

**A G E N D A**  
**JAMES CITY COUNTY BOARD OF SUPERVISORS**  
**REGULAR MEETING**  
**County Government Center Board Room**  
**101 Mounts Bay Road, Williamsburg, VA 23185**  
**December 13, 2022**  
**5:00 PM**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. MOMENT OF SILENCE**

**D. PLEDGE OF ALLEGIANCE**

1. Pledge Leader - Kara Connor, 5th grade student a resident of the Berkeley District DJ Montague Elementary and a resident of the

**E. PRESENTATIONS**

1. Chairman's Awards

**F. PUBLIC COMMENT**

**G. CONSENT CALENDAR**

**H. PUBLIC HEARING(S)**

1. Mainland Farm Management Agreement
2. SUP-22-0019. 4090 Ironbound Road Detached Accessory Dwelling
3. SUP-22-0015. 7294 & 7296 Richmond Rd. Pivot Energy Solar Project
4. AFD-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal
5. SUP-20-0010. Hertzler Clearing and Grading

**I. BOARD CONSIDERATION(S)**

1. SUP-22-0007. Branscome Resource Recovery and Aggregate Storage
2. Employee Engagement Survey Results
3. FY 2022 Annual Report

**J. BOARD REQUESTS AND DIRECTIVES**

**K. REPORTS OF THE COUNTY ADMINISTRATOR**

**L. CLOSED SESSION**

1. Consideration of a personnel matter, the appointment of individuals to County Boards and/or Commissions, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia
2. Williamsburg/James City County Community Action Agency Board Appointments

**M. ADJOURNMENT**

1. Adjourn until 4 pm on January 10, 2023 for the Organizational Meeting

**ITEM SUMMARY**

DATE: 12/13/2022

TO: The Board of Supervisors

FROM: Teresa Saeed, Deputy Clerk

SUBJECT: Pledge Leader - Kara Connor, 5th grade student a resident of the Berkeley District DJ Montague Elementary and a resident of the

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**REVIEWERS:**

| Department      | Reviewer      | Action   | Date                |
|-----------------|---------------|----------|---------------------|
| Board Secretary | Saeed, Teresa | Approved | 12/2/2022 - 4:18 PM |



**ITEM SUMMARY**

DATE: 12/13/2022

TO: The Board of Supervisors

FROM: John J. McGlennon, Chairman

SUBJECT: Chairman's Awards

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**REVIEWERS:**

| Department      | Reviewer      | Action   | Date                |
|-----------------|---------------|----------|---------------------|
| Board Secretary | Saeed, Teresa | Approved | 12/6/2022 - 3:26 PM |

**ITEM SUMMARY**

DATE: 12/13/2022

TO: The Board of Supervisors

FROM: Liz Parman, Deputy County Attorney

SUBJECT: Mainland Farm Management Agreement

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**ATTACHMENTS:**

|   | Description | Type       |
|---|-------------|------------|
| ☐ | Memo        | Cover Memo |
| ☐ | Resolution  | Resolution |

**REVIEWERS:**

| Department             | Reviewer           | Action   | Date                  |
|------------------------|--------------------|----------|-----------------------|
| Attorney               | Kinsman, Adam      | Approved | 11/21/2022 - 12:44 PM |
| Publication Management | Pobiak, Amanda     | Approved | 11/21/2022 - 2:07 PM  |
| Legal Review           | Kinsman, Adam      | Approved | 11/21/2022 - 2:14 PM  |
| Board Secretary        | Saeed, Teresa      | Approved | 12/5/2022 - 10:56 AM  |
| Board Secretary        | Rinehimer, Bradley | Approved | 12/5/2022 - 11:00 AM  |
| Board Secretary        | Saeed, Teresa      | Approved | 12/6/2022 - 3:09 PM   |

## MEMORANDUM

DATE: December 13, 2022

TO: The Board of Supervisors

FROM: Liz Parman, Deputy County Attorney

SUBJECT: Mainland Farm Management Agreement with Renwood Farms, Inc.

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James City County (the “County”) currently owns a certain parcel of land located in the County of James City at 2881 Greensprings Road and further identified as James City County Real Estate Tax Parcel No. 4610100012 and commonly known as Mainland Farm (the “Property”).

The County currently contracts with Renwood Farms, Inc. (“Renwood Farms”) to manage the land, buildings, and other improvements on the Property and to maintain the Property as a working farm. This agreement expires December 31, 2022. Attached is a new Management Agreement for a five-year term beginning January 1, 2023, with the option for two, five-year renewal terms.

If adopted, Renwood Farms will continue to pay the County \$14,725 annually. The County may terminate the Management Agreement upon providing sixty (60) days’ written notice to Renwood Farms.

Staff recommends approval of the attached Management Agreement.

LP/ap  
MnIndFmMgmtAgt-mem

Attachment

## RESOLUTION

### DISPOSITION OF REAL PROPERTY - 2881 GREENSPRINGS ROAD

#### MANAGEMENT AGREEMENT WITH RENWOOD FARMS, INC.

WHEREAS, James City County currently owns a certain parcel of land located in the County of James City at 2881 Greensprings Road and further identified as James City County Real Estate Tax Parcel No. 4610100012 and commonly known as Mainland Farm (the "Property"); and

WHEREAS, the County currently contracts with Renwood Farms, Inc. ("Renwood Farms") pursuant to a Management Agreement, to manage the land, buildings, and other improvements on the Property and to maintain the Property as a working farm; and

WHEREAS, the Management Agreement is set to expire on December 31, 2022; and

WHEREAS, the County wishes to execute a new Management Agreement with Renwood Farms to manage the land, buildings, and other improvements on the Property and to maintain the Property as a working farm; and

WHEREAS, the Board of Supervisors, following a public hearing pursuant to Virginia Code § 15.2-1800, is of the opinion that the County should execute a Management Agreement with Renwood Farms.

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 those documents necessary to execute a Management Agreement for Mainland Farm with Renwood Farms, Inc.

\_\_\_\_\_  
John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Teresa J. Saeed  
Deputy Clerk to the Board

ICENHOUR  
HIPPLE  
LARSON  
SADLER  
MCGLENNON

VOTES

AYE    NAY    ABSTAIN    ABSENT

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Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2022.

MnIndFmMgmtAgt-res

**ITEM SUMMARY**

DATE: 12/13/2022

TO: The Board of Supervisors

FROM: Paxton Condon, Planner

SUBJECT: SUP-22-0019. 4090 Ironbound Road Detached Accessory Dwelling

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**ATTACHMENTS:**

|   | Description  | Type            |
|---|--|-----------------|
| ☐ | Staff Report   | Staff Report    |
| ☐ | 1. Resolution  | Resolution      |
| ☐ | 2. Location Map  | Backup Material |
| ☐ | 3. Master Plan   | Backup Material |
| ☐ | 4. Applicant Narrative   | Backup Material |
| ☐ | 5. Unapproved Minutes of the November 2, 2022, Planning Commission Meeting | Minutes         |

**REVIEWERS:**

| Department             | Reviewer           | Action   | Date                 |
|------------------------|--------------------|----------|----------------------|
| Planning               | Holt, Paul         | Approved | 11/21/2022 - 4:11 PM |
| Development Management | Holt, Paul         | Approved | 11/21/2022 - 4:12 PM |
| Publication Management | Daniel, Martha     | Approved | 11/21/2022 - 4:38 PM |
| Legal Review           | Kinsman, Adam      | Approved | 11/22/2022 - 8:29 AM |
| Board Secretary        | Saeed, Teresa      | Approved | 12/5/2022 - 10:57 AM |
| Board Secretary        | Rinehimer, Bradley | Approved | 12/5/2022 - 11:05 AM |
| Board Secretary        | Saeed, Teresa      | Approved | 12/6/2022 - 3:08 PM  |

**SPECIAL USE PERMIT-22-0019. 4090 Ironbound Road Detached Accessory Apartment  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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**SUMMARY FACTS**

Applicant: Mr. Hoa Huynh

Landowners: Mr. Hoa Ba and Ms. Loan Pham Huynh

Proposal: To convert an existing detached garage to include a 394-square-foot detached accessory apartment for a family member of the property owner

Location: 4090 Ironbound Road

Tax Map/Parcel No.: 3840400002

Property Acreage: ± .55 acres

Zoning: R-2, General Residential

Comprehensive Plan: Low Density Residential

Primary Service Area: Inside

Staff Contact: Paxton Condon, Senior Planner

**PUBLIC HEARING DATES**

Planning Commission: November 2, 2022, 6:00 p.m.

Board of Supervisors: December 13, 2022, 5:00 p.m.

**FACTORS FAVORABLE**

1. With the proposed conditions, staff finds the proposal will not impact the surrounding zoning and development.
2. With the proposed conditions, staff finds the proposal consistent with the recommendations of the 2045 Comprehensive Plan.
3. Impacts: See Impact Analysis on Pages 3-4.

**FACTORS UNFAVORABLE**

1. With the proposed conditions, staff finds no factors unfavorable.

**SUMMARY STAFF RECOMMENDATION**

Staff recommends approval subject to the proposed conditions.

**PLANNING COMMISSION RECOMMENDATION**

At its November 2, 2022, meeting, the Planning Commission voted to recommend approval of this application by a vote of 7-0.

**PROPOSED CHANGES MADE SINCE THE PLANNING COMMISSION MEETING**

There have been no proposed changes since the November 2, 2022, Planning Commission meeting.

**PROJECT DESCRIPTION**

Mr. Hoa Huynh has applied for a Special Use Permit (SUP) to allow a detached accessory apartment to be constructed within an existing detached accessory structure. The existing detached garage is 896 square feet, and the proposed apartment would be 394 square feet or approximately 44% of the floor area.

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*This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.*

**SPECIAL USE PERMIT-22-0019. 4090 Ironbound Road Detached Accessory Apartment  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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R-2, General Residential, allows detached accessory apartments as a specially permitted use in accordance with Section 24-32 (b) of the Zoning Ordinance, which states that detached accessory apartments, where approved, shall comply with the following requirements (staff comments in *italics*):

1. Only one accessory apartment shall be created per lot.

*Only one accessory apartment is proposed with this application.*

2. The accessory apartment may not occupy more than 50% of the floor area of the accessory structure and shall meet all setback, yard, and height regulations applicable to accessory structures in the zoning district in which it is located.

*The proposed apartment unit will occupy approximately 44% of the accessory structure's floor area (896 square feet).*

3. The accessory apartment shall not exceed 400 square feet in size and shall meet all setback, yard, and height regulations applicable to accessory structures in the zoning district in which it is located.

*The proposed apartment unit will be 394 square feet.*

4. The property owner or an immediate family member as defined in Section 19-17 of the Subdivision Ordinance shall reside in either the single-family dwelling or the accessory apartment.

*Per the applicant's letter (Attachment No. 4), the property owners will continue to reside in the single-family dwelling.*

5. Approval from the Virginia Department of Health shall be required where the property is served by an individual well and/or sewer disposal system.

*Not applicable. The lot is served by public water/sewer.*

6. The accessory structure shall be so designed such that the size and scale of the structure is compatible with surrounding structures.

*The apartment is being added within the existing structure.*

7. Off-street parking shall be required in accordance with Section 24-54 of this chapter.

*Staff Analysis: Section 24-59 states that the minimum off-street parking required for a single-family unit with an accessory apartment is three parking spaces. The single-family dwelling has a two-car garage and the detached accessory structure will have a remaining one-car garage which meets the Ordinance requirement for three parking spaces.*

Staff has reviewed the proposed design and finds that all requirements have been met.

## **PLANNING AND ZONING HISTORY**

- There have been no previous legislative cases associated with this parcel.

## **SURROUNDING ZONING AND DEVELOPMENT**

- Adjacent properties are zoned R-2, General Residential, and M-1, Limited Business/Industrial.
- Properties surrounding this parcel are also designated Low Density Residential as well as Mixed Use on the 2045 Comprehensive Plan Land Use Map.

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**SPECIAL USE PERMIT-22-0019. 4090 Ironbound Road Detached Accessory Apartment  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

| <b>Impacts/Potentially Unfavorable Conditions</b>   | <b>Status</b><br><i>(No Mitigation Required/Mitigated/Not Fully Mitigated)</i> | <b>Considerations/Proposed Mitigation of Potentially Unfavorable Conditions</b>   |
|---|--|---|
| <u>Public Transportation: Vehicular</u>   | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- The proposal is not anticipated to generate traffic exceeding a typical residential use.</li> <li>- The subject property is located on a minor collector road.</li> </ul>  |
| <u>Public Transportation: Bicycle/Pedestrian</u>  | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- There are no changes to the existing footprint of the building and bicycle and pedestrian accommodations are not required per Section 24-35(c)(2) of the Zoning Ordinance.</li> </ul>  |
| <u>Public Safety</u>  | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- Fire Station 3 on John Tyler Highway serves this area of the County and is approximately 1.7 miles from the proposed detached accessory garage.</li> <li>- Staff finds this project does not generate impacts that require mitigation to the County's Fire Department facilities or services.</li> </ul>                         |
| <u>Public Schools</u>   | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- Staff finds this project does not generate impacts that require mitigation.</li> </ul>   |
| <u>Public Parks and Recreation</u>  | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- Staff finds this project does not generate impacts that require mitigation.</li> </ul>   |
| <u>Public Libraries and Cultural Centers</u>  | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- Staff finds this project does not generate impacts that require mitigation.</li> </ul>   |
| <u>Groundwater and Drinking Water Resources</u>   | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- The property receives public water and sewer.</li> <li>- The proposal does not generate impacts that require mitigation to groundwater or drinking water resources.</li> </ul>   |
| <u>Watersheds, Streams, and Reservoirs</u><br>Project is located in the Mill Creek Watershed. | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- The Stormwater and Resource Protection Division has reviewed this application and had no objections. No new impervious surface is proposed as part of this SUP request. Should exterior site improvements be made in the future, those improvements would be subject to additional environmental review at that time.</li> </ul> |
| <u>Cultural/Historic</u>  | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- The subject property has been previously disturbed and has no known cultural resources on-site.</li> </ul>   |

*This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.*



**SPECIAL USE PERMIT-22-0019. 4090 Ironbound Road Detached Accessory Apartment**  
**Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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| <b>Impacts/Potentially Unfavorable Conditions</b> | <b>Status</b><br><i>(No Mitigation<br/>Required/Mitigated/Not<br/>Fully Mitigated)</i> | <b>Considerations/Proposed Mitigation of Potentially Unfavorable Conditions</b>  |
|---|--|--|
| <u>Nearby and Surrounding Properties</u>          | <u>No Mitigation<br/>Required</u>  | - Traffic is anticipated to be typical of a residential home. The subject property must adhere to the County's Noise Ordinance.      |
| <u>Community Character</u>                        | <u>No Mitigation<br/>Required</u>  | - This portion of Ironbound Road is not a Community Character Corridor and this parcel is located within a Community Character Area. |
| <u>Covenants and Restrictions</u>                 | <u>No Mitigation<br/>Required</u>  | - The applicant has verified that he is not aware of any covenants or restrictions on the property that prohibit the proposed use.   |

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*This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.*

## **2045 COMPREHENSIVE PLAN**

The site is designated Low Density Residential on the 2045 Comprehensive Plan Land Use Map. The adopted Comprehensive Plan includes “single family and multifamily units, accessory units, cluster or cottage homes on small lots, recreation areas” within lands designated Low Density Residential.

Staff finds the proposal is consistent with the recommendations of 2045 Comprehensive Plan.

## **STAFF RECOMMENDATION**

Staff finds the proposal compatible with surrounding zoning and development and consistent with the recommendations of the adopted 2045 Comprehensive Plan.

Staff therefore recommends approval of the SUP, subject to the conditions (Attachment No. 1).

PC/md  
SUP22-19\_4090IrnbdDetApt

### **Attachments:**

1. Resolution
2. Location Map
3. Master Plan
4. Applicant Narrative
5. Unapproved Minutes of the November 2, 2022, Planning Commission Meeting

## RESOLUTION

### CASE NO. SUP-22-0019. 4090 IRONBOUND ROAD DETACHED ACCESSORY APARTMENT

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

WHEREAS, Mr. Hoa Huynh, the owner of the property located at 4090 Ironbound Road, further identified as James City County Tax Map Parcel No. 3840400002 (the "Property"), has applied for an SUP to allow for the construction of a detached accessory apartment within an existing detached garage on the Property as shown on the Master Plan titled "SUP-22-0019, 4090 Ironbound Road Detached Accessory Dwelling" dated September 13, 2022, and revised October 18, 2022; and

WHEREAS, the Planning Commission, following its public hearing on November 2, 2022, recommended approval of Case No. SUP-22-0019 by a vote of 7-0; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. SUP-22-0019; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with good zoning practices and the 2045 Comprehensive Plan Land Use Map designation for the Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after consideration of the factors in Section 24-9 of the James City County Code, does hereby approve the issuance of Case No. SUP-22-0019 as described herein with the following conditions:

1. Master Plan. This SUP shall be valid for a detached accessory apartment (the "Project") located at 4090 Ironbound Road, further identified as James City County Real Estate Tax Map Parcel No. 3840400002 (the "Property"). Development of the Project on the Property shall be in accordance with Section 24-32 (b) of the James City County Code (the "County Code"), as amended, and shall occur generally as shown on the exhibit entitled, "4090 Ironbound Road Detached Accessory Apartment," dated September 13, 2022 (the "Master Plan"), with any deviations considered pursuant to Section 24-23(a)(2) of the County Code, as amended.
2. Recordation. A certified copy of the Board of Supervisors' SUP resolution shall be recorded against the Property in the Williamsburg/James City County Circuit Court prior to issuance of any Certificate of Occupancy for the Project. Proof of recordation shall be provided to the Zoning Administrator.
3. Dwelling Occupied. Within 24 months from the issuance of this SUP, a permanent Certificate of Occupancy for the Project shall be issued, or the SUP shall become void.
4. Square Footage. The detached accessory apartment shall be no more than 400 square feet.
5. Access. No new ingress/egress points shall be created to Ironbound Road.

6. Parking. Off-site parking for this use shall be prohibited.
7. Severance Clause. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Teresa J. Saeed  
Deputy Clerk to the Board

ICENHOUR  
HIPPLE  
LARSON  
SADLER  
MCGLENNON

VOTES

AYE    NAY    ABSTAIN    ABSENT

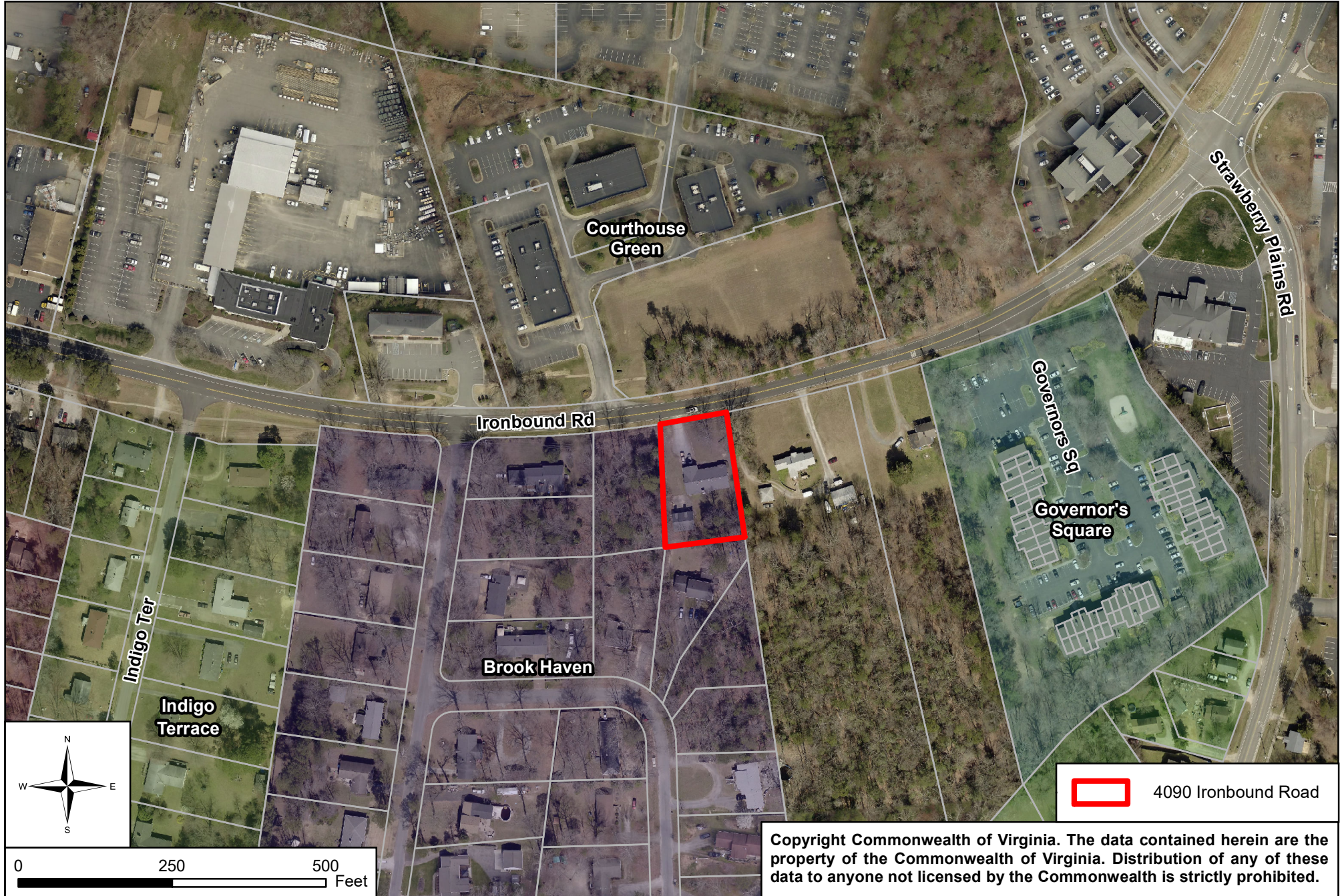
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Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2022.

SUP22-19\_4090IrnbdDetApt-res



# JCC SUP-22-0019, 4090 Ironbound Road Detached Accessory Dwelling





# SUP-22-0019, 4090 Ironbound Road Detached Accessory Dwelling

## Property Information

3840400002  
Hoa Ba & Loan Pham Huynh  
4090 Ironbound Road  
Williamsburg, VA 23188  
Zoning: R2 General Residential  
2045 Comp Plan: Low Density  
Residential  
Legal Acreage: .55

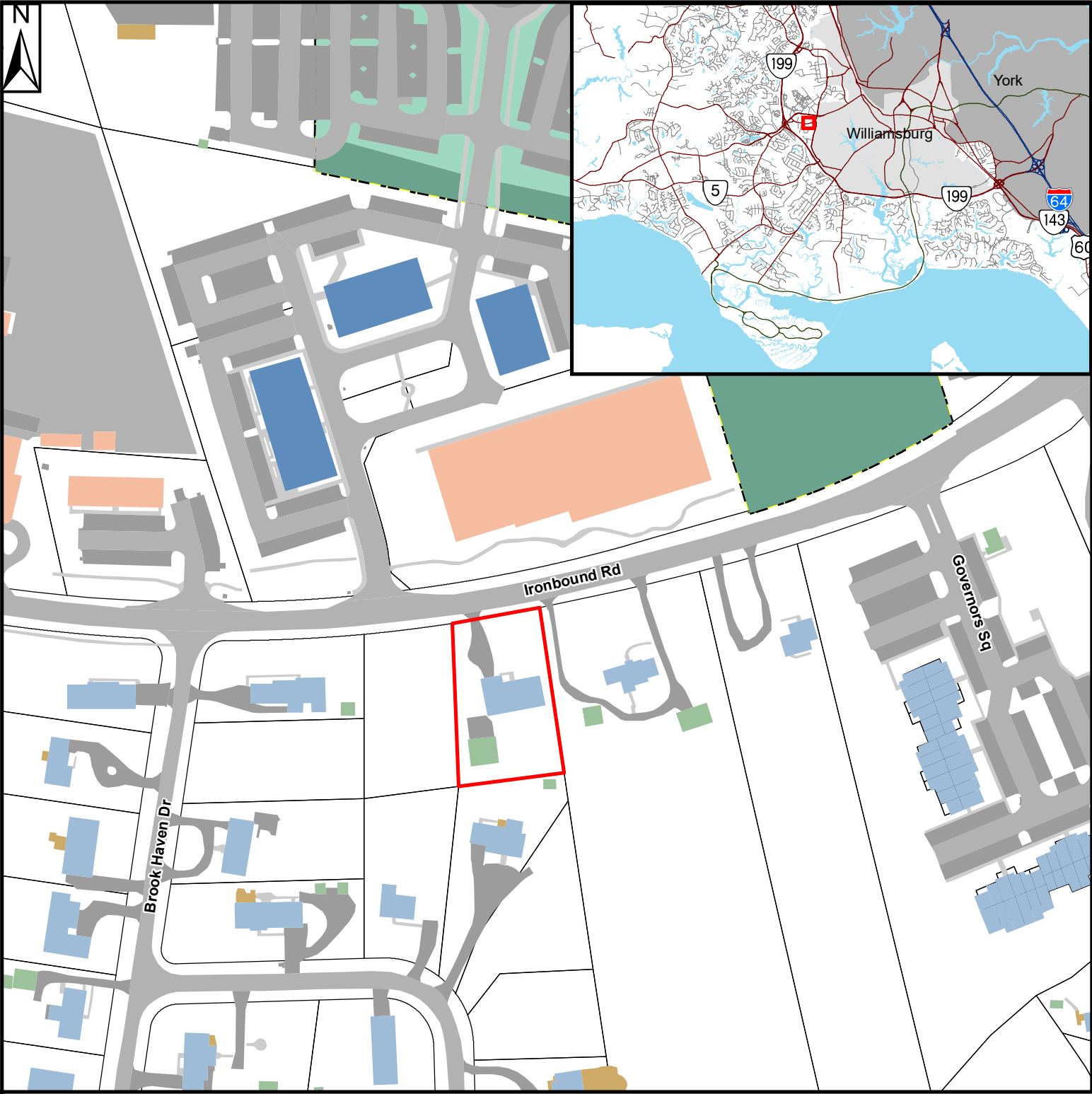
## General Notes

1. Site is served by public water and sewer.
2. Property is not located in a FEMA Flood zone.
3. Property does not contain Resource Protected Area.
4. Property has an existing driveway.

