, at reasonable times, for the purpose of monitoring compliance with the terms of this Deed of Easement. The Grantee shall give reasonable prior notice before entering the Properties.

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

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

(e). *Restoration.* Upon any breach of the terms of this Deed of Easement by Grantors, Grantee may require by written demand to the Grantors that the Properties be restored promptly to the condition required by this Deed of Easement. Furthermore the Grantee retains the right to

restore the Properties to a condition consistent with the terms of this Deed of Easement and assess the cost of such restoration against the owner of the parcel in violation of this Deed of Easement and as a lien against the Properties in violation of this Deed of Easement, provided however, that no such lien shall affect the rights of a subsequent bona fide purchaser unless a memorandum of such lien was recorded among the land records prior to such purchase, and such lien shall be subordinate to any deed of trust recorded prior to the recordation of a memorandum of such lien.

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

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

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

(i). *Extinguishment and exchange.* The Parties intend that this conservation easement be perpetual and not extinguished, and agree that extinguishment of the conservation easement is not permitted under the Open Space Land Act (Virginia Code §§ 10.1-1700 et seq.), except in conformity with Virginia Code § 10.1 – 1704. The Parties further agree that the Properties shall not be converted or diverted, as the Open-Space Land Act employs those terms, from the uses permitted by the Deed of Easement until and unless twenty-five (25) years have elapsed between the recordation date of this Deed of Easement and the date of the Grantor's petition to the James City County Board of Supervisors for such conversion or diversion, which shall conform to all procedures and requirements set forth in the PDR Ordinance on the recordation date of this Deed of Easement. Furthermore, the Parties intend and agree that pursuant to any decision by the James City County Board of Supervisors to extinguish this Deed of Easement the Grantor shall convey to the Grantee a Deed of Easement on a different but similar parcel approved by the Grantee, located in James City County and in accordance with the PDR Ordinance in place at the time of the recording of this Deed of Easement.

(j). *Property right.* Grantors agree that Grantee's purchase of the perpetual conservation restrictions contained in this Deed of Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the purchase bears to the value of the Property as a whole, exclusive of the value of all improvements, at that time, which is 47 percent (47.00 %) as established by the appraisal conducted by Simerlein Appraisals Ltd., dated October 30, 2012 and amended by letter dated April 12, 2013. If a subsequent unexpected

change in the conditions surrounding the Properties makes impossible or impractical the continued use of the Properties for the conservation purposes specified herein, and the restrictions set forth in this Deed of Easement are extinguished, whether in whole or part, by a judicial proceeding, such extinguishment shall also satisfy the requirements of the Open-Space Land Act and Chapter 16A of the County Code. The Grantee, upon a sale, exchange or involuntary conversion due to an extinguishment, shall be entitled to a portion of any monetary proceeds derived therefrom, which shall be determined by multiplying the proceeds for the land taken (but not proceeds for improvements or damages to the residue or any other award) by the proportionate value established above. The Grantee shall not receive any portion of the proceeds attributable to improvements, timber or crops.

All proceeds to which Grantee is thereafter entitled to retain from such sale, exchange or involuntary conversion shall be used by the Grantee in a manner consistent with the original conservation purposes of this Deed of Easement and the Open-Space Land Act.

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

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

(m). *Severability.* If any provision of this Deed of Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Deed of Easement shall not be affected thereby. The Grantor shall remunerate Grantee for the proportionate loss of value in the Conservation Easement as determined by the Board of Supervisors due to any invalidated provision.

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

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

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

(q). *Proceeds from eminent domain.* If all or any part of the Properties is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation,

whether by public, corporate or other authority, so as to extinguish the terms of this Deed of Easement, in whole or part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Properties subject to the taking and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received. Grantee's share of the balance of the amount recovered shall be determined by multiplying the proceeds by the proportionate value established in 10 (j), above. Grantee shall have the right to appear as a party in any eminent domain proceeding concerning the Properties.

(r). *Transfer of easement by grantee.* Neither Grantee nor their successors and assigns may convey or lease the conservation easement established and conveyed hereby unless the Grantee conditions the conveyance or lease on the requirements that: (1) the conveyance or lease is subject to contractual arrangements that will assure that the Properties is subject to the restrictions and conservation purposes set forth in this Deed of Easement, in perpetuity; and (2) the transferee is an organization then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder, or is a public body within the meaning of Virginia Code § 10.1-1700.

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

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

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

(v). *Controlling law.* The interpretation and performance of this Deed of Easement shall be governed by the laws of the Commonwealth of Virginia.

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

(x). *Amendments.* This Deed of Easement may be amended only with the written consent of the Grantee and Grantors, and such amendment shall be duly recorded. Any amendment shall be at the sole discretion of the Grantee, and shall be consistent with the Open-Space Land Act and Chapter 16A of the County Code. Any such amendment shall also be consistent with the overall purposes and intent of this Deed of Easement.

SIGNATURE PAGE FOLLOWS

DRAFT

WITNESS the following signatures and seals:

GRANTOR:

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this _____ day of _____, 20XX, by Grantor.

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

The form of this Deed of Easement is approved, and pursuant to Resolution of the Board of Supervisors of James City County, Virginia, duly executed on the --th day of _____, 20XX and this conveyance is hereby accepted on behalf of said County.

_____ Date

_____ County Attorney

EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D

DRAFT

MEMORANDUM COVER

Subject: Greenspace Easement and Land Acquisition - Jamestown Building Corporation, Inc, 71 Acres, LLC, C. Lewis and Phyllis Waltrip, and PL, LLC

Action Requested: Shall the Board approve the acquisition of a conservation easement on 81.794 acres and the fee simple purchase of two acres for greenspace purposes?

Summary: Jamestown Building Corporation and 71 Acres, LLC have offered to sell the County a conservation easement on 81.794 acres located on Greensprings Road. The property is currently used as Carlton Farms Stables. C. Lewis and Phyllis Waltrip have also offered to sell the County two parcels, which are one acre each, located at the corner of 4H Club Road and Greensprings Road. These lands have significant conservation value as outlined in the attached memorandum. The total proposed purchase price for the properties is \$2,611,200. Sufficient funds exist in the Greenspace Capital Improvements Plan (CIP) account.

Staff recommends approval of the attached resolution.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution
3. Map
4. Easement

Agenda Item No.: J-6

Date: June 25, 2013

MEMORANDUM

DATE: June 25, 2013

TO: The Board of Supervisors

FROM: John T.P. Horne, General Services Director

SUBJECT: Greenspace Easement and Land Acquisition - Jamestown Building Corporation, Inc, 71 Acres, LLC, C. Lewis and Phyllis Waltrip, and PL, LLC

Following expressions of interest by the property owner, staff has been in discussions with C. Lewis Waltrip about the purchase of a conservation easement on 81.794 acres, now used as Carlton Farms stables on Greensprings Road. Also included in the acquisition are two parcels on the corner of Jamestown Road and 4H Club Road. All the properties are zoned R-8 and designated Low Density Residential in the Comprehensive Plan. The properties are also included in the Jamestown Ferry Approach Community Character Area and front on Greensprings Road, which are a County Community Character Corridor and a State Scenic Byway. Conservation of these parcels at the center of the Governor's Land Archeological District has been a long term priority for several years.

Conservation Easement Terms

The attached easement covers 81.794 acres. Development and disturbance of the properties will be largely eliminated as compared to the residential development for which it is designated in the Comprehensive Plan. The historic setting at the center of the Governor's Land Archeological District and the significant archeological resources will thus be protected.

- No additional dwelling units permitted in the easement area. One existing dwelling exists and can be retained and expanded subject to County approval.
- Uses restricted to agricultural and forestal uses, including the continuation of the stable use.
- Existing private driveway must remain private and limited in width.
- An area reserved for road access along boundary with 4H Club driveway, with restrictions
- No structures within 1,000 feet of the centerline of Greensprings Road
- Control of the placement of fencing and planting of vegetation to preserve the scenic vistas

Fee Simple Purchase

- Two lots on two acres at the intersection of 4H Club Road and Greensprings Road. Over time the staff would recommend removal of the houses.

Conservation Benefits to the County

- Extensive frontage and open vistas on Greensprings Road, a State Scenic Byway, and County Community Character Road
- Extensive archeological resources related the Great Road, colonial settlements, and the Battle of Greensprings.