## Sheet Index

1. Cover Page
2. Location Map
3. Site Details

September 13, 2022  
Edited October 18, 2022



Maps Not to Scale

## Adjacent Properties

3840400003  
Lindsay N Jackson  
155 Brook Haven Dr  
Williamsburg, VA 23188  
R2 General Residential

3840400004  
Eric L & Laura G Finley  
153 Brook Haven Dr  
Williamsburg, VA 23188  
R2 General Residential

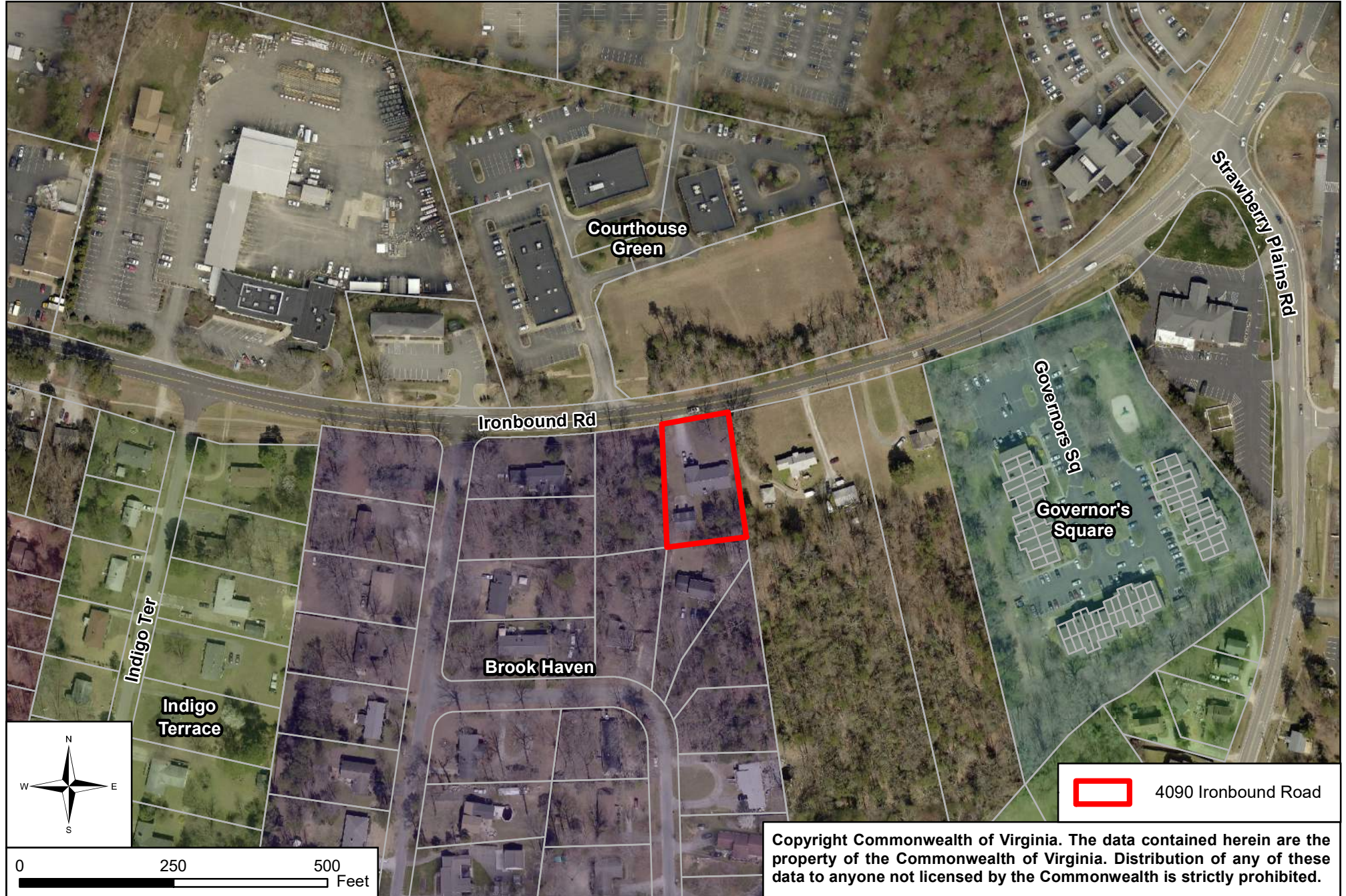
3840100009  
Lewcar, LLC  
4096 Ironbound Road  
Williamsburg, VA 23188  
R2 General Residential

3842300001  
Ironbound LLC  
4091 Ironbound Rd  
Williamsburg, VA 23188  
M1 Limited Business/Industrial

3840400001  
Dennis A & Qui N Funk  
4086 Ironbound Rd  
Williamsburg, VA 23188  
R2 General Residential



# JCC SUP-22-0019, 4090 Ironbound Road Detached Accessory Dwelling





JCC SUP-22-0019

# 4090 Ironbound Road Detached Accessory Dwelling





SUP-22-0019, 4090 Ironbound Rd. Detached Accessory Dwelling

PIN: 3840400002  
Legal Acreage: 0.55  
Owner: Huynh, Hoa Ba & Loan Pham  
Zoning: R2 General Residential  
Subdivision: Brook Haven  
2045 Comp. Plan: Low Density Residential  
PSA: Inside

To Whom it may concern,

The detached accessory dwelling is needed to care for my elderly father. This dwelling would be where my father who cannot be unsupervised would stay. My sister and I will be able to take turns in caring for my father.

I cannot afford to put him in a nursing home, and he does not speak or understand English.

Thank you for considering the permit for me,

Hoa Ba Huynh  
4090 Ironbound Rd.  
Williamsburg, VA 23188  
[noelmahler@yahoo.com](mailto:noelmahler@yahoo.com)  
(757)585-6845

PLANNING DIVISION

Sep 13 2022

RECEIVED

**Unapproved Minutes of the November 2, 2022  
Planning Commission Regular Meeting**

**SUP-22-0019. 4090 Ironbound Road Detached Accessory Dwelling**

Ms. Paxton Condon, Deputy Zoning Administrator, stated that Mr. Hoa Huynh has applied for an SUP to allow a detached accessory apartment at 4090 Ironbound Road. Ms. Condon stated that the applicant proposes to convert part of an existing detached garage into a detached accessory apartment. Ms. Condon stated that the property is zoned R-2, General Residential, and is designated Low Density Residential on the 2045 Comprehensive Plan Land Use Map.

Ms. Condon further stated that the single-family dwelling on the property is currently occupied by the applicant and building permits have been submitted for the proposed alterations and are under review. Ms. Condon stated that the existing structure is 896 square feet, and the proposed accessory apartment will be 394 square feet. Ms. Condon stated that the remaining portion of the structure will continue to be used as a garage.

Ms. Condon stated that the R-2 Zoning District allows detached accessory apartments as a specially permitted use in accordance with 24-32(b) of the James City County Code. Ms. Condon stated that staff has reviewed the proposed design and finds that all requirements have been met.

Ms. Condon further stated that staff also finds this proposal to be compatible with surrounding development and consistent with the 2045 Comprehensive Plan. Ms. Condon stated that staff recommends that the Planning Commission recommend approval of this application to the Board of Supervisors, subject to the proposed conditions.

Mr. O'Connor opened the Public Hearing.

Ms. Noel Mahler, 4090 Ironbound Road, applicant's representative, addressed the Commission in support of the application.

As no one further wished to speak, Mr. O'Connor closed the Public Hearing.

Mr. Haldeman made a motion to recommend approval of the application.

On a roll call vote, the Commission voted to recommend approval of SUP-22-0019. 4090 Ironbound Road Detached Accessory Dwelling. (7-0)

**ITEM SUMMARY**

DATE: 12/13/2022

TO: The Board of Supervisors

FROM: John Risinger, Senior Planner

SUBJECT: SUP-22-0015. 7294 & 7296 Richmond Rd. Pivot Energy Solar Project

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**ATTACHMENTS:**

|   | Description  | Type            |
|---|--|-----------------|
| ☐ | Staff Report   | Staff Report    |
| ☐ | Resolution   | Resolution      |
| ☐ | 2. Location Map  | Backup Material |
| ☐ | 3. Applicant Narrative   | Backup Material |
| ☐ | 4. Master Plan   | Backup Material |
| ☐ | 5. Proposed Landscape Buffer   | Backup Material |
| ☐ | 6. Adopted Resolution for Consistency with Section 15.2-2232               | Backup Material |
| ☐ | 7. Unapproved Minutes of the November 2, 2022, Planning Commission Meeting | Backup Material |

**REVIEWERS:**

| Department             | Reviewer       | Action   | Date                 |
|------------------------|----------------|----------|----------------------|
| Planning               | Holt, Paul     | Approved | 11/21/2022 - 4:09 PM |
| Development Management | Holt, Paul     | Approved | 11/21/2022 - 4:09 PM |
| Publication Management | Daniel, Martha | Approved | 11/21/2022 - 4:34 PM |
| Legal Review           | Kinsman, Adam  | Approved | 12/5/2022 - 2:46 PM  |
| Board Secretary        | Saeed, Teresa  | Approved | 12/6/2022 - 3:08 PM  |
| Board Secretary        | Purse, Jason   | Approved | 12/6/2022 - 3:11 PM  |
| Board Secretary        | Saeed, Teresa  | Approved | 12/6/2022 - 3:35 PM  |

**SPECIAL USE PERMIT-22-0015. 7294 and 7296 Richmond Road Pivot Energy Solar Project  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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**SUMMARY FACTS**

Applicant: Mr. Buzz Becker, Pivot Energy, Inc.

Landowners: D & S Chong, LLC  
Mr. Dae Ik and Ms. Susan Chong

Proposal: Development and construction of a solar panel facility for electrical power generation, storage, transmission, and associated activities

Locations: 7294 Richmond Road  
7296 Richmond Road

Tax Map/Parcel Nos.: 2410100004  
2320100025

Project Acreage: ± 64.9

Zoning: A-1, General Agricultural

Comprehensive Plan: Economic Opportunity

Primary Service Area: Outside

Staff Contact: John Risinger, Senior Planner

**PUBLIC HEARING DATES**

Planning Commission: September 7, 2022, 6:00 p.m. (Postponed)  
October 5, 2022, 6:00 p.m. (Postponed)  
November 2, 2022, 6:00 p.m.

Board of Supervisors: December 13, 2022, 5:00 p.m.

**FACTORS FAVORABLE**

1. Staff finds the proposal consistent with the 2045 Comprehensive Plan.
2. Staff finds the proposal will not negatively impact surrounding development.
3. Impacts: See Impact Analysis on Pages 4-6.

**FACTORS UNFAVORABLE**

1. Should the Board of Supervisors deny the applicant's Agricultural and Forestal District (AFD) withdrawal request, then this use would not be consistent with the terms of the AFD.
2. Impacts: See Impact Analysis on Pages 4-6.

**SUMMARY STAFF RECOMMENDATION**

Should the Board of Supervisors approve Case No. AFD-22-0017, staff recommends that the Board of Supervisors approve the proposed Special Use Permit (SUP) subject to the proposed conditions.

**PLANNING COMMISSION RECOMMENDATION**

At its November 2, 2022, meeting, the Planning Commission voted 5-2 to recommend approval of the SUP request to the Board of Supervisors with amendments to Condition Nos. 5b and 6 to address using native shrubs and trees within the vegetated buffer and native grasses for site groundcover. The Planning Commission also approved, by a vote of 5-2, a resolution to find the proposal consistent with the Comprehensive Plan in accordance with Section 15.2-2232 of the Code of Virginia (Attachment No. 6).

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**SPECIAL USE PERMIT-22-0015. 7294 and 7296 Richmond Road Pivot Energy Solar Project**  
**Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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**PROPOSED CHANGES MADE SINCE THE PLANNING COMMISSION MEETING**

At its November 2, 2022, meeting, the Planning Commission recommended amending Condition No. 5b to address using native shrubs and trees within the vegetated buffer. Furthermore, staff has corrected a typo in Condition No. 5b so that it correctly references Condition No. 5c. The complete revised language of Condition No. 5b states:

“In areas of the Perimeter Buffer that are not completely comprised of mature forest, as determined by the Planning Director or designee, supplementation with native evergreen shrubs and trees shall be required in accordance with Condition No. 5c.”

The Planning Commission also recommended amending Condition No. 6 to address the use of native grasses as site groundcover in addition to native pollinators. Accordingly, Condition No. 6 has been revised to state:

“Disturbed areas requiring reseeding shall be seeded with a seed mix for site groundcover that includes native pollinators and native grasses which bloom in spring and/or summer as identified by the Virginia Department of Conservation and Recreation’s Virginia Solar Site Native Plant Finder. A landscaping plan showing the areas being reseeded, including a detailed list of plant species included in the seed mix, shall be reviewed and approved by the Planning Director or designee prior to final site plan approval.”

Finally, Condition No. 28 has been revised to be consistent with previous solar farm applications. This revision clarifies the public improvements which may be supported by the payments. No changes were made to the payment amount. The revised language of Condition No. 28 states:

“Pursuant to Code of Virginia § 15.2-2288.8(B), a payment of \$1,400 per megawatt, as measured in alternating current (AC) generation capacity of the nameplate capacity of the Facility, shall be made to the County on July 1 of each year following the Facility being operational to support construction of public improvements (including but not limited to transportation infrastructure, facilities for provision of public safety, etc.), the need for which is not generated solely by the Facility, but are reasonably related to it.”

**PROJECT DESCRIPTION**

Mr. Buzz Becker, Pivot Energy, Inc., has applied for an SUP for a 4.75-megawatt alternate current (MWac) solar farm located at 7294 and 7296 Richmond Road. If approved, the proposed solar farm will be developed on approximately 64.9 acres of the total 129.19 acres of the properties and would connect to existing overhead utility lines on-site.

In general, this property has limited visibility from surrounding properties and roadways given the topography of the railroad tracks and existing vegetation. Much of the properties boundaries are located within Resource Protection Areas (RPAs). The master plan shows a proposed 50-foot-wide perimeter landscape buffer that will be comprised of evergreen trees, ornamental deciduous trees, and deciduous shade trees to provide screening. The perimeter buffer is increased to 75 feet along Richmond Road and the boundaries with properties to the north and south. The applicant has indicated that disturbed areas on-site will be reseeded with groundcover seed mixes containing native pollinator friendly plants.

The applicant has stated that the lease with the property owners would be for 21 years with an option to extend for an additional 10 years. Following the end of the use of the solar farm, the facility would be decommissioned, and the site would be restored.

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7294 Richmond Road is currently within the Hill Pleasant Farm AFD. During the 2022 AFD renewal process, the property owners submitted a request to withdraw 42 acres of the property from the Hill Pleasant Farm AFD to allow the development of the solar farm. Because that AFD withdrawal request occurred within the District renewal timeframe, that withdrawal does not need to be acted upon by the Board of Supervisors. Following the September 7, 2022, Planning Commission Meeting, the applicant submitted a request, Case No. AFD-22-0017, to withdraw 10 additional acres from the AFD to accommodate additional stormwater management facilities.

**PLANNING AND ZONING HISTORY**

- 7294 Richmond Road has been included in the Hill Pleasant Farm AFD since the creation of the AFD. Forty-two acres were withdrawn from the AFD during the 2022 AFD renewal process.

**SURROUNDING ZONING AND DEVELOPMENT**

- Properties across Richmond Road are zoned B-1, General Business, LB, Limited Business, R-2, General Residential, and PL, Public Lands. On the 2045 Comprehensive Plan Land Use Map, the properties are designated Low Density Residential, Community Commercial and Federal, State, or County Land.
- The properties to the north are zoned A-1, General Agricultural and are designated Economic Opportunity (EO) and Rural Lands on the 2045 Comprehensive Plan Land Use Map.
- The properties to the south are zoned A-1, General Agricultural and are designated EO on the 2045 Comprehensive Plan Land Use Map.

- The properties to the east are zoned A-1, General Agricultural and are designated Rural Lands on the 2045 Comprehensive Plan Land Use Map.

**FINDING OF CONSISTENCY**

Section 15.2-2232 of the Code of Virginia requires that unless a utility facility is shown on the adopted Comprehensive Plan or other master plan for the County, the local planning commission and a governing body shall review the facility to determine whether the location, character, and extent of the project is substantial in accords with the adopted Comprehensive Plan. The proposed solar electrical generation facility is not currently shown on the County's adopted Comprehensive Plan and, therefore, requires this additional level of review by the Planning Commission and the Board of Supervisors.

At its November 2, 2022, meeting, the Planning Commission approved, by a vote of 5-2, a resolution to find the proposal consistent with the Comprehensive Plan in accordance with Section 15.2-2232 of the Code of Virginia.

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**SPECIAL USE PERMIT-22-0015. 7294 and 7296 Richmond Road Pivot Energy Solar Project**  
**Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

| <b>Impacts/Potentially Unfavorable Conditions</b> | <b>Status</b><br><i>(No Mitigation Required/Mitigated/Not Fully Mitigated)</i> | <b>Considerations/Proposed Mitigation of Potentially Unfavorable Conditions</b>  |
|---|--|--|
| <u>Public Transportation: Vehicular</u>           | <u>Mitigated</u>   | <ul style="list-style-type: none"> <li>- The new solar farm would not exceed 100 peak hour trips.</li> <li>- Access to the properties is proposed to utilize an easement along the railroad which connects to the north of the properties. The easement connects to Peach Street which connects to Richmond Road via Peninsula Street and Norge Lane.</li> <li>- Condition Nos. 12 and 13 address the potential damage to the existing roadways and limiting the number of employee vehicles parking on-site during construction.</li> </ul> |
| <u>Public Transportation: Bicycle/Pedestrian</u>  | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- Bicycle and pedestrian accommodations are not required for this proposal.</li> </ul>  |
| <u>Public Safety</u>                              | <u>Mitigated</u>   | <ul style="list-style-type: none"> <li>- Fire Station 1 on Forge Road serves this area of the County, approximately 3.7 miles from the proposed solar farm.</li> <li>- Staff finds this project does not generate impacts that require mitigation to the County's Fire Department facilities or services.</li> <li>- Condition No. 10 requires the Facility operator to prepare and maintain an Emergency Management Plan to address situations that may require response from public safety personnel.</li> </ul>                           |
| <u>Public Schools</u>                             | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- N/A since no residential dwelling units are proposed.</li> </ul>  |
| <u>Public Parks and Recreation</u>                | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- N/A since no residential dwelling units are proposed.</li> </ul>  |
| <u>Public Libraries and Cultural Centers</u>      | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- Staff finds this project does not generate impacts that require mitigation.</li> </ul>  |
| <u>Groundwater and Drinking Water Resources</u>   | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- The property does not receive public water and sewer. The solar farm would not need water or sewer services.</li> </ul>   |

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**SPECIAL USE PERMIT-22-0015. 7294 and 7296 Richmond Road Pivot Energy Solar Project**  
**Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

| <b>Impacts/Potentially Unfavorable Conditions</b>  | <b>Status</b><br><i>(No Mitigation<br/>Required/Mitigated/Not<br/>Fully Mitigated)</i> | <b>Considerations/Proposed Mitigation of Potentially Unfavorable Conditions</b>  |
|--|--|--|
| <u>Watersheds, Streams, and Reservoirs</u><br>Project is located in the Skimino Creek Watershed. | <u>Mitigated</u>   | <ul style="list-style-type: none"> <li>- The Master Plan shows a conceptual layout for stormwater management facilities.</li> <li>- This project will need to demonstrate full compliance with environmental regulations at the development plan stage, but no other specific environmental impacts have been identified for mitigation. Condition No. 15 requires that stormwater management facilities be addressed in the decommissioning plan.</li> <li>- Condition Nos. 4 and 14 address a nutrient management plan and spill prevention control and countermeasures plan, respectively.</li> <li>- The Stormwater and Resource Protection Division provided additional SUP Conditions (Condition Nos. 18-27) to address discing of the subsoil, impacts to the RPA, stormwater facility design and computations, off-site nutrient credits, special stormwater criteria, channel protection, flood protection, stream channel restoration, and erosion and control inspections.</li> </ul> |
| <u>Cultural/Historic</u>   | <u>Mitigated</u>   | <ul style="list-style-type: none"> <li>- Per Section 24-145 of the Zoning Ordinance, an archaeological study and natural resource inventory will be required at the development plan stage.</li> </ul>   |
| <u>Nearby and Surrounding Properties</u>   | <u>Mitigated</u>   | <ul style="list-style-type: none"> <li>- Condition No. 5 requires a vegetated buffer to screen the development from adjacent properties.</li> <li>- Condition No. 7 prohibits lighting from crossing property lines as well as limiting the height of light poles. The project will also need to demonstrate full compliance with lighting and landscaping regulations in the Zoning Ordinance at the development plan stage.</li> <li>- Condition Nos. 16 and 17 also limit the height of the panels and address use of materials to prevent glare.</li> <li>- Condition No. 11 requires a construction management and mitigation plan which is intended in part to address impacts to nearby properties during the construction stage.</li> <li>- Condition No. 9 limits the height and the color of the perimeter fence.</li> </ul>   |

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**SPECIAL USE PERMIT-22-0015. 7294 and 7296 Richmond Road Pivot Energy Solar Project**  
**Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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| <b>Impacts/Potentially Unfavorable Conditions</b>  | <b>Status</b><br><i>(No Mitigation<br/>Required/Mitigated/Not<br/>Fully Mitigated)</i> | <b>Considerations/Proposed Mitigation of Potentially Unfavorable Conditions</b>  |
|--|--|--|
| <u>Community Character</u><br>The project is located along the Richmond Road Community Character Corridor (CCC). Buffering along a CCC is required to be an average width of 50 feet. The project is also within the Norge Community Character Area (CCA). | <u>Mitigated</u>   | - Condition No. 5 requires a 75-foot vegetated buffer along Richmond Road to mitigate visual impacts to the CCC and CCA.           |
| <u>Covenants and Restrictions</u>  | <u>No Mitigation Required</u>  | - The applicant has verified that he is not aware of any covenants or restrictions on the property that prohibit the proposed use. |

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**SPECIAL USE PERMIT-22-0015. 7294 and 7296 Richmond Road Pivot Energy Solar Project  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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**2045 COMPREHENSIVE PLAN**

The site is designated EO-Mooretown Road/Hill Pleasant Farm Area on the 2045 Comprehensive Plan Land Use Map. Lands designated EO are intended primarily for economic development, increased non-residential tax base, and the creation of jobs. The lands should be at strategic locations in the County relative to transportation, utilities infrastructure, and adjacent uses, and the lands should only be developed consistent with comprehensive area/corridor master plans for the EO area.

For the Mooretown Road/Hill Pleasant Farm Area, the primary suggested uses include industrial, light industrial, and office uses. Development in this area should refer to the Commercial/Industrial Development standards which state that uses should be located adjacent to compatible or similar uses, have a limited impact on adjacent residential areas, be located where public services, utilities and facilities are adequate to support the use, and protection of environmentally sensitive resources, watersheds, historic and archaeological resources, designated CCCs and CCAs, and other sensitive resources by utilizing design features, including building and site design, buffers, and screening to protect the resource.

The Comprehensive Plan does not specifically identify solar farms as a compatible use; however, given that this proposal includes a lease with the property owners, this use may serve as a transitional land use until market forces determine a more intense economic use. The site is also located adjacent to an approved solar farm development. With the proposed conditions, the development is anticipated to have a limited impact on adjacent residential properties. The development is not anticipated to have an impact on public services. Proposed conditions are intended to mitigate impacts to sensitive resources.

The site is located along a CCC. Buffering along a CCC is required to be an average width of 50 feet. A portion of the site is also located within the Norge CCA. For areas within the Norge CCA that are designated EO, protecting the viewshed around the central core of the CCA and along the railroad should be a primary consideration. With the proposed master plan and conditions, the required buffering is anticipated to mitigate any visual impacts to the Norge CCA.

With the proposed conditions, staff finds the proposal consistent with the 2045 Comprehensive Plan.

**STAFF RECOMMENDATION**

Should the Board of Supervisors approve Case No. AFD-22-0017, staff recommends that the Board of Supervisors approve the proposed SUP subject to the proposed conditions.

JR/md  
SUP22-15RichRdSolr

**Attachments:**

1. Resolution
2. Location Map
3. Applicant Narrative
4. Master Plan
5. Proposed Landscape Buffer
6. Adopted Resolution for Consistency with Section 15.2-2232
7. Unapproved Minutes of the November 2, 2022, Planning Commission Meeting

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## **RESOLUTION**

**CASE NO. SUP-22-0015. 7294 AND 7296 RICHMOND ROAD**

### **PIVOT ENERGY SOLAR PROJECT**

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

WHEREAS, Mr. Buzz Becker of Pivot Energy, Inc., on behalf of D & S Chong, LLC, and Mr. Dae Ik and Ms. Susan Chong, the owners of property located at 7294 and 7296 Richmond Road, respectively, and further identified as James City County Tax Map Parcel Nos. 2410100004 and 2320100025, respectively (collectively, the “Properties”), has applied for an SUP to allow for the construction of a solar electrical generation facility on the Properties as shown on a plan titled “Pivot Energy VA I & II Prepared for Pivot Energy VA, LLC” and sealed October 24, 2022; and

WHEREAS, the Planning Commission, following its public hearing on November 2, 2022, recommended approval of Case No. SUP-22-0015 by a vote of 5-2; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. SUP-22-0015; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with good zoning practices and the 2045 Comprehensive Plan Land Use Map designation for the Properties.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after consideration of the factors in Section 24-9 of the James City County Code, does hereby approve the issuance of Case No. SUP-22-0015 as described herein with the following conditions:

1. Master Plan. This SUP shall be valid for the construction of a photovoltaic solar electrical generation facility (the “Facility”), electrical substations with a capacity of 5,000-kilovolt amperes or more serving the Facility, and electrical transmission lines capable of transmitting 69 kilovolts or more serving the Facility (all together, the “Project”) on property located at 7294 and 7296 Richmond Road and further identified as James City County Real Estate Tax Map Nos. 2410100004 and 2320100025, respectively (collectively, the “Properties”). The Properties shall be developed and the Project constructed substantially in accordance with the Master Plan titled “Pivot Energy VA I & II Prepared for Pivot Energy VA, LLC” prepared by Kimley-Horn, and sealed October 24, 2022 (the “Master Plan”), with any deviations considered per Section 24-23(a)(2) of the James City County Code, as amended (“County Code”).
2. Boundary Line Extinguishment. Prior to final approval of any site plan, a subdivision plat that extinguishes the lot lines separating the Properties shall be recorded.

3. *Vehicular Access.* Vehicular access to and from the Facility during construction and decommissioning shall only be from Peach Street as shown on the Master Plan. Vehicular access to and from the Facility during regular operations and maintenance activities, except for oversized vehicles as defined in Section 13-36.1(b) of the County Code, may access the site from Richmond Road. No vehicles associated with the construction, operation, maintenance or decommissioning of the Facility shall be permitted to park or queue along Richmond Road.
4. *Nutrient Management Plan.* The Facility operator shall provide a nutrient management plan (NMP) prepared by a certified nutrient management planner for all of the area within the defined limits of work (disturbance) for the Properties. The purpose of the NMP is to provide for long-term establishment and maintenance of turf grass, pasture, rangeland, or other similar type vegetative cover which preserve the long-term soil health for potential future farming purposes. The NMP shall have a component which specifically identifies and maintain and protects designated Prime Farmland soil mapping units consistent with the Soil Survey of James City County Counties and the City of Williamsburg Virginia (April 1985) and the County's Comprehensive Plan. The NMP shall be submitted for review and approval by the County's Director of Stormwater and Resource Protection prior to approval of any final site plan for the Facility. Upon approval of the NMP, the Facility operator shall be responsible for ensuring that any nutrient applied in the area within the defined limits of work is in strict accordance with the NMP.
5. *Vegetated Buffer.* Prior to final approval of any site plan, the Planning Director or designee shall review and approve a landscape plan for the Project. The landscape plan shall provide a 50-foot landscaped buffer (the "Perimeter Buffer") along the perimeter of the Project site. The Perimeter Buffer shall be increased to 75 feet in the following locations: (i) along approximately 1,154 feet of the western perimeter that faces Richmond Road, (ii) along approximately 645 feet of the northern perimeter, and (iii) along approximately 2,862 feet of the southern perimeter to screen the Project as shown on the Master Plan. The Perimeter Buffer shall be shown on the site plan. The Perimeter Buffer shall be provided by one of the three treatment options listed below:
  - a. In areas of the Perimeter Buffer that are currently comprised of mature forest, as determined by the Planning Director or designee, the buffer shall be left undisturbed in its natural state.
  - b. In areas of the Perimeter Buffer that are not completely comprised of mature forest, as determined by the Planning Director or designee, supplementation with native evergreen shrubs and trees shall be required in accordance with Condition No. 5c.
  - c. In areas of the Perimeter Buffer where little or no vegetation exists, as determined by the Planning Director or designee, the buffer shall be landscaped to the provisions of Section 24-96 of the County Code for General Landscape Areas except that the required evergreen tree and shrub mixture shall be increased from 35% to at least 50%.

6. *Native Pollinators.* Disturbed areas requiring reseeding shall be seeded with a seed mix for site groundcover that includes native pollinators and native grasses which bloom in spring and/or summer as identified by the Virginia Department of Conservation and Recreation's Virginia Solar Site Native Plant Finder. A landscaping plan showing the areas being reseeded, including a detailed list of plant species included in the seed mix, shall be reviewed and approved by the Planning Director or designee prior to final site plan approval.
7. *Lighting.* If any lighting of the Project is proposed, the Planning Director or designee shall review and approve a lighting plan prior to final site plan approval. Any exterior site or building lighting on the Properties shall be shielded and directed downward. No glare, defined as 0.1-foot-candle or higher, shall extend outside the boundaries of the Properties. Lights shall be operated by a motion detector or be able to be turned on as needed by the Facility operator and shall not be routinely illuminated at night. No light poles shall exceed a height of 16 feet above finished grade unless otherwise approved in writing by the Planning Director prior to final site plan approval.
8. *Signage.* Unless otherwise exempt by Section 24-74 of the County Code, no outdoor signage related to the Project shall be permitted on the Properties.
9. *Fencing.* Any fence on the Properties shall be black or other neutral color and shall not exceed a height of 8 feet above finished grade and not consist of barbed wire. Prior to final approval of any site plan, the Planning Director or designee shall review and approve a detail of any proposed fencing on the Properties for consistency with this condition.
10. *Emergency Management Plan.* The Facility operator shall prepare and maintain an Emergency Management Plan (EMP) to address situations that may require response from James City County public safety personnel, including, without limitation, fire safety and emergency response personnel. The EMP shall:
  - Be developed in conjunction with and approved by the County Fire Chief and County Police Chief or their designees prior to final approval of any site plan.
  - Provide a mutually agreed-upon schedule for the Facility operator to provide information sessions and training for James City County public safety personnel relative to possible emergency response situations at the Facility.
  - Provide pertinent contact numbers for the Facility operator emergency personnel.
  - Provide that all emergency contact information will be posted on access gates.
11. *Construction Management and Mitigation Plan.* Prior to final approval of any site plan, the Facility operator shall provide a Construction Management and Mitigation Plan (CMMP) for review and approval of the Planning Director or designee. The CMMP shall include those items listed below:
  - a. *Construction Management:*
    - Designated parking areas.
    - All piling driving activity on the Properties shall be limited to the hours of 8 a.m. to 6 p.m., Monday through Friday.
    - Other construction activities, including clearing and grading of the Properties shall be limited to the hours of 7 a.m. to 7 p.m., Monday through Friday.