The parcel of land near Jamestown Island known as Carlton Farms includes significant elements of the Governor's Land Archaeological District, which is on the Virginia Landmarks Register and the National Register of Historic Places. Like the County-owned Mainland Farm, it includes important surviving

portions of the July 6, 1781, Battle of Green Spring landscape (Harris site) which should remain open, in agricultural use, to allow visitors to understand and appreciate the topographic location of this engagement during the Revolutionary War. This battle was a prelude to the final American victory at Yorktown, on October 19, 1781, where Lt. Gen. Charles, Earl Cornwallis and Lt. Col. Banastre Tarleton again met The Marquis de Lafayette and Brig. Gen. Anthony Wayne, a few months later.

Moreover, the land contains the trace of the Greate Road, which led from the capital of the Virginia Colony at Jamestown to Governor Sir William Berkeley's mansion at Green Spring, by the middle of the seventeenth century. This road is considered the earliest developed English thoroughfare in Virginia. As well, the parcel includes the site of the William Drummond plantation (c.1648). Drummond was Governor of the Carolina Proprietary from 1665 to 1667. Later, he clashed with Berkeley and took part in Bacon's Rebellion of 1676. This site is the very plantation described in Sarah Drummond's successful plea, supported by King Charles II, for restitution of the property after his death at the end of the rebellion.

- Conservation of this land would link Mainland Farm, Jamestown Property, Jamestown Settlement, and Jamestown Island into a cohesive protected landscape. The overall character of this highly significant area would be compatible with the nationally significant resources that exist on the lands (see attached map).

Easement Value

An appraisal by Simerlein Appraisals, Ltd valued the easement at \$2,400,000. The assessed value of the two other parcels is \$211,200. The owners have agreed on a purchase price for the easement and parcels of \$2,611,200. There is currently a balance of \$4,571,192 in the Greenspace and PDR accounts. If the Board approves both the Gilley easement and this acquisition, then the remaining balance in the Greenspace and PDR accounts would be \$784,992.

Staff recommends approval of the attached resolution authorizing the purchase of the conservation easement and two parcels.


John T.P. Horne

JTPH/gb
GreAcq-Waltrip_mem

Attachments

RESOLUTION

GREENSPACE ACQUISITION - JAMESTOWN BUILDING

CORPORATION, INC, 71 ACRES, LLC, C. LEWIS AND PHYLLIS WALTRIP, AND PL, LLC

WHEREAS, Jamestown Building Corporation, Inc, 71 Acres. LLC and C. Lewis and Phyllis Waltrip, and PL, LLC have offered to sell a conservation easement and two parcels to James City County; and

WHEREAS, conservation of these parcels would contribute to the goals of the James City County Comprehensive Plan; and

WHEREAS, conservation of these parcels would contribute to the cultural, historic, and scenic characteristics of the Jamestown area and the County as a whole.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the purchase of a conservation easement on 81.794 acres owned by Jamestown Building Corporation and 71 Acres, LLC, consisting of Parcels 4630100001B, 4630200001A, and 4630200001C, and fee simple purchase of two acres owned by PL, LLC and C. Lewis and Phyllis Waltrip consisting of Parcels 4630100010 and 4630100011 in the amount of \$2,611,200.

John J. McGlennon
Chairman, Board of Supervisors

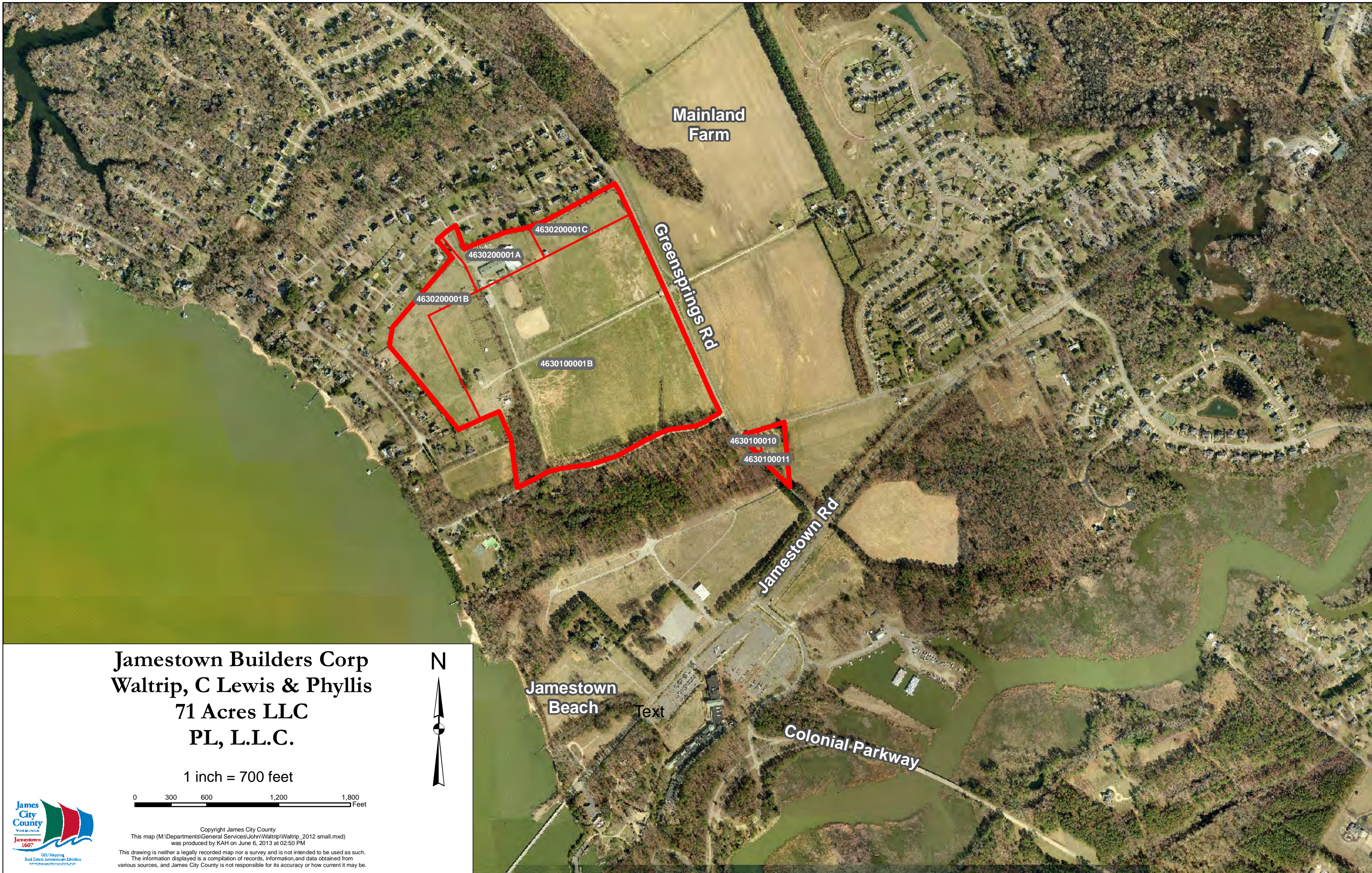
ATTEST:

Robert C. Middaugh
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
BRADSHAW	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of June, 2013.

GreAcq-Waltrip_res



**Jamestown Builders Corp
Waltrip, C Lewis & Phyllis
71 Acres LLC
PL, L.L.C.**

1 inch = 700 feet

0 300 600 1,200 1,800 Feet



Copyright James City County
This map (M:\Departments\General Services\John\Waltrip\Waltrip_2012 small.mxd)
was produced by KAH on June 6, 2013 at 02:50 PM

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.

NOTE TO TITLE EXAMINERS: This conservation and open-space easement contains restrictions on permitted uses and activities on the property described below, which run with the land and are applicable to the property in perpetuity.

_____, 20____

JCC TAX ID NOS: # **4630100001B, 4630200001C, and 4630200001A**

CONSIDERATION: \$2,400,000.00

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

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this ____ day of ____, 2012, by and between **71 ACRES, L.L.C.**, a Virginia limited liability company (“71 Acres”) and **JAMESTOWN BUILDING CORPORATION, INC.**, a Virginia corporation (“Jamestown Building” and, together with 71 the “Grantors”) and the **COUNTY OF JAMES CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, (the “County” or the “Grantee” and, together with the Grantors, the “Parties”).