- Construction delivery traffic to the Properties shall not be allowed during pick-up/drop-off times for surrounding schools.
  - Appropriate methods for the storage, transportation, and disposal of any waste and/or hazardous materials.
- b. Construction Mitigation:
- Dust mitigation, such as water trucks, mulch, or similar methods.
  - Smoke and burn mitigation, such as containments or similar methods.
12. Construction Traffic Mitigation Plan. A Construction Traffic Mitigation Plan (CTMP) shall be submitted to the Virginia Department of Transportation (VDOT) and the Planning Director, or designee, for review and approval prior to the issuance of a land disturbing permit for the Facility. The CTMP shall identify all existing conditions along Peach Street, Peninsula Street, and Norge Lane, provide a plan to address all necessary repairs required as a result of damage from construction traffic, and provide a timeline for completion of repairs. All road repairs as identified by the approved CTMP shall be completed within six months of the Facility becoming operational.
13. Off-Site Parking. Prior to issuance of a land disturbing permit, an Off-Site Parking Plan (OPP) shall be submitted to the Planning Director, or designee, for review and approval. The off-site parking area shall be used by construction workers who shall be transported to the Properties via a shuttle van and/or bus. The OPP shall conform to all Zoning Ordinance requirements and shall identify elements such as, but not limited to, the number of off-site parking spaces provided and the location of the off-site parking area. In order to reduce the amount of construction-related traffic along Peach Street and Peninsula Street and to ensure that construction workers are parking their vehicles at the off-site parking area, no more than 20 vehicles may be parked on the construction site at any time except for trucks, as defined by the Zoning Ordinance, and delivery vehicles. No on-street parking for the Project shall be allowed. The OPP shall identify the need for additional Erosion and Sediment Control measures and Stormwater measures generated by the off-site parking area and those needs be approved through an erosion and sediment control plan prior to issuance of land disturbance permit for the Facility.
14. Spill Prevention Control and Countermeasure Plan. Prior to approval of any site plan, the Facility operator shall submit a Spill Prevention Control and Countermeasure (SPCC) plan for the Project to the County Director of Stormwater and Resource Protection or designee for review and approval. The SPCC plan shall outline measures and procedures necessary for the operation of the Facility until decommissioning.
15. Decommissioning and Restoration Plan and Agreement. Prior to final approval of any site plan, a Decommissioning and Restoration Plan (DRP) shall be submitted to the Planning Director or designee for review and approval. The DRP shall outline the required steps for removal of above and below-ground Facility components, disposal and/or recycling of wastes and materials, soil stabilization, and the revegetation and restoration of native habitat of the Properties. At the time of decommissioning of the Facility, the stormwater facilities on the Properties must be evaluated for continued need and the final DRP must include the close-out or remediation of stormwater facilities. The DRP shall be enforceable by a written Decommissioning Agreement in accordance with and subject to the terms of Virginia Code § 15.2-2241.2(B). To ensure sufficient funds are available to the County to conduct the DRP, a surety in an amount sufficient for decommissioning the Facility and remediating the Properties shall be posted with James City County

in a form acceptable to the County Attorney. The Decommissioning Agreement shall be executed prior to approval of a site plan for the Facility.

16. Height Limitation. The maximum height of all structures in the Facility, including the photovoltaic solar panel mounts, shall not exceed 16 feet above finished grade.
17. Glare. All photovoltaic solar panels on the Property shall be of made of or be coated with anti-reflective materials to prevent glare.
18. Discing. After areas to be topsoiled have been brought to grade, and immediately prior to dumping and spreading the topsoil, the subsoil shall be loosened by discing to a depth of at least two inches to ensure bonding of the topsoil and subsoil. A geotechnical report showing completion of discing for the Project shall be submitted to the Stormwater and Resource Protection Director or designee at the time of submitting a Stormwater Final As-Built application.
19. Resource Protection Area. Impacts to the Resource Protection Area shall be limited to required stormwater management facility outfalls. There shall be no clearing of trees to allow for sunlight access to panel arrays.
20. Stormwater Management Facility Design. All stormwater management facilities shall meet or exceed the criteria of the appropriate Virginia Department of Environmental Quality (DEQ) BMP Clearinghouse design standard.
21. Best Management Practice Facility Access Roads. Best Management Practice (BMP) facility access roads shall be a 12-foot wide paved or gravel surface with sufficient means for ingress and egress as determined by the Planning Director or designee. The use of grass pavers shall be prohibited. The BMP facility access roads shall be shown on the site plan for the Facility and approved by the Planning Director prior to final site plan approval.
22. Panel Cover. Solar panels are to be considered unconnected impervious areas when performing post-development water quantity calculations using the hydrologic methods specified in the Virginia Stormwater Management Program Regulations. Solar panels are to be considered impervious areas when performing post-development water quality calculations using the Virginia Runoff Reduction Method. The applicant may propose and use alternative methods, provided it is demonstrated to the satisfaction of the Stormwater and Resource Protection Director or designee, in their sole discretion, that such alternative methods provide equivalent or improved water quantity and/or water quality performance measures and remain consistent with DEQ guidance, regulations, and standards as specified by DEQ.
23. Virginia Runoff Reduction Method. The Forested Open Space (FOS) land use category may be used to account for a maximum of 25% of the required water quality treatment associated with the Project. The purchase of off-site nutrient credits toward needed water quality treatment associated with the Project will not be allowed. FOS shall meet the criteria set forth in the DEQ BMP Clearinghouse Specification No. 2, "Sheet Flow to A Vegetated Filter Strip or Conserved Open Space." FOS area shall treat sheet flow from the development. FOS which is disconnected from any drainage patterns of the development shall not be used to account for water quality treatment associated with the Project.

24. Special Stormwater Criteria. Special Stormwater Criteria (SSC) measures shall be required for the Project. Specific SSC measures may be deemed unsuitable for the type of development as determined by the Stormwater and Resource Protection Director or designee.
25. Channel Protection. The stormwater management design shall provide channel protection for the 1-year, 24-hour storm event per energy balance, as defined in 9 VAC 25-870-66(B)(3)(a), for all outfall and discharge locations for the Project.
26. Flood Protection. The stormwater management design shall provide flood protection through attenuation of the 10-year, 24-hour storm event, per 9 VAC 25-870-66(C)(2)(b).
27. Erosion and Sediment Control Inspection.
  - a. The person responsible for carrying out the erosion and sediment control plan on the Properties shall be responsible for monitoring and inspecting the land disturbing activity in accordance with Section 8-6(a) of the County Code. All inspection documentation shall be submitted to the Stormwater and Resource Protection Division for review and approval in accordance with Chapter 8 of the County Code. Prior to the issuance of a land disturbance permit, the Facility operator and any third-party inspector shall conduct a pre-construction meeting with the Stormwater and Resource Protection Division to discuss schedule, submittal requirements, and other necessary items to complete the monitoring and inspections.
  - b. At the County's sole discretion, the County may engage the services of County-contracted inspectors for inspections required by Section 8-6(b) of the County Code, or as deemed appropriate by the County to ensure compliance with applicable codes and Ordinances. The Facility operator shall be financially responsible for the costs of any inspections contracted for by the County for the Facility or the Properties.
28. Public Improvements. Pursuant to Code of Virginia § 15.2-2288.8(B), a payment of \$1,400 per megawatt, as measured in alternating current generation capacity of the nameplate capacity of the Facility, shall be made to the County on July 1 of each year following the Facility being operational to support construction of public improvements (including but not limited to transportation infrastructure, facilities for provision of public safety, etc.), the need for which is not generated solely by the Facility, but are reasonably related to it.
29. Solar Panel Details. As part of the site plan review, the applicant shall provide documentation that the selected panels are non-regulated waste under Resource Conservation Recovery Act classification. Furthermore, the applicant shall provide documentation that the selected panels are "Tier 1" modules as established by the most recent "PV Module Tier 1 List" issued by BloombergNEF or a similar third-party analysis widely accepted in the solar industry.
30. Commencement. The Facility shall be operational within 48 months from the date of adoption of this resolution authorizing the SUP, or this SUP shall automatically be void. The Facility operator shall submit a signed letter to the Planning Director prior to 48 months from the issuance of this SUP to confirm the operational status of the Facility.



31. Severance Clause. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

BE IT FURTHER RESOLVED by the Board of Supervisors of James City County, Virginia, that SUP-22-0015 authorized herein shall not be effective and no site plan may be approved until the area shown on the Master Plan for the Project is withdrawn from the Hill Pleasant Farm Agricultural and Forestal District enacted by Ordinance No. 165A-14 adopted on September 13, 2022.

\_\_\_\_\_  
John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

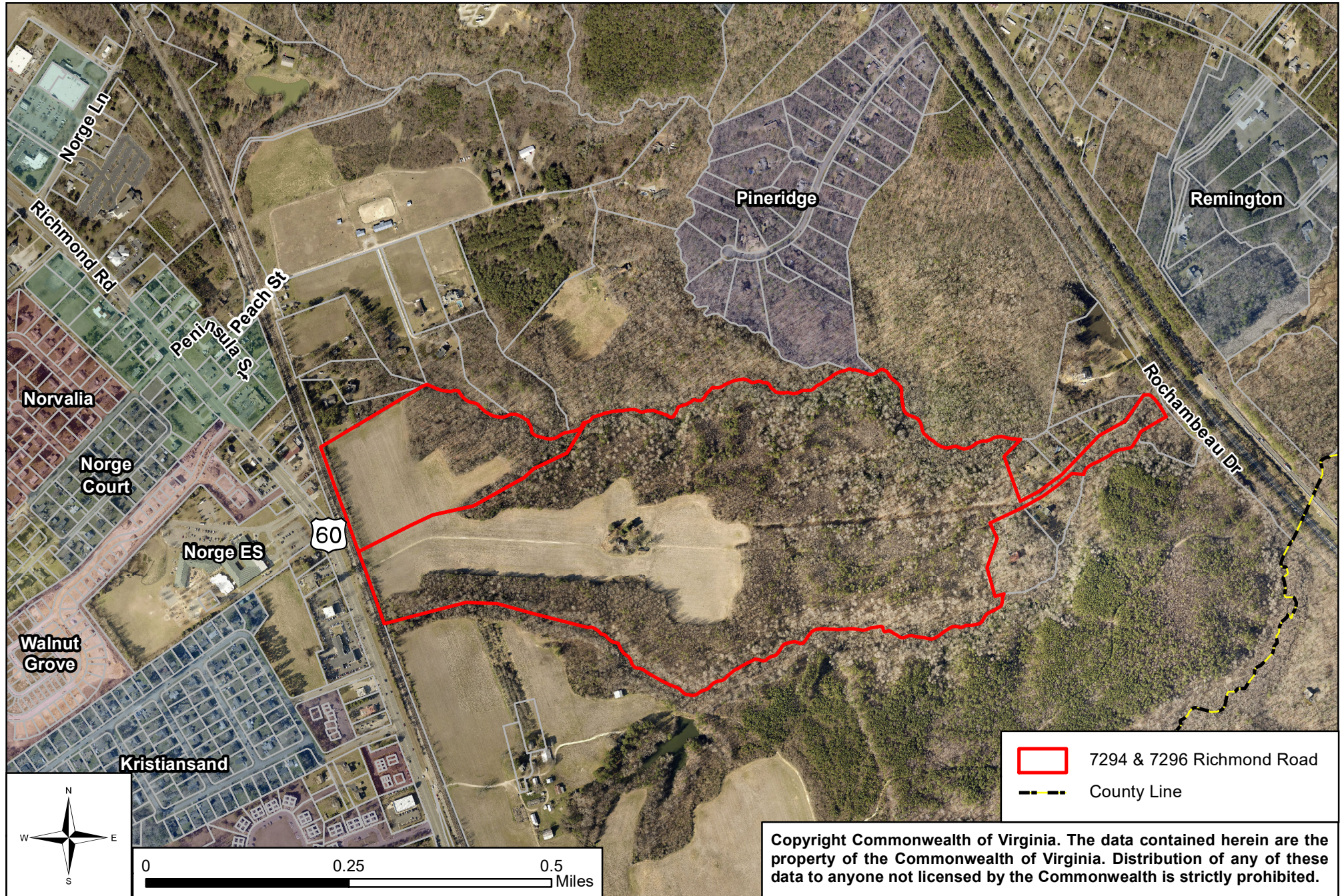
|                           |           | VOTES      |            |                |               |
|---------------------------|-----------|------------|------------|----------------|---------------|
|                           |           | <u>AYE</u> | <u>NAY</u> | <u>ABSTAIN</u> | <u>ABSENT</u> |
| _____                     | ICENHOUR  | _____      | _____      | _____          | _____         |
| Teresa J. Saeed           | HIPPLE    | _____      | _____      | _____          | _____         |
| Deputy Clerk to the Board | LARSON    | _____      | _____      | _____          | _____         |
|                           | SADLER    | _____      | _____      | _____          | _____         |
|                           | MCGLENNON | _____      | _____      | _____          | _____         |

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2022.

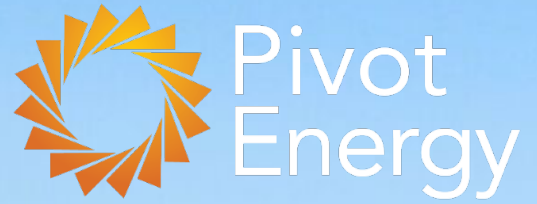
SUP22-15RichRdSolr-res



# JCC SUP-22-0015, 7294 & 7296 Richmond Rd. Pivot Energy Solar Project







# Special Use Permit Application for: Pivot Energy Virginia, Pivot Energy Virginia 2

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Pivot Energy

1750 15th St., Ste. 400  
Denver, CO 80202

Buzz Becker - (918) 346-9542 - [bbecker@pivotenergy.net](mailto:bbecker@pivotenergy.net)

June 20, 2022

James City County  
Paul Holt, Director of Community Development  
101 Mounts Bay Road  
Building A  
Williamsburg, VA 23187

Dear Mr. Holt,

Please let this letter serve as the introduction for Pivot Energy's SUP application for our proposed multi-phase solar project at PINs 2320100025 and 2410100004 respectively. In the following community impact statement, you will see a thoughtfully designed project that has already undergone significant site diligence. This proposed project offers meaningful value to the landowner and county alike while ensuring thorough compliance with the comprehensive plan.

This submission formally requests waivers to the following submittal requirement sections as seen in Zoning Ordinance Section 24-23.a.1:

- (a) **Traffic Impact Analysis** – As seen in previously submitted Trip Generation Memo, only 56 peak hour trips to and from the site are expected during construction of the facility.
- (b) **Water and Sewer Impact Study** – No additional use of county water or sewer from proposed development.
- (c) Environmental information is included in the SUP application—***no waiver requested***
- (d) **Public Facilities Report** – The proposed solar array creates no impact on the county's locally-financed public facilities and requires no services from county resources.
- (e) **Additional Public Facilities** – No new public facilities would be required because of the proposed solar array.
- (f) **Phase 1A Archaeological Study** – Properties are not in an ultra or highly-sensitive area as determined in the James City County archaeological assessment.
- (g) Preliminary Natural Resource Inventory is included in the SUP application—***no waiver requested***
- (h) **Fiscal Impact Analysis** – No residential units proposed.
- (i) **Parks and Recreation Information** – No impact to county parks and recreation system.

Sincerely,

Buzz Becker

**Buzz Becker** | Director, Project Development  
bbecker@pivotenergy.net  
918.346.9542

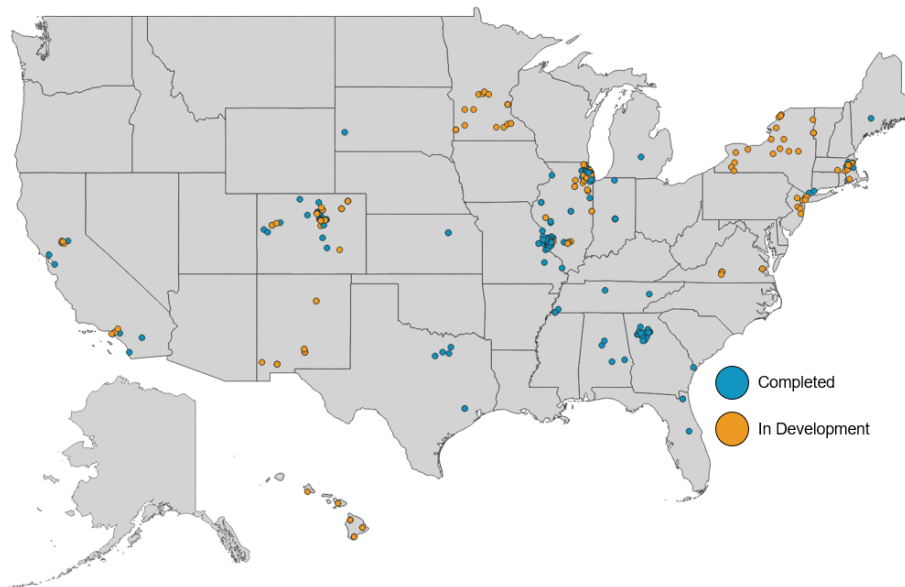
## Executive Summary

Pivot Energy is pleased to apply for a Special Use Permit (SUP) from James City County for Pivot Energy Virginia/Pivot Energy Virginia 2 (PEVA/PEVA2) (the Project). This two-phase Project represents a small, solar photovoltaic (PV) facility of one (1) megawatt (MW) and three-and-three-quarters (3.75) megawatts in capacity as measured in alternating-current (AC). The proposed Project would be at PINs 2320100025 and 2410100004 respectively, east of Richmond Road and approximately 1 mile south of James City County Library. The Project will be sited on approximately 31 acres (the Site) of the approximately 129-acre host property (the Property) located in the General Agricultural (A1) zoning district. The Project has been designed in full compliance with James City County code.

This project will positively impact the local community by employing local labor, decarbonizing the local grid, and providing increased resources to the county over the life of the project. Pivot's lead developer on this project, Buzz Becker, is based in Virginia and has previous experience permitting similar solar projects in eastern Virginia. With a strong development and customer relationship background in small utility, commercial, and community solar projects, Pivot continues to expand its offerings throughout the solar industry by working with low-income communities, residential renters and homeowners, agricultural customers, local businesses, & local government organizations.

### Prior Solar Development Success:

#### Recently Completed and Ongoing Projects



## Development Experience, Including Solar Gardens

### Background on Pivot Energy

Pivot Energy is a turnkey solar developer of commercial and industrial solar projects founded in 2009 and headquartered in Denver, Colorado. Pivot has become a national leader in commercial and industrial solar projects, with hundreds of successful projects completed for many small, mid-sized and Fortune 500 companies, as well as for nonprofit, government, and military organizations.

Pivot Energy has built or developed the most community solar projects of any developer in Colorado and has expanded to build projects nationwide over the last several years. Our development team works in conjunction with our EPC team to plan a project for success from the beginning and execute in a timely manner. Pivot will provide turnkey development of the community solar garden, from initial site planning and engineering to system design, construction, commissioning, and customer subscriptions.

Pivot Energy is a certified B Corps, using a triple bottom line approach to measure our progress on more than just a financial basis. Our goal is to achieve balance between three, sometimes opposing, ends of People, Planet, and Profit. B Corps, or Benefit Corporations, are redefining success in business to include benefits to workers, society, and the environment. We aim to balance these measures in all aspects of our projects to bring widespread benefit to multiple areas of the community.



### Experience with Developing and Operating Similar Solar Facilities

Pivot Energy has invested heavily in both the Colorado community solar market as well as community and commercial solar nationally. Our company also has community solar projects either under construction or in development in states including Minnesota, Illinois, New York, New Mexico, Virginia, and more totaling well over 150MW.

In Colorado Pivot has become the largest community solar developer having built or in process of developing more than 70 MW of community solar. Pivot Energy is also one of the only developers to never abandon a community solar project with a 100% success rate post-bid. As noted in the project examples, our community solar projects range in size and type from small urban rooftops to medium and large-scale ground mounts. Our team's experience is deeply rooted in Colorado development having built many of the early projects at previous companies and then coming together as a team of industry experts to accelerate community solar development, construction, and customer adoption throughout the state and country.

Pivot Energy's SunCentral team has also become the largest and most all-encompassing subscription manager in Colorado with thousands of residential customers and serving more than 16MW of low-income customer capacity throughout Colorado. We are proud that our SunCentral management platform is so widely used by the market – especially in Colorado. Our team regularly communicates with MPEI to not only manage customers within the market but also look for ways to improve how utilities and developers can communicate and operate to continuously provide better experiences to the end customer and bring projects to successful completion.

## Pivot Energy Acquisition by ECP

As of June 1, 2021 Pivot Energy is wholly owned by Energy Capital Partners (ECP)<sup>1</sup>. Founded in 2005, ECP is a leading investor across energy transition, electrification and decarbonization infrastructure assets, including power generation, renewables and storage solutions, environmental infrastructure and efficiency & reliability assets facilitating the energy transition. The ECP team, comprised of 53 people with 500 years of collective industry experience, deep expertise and extensive relationships, has consummated more than 60 transactions over the last 10 years, representing more than \$45 billion of enterprise value.



More information on the acquisition available at: <https://www.prnewswire.com/news-releases/ecp-announces-acquisition-of-pivot-energy-301303505.html>

ECP has extensive experience in energy infrastructure with portfolio companies including Sunnova and Calpine. The investment in Pivot Energy by ECP allows for Pivot to not only develop solar assets and manage customers through our SunCentral platform but to maintain ownership of the assets through their full life. Additionally, Pivot Energy is a part of ECP's continued commitment to Environmental, Social, and Governance (ESG) goals and their expansion into renewable energy. Pivot Energy is ECP's first certified B Corporation and, as noted in their 2021 ESG Report highlights ECP's "ability to source attractive investments that have positive benefits from both a social justice and environmental standpoint."<sup>2</sup>

More information on ECP's ESG goals available at: [https://www.ecpgp.com/system/uploads/fae/file/asset/136/ECP\\_ESG\\_Report\\_2021\\_Web.pdf](https://www.ecpgp.com/system/uploads/fae/file/asset/136/ECP_ESG_Report_2021_Web.pdf)

In addition to the funding from ECP, Pivot Energy is nearing closing with both our tax equity partner and back leverage partner for our 2023 project portfolio that this project would be placed into. Pivot Energy is in final negotiations with a single tax equity partner that we have chosen as well as a single back leverage partner which are allowing us to get industry leading terms and cost of capital to make these projects very financially efficient.

<sup>1</sup> PR Newswire – ECP Announces Acquisition of Pivot Energy: <https://www.prnewswire.com/news-releases/ecp-announces-acquisition-of-pivot-energy-301303505.html>

<sup>2</sup> Energy Capital Partners (ECP) – ESG Report: [https://www.ecpgp.com/system/uploads/fae/file/asset/136/ECP\\_ESG\\_Report\\_2021\\_Web.pdf](https://www.ecpgp.com/system/uploads/fae/file/asset/136/ECP_ESG_Report_2021_Web.pdf)



## Selected Customer List

Our customer list includes small, midsize, and Fortune 500 companies, as well as utilities, nonprofits, governments, and military institutions.





## Project Design

Pivot Energy seeks to develop PEVA/PEVA2 with a collective nameplate capacity up to 4.75MWac. The clean energy generated by the solar array will be delivered to Dominion's grid (the Grid) at 34.5kV distribution line along Richmond Road. The Project has been shortlisted by Dominion Energy to acquire the power generated from the Project to serve local customers.

PEVA/PEVA2 will be comprised of approximately 9,528 solar PV panels from Tier 1 manufacturers. Standard additional equipment includes single axis tracker components, DC to AC inverters, medium-voltage transformers and control cabinets, project switchgear, meters, and the attachment facilities to the current local grid.

These panels will be mounted to a single-axis tracking (SAT) system designed to maximize the panel production by following the rising and setting of the sun. This SAT system includes linked horizontal steel support beams known as torque tubes, with a centrally located drive train system. The rows will be 21 feet apart (center-to-center) and the square footage of the panels will account for approximately 29% of the total Project acreage. PEVA/PEVA2's racking system will be affixed to pile-driven metal beams at a depth of approximately 10 feet. At full tilt, the maximum height of any panel will be under sixteen feet (16').

The solar panels in each row will be wired together into a circuit. There will be a DC to AC string inverter for approximately every 3 rows, typically mounted on a piling adjacent to the tracker structure. Once the inverter converts the panels DC power to AC, this power will be transmitted from the string inverters via three-phase direct-buried cables (at a depth of approximately 4.5 feet) and aggregated at the AC collection switch gear before moving to the medium-voltage transformer. This transformer will be mounted on a concrete slab alongside project switchgear and control cabinet. After the transformer steps up the electric power voltage to match the existing Grid, the power is transmitted to the Project's protective recloser and metering equipment before connecting with Dominion's powerlines.

An internal access drive made from all-weather aggregate base will provide access to the array. This Site access will be restricted by a perimeter security fence in compliance with Federal and State regulations. Manual swing gates will be built at the main entrance and other required entry points as determined by maintenance crews and/or safety personnel. National Electric Code Standards for safety and signage will be met or exceeded.

The project will be obscured from view with a vegetative buffer, as seen in the provided Landscaping Plan. The buffering mix includes 50/50 evergreen shrubs and a tree composition of 50% evergreen, 30% shade, and 20% ornamental. The layout and density of the buffer will meet or exceed the standards as outlined in the James City County landscaping ordinance. PEVA/PEVA2 will seek input from county staff and neighboring residents on species selection within our vegetative buffer. To best preserve the existing natural aesthetic, we will seek out native species that have been utilized in comparable Project vegetative buffers. To ensure adequate screening from the beginning of the Project, evergreen trees within the northern bufferyard will be no less than 8 feet (8') tall at the time of planting.

# Environmental and Cultural Impact

## Wetlands

The site is enveloped by wooded wetlands to the north and the south as identified in the wetlands delineation and field assessment. This delineation and report were conducted by qualified professionals from Tetra Tech, Inc and is included in the application submission. These wetlands will be verified by the US Army Corps of Engineers prior to construction while the project is designed to avoid any impact on wetlands or resource protection areas (RPAs).

## Wildlife Habitats

The applicant has commissioned Tetra Tech, Inc to conduct an environmental inventory report on rare, threatened, and endangered species for the Property. The report utilizes 8 different state and federal databases to evaluate the potential for habitat occurrence and preliminarily proposed mitigation efforts for the project development. This report is included in the application submission.

The environmental inventory report identifies three threatened species that could exist within the vicinity of the project: Northern Long-eared Bat (NLEB), Small Whorled Pogonia, and Canebrake Rattlesnake. Using the DWR Winter Habitat and Roost Trees Map, we confirmed that there are no known roost habitats for NLEB within a 50-mile radius. Under the USFWS 4(d) rule, no further study is required given the DWR map result. While our report shows a moderate chance of occurrence for the Small Whorled Pogonia and Canebrake Rattlesnake, there are no previously documented sightings of either species on the property in the USFWS critical habitat database. Furthermore, it is exceedingly unlikely that either species would be located within the site given the mutual preference for maintaining proximity to hardwood trees within swampy areas and the previous use of the site area for agriculture. All local, state, and federal laws shall be followed if one of the species are encountered during Project construction.

## Cultural and Historical Resources

Tetra Tech Inc conducted a preliminary desktop analysis of cultural and historical resources on the property through the Virginia Department of Historic Resources' (DHR) Virginia Cultural Resource Information System (V-CRIS). No known historic resources were identified within the Property limits while two eligible resources within the Area of Potential Effects (APE) were identified. The analysis is provided within the application submission.

We additionally sought comments from staff at DHR on potential impacts on the historical resources as a result of the proposed development. In DHR's response letter (provided with the application submission), staff indicated that a viewshed analysis from the historic resources and proposed site area would be necessary for further evaluation. This indication of viewshed as the primary concern bodes well for the project's mitigated impact, given the robust proposed vegetative buffer within the development plan. DHR also recommended a Phase I cultural resources survey within the APE. This survey and subsequent DHR concurrence are included as a proposed permit condition in our submitted list.

## Environmentally Sensitive Areas

PEVA/PEVA2 has been reviewed by the Virginia Department of Conservation and Recreation (VADCR) for environmentally sensitive areas—as seen in our environmental inventory report. VADCR confirmed that the only known natural heritage resource within the York River-Skimino Creek subwatershed (in which our Property is located) is the previously referenced Small Whorled Pogonia. As mentioned above, it is exceedingly unlikely that this species would be located within the site given its preference for maintaining proximity to hardwood trees within swampy areas and the previous use of the site area for agriculture. All local, state, and federal laws shall be followed if the species is encountered during Project construction.

## Construction

Based on the current project schedule, construction is tentatively planned for late Spring 2023. We estimate construction to last approximately three months, depending on the weather. Submitted within the proposed conditions are limits on general construction hours from 7am-7pm Monday-Friday and further limits on pile-driving activities from 8am-6pm Monday-Friday. After construction is complete, the Project will work with Dominion Energy for testing and commissioning verification and is expected to begin commercial operations in Fall 2023.

Ground disturbance will be minimal during the construction process. Ingress and egress related to construction will be restricted to Richmond Road. PEVA/PEVA2 has included a preliminary transportation plan as a part of its permit submission. Prior to land disturbance permit, the Applicant shall submit a Construction Traffic Mitigation Plan to VDOT and the Planning Director for approval. This measure is included in our submitted proposed conditions.

The final site plan will include an in-depth erosion and sediment control plan. Such measures will be implemented to prevent runoff from entering the surrounding environment and typically include straw bales, silt fencing, run-off channels, sediment basins, and hay coil logs. The Applicant has commissioned Kimley Horn to produce preliminary stormwater calculations for this conceptual phase of permitting and has included that work in the submission.

After construction, natural vegetation will be established throughout the Site to ensure erosion and sediment control. This ground cover will include native pollinator seed mix with multi-season bloom composition as identified through the Virginia Department of Conservation and Recreation's Pollinator-Smart program and affirmed in our proposed conditions.

## Operations and Maintenance

After construction is complete, we anticipate minimal site access requirements for Project maintenance activities. At a minimum, the Project will undergo two annual preventative maintenance checks, once in the spring (~April) and once in the fall (~August). While all products installed on site are of the highest quality per industry standard testing practices & classifications, occasional dispatch to site may be required to correct outages on an as needed basis. Corrective activities such as this may add two to four site access instances each year.

As the long-term owners & operators of the proposed Project, our team will also actively monitor site performance 24/7 and will address any issues in a timely manner; based on performance impact, our contracted O&M providers will respond within 24, 48, or 72 hours depending on the outage type. Average rainfall in James City County is anticipated to be adequate for natural cleaning of the panels. Vegetative ground cover will be managed during the growing season in compliance with local

requirements, including but not limited to land use permit specifications, water management plans, and site access agreements. The method of vegetation management will include pollinator-friendly vegetation plantings with one mechanical mow per season after plants have gone to seed.

## Impacts and Mitigations

**Water** – No on-site source of potable water will be required during construction or operations for PEVA/PEVA2. If any on-site water source is required during construction or operation, it will be supplied by the host Project and sourced offsite. No new well will be dug for this project. Please see the request above for the waiver request regarding Water and Sewer Impact Study.

**Sound** – The majority of sound associated with the proposed Project will occur during construction. This is expected to be the result of material deliveries to the Property and support beam installation for the array. Impacts from noise are mitigated from a selected site that requires minimal ground disturbance and restricted hours of construction operations as seen in our proposed conditions.

Once operational, PEVA, PEVA2 will be practically inaudible. At a distance of 3ft from the security fence, our inverters and racking equipment create a sound comparable to a home HVAC unit. These sound measurements fall to less than 30dB at only 50ft from the perimeter—equivalent to background noise in the county. Given the nearest abutting residence is approximately 500ft from the array, no sound impact is expected.

**Glare** – No glare hazard is expected during construction or operations. Our Tier I panels are treated with anti-glare coating and are designed to absorb as much sunlight as possible. The large setbacks and robust vegetative screening from neighbors will further obscure any visual impact of the proposed Project. Furthermore, we have submitted the proposed development to the Federal Aviation Administration and secured a Determination of No Hazard to Air Navigation. This formal notice is included in our permit application.

**Odor** – Our EPC team will store, collect, and dispose of any solid construction material waste to prevent any odors from the Site, mitigating any impact on neighboring properties. No detectable odors are produced from the solar array components during operations.

**Dust** – Possible dust occurrence during operations is most likely to result from delivery or construction trucks on the Site. This will be mitigated by spraying water on dry dirt and enforcing a 5 MPH speed limit within the construction area. Minimal vehicle or foot traffic during operations and vegetative groundcover will naturally mitigate against concerns for dust.

**Security and Access** – The perimeter fence around the array will be no taller than 8 feet in height and contain no barbed wire. This fence will be black or another neutral color with final design approval to be sought from the Planning Director. The gates within the fence will remain locked while access will be coordinated through our operations and maintenance personnel. Our Site will provide a “Knox Box” to provide 24/7 access for local emergency personnel. The Applicant will ensure suitable access from Richmond Road is maintained for fire or other emergency vehicles.

## Removal

At the end of the Project's life, it will be decommissioned and removed from the Property. Formal notice of end of operations will be sent to James City County via Certified Mail. The Project will then be completely removed from the Property and reasonably restored to previous condition within 365 days of receipt of notice. PEVA/PEVA2 has included a proposed condition of county approval of our decommissioning plan prior to final site approval. We have commissioned Tetra Tech Inc to develop a preliminary plan for such decommissioning and have included it within our application submission.

## Economic Development

### Jobs

To the extent possible, PEVA/PEVA2 will source local materials and labor for the construction and maintenance of the project and have committed to hosting jobs fairs in James City County as seen in our proposed conditions. We estimate that this project will create approximately 30 new construction positions and 1-2 operations positions. Operations jobs will be focused on facility upkeep with responsibilities such as vegetation management, equipment repair, and component maintenance. Typical cadence for site maintenance is every two to three months.

### Increased County Revenue

PEVA/PEVA2 will increase the site acreage tax revenue to nearly 7x the current land use rate. This increase is a product of increased assessment of the host acreage and the proposed annual voluntary payment.

The 5-acre portion of land from PIN 2320100025 in PEVA/PEVA2 will increase in assessment from \$8,999.38/acre (Agricultural) to \$15,000/acre (Solar). The 26-acre portion of land from PIN 240100004 will increase in assessment from \$5,390.57/acre (AFD-abated Agricultural) to \$15,000/acre (Solar).

|                       | Assessment Rate   | Assessed Value<br>(Acres x Assessment Rate) | Real Property Tax Rate              | Annual Real Property Tax<br>(Assessed Value x Real Property Tax Rate) | 30 Year Revenue  |
|-----------------------|---|---|-------------------------------------|---|------------------|
| Current<br>(31 Acres) | \$8,999.38 /<br>acre<br>(5 acres)<br>+<br>\$5,390.57/<br>acre<br>(26 acres) | \$185,142<br>(Assessed, full property)      | \$0.84 /<br>\$100<br>assessed value | <b>\$1,555 / year</b>   | <b>\$46,656</b>  |
| Project<br>(31 Acres) | \$15,000 /<br>acre  | \$465,000                                   | \$0.84 /<br>\$100<br>assessed value | <b>\$3,906 / year</b>   | <b>\$117,180</b> |

## Voluntary Payment

As PEVA/PEVA2 in aggregate comprises less than 5MW, the Project offers a voluntary annual payment of \$1,400 per MW for the life of the project to the County's Public Works department to support construction of public improvements such as transportation infrastructure or various public safety facilities. Over a 30-year period, revenue stream would bring provide an additional \$199,500 to James City County. This payment is included as a proposed condition in our permit application.

## Regulatory Conformance

Virginia Code § 15.2-2232 requires that the Planning Commission makes a determination as to whether or not the general location, character, and extent of a proposed solar energy facility is in substantial accord with the locality's adopted comprehensive plan *Engage 2045 – Our County, Our Shared Future*.

### Location

The location of PEVA/PEVA2 is substantially in accord with the County's Comprehensive Plan. The Project is located east of Richmond Road in the Mooretown Road/Hill Pleasant Farm Area Economic Opportunity designation. According to the Land Use section of the 2045 Comprehensive Plan, principal uses in this area should "encourage development types that have certain attributes, principally that they have a positive fiscal contribution, provide quality jobs, enhance community values, are environmentally friendly, and support local economic stability." PEVA/PEVA2 is the type of development that meets these attributes and satisfies goals LU 1.1, LU 4.7, and PF 4.5 in its Economic Opportunity siting with robust buffering and topographical obscuration.

In spite of being in the area designated for "Economic Opportunity," the project location is outside the Primary Service Area (PSA), which makes this location particularly well suited for this project. The PSA has traditionally been the demarcation between areas planned for growth and development that require public water, sewer and high levels of public services and those areas reserved for conservation, preservation, and limited growth. This project is unique in that it meets the goals of the Economic Opportunity designation, as noted above, *and* is in keeping with the type of growth and development allowed outside the PSA: it requires no public water and sewer, will generate minimal traffic, and does not generate demand for schools, libraries or human services.

### Character and Extent

The character and extent of PEVA/PEVA2 is substantially in accord with the County's Comprehensive Plan. The Project will provide clean, locally sourced energy to nearby Dominion customers while investing in county infrastructure improvements. The minimal trips to the site generated by the development meets the guidance of T 1.2 while the growing demand of electric vehicles and the subsequent need for clean electricity addresses T 3.6.

The unique siting of the project site and the passive, low impact nature of the use facilitates no changes to the current viewshed or intensity of development along Richmond Road. This verified viewshed maintenance—and even augmentation with robust, native vegetative buffering as seen in the provided renderings—address CC 1.1 and CC 3.2. PEVA/PEVA2 assert in the proposed condition that DHR concurrence for any resource impact mitigation will be achieved, by cultural survey if



required. This meets CC 6.1. By the nature of the proposed development, PEVA/PEVA2 meets PF 2.3 while the proposed siting on already cleared land with native pollinators included in the ground seed mix address ENV 4.6.1 and ENV 4.6.2.

PEVA/PEVA2 provides an opportunity to bring infrastructure investment and low-intensity development to James City County while preserving the proud community character thanks to its thoughtful siting. PEVA/PEVA2 shows a fiscal-positive example of a project that helps JCC meet its climate goals and deliver cost-savings to local Dominion customers who wish to subscribe.

Lastly, Comprehensive Plan section LU 6.1.4 states that the County should “(a)s resources allow, support implementation of the recommendations in the Strategy for Rural Economic Development to maintain and create viable economic options for rural landowners.” The leases associated with this project provide a valuable revenue stream to these landowners, one which may offset or eliminate the need to pursue other, less desired options for monetizing the Property. Once the Project is decommissioned, the land is available for continued agricultural or other valuable uses.

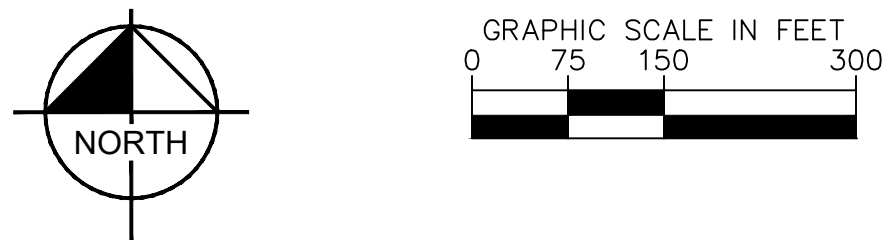




|    | OWNER                                | PARCEL ID   | ZONING |
|----|--------------------------------------|-------------|--------|
| 1  | D&S CHONG LLC                        | 2410100004  | A1     |
| 2  | CHONG, DAE IK & SUSAN                | 2320100025  | A1     |
| 3  | CAMPBELL, ARMOND B & LINDA C         | 2320100024A | A1     |
| 4  | CAMPBELL, GARY D & JENNIFER L        | 2320100024B | A1     |
| 5  | AMOS, KENNETH E & CAROLINE M         | 2320100022  | A1     |
| 6  | AMOS, SAMANTHA LEIGH & FARMER, MICHA | 2410100014E | A1     |
| 7  | AMOS, MICHAEL K                      | 2410100014D | A1     |
| 8  | MOYER, WAYNE A                       | 2410100015D | A1     |
| 9  | PARKER, JAMES E & VIOLET             | 2410100012  | A1     |
| 10 | MARTIN, HUGH L ESTATE                | 2410100002  | A1     |
| 11 | PINNEY, DANIEL ROBERT                | 2420100001  | A1     |
| 12 | STEVENS, JOHN ROBERT TRUSTEE         | 2420100029  | A1     |
| 13 | STEWART, DIANA F                     | 2420100030  | A1     |
| 14 | STEWART, DIANA F                     | 2420100031  | A1     |
| 15 | STEVENS, JOHN ROBERT TRUSTEE         | 2420100032  | A1     |
| 16 | HADEN, SUNNY CREECH                  | 2420100034  | A1     |
| 17 | WORMAN, WALTER, III & KATHLEEN S     | 2410100003  | A1     |
| 18 | HILL PLEASANT FARM, INC              | 2410100005  | A1     |

STANDARD NOTES:

1. THE PURPOSE OF THIS PLAN IS FOR A SPECIAL USE PERMIT APPLICATION FOR REVIEW AND APPROVAL BY JAMES CITY COUNTY. ALL INFORMATION IS FOR PLANNING PURPOSES ONLY.
2. WETLANDS WERE DELINEATED AND RPA LIMITS WERE DETERMINED BY TETRA TECH IN AUGUST 2021 AND MAY 2022.
3. PROJECT AREA WILL BE CLEARED AND GRUBBED AS NECESSARY, RETAINING PRE-DEVELOPMENT DRAINAGE PATTERNS. MINOR GRADING WILL OCCUR AROUND INVERTER AREAS TO DIVERT SURFACE DRAINAGE. AREAS SUBJECT TO RUTTING DURING CONSTRUCTION WILL BE TEMPORARILY STABILIZED WITH GRAVEL THAT WILL REMAIN AFTER CONSTRUCTION. SOIL CONDITIONS AND EQUIPMENT LOADS WILL DETERMINE FINAL DESIGN.
4. ACCESS ROAD ENTRANCE WILL BE APPROVED BY VDOT PRIOR TO BEGINNING CONSTRUCTION.
5. INTERNAL CABLING WILL BE BURIED IN UNDERGROUND TRENCHES, WHENEVER POSSIBLE.
6. DISTURBED AREAS REQUIRING RESEEDING WILL BE SEEDED WITH APPROPRIATE POLLINATOR-FRIENDLY NATIVE PLANTS AFTER CONSTRUCTION.
7. FENCING WILL NOT EXCEED 8' IN HEIGHT, WILL BE BLACK OR OTHER NEUTRAL COLOR, AND WILL NOT HAVE BARBED WIRE.
8. PANELS SHALL NOT EXCEED 16' IN HEIGHT.
9. STORMWATER MANAGEMENT FACILITIES WILL BE SEDIMENT BASINS CONVERTED TO PERMANENT BASINS TO COMPLY WITH VSMP REGULATIONS.
10. THE PHASING OF THE DRAINAGE DESIGN WILL INCLUDE A TWO PHASE EROSION AND SEDIMENT CONTROL PLAN, WITH THE FINAL PHASE AS PERMANENT BASINS SHOWN HEREIN.
11. STREAMS AND ASSOCIATED BUFFERS ARE NOT WITHIN THE PROPOSED PROJECT SHOWN HEREIN.



**Kimley»»Horn**  
© 2022 KIMLEY-HORN AND ASSOCIATES, INC.  
2035 MAYWILL ST., SUITE 200, RICHMOND, VA 23230  
PHONE: 804-673-3882  
[WWW.KIMLEY-HORN.COM](http://WWW.KIMLEY-HORN.COM)



Pivot Energy VA I & II  
Prepared for  
Pivot Energy VA, LLC

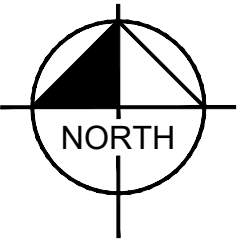
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|                  |                   |
|------------------|-------------------|
| SHEET NUMBER     | VA                |
| <b>EXHIBIT 1</b> | JAMES CITY COUNTY |





11. STREAMS AND ASSOCIATED BUFFERS ARE NOT WITHIN THE PROPOSED PROJECT SHOWN HEREIN.



PIVOT ENERGY VA I & II  
PREPARED FOR  
PIVOT ENERGY VA, LLC

SHEET NUMBER  
**EXHIBIT 1**

[illegible]

**Kimley»»Horn**  
© 2022 KIMLEY-HORN AND ASSOCIATES, INC. 23230  
WILLOW LAWN DR., SUITE 200, RICHMOND, VA 23230  
PHONE: 804-673-3882  
WWW.KIMLEY-HORN.COM





## RESOLUTION

VIRGINIA CODE SECTION 15.2-2232 ACTION ON CASE NO. SUP-22-0015.


### 7294 AND 7296 RICHMOND ROAD PIVOT ENERGY SOLAR PROJECT

- WHEREAS, in accordance with Section 15.2-2232 of the Code of Virginia, a public utility facility, whether publicly or privately owned, shall not be constructed, established, or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the Planning Commission as being substantially in accord with the adopted Comprehensive Plan or part thereof; and
- WHEREAS, D & S Chong, LLC, and Mr. Dae Ik and Ms. Susan Chong (collectively, the "Owners"), own property located at 7294 and 7296 Richmond Road, further identified as James City County Real Estate Tax Map Parcel Nos. 2410100004 and 2320100025, respectively, (collectively, the "Properties") and zoned A-1, General Agricultural; and
- WHEREAS, Mr. Buzz Becker of Pivot Energy, Inc., on behalf of the Owners, has applied for a Special Use Permit (SUP) to allow for the construction of a solar electrical generation facility on the Properties as shown on a plan titled "Pivot Energy VA I & II Prepared for Pivot Energy VA, LLC" sealed October 24, 2022; and
- WHEREAS, in accordance with Section 15.2-2204 of the Code of Virginia and Section 24-9 of the James City County Zoning Ordinance, a public hearing was advertised, adjacent property owners notified, and a hearing scheduled for Case No. SUP-22-0015.
- NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of James City County, Virginia, for the reasons expressed in the written minutes which shall be transmitted to the Board of Supervisors, finds that the general or approximate location, character, and extent of the public utility facility shown in Case No. SUP-22-0015 is substantially in accord with the adopted Comprehensive Plan and applicable parts thereof.

ATTEST:



Paul D. Holt, III  
Clerk to the Board

  
Tim O'Connor  
Chairman, Planning Commission

Adopted by the Planning Commission of James City County, Virginia, this 2nd day of November, 2022.

SUP22-15\_RichRdPESPUdp-res

**Unapproved Minutes of the November 2, 2022  
Planning Commission Regular Meeting**

**AFD-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal**

This application was presented and reviewed in tandem with SUP-22-0015. 7294 & 7296 Richmond Rd. Pivot Energy Solar Project. Discussion is combined and recorded with SUP application.

Mr. Polster made a motion to recommend approval of application

On a roll call vote, the Commission voted to recommend approval of AFD-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal. (5-2)

**SUP-22-0015. 7294 & 7296 Richmond Rd. Pivot Energy Solar Project**

Mr. Thomas Wysong, Senior Planner, stated that Mr. Buzz Becker of Pivot Energy has applied for a Special Use Permit (SUP) to construct a solar farm on an approximately 64.9-acre portion of parcels located at 7294 and 7296 Richmond Road. Mr. Wysong stated that the parcels are zoned A-1, General Agricultural and designated Economic Opportunity on the 2045 Comprehensive Land Use map and located outside the Primary Service Area.

Mr. Wysong stated that the property located at 7296 Richmond Road is not located within an Agricultural and Forestal District (AFD); however, the property located at 7294 Richmond Road is currently within the Hill Pleasant Farm AFD. Mr. Wysong stated that as part of the 2022 AFD renewal process, the owner withdrew 42 acres of that property from the AFD. Mr. Wysong further stated that after the renewal period closed, the applicant recognized the need to withdraw an additional 10 acres from the AFD for stormwater facilities and this withdrawal proposal does require Board approval because it occurred after the renewal period closed.

Mr. Wysong Stated Withdrawal requests outside of the renewal period are considered per the criteria listed in the Board of Supervisor's Policy governing the withdrawal of properties from AFDs. The criteria are:

- The request is caused by a change in circumstances that could not have been anticipated at the time application was made for inclusion in the district. (This has historically been interpreted as death of a property owner.)
- The request would serve a public purpose, as opposed to the proprietary interest of the landowner that could not otherwise be realized upon expiration of the AFD. (Staff interprets a public purpose as using the land for a public facility such as a school or fire station.)
- The request would not cause damage or disruption to the existing district. (The AFD would continue to meet the minimum acreage requirements if this withdrawal is approved.)

- If the request for withdrawal is in conjunction with a proposal to convert the land use of a property to a different use than is currently in place on the property, the new land use would be in conformance with the Comprehensive Plan.

Mr. Wysong stated that Solar Farms are not specifically identified as a compatible land use in the Economic Opportunity designation, but they may serve as a transitional land use until market forces determine a more intense economic use.

Mr. Wysong stated that staff finds that this application would not cause a disruption to the AFD and that the proposed land use would be a transitional use within the EO designation; however, staff finds that this proposal is not caused by an unforeseen change in circumstances and that the request would not serve a public purpose. Mr. Wysong stated that since it does not meet all the criteria of the Board's withdrawal policy, staff recommends denial of this withdrawal request to the Board of Supervisors.

Mr. Wysong stated that at its October 20, 2022, meeting, the AFD Advisory Committee unanimously recommended approval of this withdrawal request by a vote of 7-0.

Mr. Wysong stated that the proposed solar farm facility will consist of ground-mounted arrays of solar panels mounted on single-axis trackers to orient the arrays toward the direction of the sun. Mr. Wysong stated that all new utilities will be placed underground and the solar farm will connect to an existing overhead utility lines on the property. Mr. Wysong stated that the lease will be for 21 years with an option to extend for an additional 10 years.

Mr. Wysong stated that staff has proposed conditions to mitigate impacts from this proposal. Mr. Wysong further stated that these proposed conditions will require access to the facility during construction to be from the existing easement along the railroad connecting to Peach Street. Mr. Wysong stated that once the site construction is complete, normal sized vehicles can access the site from Richmond Road, but oversized vehicles will still be required to utilize the Peach Street entrance. Mr. Wysong stated that construction activities such as pile driving, clearing and grading have limited hours per the SUP conditions. Mr. Wysong stated that a 50-foot vegetated buffer is shown along the perimeter of the development, with the buffer being increased to 75 feet along areas nearest to Richmond Road.

Mr. Wysong stated that the 2045 Comprehensive Plan Land Use Map designates the property Economic Opportunity. Mr. Wysong stated that the Comprehensive Plan does not specifically identify solar farm as a compatible use in EO, therefore; staff has reviewed this application as a transitional use given the limited lease of the property.

Mr. Wysong stated that according to Virginia Code Section 15.2-2232, unless a utility facility is shown on the adopted Comprehensive Plan or other master plans for the County, the local Planning Commission and a governing body shall review the facility to determine whether the location, character, and extent of the project is substantially in accord with the adopted Comprehensive Plan. Mr. Wysong stated that staff recommends the Planning Commission find this application consistent with the 2045 Comprehensive Plan and recommend approval of the SUP to the Board

of Supervisors subject to the proposed conditions and approval of the withdrawal request from the AFD.

Mr. O'Connor opened the floor for questions from the Commission.

Mr. Krapf requested more information on the reason for requesting the additional 10 acres.

Mr. Wysong stated that during staff review, it was determined that more acreage was needed for the stormwater facilities and a small expansion to the footprint of the solar arrays.

Mr. Krapf inquired if this could be considered a circumstance beyond the applicant's control that would meet one of the withdrawal criteria.

Mr. Wysong stated that staff did not interpret it as meeting the criteria.

Mr. Krapf inquired about the access to the site during constructions and the impact of the existing utility lines on the access.

Mr. Holt stated that in the interim, as follow up on the stormwater management piece, there has been updated guidance from the state on calculating impervious cover for solar farms. Mr. Holt stated that the panels are now considered impervious cover which increases the amount of area needed for treatment of stormwater. Mr. Holt further stated that there is also a cap on the amount of forested land that can be credited to stormwater management. Mr. Holt stated that this accounts for the withdrawal of the additional land from the AFD.

Mr. Wysong provided an overview of the construction access road to the property.

Mr. Krapf inquired if any road improvements would be required.

Mr. Wysong stated that there is a condition that the applicant would have to do an existing conditions assessment and calculate what the repairs would be. Mr. Wysong stated that those repairs would need to be completed after construction on the site is finished.

Mr. Krapf inquired if this would include the overhead utilities.

Mr. Wysong confirmed.

Mr. Holt stated that Peach Street and Peninsula Street are in the VDOT Secondary system for maintenance. Mr. Holt stated that on the other side of the railroad tracks, it becomes a shared easement. Mr. Holt stated that much of the private easement may need to be improved.

Ms. Null stated that this is her concern as well. Ms. Null inquired if the site could be accessed from Rochambeau Drive or from Route 60. Ms. Null noted that there could be huge impacts to the CSX operations if a vehicle was stuck on the track crossing.

Mr. Holt stated that access from Rochambeau Drive for this site is distinctly different from the other solar far to the south because the route passes a number of residential units on one end and is encumbered by environmentally sensitive land at the other end.

Mr. Krapf inquired about a bond to ensure appropriate decommissioning of the panels at the end of their life.

Mr. Wysong stated that there is a condition for a surety bond to decommission the panels and remediate the site in the event the applicant is no longer in business.

Mr. Polster stated that part of the condition for the surety bond is to reevaluate it periodically to ensure it will cover any increase in costs over the years.

Mr. O'Connor opened the Public Hearing.

Mr. Buzz Becker, Director of Project Development, Pivot Energy. Made a presentation to the Commission in support of the application.

Mr. Polster about the use of the property between the buffer and the boundary line with the adjacent property owner.

Mr. Becker stated that the property owner will be reimbursed for that property so that it can be open space; most likely a meadow with pollinating plants.

Mr. Polster inquired about the ground cover under the solar panels.

Mr. Becker stated that the plan is for a native pollinator seed mix with up to quarterly mowing or maintenance.

Mr. Polster inquired about the size of the largest vehicles bringing in equipment.

Mr. Becker stated that the solar panels would be delivered on a tractor trailer. Mr. Becker further stated that the vast majority of the vehicles would not be that large.

Mr. Polster inquired about whether the tractor trailer would have difficulty crossing the railroad tracks and navigating the turn.

Mr. Becker stated that it would not be a problem.

Mr. Polster inquired about the buffering along the road adjacent to the neighboring property.

Mr. Becker stated that they are working with the adjacent property owner to establish a satisfactory mix of plantings.

Dr. Rose inquired about the subscription service for low to moderate income customers.

Mr. Becker stated that they have a manager of subscriptions that reaches out to the community to find potential subscribers.

Dr. Rose inquired if the subscriber opportunity was limited to residents near the solar farm.

Mr. Becker stated that it was not limited by proximity.

Mr. Rodgers inquired if the project could move forward without the additional ten acres.

Mr. Nick Robertson, Kimley-Horn, stated that without the additional acreage, it would be necessary to reduce the number of panels or not go forward with the project. Mr. Robertson stated that a reduction in the panels may affect support from Dominion Energy.