WITNESSETH:

WHEREAS, 71 Acres is the owner in fee simple of a parcel of property located at 2589 Greensprings Road in James City County, Virginia and further identified as James City County Real Estate Tax Parcel Number 4630100001B as more particularly described in Exhibit A (the “71 Property”); and

WHEREAS, Jamestown Building is the owner in fee simple of two parcels of property located at 2599 Greensprings Road and 3516 Mott Lane in James City County, Virginia and further identified as James City County Real Estate Tax Parcel Numbers 4630200001C and 4630200001A, respectively, as more particularly described in Exhibit B (the “Jamestown Building Properties” and, together with the 71 Property, the “Properties”); and

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

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

WHEREAS, the County’s acquisition of the conservation easement identified herein furthers the purposes of the PDR Program in that such acquisition, among other things, assures

that the County's resources are protected and efficiently used, establishes and preserves open space, and furthers the goals of the County's Comprehensive Plan by protecting the County's natural and scenic resources, conserving biological diversity and natural wildlife habitat, promoting the continuation of agricultural and forestal activities, and protecting the quality of the County's surface water and groundwater resources; and

WHEREAS, the Grantors have offered to sell a conservation easement and the County has agreed to pay the Grantors the sum of Two Million Four Hundred Thousand and 00/100 Dollars (\$2,400,000.00) for this conservation easement, such sum being based upon the fair market value of the easement, as determined by a qualified appraiser.

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

1. GRANT AND CONVEYANCE OF EASEMENT. The Grantors hereby grant and convey to the Grantee and its successors and assigns, with General Warranty and English Covenants of Title, a conservation easement in gross over the parcels located 2589 Greensprings Road, 2599 Greensprings Road, and 3516 Mott Lane in James City County, Virginia and further identified as James City County Real Estate Tax Parcel Number Nos. 4630100001B, 4630200001C, and 4630200001A, respectively and as more particularly described in Exhibits A and B, restricting in perpetuity the use of the Properties in the manner set forth in this Deed of Easement.

2. EXISTING STRUCTURES. Existing structures on the Properties shall be authorized to continue as follows:

(a). *Existing residential structures.* The single-family dwelling that exists on the 71 Property (the "Existing Dwelling") shown on and more particularly described in the Baseline Study identified as Exhibit C, a copy of which is maintained in the County file may be repaired, expanded upon up to 8,000 square feet, relocated or replaced without the prior written consent of the Grantee. Any expansion or remodeling of the Existing Dwelling that materially alters its existing location or external character may be completed with the prior written consent of the Grantee.

(b). *Existing non-residential structures.* The non-residential structures that exist on the Jamestown Building Properties shown on and more particularly described in the Baseline Study attached as Exhibit C (the "Existing Non-Residential Structures") may be maintained, repaired, remodeled, rebuilt or removed. Any expansion or remodeling of Existing Non-Residential Structure that materially alters its existing location or external character may be completed with the prior written consent of the Grantee.

3. FUTURE STRUCTURES AND IMPROVEMENTS. There shall be no construction, placement or maintenance of any structure or other improvement on the Properties unless the

structure or improvement is authorized as follows:

(a). *Residential structure.* Grantor is permitted only the Existing Dwelling on the 71 Property, which shall not exceed a total of 8,000 square feet. No residential structure or dwelling may be situated upon the Jamestown Building Properties.

(b). *Accessory structures.* Accessory structures, as defined by the County Code and incidental to a Permitted Dwelling(s) or otherwise incidental to a *bona fide* agricultural or forestal use conducted on the Property shall be permitted. Accessory structures may be maintained, repaired, remodeled, rebuilt, expanded upon or replaced, provided that any expansion or remodeling that materially alters its existing location or external character may be completed with the prior written consent of the Grantee.

(c). *Structure Size.* No single structure on the Properties, whether residential, accessory, or otherwise, may exceed four thousand five hundred (4,500) square feet without the prior written consent of the Grantee, except the existing stable building as detailed in the Baseline Study and the Existing Dwelling as authorized in subsection (a) of this section. The total area of all impervious surfaces on the Properties shall not exceed ten percent (10%) of the surface area of the Properties without prior written consent of the Grantee.

(d). *Visual Buffer.* Prior written permission shall be obtained from the Grantee prior to the construction or placement of any structure on the Properties. No structure or planting of permanent vegetation (e.g., bushes or trees) with a mature height of three feet or more may be located on the Properties within one thousand feet (1000') of the centerline of Greensprings Road.