Mr. Polster inquired if staff did the stormwater calculations.

Mr. Roberson stated that Kimley-Horn did the calculations.

Mr. Polster inquired if the Stormwater division supported those calculations.

Mr. Robertson stated that staff supported the calculations.

Mr. Polster inquired if there were any alternative.

Mr. Roberson stated that there is no alternative except reducing the number of panels which the applicant cannot do.

Mr. O'Connor inquired if any other portion of the property could be used for stormwater management.

Mr. Robertson stated that the location of the retention ponds is determined by topography; the ponds must be place where water will drain. Mr. Roberson stated that it would not be possible to move sufficient panels to another area or be detrimental to the adjacent property owner.

Mr. Polster if he is correct that the calculations for impervious cover are based on the amount of water coming off the panels and where it drains to which is why the retention ponds must be located as where they are.

Mr. Becker confirmed that this is correct.

Mr. Gary Campbell, 230 Peach Street, addressed the Commission in support of the application.

As no one further wished to speak, Mr. O'Connor closed the Public Hearing.

Mr. O'Connor opened the floor for discussion by the Commission.

Mr. Haldeman stated that he plans to support the application. Mr. Haldeman stated that he finds that the AFD withdrawal does meet the criteria for a change in circumstance and further it also meets the criteria of being for a public purpose. Mr. Haldeman stated that this does meet a goal of the Comprehensive Plan as well as stated and federal goals to de-carbonize energy production.

Mr. Krapf stated that he also finds that the criteria for AFD withdrawal are met. Mr. Krapf stated that he believes the applicant would have removed the acreage during the renewal period if the stormwater information had been available at that time. Mr. Krapf stated that he would like to recommend that Condition No. 5 be amended to include that item B read: The majority of evergreen shrubs and trees should be native species. Mr. Krapf further stated that he would recommend that Condition No. 6 be amended to read: Site ground cover that includes native pollinators and native grasses. Mr. Krapf further stated that he is in favor of solar and other power; however, he is concerned about the impact on the Economic Opportunity Zone (EO).

Mr. O'Connor stated that he has concerns about this use of the property in the EO Zone. Mr. O'Connor stated that he did not support the other neighboring solar farm and does not intend to support this application.

Mr. Polster made a motion to recommend approval of the application with conditions as proposed by staff and with the recommended amendments.

On a roll call vote, the Commission voted to recommend approval of SUP-22-0015. 7294 & 7296 Richmond Rd. Pivot Energy Solar Project. (5-2)

Mr. Polster made a motion to adopt the resolution finding the project to be in substantial accord with the Comprehensive Plan.

On a roll call vote the Commission voted to find the application in substantial accord with the Comprehensive Plan. (5-0)



**ITEM SUMMARY**

DATE: 12/13/2022

TO: The Board of Supervisors

FROM: John Risinger, Senior Planner

SUBJECT: AFD-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal

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**ATTACHMENTS:**

|   | Description   | Type            |
|---|---|-----------------|
| ☐ | Staff Report  | Staff Report    |
| ☐ | 1. Ordinance  | Ordinance       |
| ☐ | 2. Location Map   | Backup Material |
| ☐ | 3. Hill Pleasant Farm AFD 2022<br>Renewal Ordinance and Staff Report                | Backup Material |
| ☐ | 4. Policy Governing the Withdrawals<br>of Property from AFDs                        | Backup Material |
| ☐ | 5. AFD Withdrawal Request Letter  | Backup Material |
| ☐ | 6. Letter from Property Owner   | Backup Material |
| ☐ | 7. Map Showing Extent of Withdrawal<br>Request                                      | Backup Material |
| ☐ | 8. Proposed Solar Farm Master Plan  | Backup Material |
| ☐ | 9. Unapproved Minutes of the<br>October 20, 2022, AFD Advisory<br>Committee Meeting | Backup Material |
| ☐ | 10. Unapproved Minutes of the<br>November 2, 2022, Planning<br>Commission Meeting   | Backup Material |

**REVIEWERS:**

| Department             | Reviewer           | Action   | Date                 |
|------------------------|--------------------|----------|----------------------|
| Planning               | Holt, Paul         | Approved | 11/21/2022 - 4:18 PM |
| Development Management | Holt, Paul         | Approved | 11/21/2022 - 4:19 PM |
| Publication Management | Pobiak, Amanda     | Approved | 11/21/2022 - 4:47 PM |
| Legal Review           | Kinsman, Adam      | Approved | 11/22/2022 - 8:30 AM |
| Board Secretary        | Saeed, Teresa      | Approved | 12/5/2022 - 10:55 AM |
| Board Secretary        | Rinehimer, Bradley | Approved | 12/5/2022 - 10:59 AM |
| Board Secretary        | Saeed, Teresa      | Approved | 12/6/2022 - 3:06 PM  |

**AGRICULTURAL AND FORESTAL DISTRICT-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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**SUMMARY FACTS**

Applicant: Mr. Buzz Becker, Pivot Energy, Inc.

Landowners: D & S Chong, LLC

Proposal: Withdrawal of ± 10 acres of the 105.82 total acre parcel from the Hill Pleasant Farm Agricultural and Forestal District (AFD)

Location: 7294 Richmond Road

Tax Map/Parcel No. 2410100004

Parcel Size: ± 105.82 acres

Zoning: A-1, General Agricultural

Comprehensive Plan: Economic Opportunity (EO)

Primary Service Area (PSA): Outside

Staff Contact: John Risinger, Senior Planner

**PUBLIC HEARING DATES**

AFD Advisory Committee: October 20, 2022, 4:00 p.m.

Planning Commission: November 2, 2022, 6:00 p.m.

Board of Supervisors: December 13, 2022, 5:00 p.m.

**FACTORS FAVORABLE**

1. The request would not cause damage or disruption to the existing District.

**FACTORS UNFAVORABLE**

1. Request does not fully meet all four criteria set forth in the Board's policy.

**SUMMARY STAFF RECOMMENDATION**

The adopted Board of Supervisors' policy governing withdrawal of property from AFDs states that "it is the policy of the Board to discourage the withdrawal of properties from AFDs during the terms of those districts." This withdrawal request was submitted approximately one month after the most recent renewal of the Hill Pleasant Farm AFD on September 13, 2022. Additionally, staff finds that the use of this site would not serve a public purpose. Staff cannot support this request for withdrawal due to it not fully meeting all four of the criteria set forth in the Board's policy. Therefore, staff recommends that the Board of Supervisors deny this withdrawal application.

**AFD ADVISORY COMMITTEE RECOMMENDATION**

At its October 20, 2022, meeting, the AFD Advisory Committee voted 7-0 to recommend approval of the withdrawal request to the Planning Commission and the Board of Supervisors.

**PLANNING COMMISSION RECOMMENDATION**

At its November 2, 2022, meeting, the Planning Commission voted 5-2 to recommend approval of the withdrawal request to the Board of Supervisors.

**AGRICULTURAL AND FORESTAL DISTRICT-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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**CHANGES SINCE PLANNING COMMISSION MEETING**

None.

**DISTRICT HISTORY**

- The Hill Pleasant Farm AFD was created in 1986 for a term of four years and originally consisted of two parcels totaling  $\pm$  504 acres.
- The District was renewed in 1990, 1994, 1998, 2002, 2006, 2010, 2014, 2018, and 2022, for periods of four years, during which time various withdrawals and additions took place.
- The District currently consists of  $\pm$  304.34 acres. During the 2022 AFD renewal process, 42 acres of the property located at 7294 Richmond Road were withdrawn to allow for a Special Use Permit (SUP) proposal for the development of a solar farm on the property. Should this withdrawal be approved, the District would consist of  $\pm$  294.34 acres.

**DISTRICT DESCRIPTION**

Except for a few residences, all acreage in this District is in agricultural or forestal uses. The properties have been managed in the past for food or fiber production and have the potential to support significant agriculture and commercial timber operations. All the land in this District is zoned A-1, General Agricultural, and is located outside of the PSA. The majority of the land in this District is designated EO by the adopted Comprehensive Plan, with the remainder designated Rural Lands.

**WITHDRAWAL REQUESTS/WITHDRAWAL ANALYSIS**

Mr. Buzz Becker, Pivot Energy, Inc., on behalf of the owners of the property located at 7294 Richmond Road, has requested to withdraw 10 acres of their 105.82 total acre parcel from the AFD (Attachment No. 6). The requested withdrawal is to allow for a proposed SUP (SUP-22-0015) for a 4.75-megawatt alternate current (MWac) solar farm. Per Hill Pleasant Farm AFD Condition No. 3c (Attachment No. 3), no SUP shall be issued except for agricultural, forestal, or other activities and uses consistent with the Virginia Agricultural and Forestal District Act.

During the 2022 AFD renewal process, 42 acres of the property were withdrawn from the Hill Pleasant Farm AFD to allow for the proposed SUP. After the District was renewed on September 13, 2022, as part of the ongoing SUP review, the applicant provided a revised master plan for the proposed solar farm (Attachment No. 8) which includes 10 acres of the property which were not withdrawn from the AFD during the 2022 renewal process.

On September 28, 2010, the Board of Supervisors adopted a policy and withdrawal criteria for AFD parcels outside of renewal periods. That policy is enclosed (Attachment No. 4) and the withdrawal criteria are listed below with staff comments following in italics.

- A. The request is caused by a change in circumstances that could not have been anticipated at the time the application was made for inclusion in the District.

*Historically, a change in circumstances has been interpreted to include "death of a property owner," as stated in the State Code, but has not included new opportunities for development of a property. The withdrawal policy, as adopted by the Board of Supervisors, states that it is the policy of the Board of Supervisors to discourage the withdrawal of properties from AFDs during the terms of those districts.*

**AGRICULTURAL AND FORESTAL DISTRICT-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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- B. The request would serve a public purpose, as opposed to the proprietary interest of the landowner that could not otherwise be realized upon expiration of the AFD.

*Although the proposed solar farm would potentially provide a community benefit by supplying green energy to the adjacent communities, staff finds that this does not fulfill the requirement of Criteria B. Staff interprets “public purpose” as using the land for a public facility such as a school or fire station.*

- C. The request would not cause damage or disruption to the existing District.

*With this withdrawal, the District will include a total of 294.34 acres, and will thus continue to meet minimum acreage requirements.*

- D. If the request for withdrawal is in conjunction with a proposal to convert the land use of a property to a different use than is currently in place, the new land use would be in conformance with the Comprehensive Plan.

*The 2045 Comprehensive Plan designates this parcel as EO. Lands designated EO are intended primarily for economic development, increased non-residential tax base, and the creation of jobs. Suggested primary uses for the Mooretown Road/Hill Pleasant Farm Area include industrial, light industrial, and office uses. Solar farms are not specifically identified as a compatible use in the EO designation; however, they may serve as a transitional land use until market forces determine a more intense economic use.*

#### **SURROUNDING ZONING AND DEVELOPMENT**

Adjacent properties to the north, east, and west are zoned A-1, General Agricultural, and designated EO and Rural Lands on the 2045 Comprehensive Plan Land Use Map. Properties across Richmond Road are zoned B-1, General Business; LB, Limited Business; R-2,

General Residential; and PL, Public Lands; and designated Low Density Residential, Community Commercial and Federal, State, or County Land on the 2045 Comprehensive Plan Land Use Map.

#### **STAFF RECOMMENDATION**

The adopted Board of Supervisors’ policy governing withdrawal of property from AFDs states that “it is the policy of the Board to discourage the withdrawal of properties from AFDs during the terms of those districts.” This withdrawal request was submitted approximately one month after the most recent renewal of the Hill Pleasant Farm AFD on September 13, 2022. Additionally, staff finds that the use of this site would not serve a public purpose. Staff cannot support this request for withdrawal due to it not fully meeting all four of the criteria set forth in the Board’s policy. Therefore, staff recommends that the Board of Supervisors deny this withdrawal application.

JR/ap  
AFD22-17\_7249RichRd

#### **Attachments:**

1. Ordinance
2. Location Map
3. Hill Pleasant Farm AFD 2022 Renewal Ordinance and Staff Report
4. Policy Governing the Withdrawals of Property from AFDs
5. AFD Withdrawal Request Letter
6. Letter from Property Owner
7. Map Showing Extent of Withdrawal Request
8. Proposed Solar Farm Master Plan
9. Unapproved Minutes of the October 20, 2022, AFD Advisory Committee Meeting
10. Unapproved Minutes of the November 2, 2022, Planning Commission Meeting

ORDINANCE NO. \_\_\_\_\_

AGRICULTURAL AND FORESTAL DISTRICT-22-0017.

AMENDMENT OF ORDINANCE NO. 165A-14:

7294 RICHMOND ROAD HILL PLEASANT FARM AFD WITHDRAWAL

- WHEREAS, a request has been filed with the Board of Supervisors of James City County, Virginia (the "Board"), to withdraw  $\pm$  10 acres of land as shown on a plan titled "AFD Exhibit" dated September 2022, from the Hill Pleasant Farm Agricultural and Forestal District (AFD), which is currently  $\pm$  304.34 acres (the "Application"); and
- WHEREAS, the  $\pm$  10 acres subject to the Application is a portion of the  $\pm$  105.82-acre property owned by D & S Chong, LLC, located at 7294 Richmond Road and identified as James City County Real Estate Tax Map Parcel No. 2410100004; and
- WHEREAS, at its October 20, 2022, meeting, the Agricultural and Forestal District Advisory Committee voted 7-0 to recommend approval of the Application; and
- WHEREAS, a public hearing was advertised and held by the Planning Commission (the "Commission") at its November 2, 2022, meeting, pursuant to Section 15.2-4314 of the Code of Virginia, 1950, as amended (the "Virginia Code"), after which the Commission voted 5-2 to recommend approval of the Application; and
- WHEREAS, pursuant to Sections 15.2-1427 and 15.2-4309 of the Virginia Code, a public hearing was advertised and held by the Board; and
- WHEREAS, the Board finds that the withdrawal request meets the criteria set forth in the Board's Withdrawal Policy for Agricultural and Forestal Districts, dated September 28, 2010.
- NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that Ordinance No. 165A-14 is hereby amended to remove  $\pm$  10 acres owned by D & S Chong, LLC, as referenced herein, from the Hill Pleasant Farm Agricultural and Forestal District.

\_\_\_\_\_  
John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Teresa J. Saeed  
Deputy Clerk to the Board

ICENHOUR  
HIPPLE  
LARSON  
SADLER  
MCGLENNON

VOTES

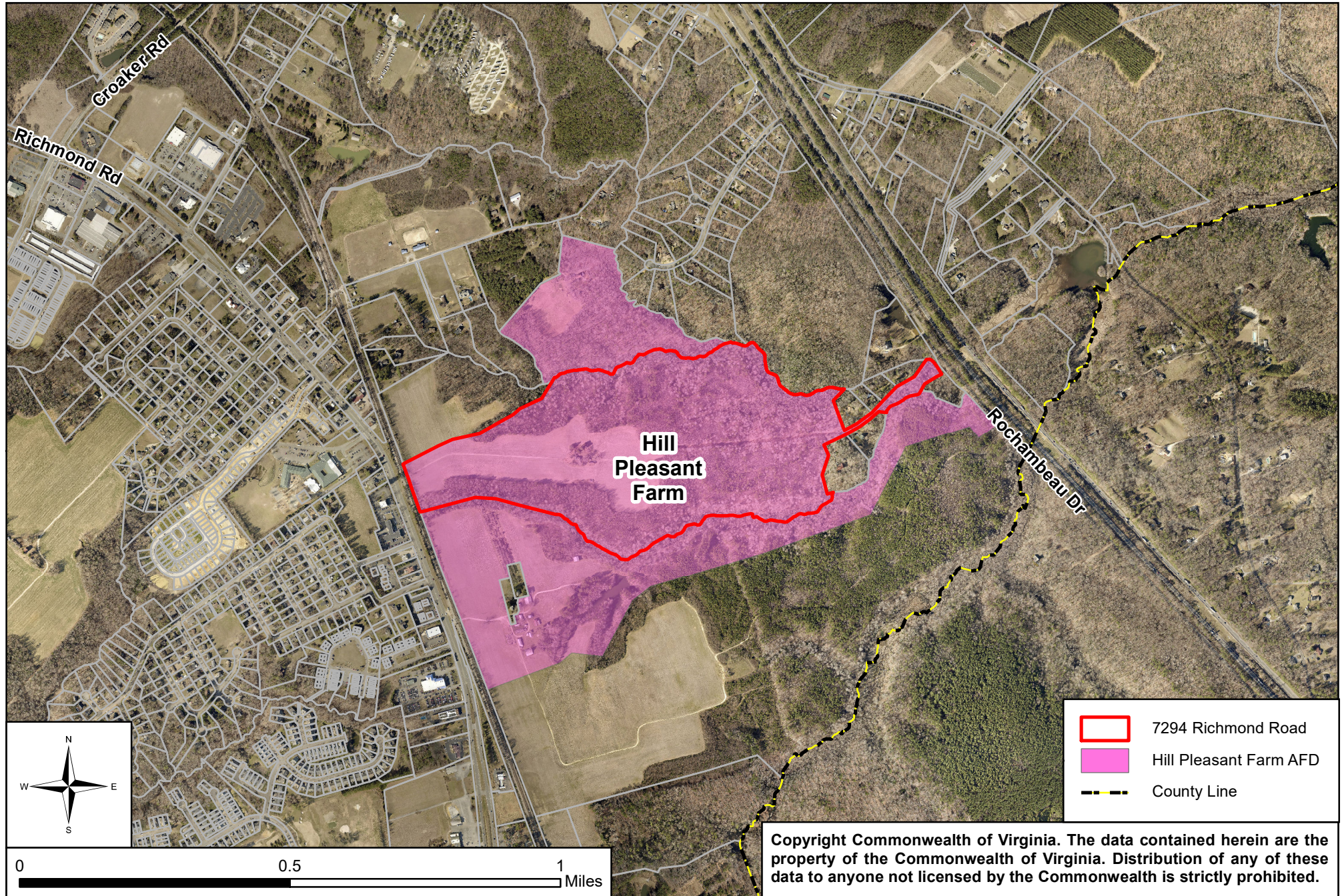
| <u>AYE</u> | <u>NAY</u> | <u>ABSTAIN</u> | <u>ABSENT</u> |
|------------|------------|----------------|---------------|
| _____      | _____      | _____          | _____         |
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| _____      | _____      | _____          | _____         |
| _____      | _____      | _____          | _____         |

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2022.

AFD22-17\_7294RichRd-ord



# JCC AFD-22-0017, 7294 Richmond Rd. Hill Pleasant Farm AFD Withdrawal





ADOPTED

SEP 13 2022

ORDINANCE NO. 165A-14

Board of Supervisors  
James City County, VA

AGRICULTURAL AND FORESTAL DISTRICT-22-0010

HILL PLEASANT FARM 2022 RENEWAL

WHEREAS, James City County has completed a review of the Hill Pleasant Farm Agricultural and Forestal District (the "District"); and

WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, 1950, as amended (the "Virginia Code"), property owners have been notified, public notices have been filed, public hearings have been advertised, and public hearings have been held on the continuation of the District; and

WHEREAS, the Agricultural and Forestal District (AFD) Advisory Committee at its meeting on July 21, 2022, voted 6-0 to recommend renewal of the District; and

WHEREAS, the Planning Commission following its public hearing on August 3, 2022, concurred with the recommendation of staff and the AFD Advisory Committee and voted 7-0 to recommend renewal of the District with the conditions listed below.

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

1. The Hill Pleasant Farm Agricultural and Forestal District (the "District") is hereby continued to October 31, 2026, in accordance with the provisions of the Virginia Agricultural and Forestal District Act, Virginia Code Section 15.2-4300 et. seq. (the "Act").
2. That the District shall include the following parcels, provided, however, that all land within 25 feet of road rights-of-way is excluded from the District:

| <u>Owner</u>                   | <u>Parcel No.</u> | <u>Acres</u>  |
|--------------------------------|-------------------|---------------|
| D&S Chong, LLC                 | 2410100004        | 63.82         |
| Hill Pleasant Farm, Inc.       | 2410100005        | 208.24        |
| Wayne A. Moyer Revocable Trust | 2410100015D       | <u>32.28</u>  |
| Total:                         |                   | <u>304.34</u> |

3. That pursuant to Section 15.2-4309 of the Act, The Board of Supervisors requires that any parcel in the District shall not, without the prior approval of the Board of Supervisors, be developed to any more intensive use, other than uses resulting in more intensive agricultural or forestal production. Specifically, the following restrictions shall apply:



- a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCFs), provided: a) the subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
- b. Land within the District may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawal of Properties from Agricultural and Forestal Districts, adopted September 28, 2010.
- c. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the Act, which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for WCFs on properties in the District that are in accordance with the County's policies and Ordinances regulating such facilities.

  
John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

  
Teresa J. Saegge  
Deputy Clerk to the Board

ICENHOUR  
HIPPLE  
LARSON  
SADLER  
MCGLENNON

VOTES

| <u>AYE</u>                          | <u>NAY</u>               | <u>ABSTAIN</u>           | <u>ABSENT</u>            |
|-------------------------------------|--------------------------|--------------------------|--------------------------|
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Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of September, 2022.

AFD22-10HillPIFmRen-res

## AGRICULTURAL AND FORESTAL DISTRICT-22-0010. Hill Pleasant Farms Renewal

### Staff Report for the September 13, 2022, Board of Supervisors Meeting

#### SUMMARY FACTS

| <u>LAND OWNERS</u>       | <u>PARCEL ID</u> | <u>ACRES</u> |
|--------------------------|------------------|--------------|
| D&S Chong, LLC           | 2410100004       | 63.82*       |
| Hill Pleasant Farm, Inc. | 2410100005       | 208.24       |
| Wayne A. Moyer           | 2410100015D      | 32.28        |
| TOTAL ACRES              |                  | 304.34       |

*\*Requesting a partial withdrawal*

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands  
Economic Opportunity

Primary Service Area  
(PSA): Outside

Staff Contact: Suzanne Yeats, Planner

#### PUBLIC HEARING DATES

Agricultural and Forestal District  
(AFD) Advisory Committee: July 21, 2022, 4:00 p.m.  
Planning Commission: Aug. 3, 2022, 6:00 p.m.  
Board of Supervisors: Sept. 13, 2022, 5:00 p.m.

#### STAFF RECOMMENDATION

Approval, subject to the proposed conditions.

#### AGRICULTURAL AND FORESTAL DISTRICT ADVISORY COMMITTEE RECOMMENDATION:

At its July 21, 2022, meeting, the Agricultural and Forestal District (AFD) Advisory Committee voted 6-0 to recommend the continuation of the District to the Planning Commission and Board of Supervisors.

#### PLANNING COMMISSION RECOMMENDATION:

At its August 3, 2022, meeting, the Planning Commission voted 7-0 for the continuation of the District to the Board of Supervisors including the following recommendations:

- For staff to review the end-to-end survey process prior to the next renewal cycle;
- For staff to consider other avenues inclusive of AFD tax credits, including but not limited to carbon sequestration, to reimburse AFD landowners;
- For staff to forward the Commissioner of the Revenue's "Tax Benefits Associated with Inclusion in an AFD for FY 2022" to the Board of Supervisors.

#### DISTRICT HISTORY

- The Hill Pleasant Farms AFD was created in 1986 for a term of four years and originally consisted of two parcels totaling ± 504 acres.
- The District was renewed in 1990, 1994, 1998, 2002, 2006, 2010, 2014, and 2018 for periods of four years, during which time various withdrawals and additions took place.
- On November 15, 2019, the Board of Supervisors approved the withdrawal of approximately 192.76 acres (Hill Pleasant Farm, Inc., Parcel ID No. 2410100005) as part of a Special Use Permit (SUP) (SUP-19-0017) for Hill Pleasant Solar Farm.

#### DISTRICT DESCRIPTION

Except for a few residences, all acreage in this District is in agriculture or forestal uses. The properties have been managed in the past for food

## **AGRICULTURAL AND FORESTAL DISTRICT-22-0010. Hill Pleasant Farms Renewal**

### **Staff Report for the September 13, 2022, Board of Supervisors Meeting**

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and fiber production and have the potential to support significant agriculture and commercial timber operations. All the land in this District is zoned A-1, General Agricultural, and is located outside of the PSA. The majority of the land in this District is designated Economic Opportunity by the adopted 2045 Comprehensive Plan, with Mr. Moyer's parcel and a small portion of a parcel located northeast of the Interstate 64 right-of-way, both designated Rural Lands.

Total acreage includes all the land in the above properties except land within 25 feet of rights-of-way. This area has been excluded to allow for possible road and/or drainage improvements.

#### **ADDITION/WITHDRAWAL REQUESTS**

The owner of the property located at 7294 Richmond Road (Parcel ID No. 2410100004) has requested a partial withdrawal of 42 acres (Attachment No. 3). With this withdrawal, the District will encompass 304.34 acres and continue to maintain the 200-acre minimum requirement per State Code.

#### **CONDITIONS**

If continued, the Districts are proposed to be re-established for another four-year term, with edits to Condition No. 3 that reflects updates from the Virginia State Code and clarifying language (See Attachment No. 1).

#### **SURROUNDING ZONING AND DEVELOPMENT**

Most of the surrounding land to the north of the District is zoned A-1, General Agriculture. The property to the west of the District is a mixture of businesses, residences, and developed property within the PSA zoned LB, Limited Business; B-1, General Business; R-2, General Residential; and MU, Mixed Use. The property to the south of the District is zoned A-1, General Agriculture and M-1, Limited

Business/Industrial. Although this AFD lies within the vicinity of existing commercial development along Richmond Road, the District is separated from Richmond Road by the CSX Railway. The District borders York County to the east.

#### **COMPREHENSIVE PLAN**

The 2045 Comprehensive Plan designates these parcels as Economic Opportunity and Rural Lands. Land Use Action 6.1.1 of the adopted Comprehensive Plan states the County shall "support both the use value assessment and Agricultural and Forestal District (AFD) programs to the maximum degree allowed by the *Code of Virginia*."

#### **STAFF RECOMMENDATION**

Staff finds the Hill Pleasant AFD compatible with surrounding development and consistent with the recommendations of the adopted Comprehensive Plan and Zoning Ordinance. Staff recommends that the Board of Supervisors approve the renewal of this AFD for a period of four years, subject to the conditions listed in the District Ordinance (See Attachment No. 1).

SY/md

AFD22-10HillPIFm

Attachments:

1. Ordinance
2. Location Map
3. Property Owner Withdrawal Request

## RESOLUTION

### POLICY GOVERNING THE WITHDRAWALS OF PROPERTY FROM AGRICULTURAL

### AND FORESTAL DISTRICTS (AFDs)

WHEREAS, the Board of Supervisors has determined that Agricultural and Forestal Districts (AFDs) are a valuable tool to help protect the agricultural and forestal lands and industry in James City County; and

WHEREAS, premature withdrawals of land from the Districts is contrary to the intent of the Board in allowing the establishment of these Districts.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby establishes the following policy relating to the withdrawal of lands from AFDs during the terms of those Districts. This policy in no way supersedes the provisions for withdrawal by right under Sections 15.2-4311 or 15.2-4314D of the Code of Virginia.

1. It is the policy of the Board of Supervisors to discourage the withdrawal of properties from AFDs during the terms of those districts.
2. The criteria for withdrawal during the terms of the districts are as follows:

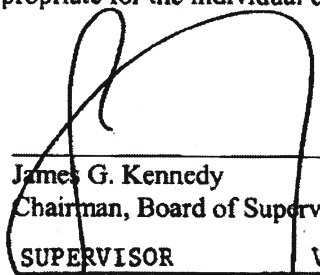
In order to establish "good and reasonable cause," a landowner requesting to withdraw property from an AFD must submit written information to demonstrate compliance with the following criteria:

- A. The request is caused by a change in circumstances that could not have been anticipated at the time application was made for inclusion in the district.
- B. The request would serve a public purpose, as opposed to the proprietary interest of the landowner that could not otherwise be realized upon expiration of the AFD.
- C. The request would not cause damage or disruption to the existing district.
- D. If the request for withdrawal is in conjunction with a proposal to convert the land use of a property to a different use than is currently in place on the property, the new land use would be in conformance with the Comprehensive Plan.

The Board shall weigh each of the above criteria in its deliberation, but may also use whatever other criteria as it deems appropriate for the individual case.

ATTEST:

  
Robert C. Mindaugh  
Clerk to the Board

  
James G. Kennedy  
Chairman, Board of Supervisors

| SUPERVISOR | VOTE |
|------------|------|
| MCGLENNON  | AYE  |
| GOODSON    | AYE  |
| ICENHOUR   | AYE  |
| JONES      | AYE  |
| KENNEDY    | AYE  |

Adopted by the Board of Supervisors of James City County, Virginia, this 28th day of September, 2010.

AFDsPolWdraw\_res

September 28, 2022

James City County  
John Risinger, Senior Planner  
101 Mounts Bay Road  
Building A  
Williamsburg, VA 23187

Dear Mr. Risinger,

Pivot Energy VA LLC and Pivot Energy VA 2 LLC, on behalf of D & S Chong LLC, request that a ten (10) acre portion of property owned by D & S Chong LLC be withdrawn from the Hill Pleasant Farm Agricultural and Forestal District (AFD). In order to establish good and reasonable cause for the proposed withdrawal, below we demonstrate compliance with the required criteria outlined in the Policy Governing the Withdrawals of Property from the Agricultural and Forestal Districts (AFDs).

**A. The request is caused by a change in circumstances that could not have been anticipated at the time application was made for inclusion in the district.**

When we submitted for a partial AFD withdrawal during the “renewal period” in July 2022, our goal was to keep as much acreage in the AFD as possible while allowing for the construction of the proposed solar project. To inform our solar site’s design, we relied upon the relevant use permit conditions as adopted by the Board of Supervisors during their most recent solar project permit approval in March 2022 (Racefield Solar).

After our submission for partial withdrawal from the AFD, we received draft conditions from the County on August 29<sup>th</sup> 2022 that were meaningfully different from what had been approved for Racefield Solar. Adhering to these proposed conditions will require us to use more area of the subject parcel than was originally withdrawn from the AFD. Given our desire to proceed with the project and the substantially different proposed conditions that were introduced after our previous application, we are seeking this relief—requesting the additional acreage in question be withdrawn from the AFD.

**B. The request would serve a public purpose, as opposed to the proprietary interest of the landowner that could not otherwise be realized upon expiration of the AFD.**

If approved, this withdrawal request would allow for the consideration of a Special Use Permit for a two-phase, 4.75 megawatt solar energy array. Not only would this project bring clean, locally sourced energy to James City County, it would serve as a form of land conservation while providing a marked uptick in tax revenue to the county.

As the project intends to secure Shared Solar capacity for its production, there is both a public purpose and a timeliness factor to consider. With regard to public purpose, our aim to develop this project as a Shared Solar array would allow local Dominion residential customers in James City County to subscribe to the project for a 20% discount off their current bill. We are particularly interested in subscribing low to moderate income customers who most acutely feel the budget pinch of increased energy costs.



While this Shared Solar program is an exciting opportunity that Pivot Energy is uniquely qualified to pursue—as an experienced community solar developer with our own proprietary customer subscription management platform, SunCentral—it is not an unlimited program through Dominion.

The current total capacity of the program is only 200MW. Our ability to secure this capacity, and deliver meaningful utility bill savings to James City County residents, depends on a timely progression through all stages of local permitting.

**C. The request would not cause damage or disruption to the existing district.**

Approving the withdrawal of ten (10) acres would allow the AFD to remain well above the requisite 200-acre minimum identified in the Hill Pleasant Farm Renewal document. Furthermore, the Chong family has indicated a willingness to return to the AFD committee in January to propose a new inclusion of eight (8) acres into the AFD to partially offset this withdrawal request—as seen in their signed request letter (provided in this packet).

**D. If the request for withdrawal is in conjunction with a proposal to convert the land use of a property to a different use than is currently in place on the property, the new land use would be in conformance with the Comprehensive Plan.**

The request for withdrawal is in conjunction with a proposed solar array as found in SUP-22-0015. The SUP application includes an in-depth analysis of James City County's *Engage 2045 – Our County, Our Shared Future* Comprehensive Plan as it relates to this proposal. As seen in the James City County Staff Report for our originally scheduled September 7<sup>th</sup>, 2022 Planning Commission hearing, Staff recommended both the approval of the proposed SUP and that the Planning Commission find the SUP application consistent with the Code of Virginia Section 15.2-2232. This report is also provided in this packet.

We appreciate your consideration of this withdrawal request. In addition to the previously referenced exhibits, we have included a conceptual site plan of our proposed solar project that outlines both the recently withdrawn AFD acres and the proposed incremental acres for withdrawal consideration. Our understanding is that this conceptual site plan fully adheres to the most recent set of proposed permit conditions from James City County staff.

Sincerely,



**Buzz Becker** | Director, Project Development  
bbecker@pivotenergy.net  
918.346.9542

**D & S Chong, LLC**  
3920 Hester Drive  
Virginia Beach, VA 23456

September 27, 2022

James City County Community Development  
101-A Mounts Bay Road  
P.O. Box 8784  
Williamsburg, VA 23187-8784

Re: 7294 Richmond Road (James City County PIN: 2410100004)

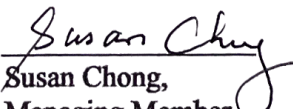
Greetings Community Development,

Please acknowledge this letter as the formal withdrawal request for our property at 7294 Richmond Rd (PIN 2410100004) from the Hill Pleasant Farm AFD. This is a partial withdrawal request for the approximately ten (10) acres as seen in the revised master site plan for a proposed solar development.

Our goal in our previous withdrawal was to maintain the maximum possible acres in the AFD while pursuing a solar development. After our previous withdrawal submission, new stormwater conditions were proposed that meaningfully impacted the required site area for the project. As a gesture of good will, we plan on following this request with a separately proposed inclusion of approximately eight (8) new acres into the AFD from the adjoining property at 7296 Richmond Rd (PIN 2320100025) to mostly offset this requested withdrawal. Please let us know what else is needed to quickly withdraw from the AFD.

Sincerely,  
D & S Chong, LLC

By:   
Dae Chong,  
Managing Member

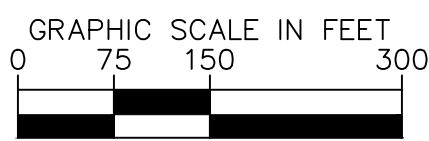
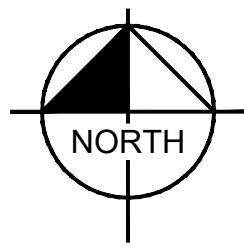
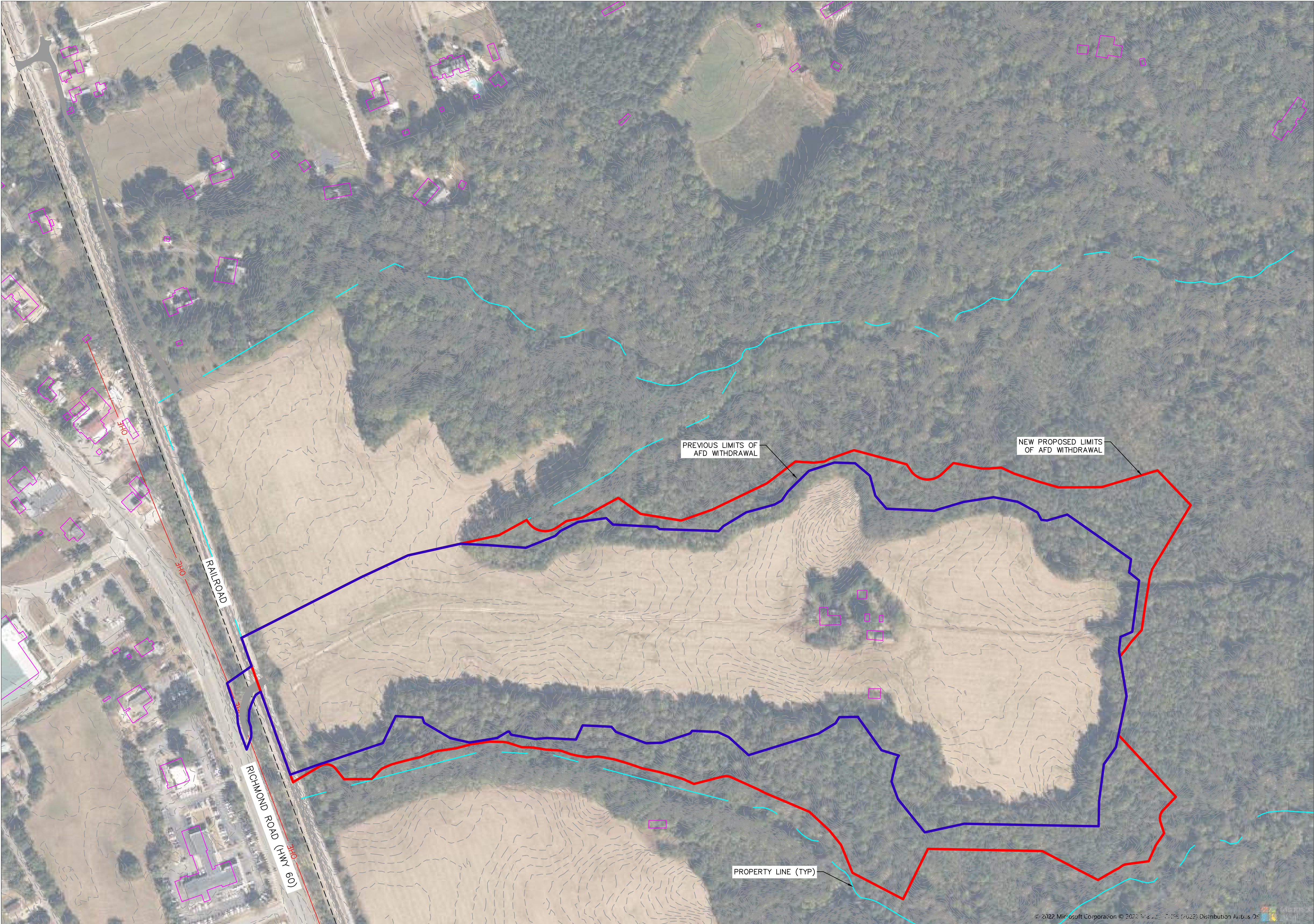
By:   
Susan Chong,  
Managing Member

cc: Buzz Becker, Pivot Energy



Plotted By:Robertson, Nicholas    Sheet Set:Kha    Layout:Layout1    September 28, 2022    01:51:08pm    K:\VIC-GVA\113545000 - Pivot Energy VA Solar - James City County, VA\CAD\Exhibits\Pivot VA 1-2 AFD Exhibit 20220928.dwg  
This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

| LEGEND              |  |                                   |
|---------------------|--|-----------------------------------|
| EXISTING            |  | PROPOSED                          |
| PROPERTY LINES      |  | LIMITS OF AFD WITHDRAWAL          |
| ADJ. PROPERTY LINES |  | PREVIOUS LIMITS OF AFD WITHDRAWAL |
| OVERHEAD WIRES      |  |                                   |
| BUILDING            |  |                                   |
| ACCESS ROAD         |  |                                   |



|  |                         |             |                          |                   |                   |                    |                 |                   |  |           |     |      |    |  |
|--|-------------------------|-------------|--------------------------|-------------------|-------------------|--------------------|-----------------|-------------------|--|-----------|-----|------|----|--|
| PIVOT ENERGY VA I & II<br>PREPARED FOR<br>PIVOT ENERGY VA, LLC | JAMES CITY COUNTY<br>VA | AFD EXHIBIT | KHA PROJECT<br>113545000 | DATE<br>SEPT 2022 | SCALE<br>AS SHOWN | DESIGNED BY<br>MLH | DRAWN BY<br>MLH | CHECKED BY<br>NLR | Kimley»Horn<br>© 2022 KIMLEY-HORN AND ASSOCIATES, INC.<br>1700 WILLOW LAWN DR, SUITE 200, RICHMOND, VA 23230<br>PHONE: 804-673-3882<br>WWW.KIMLEY-HORN.COM | REVISIONS | No. | DATE | BY |  |
|  |                         |             |                          |                   |                   |                    |                 |                   |  |           |     |      |    |  |
|  |                         |             |                          |                   |                   |                    |                 |                   |  |           |     |      |    |  |
|  |                         |             |                          |                   |                   |                    |                 |                   |  |           |     |      |    |  |
|  |                         |             |                          |                   |                   |                    |                 |                   |  |           |     |      |    |  |
| EXHIBIT 1  |                         |             |                          |                   |                   |                    |                 |                   |  |           |     |      |    |  |





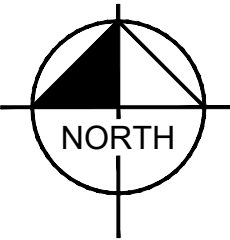
VICINITY MAP  
NOT TO SCALE

The vicinity map shows a residential area with a red rectangle highlighting the project site. The site is located near a highway interchange (I-70 and I-25) and a large body of water. The map includes a north arrow and a scale bar.



PROPOSED USE: SOLAR ENERGY FACILITY

11. STREAMS AND ASSOCIATED BUFFERS ARE NOT WITHIN THE PROPOSED PROJECT SHOWN HEREIN.



PIVOT ENERGY VA I & III  
PREPARED FOR  
PIVOT ENERGY VA, LLC  
JAMES CITY COUNTY  
VA

**Kimley»»Horn**  
© 2022 KIMLEY-HORN AND ASSOCIATES, INC.  
2035 MAYWILL ST., SUITE 200, RICHMOND, VA 23230  
PHONE: 804-673-3882  
[WWW.KIMLEY-HORN.COM](http://WWW.KIMLEY-HORN.COM)

|                          |                      |                |                 |              |                |
|--------------------------|----------------------|----------------|-----------------|--------------|----------------|
| KHA PROJECT<br>113545000 | DATE<br>OCTOBER 2022 | SCALE AS SHOWN | DESIGNED BY MLH | DRAWN BY MLH | CHECKED BY NLR |
|--------------------------|----------------------|----------------|-----------------|--------------|----------------|

# SUP SITE PLAN



**Unapproved Minutes of the October 20, 2022  
Agricultural and Forestal District Advisory Committee Regular Meeting**

**AFD-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal**

Mr. Risinger greeted the Committee and stated that Mr. Hunter Taylor has applied to enroll approximately 169.15 acres of land located at 999 Jolly Pond Road into the Cranston's Pond AFD. He said the parcel is zoned A-1, General Agricultural, and designated Rural Lands on the 2045 Comprehensive Plan. He added that the parcel is located within one mile of the core of the Cranston's Pond AFD.

Mr. Risinger stated that a single-family dwelling has been constructed on the property, but the property remains largely undeveloped. He noted that a 30-acre portion of the property was timbered this past spring and summer. Mr. Risinger said a forest management plan has been prepared for the property to guide future timbering activities.

Mr. Risinger told the Committee that staff determined the proposed addition meets state and local requirements for inclusion in the AFD and recommends that the Committee recommend approval of the proposed addition to the Planning Commission and the Board of Supervisors. He said he would be happy to answer any questions.

The Committee did not have any questions and noted that the application met the AFD qualifications.

Mr. Bradshaw motioned to recommend Approval of enrolling approximately 169.15 acres of land at 999 Jolly Pond Road into the Cranston's Pond AFD Addition.

Mr. Abbott seconded the motion.

On a voice vote, the motion was approved 7-0.

**2. Case No. AFD-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal**

Mr. Risinger stated that Mr. Buzz Becker from Pivot Energy has applied to withdraw a 10-acre portion of the 105.82-acre parcel within the Hill Pleasant Farm AFD, on behalf of the property owner. Mr. Risinger noted that the parcel is located at 7294 Richmond Road, is zoned A-1, General Agricultural, and is designated Economic Opportunity (EO) on the 2045 Comprehensive Plan Land Use Map. He said that the Hill Pleasant Farm AFD currently consists of a total of 304.34 acres across three properties.

Mr. Risinger told the Committee that 42 acres of this property were withdrawn from the AFD during the 2022 renewal process. He explained that during the review of a Special Use Permit (SUP) application for a proposed solar farm on the property, a revised master plan of the solar farm required 10 additional acres which were not part of the 42 acres already withdrawn. Mr.

Risinger stated that the additional 10 acres must be withdrawn from the AFD before the SUP application can be approved for that portion of the property.

Mr. Risinger stated that AFD withdrawal requests outside of the renewal period are considered per the criteria listed in the Board of Supervisors' Policy Governing the Withdrawal of Properties from AFDs. He listed the four criteria (and staff interpretation): (i) the request is caused by a change in circumstances that could not have been anticipated at the time the application was made for inclusion in the district (change in circumstances historically interpreted as death of a property owner); (ii) the request would serve a public purpose, as opposed to the proprietary interest of the landowner that could not otherwise be realized upon expiration of the AFD (public purpose interpreted as using the land for a public facility such as a school or fire station); (iii) the request would not cause damage or disruption to the existing district (the AFD would continue to meet the minimum acreage requirements if this withdrawal is approved); and (iv) if the request for withdrawal is in conjunction with a proposal to convert the land use of a property to a different use than what was currently in place on the property, the new land use would be in conformance with the Comprehensive Plan (solar farms are not specifically identified as a compatible land use in the EO designation but may serve as a transitional land use until market forces determine a more intense economic use).

Mr. Risinger told the Committee that staff determined the application would not cause a disruption to the AFD, and the proposed land use would be a transitional use within the EO designation. He noted, however, that staff determined the proposal is not caused by an unforeseen change in circumstances, and the request would not serve a public purpose. Mr. Risinger summarized that staff recommends the Committee recommend denial of this application to the Planning Commission and the Board of Supervisors based on evaluation of the criteria. He noted that Mr. Becker was in attendance and had a presentation available.

Mr. Bradshaw said he disagreed with staff's interpretation of the first criteria, that the change in circumstance could have been anticipated at the time of the application. He said the applicant withdrew what was believed to be the necessary acreage for the proposed solar farm, but an additional withdrawal of 10 acres was deemed required by County staff upon site plan review. Mr. Bradshaw said the applicant could not have foreseen that requirement, and therefore the current AFD withdrawal application did meet all criteria.

Mr. Bradshaw motioned to recommend Approval of withdrawing the proposed 10 acres located at 7294 Richmond Road from the Hill Pleasant Farm AFD.

Mr. Taylor invited Mr. Becker, Director of Project Development for Pivot Energy, to speak to the Committee.

Mr. Becker displayed his presentation and said there were only a few points on which he and staff disagreed. He said the proposed withdrawal would not affect the minimum 200-acre requirement for the AFD. He added that the property owner is willing to enroll into the district six to eight acres from their abutting parcel to the north, as a sign of good faith and to offset the additional withdrawal. Mr. Becker noted that the letter indicating the property owner's intent was included in the withdrawal application.

Mr. Becker stated he would expand the definition of public purpose and said that staff's definition is limited to a public facility such as a school or fire station. Mr. Becker noted that public purpose is defined in federal regulations under the Recreation and Public Purposes Act as "the purpose of providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare." Mr. Becker argued the proposed project would deliver infrastructure investment with clean, local energy to the County, and it would offer meaningful utility bill savings to County residents, particularly those of low to moderate income.

Mr. Becker then addressed the criteria related to unanticipated change in circumstance. He said he disagrees with staff accepting only one viable circumstance change as the death of a property owner. He explained the goal in withdrawing during the enrollment window was to maintain as many acres in the district as possible and still pursue the project. Mr. Becker said it was not until the end of the AFD renewal period when the County issued comments and proposed conditions which significantly impacted the required permit area for the project. He noted that his project team then conducted multiple meetings with County staff to understand the new standard and to see if the project could proceed without additional acreage withdrawal from the district. He said his project team revised designs to meet the requirements even as regulatory guidance from Virginia Department of Environmental Quality is not finalized.

Mr. Becker argued that because new standards from staff were provided after the window in which necessary acres could be withdrawn, this meets the criteria and constitutes a change in circumstance that could not have been anticipated at the time the application was made for inclusion in the district.

Mr. Abbott asked about the purpose of the additional 10 acres to be withdrawn.

Mr. Becker said the 10 acres withdrawn were for buffer requirements as well as stormwater management. He said the initial proposal was based on conditions for the recent Racefield Solar Project, but he understood that standards change.

With no additional questions by the Committee, Mr. Abbott seconded the motion made earlier by Mr. Bradshaw to recommend approval of the withdrawal.

On a voice vote, the motion was approved 7-0.

The Committee thanked Mr. Becker for attending the meeting and speaking with them.



**Unapproved Minutes of the November 2, 2022  
Planning Commission Regular Meeting**

**AFD-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal**

This application was presented and reviewed in tandem with SUP-22-0015. 7294 & 7296 Richmond Rd. Pivot Energy Solar Project. Discussion is combined and recorded with SUP application.

Mr. Polster made a motion to recommend approval of application

On a roll call vote, the Commission voted to recommend approval of AFD-22-0017. 7294 Richmond Road Hill Pleasant Farm AFD Withdrawal. (5-2)

**SUP-22-0015. 7294 & 7296 Richmond Rd. Pivot Energy Solar Project**

Mr. Thomas Wysong, Senior Planner, stated that Mr. Buzz Becker of Pivot Energy has applied for a Special Use Permit (SUP) to construct a solar farm on an approximately 64.9-acre portion of parcels located at 7294 and 7296 Richmond Road. Mr. Wysong stated that the parcels are zoned A-1, General Agricultural and designated Economic Opportunity on the 2045 Comprehensive Land Use map and located outside the Primary Service Area.

Mr. Wysong stated that the property located at 7296 Richmond Road is not located within an Agricultural and Forestal District (AFD); however, the property located at 7294 Richmond Road is currently within the Hill Pleasant Farm AFD. Mr. Wysong stated that as part of the 2022 AFD renewal process, the owner withdrew 42 acres of that property from the AFD. Mr. Wysong further stated that after the renewal period closed, the applicant recognized the need to withdraw an additional 10 acres from the AFD for stormwater facilities and this withdrawal proposal does require Board approval because it occurred after the renewal period closed.

Mr. Wysong Stated Withdrawal requests outside of the renewal period are considered per the criteria listed in the Board of Supervisor's Policy governing the withdrawal of properties from AFDs. The criteria are:

- The request is caused by a change in circumstances that could not have been anticipated at the time application was made for inclusion in the district. (This has historically been interpreted as death of a property owner.)
- The request would serve a public purpose, as opposed to the proprietary interest of the landowner that could not otherwise be realized upon expiration of the AFD. (Staff interprets a public purpose as using the land for a public facility such as a school or fire station.)
- The request would not cause damage or disruption to the existing district. (The AFD would continue to meet the minimum acreage requirements if this withdrawal is approved.)

- If the request for withdrawal is in conjunction with a proposal to convert the land use of a property to a different use than is currently in place on the property, the new land use would be in conformance with the Comprehensive Plan.

Mr. Wysong stated that Solar Farms are not specifically identified as a compatible land use in the Economic Opportunity designation, but they may serve as a transitional land use until market forces determine a more intense economic use.

Mr. Wysong stated that staff finds that this application would not cause a disruption to the AFD and that the proposed land use would be a transitional use within the EO designation; however, staff finds that this proposal is not caused by an unforeseen change in circumstances and that the request would not serve a public purpose. Mr. Wysong stated that since it does not meet all the criteria of the Board's withdrawal policy, staff recommends denial of this withdrawal request to the Board of Supervisors.

Mr. Wysong stated that at its October 20, 2022, meeting, the AFD Advisory Committee unanimously recommended approval of this withdrawal request by a vote of 7-0.

Mr. Wysong stated that the proposed solar farm facility will consist of ground-mounted arrays of solar panels mounted on single-axis trackers to orient the arrays toward the direction of the sun. Mr. Wysong stated that all new utilities will be placed underground and the solar farm will connect to an existing overhead utility lines on the property. Mr. Wysong stated that the lease will be for 21 years with an option to extend for an additional 10 years.

Mr. Wysong stated that staff has proposed conditions to mitigate impacts from this proposal. Mr. Wysong further stated that these proposed conditions will require access to the facility during construction to be from the existing easement along the railroad connecting to Peach Street. Mr. Wysong stated that once the site construction is complete, normal sized vehicles can access the site from Richmond Road, but oversized vehicles will still be required to utilize the Peach Street entrance. Mr. Wysong stated that construction activities such as pile driving, clearing and grading have limited hours per the SUP conditions. Mr. Wysong stated that a 50-foot vegetated buffer is shown along the perimeter of the development, with the buffer being increased to 75 feet along areas nearest to Richmond Road.

Mr. Wysong stated that the 2045 Comprehensive Plan Land Use Map designates the property Economic Opportunity. Mr. Wysong stated that the Comprehensive Plan does not specifically identify solar farm as a compatible use in EO, therefore; staff has reviewed this application as a transitional use given the limited lease of the property.

Mr. Wysong stated that according to Virginia Code Section 15.2-2232, unless a utility facility is shown on the adopted Comprehensive Plan or other master plans for the County, the local Planning Commission and a governing body shall review the facility to determine whether the location, character, and extent of the project is substantially in accord with the adopted Comprehensive Plan. Mr. Wysong stated that staff recommends the Planning Commission find this application consistent with the 2045 Comprehensive Plan and recommend approval of the SUP to the Board

of Supervisors subject to the proposed conditions and approval of the withdrawal request from the AFD.

Mr. O'Connor opened the floor for questions from the Commission.

Mr. Krapf requested more information on the reason for requesting the additional 10 acres.

Mr. Wysong stated that during staff review, it was determined that more acreage was needed for the stormwater facilities and a small expansion to the footprint of the solar arrays.

Mr. Krapf inquired if this could be considered a circumstance beyond the applicant's control that would meet one of the withdrawal criteria.

Mr. Wysong stated that staff did not interpret it as meeting the criteria.

Mr. Krapf inquired about the access to the site during constructions and the impact of the existing utility lines on the access.

Mr. Holt stated that in the interim, as follow up on the stormwater management piece, there has been updated guidance from the state on calculating impervious cover for solar farms. Mr. Holt stated that the panels are now considered impervious cover which increases the amount of area needed for treatment of stormwater. Mr. Holt further stated that there is also a cap on the amount of forested land that can be credited to stormwater management. Mr. Holt stated that this accounts for the withdrawal of the additional land from the AFD.

Mr. Wysong provided an overview of the construction access road to the property.

Mr. Krapf inquired if any road improvements would be required.

Mr. Wysong stated that there is a condition that the applicant would have to do an existing conditions assessment and calculate what the repairs would be. Mr. Wysong stated that those repairs would need to be completed after construction on the site is finished.

Mr. Krapf inquired if this would include the overhead utilities.

Mr. Wysong confirmed.

Mr. Holt stated that Peach Street and Peninsula Street are in the VDOT Secondary system for maintenance. Mr. Holt stated that on the other side of the railroad tracks, it becomes a shared easement. Mr. Holt stated that much of the private easement may need to be improved.

Ms. Null stated that this is her concern as well. Ms. Null inquired if the site could be accessed from Rochambeau Drive or from Route 60. Ms. Null noted that there could be huge impacts to the CSX operations if a vehicle was stuck on the track crossing.



Mr. Holt stated that access from Rochambeau Drive for this site is distinctly different from the other solar far to the south because the route passes a number of residential units on one end and is encumbered by environmentally sensitive land at the other end.

Mr. Krapf inquired about a bond to ensure appropriate decommissioning of the panels at the end of their life.

Mr. Wysong stated that there is a condition for a surety bond to decommission the panels and remediate the site in the event the applicant is no longer in business.

Mr. Polster stated that part of the condition for the surety bond is to reevaluate it periodically to ensure it will cover any increase in costs over the years.

Mr. O'Connor opened the Public Hearing.

Mr. Buzz Becker, Director of Project Development, Pivot Energy. Made a presentation to the Commission in support of the application.

Mr. Polster about the use of the property between the buffer and the boundary line with the adjacent property owner.

Mr. Becker stated that the property owner will be reimbursed for that property so that it can be open space; most likely a meadow with pollinating plants.

Mr. Polster inquired about the ground cover under the solar panels.

Mr. Becker stated that the plan is for a native pollinator seed mix with up to quarterly mowing or maintenance.

Mr. Polster inquired about the size of the largest vehicles bringing in equipment.

Mr. Becker stated that the solar panels would be delivered on a tractor trailer. Mr. Becker further stated that the vast majority of the vehicles would not be that large.

Mr. Polster inquired about whether the tractor trailer would have difficulty crossing the railroad tracks and navigating the turn.

Mr. Becker stated that it would not be a problem.