(e). *Fencing.* The Grantor may enclose any portion of the Properties with fencing without prior written approval from the Grantee, provided, however, that such fencing shall not exceed five and one-half feet in height and shall not be privacy fencing. Fencing exceeding five and one-half feet in height may be erected upon the prior written approval of the Grantee. All fencing shall be kept in good repair.

(f). *Roads.* No roads shall be permitted on the Properties except as set forth herein:

1. Greensprings Driveway. The existing private driveway from Greensprings Road in the center of the 71 Property shall remain a private driveway to serve the residential structure on the 71 Property. The private driveway may be paved and maintained; however, in no case shall it be wider than eighteen (18) feet.
2. 4H Club Road. A one-hundred-foot-wide (100') fee simple area adjacent to the existing 4H Club driveway may be used to establish road frontage on Greensprings Road to allow subdivision of the property west of the Properties as identified on Exhibit D. If a road is actually to be built in the one-hundred-foot-wide area, the owner shall incorporate the existing access to the 4H camp

and the other residential property on the driveway as shown on Exhibit D, with the net result being that only one, twenty-five-foot-wide (25') road would be used. The parties hereto agree that incorporating the existing access to the 4H Club road is the preferable option; accordingly, the County agrees to work with the Grantor to exchange property as necessary to achieve that goal.

3. There is an existing eight-inch (8") water line operated by the James City Service Authority along 4H Club Road and the parties agree that the Grantor intends to connect to this line to service the parcels identified on Exhibit D.

(g). *Public or private utilities to serve any existing or future permitted buildings structures or improvements.* Public or private utilities to be constructed in whole or in part to serve other properties shall not be constructed over the Properties unless Grantee determines that the construction and maintenance of such utilities will not impair the conservation values of the Properties and gives its prior written approval for such construction and maintenance. Approval or disapproval of such construction and maintenance shall take into consideration the visibility and any other adverse impact of such utilities on the conservation values of the Properties. Underground public or private utilities may be constructed and maintained without Grantor's permission provided that such underground utilities do not destroy or alter any known archeological sites on the Properties.

4. **FUTURE USES.** No use may be established on the Properties except as approved herein.

(a). *Uses permitted by right.* All agricultural and/or forestal uses of the Properties, as well as uses that are accessory to such agricultural and/or forestal uses, and the existing stable and equine uses as described in the Baseline Documentation (as defined in section 10(c)(2) herein) shall be permitted without the prior written approval of the Grantee to the extent such uses are: (1) permitted by the County Code; and (2) otherwise consistent with the terms and purposes of this Deed of Easement.

(b). *Conditionally permitted uses.* The Grantors may petition the Grantee for approval to establish a use other than a use permitted by right pursuant to section 4(a), *infra*, provided the proposed use is: (1) not expressly prohibited by this Deed of Easement; (2) consistent with the primary conservation purpose of this Deed of Easement, which is the preservation of the Properties for use as working farm and/or forest land in perpetuity; and (3) otherwise permitted on the Properties by the County Code. The County's prior written approval pursuant to this section shall be exclusive of any requirement for a special use permit, if such is required by the County Code.

(c). *Unlisted uses.* The Grantor may petition the Board of Supervisors for approval to establish a use which is: (1) not otherwise prohibited herein, and (2) is consistent with this Deed of Easement, and (3) is otherwise permitted on the Properties by the County Code.

5. **CONFIGURATION/SUBDIVISION OF THE PROPERTY.** The Properties are currently

comprised of three (3) parcels totaling approximately 81.794 acres, as described in Exhibits A and B. The Parties acknowledge and agree that it is the intent and purpose of this Deed of Easement that no further subdivision of the Properties shall be permitted; provided, however, that the Properties may be reconfigured or may be combined to result in fewer than three (3) parcels.

6. GRADING, EXCAVATION, EARTH REMOVAL, BLASTING, AND MINING. Earth removal, except for activities incidental to a *bona fide* agricultural or forestry operation, and blasting are prohibited. The exploration for, or development and extraction of minerals and hydrocarbons by mining or any other method is prohibited. Grading and excavation is allowed but shall not materially alter the topography of the Properties; grading and excavation shall be allowed for dam construction to create private conservation ponds with prior written approval by the Grantee, and grading and excavation shall be allowed during the construction of permitted structures or associated improvements. Common and customary agricultural or forestal activities such as plowing, erosion control and reforestation are permitted activities that do not materially alter the topography of the Properties.