Mr. Polster inquired about the buffering along the road adjacent to the neighboring property.

Mr. Becker stated that they are working with the adjacent property owner to establish a satisfactory mix of plantings.

Dr. Rose inquired about the subscription service for low to moderate income customers.

Mr. Becker stated that they have a manager of subscriptions that reaches out to the community to find potential subscribers.

Dr. Rose inquired if the subscriber opportunity was limited to residents near the solar farm.

Mr. Becker stated that it was not limited by proximity.

Mr. Rodgers inquired if the project could move forward without the additional ten acres.

Mr. Nick Robertson, Kimley-Horn, stated that without the additional acreage, it would be necessary to reduce the number of panels or not go forward with the project. Mr. Robertson stated that a reduction in the panels may affect support from Dominion Energy.

Mr. Polster inquired if staff did the stormwater calculations.

Mr. Roberson stated that Kimley-Horn did the calculations.

Mr. Polster inquired if the Stormwater division supported those calculations.

Mr. Robertson stated that staff supported the calculations.

Mr. Polster inquired if there were any alternative.

Mr. Roberson stated that there is no alternative except reducing the number of panels which the applicant cannot do.

Mr. O'Connor inquired if any other portion of the property could be used for stormwater management.

Mr. Robertson stated that the location of the retention ponds is determined by topography; the ponds must be place where water will drain. Mr. Roberson stated that it would not be possible to move sufficient panels to another area or be detrimental to the adjacent property owner.

Mr. Polster if he is correct that the calculations for impervious cover are based on the amount of water coming off the panels and where it drains to which is why the retention ponds must be located as where they are.

Mr. Becker confirmed that this is correct.

Mr. Gary Campbell, 230 Peach Street, addressed the Commission in support of the application.

As no one further wished to speak, Mr. O'Connor closed the Public Hearing.

Mr. O'Connor opened the floor for discussion by the Commission.



Mr. Haldeman stated that he plans to support the application. Mr. Haldeman stated that he finds that the AFD withdrawal does meet the criteria for a change in circumstance and further it also meets the criteria of being for a public purpose. Mr. Haldeman stated that this does meet a goal of the Comprehensive Plan as well as stated and federal goals to de-carbonize energy production.

Mr. Krapf stated that he also finds that the criteria for AFD withdrawal are met. Mr. Krapf stated that he believes the applicant would have removed the acreage during the renewal period if the stormwater information had been available at that time. Mr. Krapf stated that he would like to recommend that Condition No. 5 be amended to include that item B read: The majority of evergreen shrubs and trees should be native species. Mr. Krapf further stated that he would recommend that Condition No. 6 be amended to read: Site ground cover that includes native pollinators and native grasses. Mr. Krapf further stated that he is in favor of solar and other power; however, he is concerned about the impact on the Economic Opportunity Zone (EO).

Mr. O'Connor stated that he has concerns about this use of the property in the EO Zone. Mr. O'Connor stated that he did not support the other neighboring solar farm and does not intend to support this application.

Mr. Polster made a motion to recommend approval of the application with conditions as proposed by staff and with the recommended amendments.

On a roll call vote, the Commission voted to recommend approval of SUP-22-0015. 7294 & 7296 Richmond Rd. Pivot Energy Solar Project. (5-2)

Mr. Polster made a motion to adopt the resolution finding the project to be in substantial accord with the Comprehensive Plan.

On a roll call vote the Commission voted to find the application in substantial accord with the Comprehensive Plan. (5-0)

**ITEM SUMMARY**

DATE: 12/13/2022

TO: The Board of Supervisors

FROM: John Risinger, Senior Planner

SUBJECT: SUP-20-0010. Hertzler Clearing and Grading

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**ATTACHMENTS:**

|   | Description  | Type            |
|---|--|-----------------|
| ▣ | Staff Report   | Staff Report    |
| ▣ | 1. Resolution  | Resolution      |
| ▣ | 2. Location Map  | Backup Material |
| ▣ | 3. Master Plan   | Backup Material |
| ▣ | 4. Community Impact Statement  | Backup Material |
| ▣ | 5. SUP-0007-2000 Staff Reports and Meeting Minutes                         | Backup Material |
| ▣ | 6. Unapproved Minutes of the November 2, 2022, Planning Commission Meeting | Backup Material |
| ▣ | 7. Citizen Correspondence  | Backup Material |

**REVIEWERS:**

| Department             | Reviewer           | Action   | Date                 |
|------------------------|--------------------|----------|----------------------|
| Planning               | Holt, Paul         | Approved | 11/21/2022 - 4:27 PM |
| Development Management | Holt, Paul         | Approved | 11/21/2022 - 4:27 PM |
| Publication Management | Daniel, Martha     | Approved | 11/21/2022 - 4:44 PM |
| Legal Review           | Kinsman, Adam      | Approved | 11/22/2022 - 8:30 AM |
| Board Secretary        | Saeed, Teresa      | Approved | 12/5/2022 - 10:56 AM |
| Board Secretary        | Rinehimer, Bradley | Approved | 12/5/2022 - 11:03 AM |
| Board Secretary        | Saeed, Teresa      | Approved | 12/6/2022 - 3:07 PM  |



**SPECIAL USE PERMIT-20-0010. 9537 Barnes Road Hertzler Clearing and Grading  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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**SUMMARY FACTS**

Applicant: Ms. Mary Hertzler

Landowners: Mr. Steven L. Hertzler and Ms. Mary E. Hertzler

Proposal: To allow the operation of a contractor's office, warehouse, and sheds and the manufacturing and sale of wood products

Location: 9537 Barnes Road

Tax Map/Parcel No.: 0430100012A

Project Acreage: ± 28.61 acres

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands

Primary Service Area: (PSA) Outside

Staff Contact: John Risinger, Senior Planner

**PUBLIC HEARING DATES**

Planning Commission: November 2, 2022, 6:00 p.m.

Board of Supervisors: December 13, 2022, 5:00 p.m.

**FACTORS FAVORABLE**

1. Staff finds the proposal compatible with surrounding zoning and development and consistent with the *Our County, Our Shared Future: James City County 2045 Comprehensive Plan*.
2. Traffic impacts generated by this proposal are not anticipated to negatively impact surrounding zoning and development.
3. Impacts: Please see Impact Analysis on Pages 5-6.

**FACTORS UNFAVORABLE**

1. With the proposed conditions, staff finds that there are no unfavorable factors.
2. Impacts: Please see Impact Analysis on Pages 5-6.

**SUMMARY STAFF RECOMMENDATION**

Staff recommends that the Board of Supervisors (BOS) approve this application subject to the proposed conditions.

**PLANNING COMMISSION RECOMMENDATION**

At its November 2, 2022, Regular Meeting, the Planning Commission's motion to recommend approval of the Special Use Permit (SUP) failed by a vote of 3-4.

**PROPOSED CHANGES MADE SINCE THE PLANNING COMMISSION MEETING**

None.

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**SPECIAL USE PERMIT-20-0010. 9537 Barnes Road Hertzler Clearing and Grading  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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**PROJECT DESCRIPTION**

Ms. Mary Hertzler has applied for an SUP to allow the operation of a contractor's office, warehouse, sheds, and the manufacturing of wood products at 9537 Barnes Road. The business is currently operating on the property and this application has been submitted to bring the use into conformance with the Zoning Ordinance.

In 2000, Case No. SUP-0007-2000 was submitted and reviewed for the operation of a contractor's warehouse and office, storage and repair of heavy equipment, and the manufacture and sale of wood products. The business operations proposed with that application included a contractor's office for the clearing and grading operation with logs, stumps, brush, and other clearing debris brought to the property for processing. The application was considered by the Planning Commission at its June 5, 2000, July 5, 2000, and August 7, 2000, meetings where the Planning Commission recommended approval of the application by a vote of 6-0. The application was then considered by the BOS at its September 12, 2000, meeting where the BOS denied the application by a vote of 5-0. The staff reports and minutes from those meetings have been included in the Agenda Packet as Attachment No. 5.

Having received a complaint, the Zoning Division issued a notice of violation in 2020 indicating that the property was being used for a contractor's office and warehouse and the manufacturing of wood products and that an SUP would be needed to bring the use into conformance with the Zoning Ordinance. The applicant states that the business has been operating from the property for approximately 20 years. During this time, the area utilized for business operation has increased without the appropriate approvals or permitting from the County. Impacts to the Resource Protection Area (RPA) include land disturbance and clearing of trees, the construction of a pond, and the construction of a driveway onto a neighboring property. The

construction of the pond and driveway have also impacted the wetlands. These existing conditions are generally shown on the master plan.

The business operation currently entails clearing and grading work conducted on off-site properties. Logs, stumps, brush, and other clearing debris from off-site properties are brought to the property to be processed into lumber or mulch. The applicant states that processed lumber is typically used to make pallets. The property is not open to the public and no sales occur on the property. All processed materials are hauled off-site by employees for sale or recycling.

Equipment and vehicles are stored and maintained on the property for use during clearing and grading work, hauling materials, and manufacturing wood products. The vehicles include three road tractors, three dump trucks, a chipper, a topsoil screen, a Biogrid 400 stump and debris grinder, a LT70 sawmill, two excavators, a bulldozer, three loaders, and several pickup trucks. Vehicles are stored in and around Buildings four, six, and nine shown on the master plan and minor maintenance and repair of vehicles is conducted in and around Building five.

Up to eight employees arrive on the property starting at 6:30 a.m., Monday through Friday, before either traveling to off-site properties or working on the property. Minor maintenance and repair of vehicles is conducted from 7 a.m. to 5 p.m., Monday through Friday. All work associated with the manufacturing of wood products, including sorting materials, soil screening, grinding, and sawing, is conducted from 8 a.m. to 5 p.m., Monday through Friday.

The applicant indicates that there are approximately 20 vehicular trips per day to and from the property. Those trips include employees arriving to the property and then leaving for work sites in the morning, occasional trips throughout the day for hauling materials, and then

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**SPECIAL USE PERMIT-20-0010. 9537 Barnes Road Hertzler Clearing and Grading  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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employees returning to the property before leaving work at the end of the day. This property is located approximately 1,500 feet from the intersection of Route 30 and Barnes Road. The Virginia Department of Transportation (VDOT) has reviewed the application and did not indicate any concerns with utilizing this stretch of Barnes Road. Engineering details associated with the commercial entrance onto Barnes Road will be reviewed during the site plan stage.

The application has been reviewed by County staff to address potential impacts of the business. The Stormwater and Resource Protection Division has reviewed the application regarding stormwater management design for the current operations and for impacts to the RPA and wetlands. The proposed conditions would require impacts to the RPA be remediated, proof of appropriate permits for impacts to the wetlands, and that the stormwater management design be sufficient for all development on the property.

The application has also been reviewed by the Fire Department to ensure adequate fire safety measures are utilized. The proposed conditions would limit the size of storage piles for wood products, prohibit the use of chemicals or burning on the property to dispose of materials, and require a fire safety plan to be developed. Furthermore, the proposed conditions require that vehicles and equipment be stored on the property in an area which is separate from the area used for timber processing and mulch stockpiles.

A condition proposed for landscaping would require a 50-foot buffer along Barnes Road and the adjoining residential properties and provide screening the business from the view of Barnes Road or the adjoining properties by means of landscaping or fencing.

The highest noise generating operations of the use, primarily the operations associated with the manufacturing of wood products such as grinding and sawing, occur between 8 a.m. to 5 p.m., Monday through Friday. Staff finds that this is consistent with normal operating hours for businesses and has proposed a condition to restrict the hours of operation of the manufacturing of wood products to 8 a.m. to 5 p.m., Monday through Friday. Noise from Interstate 64 (I-64) and required buffering may also reduce potential noise impacts.

Additional proposed conditions include prohibiting sales on the property, restricting vehicular access to the business to only come from Barnes Road, prohibiting signage associated with the business, restricting the height of light poles, and prohibiting any light trespass onto adjoining properties.

A site plan would be required for the business and would need to show all existing improvements being brought into full conformance with the master plan, conditions, Zoning Ordinance, and other applicable regulations. The proposed conditions would require that the site plan be submitted within 12 months of the date of approval of the SUP and receive final approval within 24 months of the date of approval of the SUP. The proposed conditions would require that County staff inspect the property within six months of the date of approval of the SUP to verify existing conditions and within 36 months of the date of approval of the SUP to verify that all improvements shown on the site plan are completed and that the site is fully in compliance with the SUP and the site plan.

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**SPECIAL USE PERMIT-20-0010. 9537 Barnes Road Hertzler Clearing and Grading  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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**PLANNING AND ZONING HISTORY**

- On September 12, 2000, Case No. SUP-0007-2000 was denied by the BOS. This SUP was requested to allow the operation of a contractor's warehouse and office, storage and repair of heavy equipment, and the manufacture and sale of wood products on the property.
- A notice of violation was issued by the Zoning Division in 2020 for the business operating without an SUP.
- The Community Impact Statement submitted with this application indicates the business has been operating on the property for the last 20 years. This application is to bring the use into conformance with the Zoning Ordinance.

**SURROUNDING ZONING AND DEVELOPMENT**

- The properties west of Barnes Road are zoned A-1, General Agricultural, and are designated Rural Lands on the adopted 2045 Comprehensive Plan Land Use Map. Most of these properties are developed with single-family residential dwellings, but a few properties remain undeveloped.
- The properties east of Barnes Road are zoned B-1, General Business, and are designated Economic Opportunity on the adopted 2045 Comprehensive Plan Land Use Map. These properties are currently undeveloped but have an approved SUP for commercial development.
- To the south, the property is immediately bordered by I-64.

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**SPECIAL USE PERMIT-20-0010. 9537 Barnes Road Hertzler Clearing and Grading**  
**Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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| <b>Impacts/Potentially Unfavorable Conditions</b> | <b>Status</b><br><i>(No Mitigation Required/Mitigated/Not Fully Mitigated)</i> | <b>Considerations/Proposed Mitigation of Potentially Unfavorable Conditions</b>   |
|---|--|---|
| <u>Public Transportation: Vehicular</u>           | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- Per proposed Condition No. 6, all access to the business will be from Barnes Road. A commercial entrance is required and will be reviewed by VDOT at the site plan stage.</li> <li>- Traffic generated by the site is anticipated to be approximately 20 trips per day which are spread out from the morning to the afternoon. The property is approximately 1,500 feet from the intersection of Route 30 and Barnes Road. Staff anticipates that this portion of Barnes Road is equipped to handle the trips to and from the site which are spread throughout the day.</li> </ul> |
| <u>Public Transportation: Pedestrian/Bicycle</u>  | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- No pedestrian or bicycle improvements are shown along Barnes Road on the Pedestrian Accommodations Master Plan.</li> <li>- Barnes Road is shown as a shared roadway on the Regional Bikeways Master Plan. No improvements are required to be installed for this designation.</li> </ul>  |
| <u>Public Safety</u>                              | <u>Mitigated</u>   | <ul style="list-style-type: none"> <li>- Subject property is located approximately 4.6 miles from Fire Station 1.</li> <li>- Proposed Condition Nos. 10, 11, 12, and 13 are intended to mitigate potential public safety impacts including restricting where vehicles and equipment may be stored when not in use, limiting the size of piles of wood products, prohibiting the use of chemicals, or burning to dispose of materials, and requiring a fire safety plan to be developed.</li> </ul>  |
| <u>Public Schools</u>                             | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- The proposal will not generate schoolchildren.</li> </ul>  |
| <u>Public Parks and Recreation</u>                | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- The proposal does not generate impacts that require mitigation to the County's Parks and Recreation services or facilities.</li> </ul>   |
| <u>Public Libraries and Cultural Centers</u>      | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- The proposal does not generate impacts that require mitigation to public libraries or cultural centers.</li> </ul>   |
| <u>Groundwater and Drinking Water Resources</u>   | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- The property is outside the PSA. Any wells or drain fields used for the business will be reviewed by the Virginia Department of Health at the site plan stage.</li> </ul>  |

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**SPECIAL USE PERMIT-20-0010. 9537 Barnes Road Hertzler Clearing and Grading**  
**Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

| <b>Impacts/Potentially Unfavorable Conditions</b> | <b>Status</b><br><i>(No Mitigation Required/Mitigated/Not Fully Mitigated)</i> | <b>Considerations/Proposed Mitigation of Potentially Unfavorable Conditions</b>   |
|---|--|---|
| <u>Watersheds, Streams, and Reservoirs</u>        | <u>Mitigated</u>   | <ul style="list-style-type: none"> <li>- Proposed Condition No. 15 requires a Spill Prevention Control and Countermeasures plan be developed.</li> <li>- Proposed Condition No. 16 requires impacts to the RPA be restored.</li> <li>- Proposed Condition No. 17 requires the applicant to submit proof of permitting from the United States Army Corps of Engineers to County staff for any impacts to wetlands.</li> <li>- Proposed Condition No. 18 requires a stormwater management plan to be developed for the property inclusive of all improvements on the property.</li> <li>- Detailed stormwater management and design will be reviewed at the site plan stage.</li> </ul>   |
| <u>Cultural/Historic</u>                          | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- The property is not designated as a high-sensitivity or ultra-sensitivity area by the James City County Archaeological Assessment.</li> <li>- Site plan submittal requirements for archaeological studies will be reviewed at the site plan stage.</li> </ul>  |
| <u>Nearby and Surrounding Properties</u>          | <u>Mitigated</u>   | <ul style="list-style-type: none"> <li>- Proposed Condition Nos. 4, 5, 6, 7, and 8 prohibit sales on the property, limit the hours of operation, restrict vehicular access to come directly from Barnes Road, prohibit outdoor signage related to the business, and restrict the height of light poles and prohibit light trespass.</li> <li>- Proposed Condition No. 9 requires a vegetated buffer 50 feet in width along Barnes Road and the property lines that are shared with adjoining properties. The condition also requires that landscaping or fencing be installed to screen the use from Barnes Road and from the adjoining properties. All landscaping installed per this condition will be required to be evergreen.</li> <li>- Proposed Condition No. 14 requires an Operations Mitigation Plan be developed to address dust and noise mitigation, and cleaning any mud tracked onto Barnes Road by traffic associated with the business.</li> </ul> |
| <u>Community Character</u>                        | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- Barnes Road is not a Community Character Corridor (CCC), and the property is also not located in a Community Character Area.</li> </ul>  |
| <u>Covenants and Restrictions</u>                 | <u>No Mitigation Required</u>  | <ul style="list-style-type: none"> <li>- The applicant has verified that she is not aware of any covenants or restrictions on the property that prohibit the proposed use.</li> </ul>   |

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**SPECIAL USE PERMIT-20-0010. 9537 Barnes Road Hertzler Clearing and Grading**  
**Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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**2045 COMPREHENSIVE PLAN**

The site is designated Rural Lands on the 2045 Comprehensive Plan Land Use Map. Recommended uses include agricultural and forestal activities, agri-tourism, rural-support businesses, and certain commercial uses which require very low intensity settings. The Rural Lands Development Standards have the following guidance.

Uses in Rural Lands should reflect and enhance the rural character of the County. Particular attention should be given to the following:

- Locating structures and uses outside of sensitive areas.

*With the proposed conditions, impacts to the RPA would be remediated and the use would be operated outside of sensitive areas.*

- Maintaining existing topography, vegetation, trees, and tree lines to the maximum extent possible, especially along roads and between uses.

*The proposed use is generally within an area that has previously been cleared. The proposed conditions require vegetated buffers to protect and increase vegetation along the property lines.*

- Discouraging development on farmland, open fields, scenic roadside vistas, and other important agricultural/forestal soils and resources.

*The proposed improvements do not impact farmland, open fields, scenic roadside vistas, and other important agricultural/forestal soils and resources.*

- Encouraging enhanced landscaping to screen structures located in open fields using a natural appearance or one that resembles traditional hedgerows and windbreaks.

*The proposed improvements are not located in an open field.*

- Locating new driveways or service roads so that they follow existing contours and old roadway corridors whenever feasible.

*The proposed conditions require that access to the business be limited to come from Barnes Road. There is an existing driveway that has an entrance on Barnes Road.*

- Generally limiting the height of structures to an elevation below the height of surrounding mature trees and scaling buildings to be compatible with the character of the existing community.

*The property is subject to height limitations in accordance with Section 24-418 of the Zoning Ordinance. The proposed conditions require vegetated buffers and screening the use from Barnes Road and adjoining properties.*

- Minimizing the number of street and driveway intersections along the main road by providing common driveways.

*The proposed conditions limit access to the property from Barnes Road. The business would utilize an existing driveway which the entrance will be improved to VDOT standards.*

- Utilizing lighting only where necessary and in a manner that eliminates glare and brightness.

*The proposed conditions restrict the permitted height of light poles and prohibit light trespass across property lines.*

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*This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.*

**SPECIAL USE PERMIT-20-0010. 9537 Barnes Road Hertzler Clearing and Grading  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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The property is not located along a CCC.

**PROPOSED SUP CONDITIONS**

Proposed conditions are provided in Attachment No. 1.

**STAFF RECOMMENDATION**

With the attached conditions, staff finds that the proposal is compatible with surrounding zoning and development and consistent with the 2045 Comprehensive Plan.

Staff therefore recommends that the BOS approve the SUP subject to the proposed conditions.

JR/ap  
SUP20-10\_Hrtzlr

**Attachments:**

1. Resolution
2. Location Map
3. Master Plan
4. Community Impact Statement
5. SUP-0007-2000 Staff Reports and Meeting Minutes
6. Unapproved Minutes of the November 2, 2022, Planning Commission Meeting
7. Citizen Correspondence

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*This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.*

## **RESOLUTION**

**CASE NO. SUP-20-0010. 9537 BARNES ROAD**

### **HERTZLER CLEARING AND GRADING**

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

WHEREAS, Mr. Steven L. Hertzler and Ms. Mary E. Hertzler own property located at 9537 Barnes Road, further identified as James City County Real Estate Tax Map Parcel No. 0430100012A (the “Property”); and

WHEREAS, Ms. Mary Hertzler has applied for an SUP to allow for the operation of a contractor’s office, warehouse, sheds and the manufacturing and sale of wood products on the Property, as shown on the Master Plan titled “Hertzler Property 9537 Barnes Road” and dated April 4, 2022; and

WHEREAS, the Planning Commission, following its public hearing on November 2, 2022, a motion to recommended approval of this application failed by a vote of 3-4; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. SUP-20-0010; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with good zoning practices and the 2045 Comprehensive Plan Land Use Map designation for the Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after consideration of the factors in Section 24-9 of the James City County Code, does hereby approve the issuance of Case No. SUP-20-0010 as described herein with the following conditions:

1. *Master Plan.* This SUP shall be valid for the operation of a contractor’s office, warehouse, sheds, and for the manufacturing and sale of wood products (the “Project”) located at 9537 Barnes Road, further identified as James City County Real Estate Tax Map No. 0430100012A (the “Property”). Development of the Project on the Property shall occur generally as shown on the exhibit drawn by LandTech Resources Inc. entitled, “Hertzler Property 9537 Barnes Road” and dated April 4, 2022 (the “Master Plan”), with any deviations considered pursuant to Section 24-23(a)(2) of the James City County Code, as amended (“County Code”).
2. *Existing Conditions.* All existing conditions of the Property, including any unapproved or unpermitted structures or improvements, shall be brought into full compliance with the Master Plan and all applicable regulations. Within six months of the date of approval of the SUP, an inspection of the Property shall be conducted by County staff for the purpose of verifying all existing conditions of the Property to be shown on the site plan required per Condition No. 3.



3. Site Plan. A site plan showing all existing, proposed, and required improvements associated with the Project in full compliance with the Master Plan shall be submitted within 12 months from the date of approval of the SUP, and final approval of the site plan shall be obtained within 24 months of the date of approval of the SUP, or the SUP shall automatically be void. All work and improvements shown on the approved site plan shall be completed, and an inspection of the Property shall be conducted by County staff for the purpose of verifying full compliance with the Master Plan and approved site plan shall occur within 36 months of the date of approval of the SUP, or the SUP shall automatically be void.
4. Sales. No sales shall occur on the property.
5. Hours of Operation. The hours of operation of the Project shall be limited from 6:30 a.m. to 6:30 p.m., Monday through Friday, except for transportation related to occasional storm cleanup. Activities associated with the manufacturing of wood products, including but not limited to sorting materials, grinding, chipping, sawing, and soil screening, and the usage of any dumpsters on the Property shall be limited to 8 a.m. to 5 p.m., Monday through Friday. Activities associated with the repair and maintenance of vehicles and equipment shall be limited to 7 a.m. to 5 p.m., Monday through Friday.
6. Vehicular Access. All vehicular access to the Project shall be directly from Barnes Road as shown on the Master Plan. No vehicles associated with the Project shall access the site through the adjacent properties.
7. Signage. No outdoor signage advertising the Project shall be allowed on the Property.
8. Lighting. All new exterior light fixtures on the Property, including new building lighting, shall have recessed fixtures with no lens, bulb, or globe extending below the casing. All new light poles shall not exceed 16 feet in height from finished grade. No light trespass, defined as 0.1-foot-candle or higher, shall extend across any boundary line of the Property. A lighting plan showing satisfaction of this condition shall be approved by the Director of Planning prior to site plan approval.
9. Landscape and Screening Plan. As part of the site plan for the Project, a landscape plan shall be submitted to the Planning Director or designee for review and approval prior to final site plan approval with the following standards:
  - a. A vegetated buffer 50 feet in width shall be provided along the Property's frontage on Barnes Road, the side property line to the north, and the rear property line. The side property line adjacent to Interstate 64 shall, at a minimum, provide the building setback area as a vegetated buffer. Existing vegetation in the buffer areas shall be retained and supplemented as necessary with additional plantings to meet the requirements of Section 24-96 of the County Code. An inventory of existing vegetation in the buffer areas shall be provided in the site plan for the Project for the purpose of verifying the quantity of existing vegetation.
  - b. All components of the Project shall be screened from the Barnes Road right-of-way and from adjacent properties to the north by either a full panel fence or landscaping. Any fencing used to meet this requirement shall be of a natural wood color. Fence height shall be a minimum of six feet and a maximum of eight feet. The location of any fencing shall be shown on the site plan for the Project, and the design shall be submitted to the Planning Director for review and approval prior to final site plan approval.

- c. All landscape material installed to meet this condition shall be evergreen and shall meet or exceed the applicable landscape standards contained in the Zoning Ordinance.
10. Vehicle and Equipment Storage and Maintenance. All storage of vehicles and equipment associated with the Project shall be limited to the areas identified on the Master Plan as “Area utilized for material processing and storage of vehicles/equipment” and “Area utilized for material processing, storage and maintenance of vehicles/equipment.” All maintenance of vehicles and equipment associated with the Project shall be limited to the area identified on the Master Plan as “Area utilized for material processing, storage and maintenance of vehicles/equipment.”
11. Material Storage. All storage of wood products shall comply with the following requirements:
- a. Piles shall be on solid ground or other all-weather surface.
  - b. Piles shall not exceed 25 feet in height, 150 feet in width, and 250 feet in length.
  - c. Piles shall be separated from adjacent piles by at least 50 feet.
12. Material Decomposition. The use of chemicals to aid in the decomposition of material shall be prohibited. No materials shall be burned on the Property.
13. Fire Safety Plan. Prior to final approval of the site plan for the Project, a Fire Safety Plan shall be submitted to and approved by the Fire Marshal or designee. The plan shall address:
- a. Access to all areas of the Property related to the Project and to the residence at the rear of the property.
  - b. The types of materials and equipment stored on the property.
  - c. The capacity, availability, and access to any on-site water sources that may be used for fire suppression.
  - d. A plan for monitoring, controlling, and extinguishing spot fires.
14. Operations Mitigation Plan. Prior to final approval of the site plan for the Project, an Operations Mitigation Plan shall be submitted to and approved by the Planning Director or designee. The plan shall address:
- a. Dust mitigation, such as water trucks or similar methods.
  - b. Noise mitigation, such as the enforcement of hours of operation for the on-site activities.
  - c. Road monitoring of Barnes Road, to include cleaning of roadways of mud tracked onto Barnes Road from traffic associated with the Project.