7. MANAGEMENT OF AGRICULTURAL AND FORESTAL RESOURCES.

(a). *Management of Forest.* All silvicultural activities on the Properties shall conform to a Forest Stewardship Plan approved by the Grantee. The Forest Stewardship Plan shall include recommended Forest Best Management Practices and other scientifically based recommendations as may be appropriate for protecting the health of the forest, controlling erosion, protecting water quality and providing wildlife habitat. This Plan shall be professionally updated no later than every five years. Grantor shall provide Grantee a copy of the Plan and each subsequent Plan update for review and approval. A Pre-Harvest Plan consistent with the Forest Stewardship Plan shall be submitted to the Grantee, their successors or assigns, for approval no earlier than one year nor later than forty-five (45) days prior to the anticipated commencement of any material timber harvest. If an aspect of the harvest activities is inconsistent with one or more purposes of this conservation easement, the Grantee reserves the right to require modifications to the harvest activities that will minimize such impacts. Without limiting the foregoing requirement regarding submission of pre-harvest plans, Grantee shall be notified not later than 45 days prior to the clearing of over ten acres of forestland for conversion into grassland or crop land or in association with the construction of permitted buildings or the installation of roads or accessory uses.

(b). *Agriculture.* All agricultural activities on the Properties shall conform with a Farm Conservation Plan prepared by a knowledgeable person certified by an appropriate State or Federal agency as approved by the Grantee. This Plan shall include recommended Agricultural Best Management Practices, an implementation schedule and other scientifically based recommendations as may be appropriate for protecting the soil and natural resources and enhancing water quality. The Plan shall be updated no later than every three years by a certified professional and approved as specified above. The Grantor shall provide the Grantee with a copy of the Farm Conservation Plan, including updates.

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

9. NOTICE AND PERMISSION.

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

If to Grantor:
C. Lewis Waltrip, II
213 Ingram Road
Williamsburg, VA 23185

With Copy To:
Joseph H. Latchum, Jr., Esq.
Williams Mullen
721 Lakefront Commons, Suite 200
Newport News, VA 23606

If to County:
County Administrator
101-D Mounts Bay Road
P.O. Box 8784
Williamsburg, VA 23187-8784

With Copy To:
County Attorney
101-D Mounts Bay Road
P.O. Box 8784
Williamsburg, VA 23187-8784

(b). *Permission.* When permission of the Grantee is sought by the Grantors, the Grantee shall submit such request and any supporting documentation in writing to the County. The request shall be considered by the Board of Supervisors at a public meeting as soon as practicable.

10. MISCELLANEOUS PROVISIONS.

(a). *No public right-of-access to Properties.* This Deed of Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Properties or any portion thereof, except as Grantors may otherwise allow in a manner consistent with the terms of this Deed of Easement and the PDR Program.

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

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

1. Monitoring. Employees or agents of Grantee may enter the Properties from time to time, at reasonable times, for the purpose of monitoring compliance with the terms of this Deed of Easement. The Grantee shall give reasonable prior notice before entering the Properties. The Grantor shall not unreasonably withhold permission.

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

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

(e). *Restoration.* Upon any breach of the terms of this Deed of Easement by Grantors, Grantee may require by written demand to the Grantors that the Properties be restored promptly to the condition required by this Deed of Easement. Furthermore the Grantee retains the right to restore the Properties to a condition consistent with the terms of this Deed of Easement and

assess the cost of such restoration against the owner of the parcel in violation of this Deed of Easement and as a lien against the Properties in violation of this Deed of Easement, provided however, that no such lien shall affect the rights of a subsequent bona fide purchaser unless a memorandum of such lien was recorded among the land records prior to such purchase, and such lien shall be subordinate to any deed of trust recorded prior to the recordation of a memorandum of such lien.

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

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

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

(i). *Extinguishment and exchange.* The Parties intend that this conservation easement be perpetual and not extinguished, and agree that extinguishment of the conservation easement is not permitted under the Open Space Land Act (Virginia Code §§ 10.1-1700 et seq.), except in conformity with Virginia Code § 10.1 – 1704. The Parties further agree that the Properties shall not be converted or diverted, as the Open-Space Land Act employs those terms, from the uses permitted by the Deed of Easement until and unless twenty-five (25) years have elapsed between the recordation date of this Deed of Easement and the date of the Grantor's petition to the James City County Board of Supervisors for such conversion or diversion, which shall conform to all procedures and requirements set forth in the PDR Ordinance on the recordation date of this Deed of Easement. Furthermore, the Parties intend and agree that pursuant to any decision by the James City County Board of Supervisors to extinguish this Deed of Easement the Grantor shall convey to the Grantee a Deed of Easement on a different but similar parcel approved by the Grantee, located in James City County and in accordance with the PDR Ordinance in place at the time of the recording of this Deed of Easement.

(j). *Property right.* Grantors agree that Grantee's purchase of the perpetual conservation restrictions contained in this Deed of Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the purchase bears to the value of the Property as a whole, exclusive of the value of all improvements, at that time, which is 55.75 percent (55.75 %) as established by the appraisal conducted by Simerlein Appraisals Ltd., dated March 25 2013. If a subsequent unexpected change in the conditions surrounding the Properties makes impossible or impractical the continued use of the Properties for the conservation

purposes specified herein, and the restrictions set forth in this Deed of Easement are extinguished, whether in whole or part, by a judicial proceeding, such extinguishment shall also satisfy the requirements of the Open-Space Land Act and Chapter 16A of the County Code. The Grantee, upon a sale, exchange or involuntary conversion due to an extinguishment, shall be entitled to a portion of any monetary proceeds derived therefrom, which shall be determined by multiplying the proceeds for the land taken (but not proceeds for improvements or damages to the residue or any other award) by the proportionate value established above. The Grantee shall not receive any portion of the proceeds attributable to improvements, timber or crops.

All proceeds to which Grantee is thereafter entitled to retain from such sale, exchange or involuntary conversion shall be used by the Grantee in a manner consistent with the original conservation purposes of this Deed of Easement and the Open-Space Land Act.

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

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

(m). *Severability.* If any provision of this Deed of Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Deed of Easement shall not be affected thereby. The Grantor shall remunerate Grantee for the proportionate loss of value in the Conservation Easement as determined by the Board of Supervisors due to any invalidated provision.

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

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

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

(q). *Proceeds from eminent domain.* If all or any part of the Properties is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to extinguish the terms of this Deed of Easement, in whole or part, Grantors and Grantee shall act jointly to recover the full value of the

interests in the Properties subject to the taking and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received. Grantee's share of the balance of the amount recovered shall be determined by multiplying the proceeds by the proportionate value established in 10 (j), above. Grantee shall have the right to appear as a party in any eminent domain proceeding concerning the Properties.

(r). *Transfer of easement by grantee.* Neither Grantee nor their successors and assigns may convey or lease the conservation easement established and conveyed hereby unless the Grantee conditions the conveyance or lease on the requirements that: (1) the conveyance or lease is subject to contractual arrangements that will assure that the Properties is subject to the restrictions and conservation purposes set forth in this Deed of Easement, in perpetuity; and (2) the transferee is an organization then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder, or is a public body within the meaning of Virginia Code § 10.1-1700.

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

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

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

(v). *Controlling law.* The interpretation and performance of this Deed of Easement shall be governed by the laws of the Commonwealth of Virginia.

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

(x). *Amendments.* This Deed of Easement may be amended only with the written consent of the Grantee and Grantors, and such amendment shall be duly recorded. Any

amendment shall be at the sole discretion of the Grantee, and shall be consistent with the Open-Space Land Act and Chapter 16A of the County Code. Any such amendment shall also be consistent with the overall purposes and intent of this Deed of Easement.

SIGNATURE PAGE FOLLOWS

WITNESS the following signatures and seals:

GRANTOR:

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this _____ day of _____, 2013, by Grantor.

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

The form of this Deed of Easement is approved, and pursuant to Resolution of the Board of Supervisors of James City County, Virginia, duly executed on the ___th day of _____, 2013 and this conveyance is hereby accepted on behalf of said County.

Date

County Attorney

EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D