15. Spill Prevention Control and Countermeasure Plan. Prior to approval of the site plan for the Project, a Spill Prevention Control and Countermeasure (SPCC) plan for the Project shall be submitted to the Stormwater and Resource Protection Director or designee for review and approval. The SPCC shall outline measures and procedures necessary for the operation of the Project.
16. Resource Protection Area Remediation. A remediation plan for all existing impacts to the Resource Protection Area (RPA) shall be submitted to and approved by the Stormwater and Resource Protection Director or designee within 12 months of the date of approval of the SUP. The plan shall include measures to restore the RPA to pre-development conditions or, where applicable, receive an exception as outlined in Chapter 23 of the County Code. The measures identified in the remediation plan shall be shown on the site plan for the Project and approved by the Stormwater and Resource Protection Director or designee prior to final site plan approval. All measures shall be completed to the satisfaction of the Stormwater and Resource Protection Director or designee within 36 months of the date of approval of the SUP.
17. Wetlands Permitting. Proof of permitting from the United States Army Corps of Engineers for any existing impacts to wetlands shall be submitted to the Stormwater and Resource Protection Director or designee prior to final approval of the site plan for the Project.
18. Stormwater Management. The stormwater management plan included with the site plan for the Project shall account for all development on the Property. All stormwater management facility designs shall be shown on the site plan for the Project.
  - a. If intended to be used for stormwater management purposes, the existing pond on the Property shall be designed and upgraded as necessary to meet all criteria for a Virginia Department of Environmental Quality BMP Clearinghouse Specification No. 14 Level 2 Wet Pond.
  - b. All water quality treatment associated with the Property must be provided on-site. The purchase of offsite nutrient credits shall be prohibited.
  - c. The Forested Open Space land use category may be used to account for a maximum of 50% of the required water quality treatment associated with the Property.
19. Severance Clause. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.



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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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

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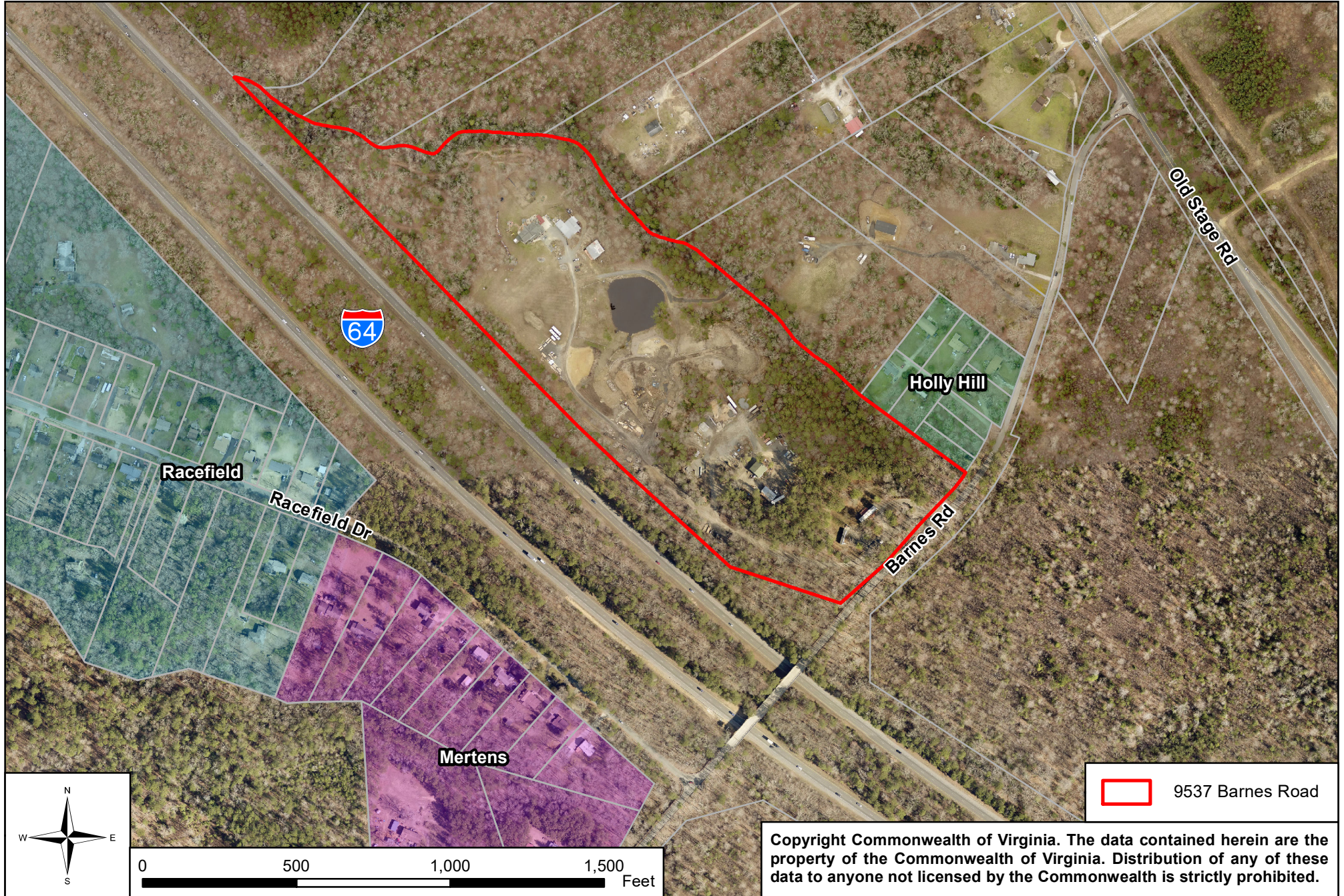
Teresa J. Saeed  
Deputy Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of  
December, 2022.

SUP20-10\_Hrtzlr-res



# JCC SUP-20-0010, Hertzler Clearing and Grading



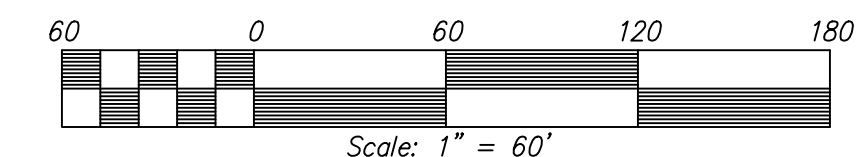


ALL STRUCTURES ARE LESS THAN 35' IN HEIGHT

|                 |         |            |
|-----------------|---------|------------|
| OUT BUILDING #1 | STORAGE | 120 S.F.   |
| OUT BUILDING #2 | STORAGE | 340 S.F.   |
| OUT BUILDING #3 | STORAGE | 950 S.F.   |
| OUT BUILDING #4 | STORAGE | 2,100 S.F. |
| OUT BUILDING #5 | GARAGE  | 1,600 S.F. |
| OUT BUILDING #6 | STORAGE | 330 S.F.   |
| OUT BUILDING #7 | STORAGE | 400 S.F.   |
| OUT BUILDING #8 | STORAGE | 930 S.F.   |
| OUT BUILDING #9 | STORAGE | 1,300 S.F. |

## TOTAL PARCEL AREA

|                           |                                     |
|---------------------------|-------------------------------------|
| <b>EX. PARCEL COVER</b>   |                                     |
| IMPERVIOUS SURFACES       | 254,390 S.F. / 5.84 AC. (20.41%)    |
| MANAGED TURF              | 275,736 S.F. / 6.33 AC. (22.13%)    |
| FOREST                    | ±716,126 S.F. / ±16.44 AC. (57.46%) |
| <b>TOTAL EMPLOYEES</b>    | 8                                   |
| <b>TRAFFIC GENERATION</b> | 20 TRIPS PER DAY                    |

[illegible]

MASTER PLAN  
**HERTZLER PROPERTY**  
**9537 BARNES ROAD**

JAMES CITY COUNTY

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VIRGINIA

|                    |
|--------------------|
| Scale: 1" = 60'    |
| Date: 04/04/2022   |
| Job Number: 21-018 |
| Drawn By: WSF      |
| Sheet Title:       |
| MASTER PLAN        |
| Sheet Number:      |
| MP101              |



**COMMUNITY IMPACT STATEMENT**  
**HERTZLER CLEARING AND GRADING**  
**9537 BARNES ROAD**  
**SPECIAL USE PERMIT**  
**SUP-20-0010**



## Introduction

The subject property is located at 9537 Barnes Road, Tax Map #043010001ZA, and is owned by Steven L. and Mary E. Hertzler. The Hertzlers live on the property. The property contains approximately 28.6 acres, is zoned A-1, and designated Rural Lands on the Comprehensive Plan Land Use Map.

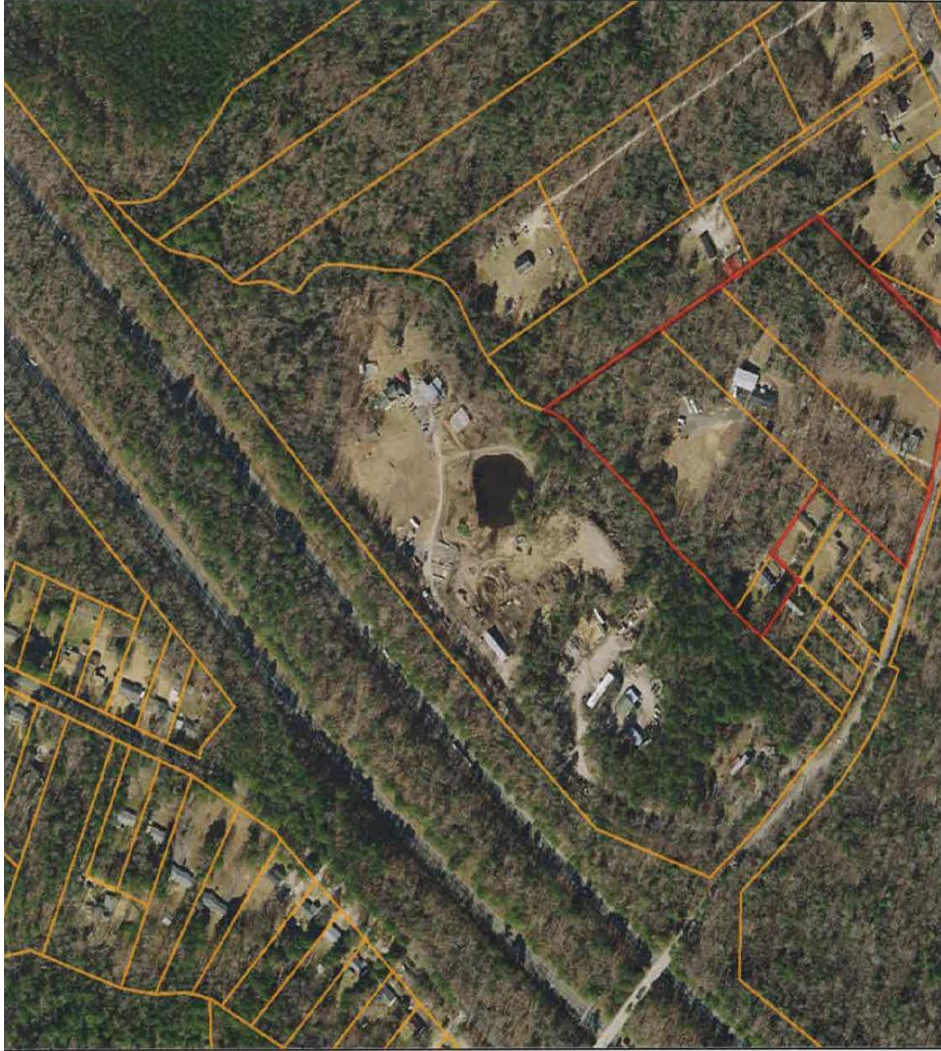


The Hertzlers are the owners of Hertzler Clearing and Grading, a small family-owned land clearing and rough grading business. The business has been operated from the property for the last 20 years. The County has informed the Hertzlers that their business constitutes a



contractor's office/warehouse and wood product manufacturing facility requiring a special use permit. The Hertzlers are applying for a special use permit.

The property contains the Hertzlers' residence and numerous out buildings as designated on the Master Plan made by LandTech Resources submitted herewith. The adjacent parcels outlined in red on the photo below are owned by members of the Hertzler family.



## **The Business**

The company is in the land clearing and rough grading business based from the property. Hertzler Clearing and Grading has generally from eight to ten employees, four of whom are family members and not all of whom come to the property. The company owns, at present,



three road tractors, three dump trucks, a chipper, a top soil screen, a BioGrind 400 stump and debris grinder, a LT 70 saw mill, two excavators, three loaders and several pickup trucks. Pictures of the equipment appear below.

On a typical day, six to eight employees arrive at the property in private vehicles between 6:30 a.m. and 8:00 a.m. Employees park in the gravel area adjacent to out building #5 shown on the Master Plan. Three to four of the heavy trucks leave the site between 7:30 a.m. and 8:30 a.m. Some days the trucks return to the site during the day and unload and return to the job site. Other days they return only at the end of the work day. Occasionally, equipment and trucks remain on the job site overnight. The applicant indicates that on average there are approximately 20 trips per day to and from the site.

The Hertzlers' goal is to responsibly reuse and recycle all wood and soil materials from the land clearing operation, rather than simply dumping it in a landfill. To that end, the operations that take place on the property are as follows:

#### Vehicle and Equipment Storage, Maintenance, and Repair

Vehicles and equipment are stored on site under pole barns shown on the Master Plan as out buildings 4, 6, and 9. Employees perform minor maintenance and repair on the vehicles and equipment as needed in and around outbuilding #5. All repairs and maintenance work are done between 7:00 a.m. and 5:00 p.m.





























































## Yard Operations

Trucks returning from job sites dump stumps, logs, brush, and other clearing debris. These materials are then sorted for further processing by either grinding, sawing for lumber, delivering to the paper mill in West Point for wood pulp or screening soil. Generally, this work is done by one employee using one excavator and 1 dozer between the hours of 8:00 am and 5:00 pm.



## Grinding

Every three to four weeks, on average, stumps and brush are ground into mulch, utilizing the grinder and excavator between the hours of 8:00 am and 5:00 pm. Generally no more than 400 to 500 cubic yards of mulch are stored on site.





## Soil Screening

Soil comes to the site with stumps and clearing debris. The soil is screened using the topsoil screener and one loader. This process involves two employees and generally takes place six to eight hours a week. About once a week the Hertzlers bring a load of manure from Dreamcatchers to mix in with the soil and to help Dreamcatchers dispose of their manure.



## Sawing

Appropriate logs are cut into dimensional lumber, using the saw mill. The lumber is either air or kiln dried. Sawing takes place between the hours of 8:00 am and 3:00 pm generally three or four days a week. One day a week cut lumber is assembled into pallets.





The site is not open to the public and there are no retail sales of any product from the site. All materials are trucked by the Hertzlers to customers/end users.

### **Water and Sewer Impacts**

The property is served by a private well and septic system and will accordingly have no impact on the public water and sewer system.

### **Traffic Impacts**

There is no use category comparable to the Hertzler's business in the ITE Trip Generation manual. The applicant indicates that on average there are 20 total trips in and out of the site per day. The level of traffic does not warrant a traffic impact study. The vast majority of the traffic is traveling the segment of Barnes Road between the site and Route 30. All site traffic uses the single entrance to the property off Barnes Road which will be upgraded to meet VDOT commercial entrance standards. The applicant indicates its vehicles have never been involved in an accident on Barnes Road.

### **Fire Protection**

The closest fire station to the site is fire station #1 located at 3135 Forge Road, approximately 4.6 miles from the site.

### **Solid Waste**

All trash and solid waste generated at the site is collected by a private contractor.

### **Environmental**

Wetlands on the property have been delineated by Roth Environmental and the limits of wetlands and associated RPA buffers are shown on the Master Plan.

### **Stormwater Management**

If the applied for special use permit is approved, the applicant will be preparing and submitting a site plan including a stormwater management plan meeting applicable state and local requirements.

### **Fiscal Impact**

The applicant pays approximately \$20,000 per year in various taxes to James City

County, including real estate, personal property and business license taxes, with minimal to no demand on County services.

## **Comprehensive Plan**

The property is designated Rural Lands on the 2045 Comprehensive Plan Land Use Map. Appropriate uses include traditional agricultural and forestal uses. The Plan recognizes that certain uses may be considered on the basis of a case-by-case review, provided such uses are compatible with the natural and rural character of the area and are in accordance with the Rural Lands Development Standards. These uses should be located in a manner that minimizes effects on agricultural and forestal activities, and where public services and facilities, especially roads, can adequately accommodate them. The proposed use is similar to a forestry use in that it involves cutting, handling and processing timber with the use of heavy trucks and equipment. The unique location of the site immediately adjacent to Interstate 64 mitigates potential impacts from the business, especially noise. All operations are located in the interior of the site, are well buffered with mature trees and are not visible from Barnes Road or surrounding properties. The business generates little traffic. Special use permit conditions will further insure impacts from the business are fully mitigated.

The business in this location is consistent with rural land development standards. Structures and uses are located outside of sensitive areas. The site is well buffered with mature trees, especially along Barnes Road. There is no development on farmland, open fields, scenic roadside vistas, and other important agricultural/forestal soils and resources. The height of structures are below the height of surrounding mature trees and buildings are scaled to be compatible with the character of the existing community. The property is served by a single entrance minimizing the number of street and driveway intersections along the main road. The site utilizes minimal security lighting only that does not generate glare and brightness on surrounding properties.

## **Conclusion**

Approval of the requested special use permit, with appropriate conditions, will allow the applicant to continue operating its small, family business while bringing it into compliance with applicable County requirements. Given the location of the site immediately adjacent to I-64 and the low traffic generated by the use, the applicant submits the business can continue to operate without adverse impacts on neighbors and in accordance with the rural land development standards set forth in the Comprehensive Plan.



file

**SPECIAL USE PERMIT-7-00. Hertzler Clearing and Grading**  
Staff Report for the September 12, 2000, Board of Supervisors Public Hearing

This report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

**PUBLIC HEARINGS**  
Building C Board Room; County Government Center  
Planning Commission: June 5, 2000, (deferred); July 5, 2000, (deferred)  
August 7, 2000, 7:00 p.m.(approved)  
Board of Supervisors: September 12, 2000, 7:00 p.m.

**SUMMARY FACTS**

Applicant/Landowner: Mr. Steven L. Hertzler  
  
Proposed Use: Contractor's warehouse and office, storage and repair of heavy equipment, and the manufacture and sale of wood products.  
  
Location: 9537 Barnes Road; Stonehouse District  
  
Tax Map and Parcel No.: (4-3)(1-12A)  
  
Primary Service Area: Outside  
  
Parcel Size: 28.6 acres  
  
Existing Zoning: A-1, General Agricultural  
  
Comprehensive Plan: Rural Lands  
  
Surrounding Zoning: North: A-1, General Agricultural  
South: B-1, General Business  
East: A-1, General Agricultural  
West: A-1 , General Agricultural  
  
Staff Contact: Christopher M. Johnson - Phone 253-6685

**STAFF RECOMMENDATION:**

Staff finds the proposal, with conditions, generally consistent with the surrounding zoning and development and generally consistent with the Comprehensive Plan. Staff recommends the Board of Supervisors approve this application with the conditions found in the staff report. At its August 7, 2000, meeting, the Planning Commission concurred with staff and voted to recommend approval of this application by a vote of 6 to 0, with one absence.

## **Description of Project**

Mr. Steven L. Hertzler has applied for a special use permit to allow the construction of a contractor's warehouse and office, the storage and repair of heavy equipment, and the manufacture of wood products at 9537 Barnes Road. The property is zoned A-1, General Agricultural, and is further identified as Parcel No. (1-12A) on James City County Real Estate Tax Map No. (4-3). The applicant's father currently resides in a mobile home located on the site. The applicant owns and operates a clearing and grading business which currently has six full-time employees but has had as many as eight employees within the past year. If approved, this special use permit would allow the construction of a 5,000-square foot office/warehouse, the storage and repair of Hertzler Clearing and Grading vehicles and heavy equipment, the storage of cleared stumps and wood material, and the grinding of stumps and wood material into mulch. Approximately seven acres (one quarter of the 28.6-acre site) is proposed to be cleared for this operation. A tub grinder would be leased periodically and brought to the site to grind accumulated stumps and wood materials into mulch on a 2.5-acre wood storage, manufacturing and processing area. The applicant has stated that because of the high concentration of dirt in the mulch, it is not suitable for resale. **A condition has been added which eliminates the sale of wood, mulch, and wood materials on the site. A condition has also been added that restricts the transportation of wood, mulch or wood materials onto or off of the property to those vehicles registered to Hertzler Clearing and Grading and restricts both the number of vehicles used as part of the operation and the number used to transport materials onto or off of the property.**

## **Description of the Grinder Apparatus**

The type of grinder to be used on this property periodically is a Moorbark tub grinder, Model 1300. The 36-ton grinder measures 38 feet in length and 13 feet in height and is powered by a 750 horsepower Caterpillar engine. The production rate varies depending on the type of material being processed but it is capable of grinding 320-cubic yards per hour. Stumps, wood, and wood debris are loaded into a large rotating tub which moves the wood over a hammer mill. Heavy hammers tear the wood to bits utilizing a grinding motion. When the bits are small enough, they fall through a screen onto a conveyer and the mulch is then stockpiled. A tractor would spread the mulch out on clear areas. The grinder achieves a three to one reduction from raw materials to the end product.

## **Field Visit/Sound Test**

On May 12, 2000, several Planning Commission members and Mr. Kennedy joined staff on a visit to the property for the purpose of viewing the tub grinder and conducting sound tests from adjacent residential properties. The tub grinder was not located at the point where it would ultimately be used as that area has yet to be cleared. Staff and the applicant tried to locate the grinder in a manner which would best approximate the distance and sound levels adjacent residential properties would encounter if a special use permit is granted for this operation. It should be noted that if approved the grinder would be approximately the same distance from one of the residences as it was from one of the test sites. A map is included as an attachment that identifies the locations where sound tests were observed and lists the recorded noise levels. Readings taken at the nearby residential test sites when the grinder was not in operation ranged from 50 dBA to 56 dBA with the primary source of background noise coming from Interstate 64. The readings taken at the various residential test sites with the grinder in operation ranged from 55 dBA to 60 dBA. Staff conducted sound tests in advance of the official test to compare results and did not observe any appreciable difference in decibel levels between the two tests.

According to the Occupational Safety and Health Administration (OSHA), continued exposure to noise over 85 dBA will eventually harm hearing. While OSHA has no mandated definition for what constitutes a substantial increase over existing sound levels, state highway departments typically use either a 10 dBA increase or a 15 dBA increase in noise levels to define "a substantial increase" in existing noise levels. Neither



the Department of Environmental Quality (DEQ) and the Environmental Protection Agency (EPA) specifically define what constitutes a substantial increase. **The measured noise level increase falls well within this acceptable range of increase typically used by state highway departments.** Examples of noises which might be typically observed in a rural setting include freeway traffic 70 dBA, a tractor 90 dBA, a leafblower 110 dBA, a power lawn mower 65-95 dBA, and an ambulance siren 120 dBA. As a comparison, a decibel reading of 84 dBA was observed from a distance of approximately 200 feet when the tub grinder was in operation.

### **Surrounding Zoning and Development**

The property is bordered on the west by Interstate 64 and further to the west by the Racefield subdivision which is zoned A-1, General Agricultural. Single-family homes and undeveloped properties are located to the north and east of the site and are also zoned A-1. The undeveloped and wooded 185-acre Hazelwood Farms property to the south of the site across Barnes Road is zoned B-1, General Business. Examples of by-right uses for B-1 include automobile service stations, professional office buildings, lumber and building supply stores, restaurants, schools, retail and service stores, and wholesale and warehouse facilities. As the Stonehouse planned community continues to develop, the B-1 properties south of Barnes Road will face increasing development pressure. **Staff finds the proposal, with conditions, consistent with the surrounding zoning and development.**

### **Physical Features and Environmental Considerations**

The 28.6-acre site is relatively flat and wooded. A stormwater management facility may be required southeast of the proposed warehouse/office due to impervious areas associated with the construction of approximately 500 feet of entrance road. Most of the entrance road area collects to a low point in topography about midpoint between Barnes Road and the proposed site and would bypass the site's primary stormwater management facility located in the interior of the site. **A condition has been added which requires the Environmental Director's approval of an erosion and sediment control and stormwater runoff management plan prior to final site plan approval. This plan would also address the method of containment for the materials in the wood processing area and stabilization of the berms.** A stormwater pollution prevention plan must comply with County erosion and sediment control and stormwater management plan requirements established by the County's Erosion and Sediment Control and Chesapeake Bay Preservation Ordinances.

The proposed facility would require a construction and demolition debris landfill permit from the Virginia Department of Environmental Quality (DEQ). DEQ requires local approval of a land use before they will review an application for a permit. Condition No. 2 requires that the applicant acquire all State permits prior to final site plan approval. Wood product storage and processing may also require a general Virginia Pollutant Discharge Elimination System (VPDES) permit for Discharges of Storm Water associated with Industrial Activity from DEQ.

### **Transportation**

Access to the property would be from Barnes Road (Route 601). Barnes Road is included in the FY 2000-2005 Six-Year Secondary Road Plan; however, the Virginia Department of Transportation (VDOT) has indicated that the "spot" improvements recommended for portions of Barnes Road to improve drainage and grading should not impact this site. VDOT has also indicated that a commercial entrance will be required for the site. **Given the low trip volume anticipated at the site, VDOT does not anticipate the need for turn lanes. VDOT did not identify road width as an issue in its preliminary review of this proposal.**

Three pickup trucks, two dump trucks, a single-axle chip truck, a log trailer, and a low-boy trailer are presently registered to Hertzler Clearing and Grading. The applicant has stated that the pickup trucks make an average of one to two trips per day to and from the site and typically go home with employees each night. Both of the trailers and the single-axle chip truck would typically make one trip per day each to and from a job site. The dump trucks make an average of three to four trips per day to and from the site. Staff estimates that the number of vehicle trips to and from the site will be approximately 24 to 34 per day. **Given the relatively low trip volume generated by the development and the fact that all traffic improvements are required to be installed or bonded prior to the issuance of an occupancy permit (Condition No. 10), staff feels that the traffic impacts generated by this proposal will have a minimal effect on the surrounding community.**

## **Fire Potential**

Concern was expressed by residents in the surrounding community over the potential for mulch and debris waste fires. The Fire Department reviewed a conceptual plan for the proposal and concluded that fire response would not be a problem provided reasonable access is provided to the site. This would typically be reviewed by the Fire Department during the site plan review process. **The Deputy Fire Marshall reported no significant problems with similar rural properties in the past and stated that existing resources would be able to control a fire on the site.** The Fire Marshall stated in a subsequent analysis of the proposal that the department was not concerned about having a single entrance to the site.

## **Public Utilities**

The property lies outside the Primary Service Area (PSA). The site is served by an on-site well and an on-site treatment and disposal system.

## **Comprehensive Plan**

### *Land Use Designation*

The property is designated as Rural Lands on the Comprehensive Plan Land Use Map. Rural Lands are areas containing farms, forests, and scattered houses, exclusively outside the Primary Service Area, where a lower level of public service delivery exists or where utilities and urban services do not exist and are not planned for the future. Appropriate primary uses include agricultural and forestal activities and certain recreational and public uses which may require a spacious site and which are compatible with the natural and rural setting. Most retail and commercial uses which will serve Rural Lands will be located at planned commercial locations on major thoroughfares inside the PSA. However, a few of the smaller uses and uses which require a specialized location may be located and approved on a case by case review, provided such uses are compatible with the natural and rural character of the area, in accordance with the Development Standards of the Comprehensive Plan. These uses should be located in a manner that minimizes effects on agricultural and forestal activities, and located where public services and facilities, especially roads, can adequately accommodate them.

Several conditions attached to this application require Environmental Director or Planning Director approval or Development Review Committee review in order to insure that the potential impacts of this development on adjacent properties are mitigated and the rural character of the surrounding area is preserved to the largest extent possible. **The unique location of the site adjacent to Interstate 64 mitigates many of the factors such as noise, dust, and odor which would be magnified if a more remote location had been proposed. A condition has also been added which limits the project size to no more than 25 percent of the site without prior Board of Supervisors approval. This condition, in addition to requiring Board of Supervisors approval of any proposed expansion of the facility or specially permitted use which is not specified in this application, insures that the project scale is consistent with the surrounding natural and rural character of the area. This proposal is consistent with the Rural Lands designation.**



### *Land Use Standards*

Rural Land Use standards call for the natural, wooded, and rural character of the County to be preserved with particular attention given to locating structures and uses outside of sensitive areas, maintaining existing topography, vegetation, and tree lines to the maximum extent possible and limiting the height of structures to an elevation below the height of surrounding mature trees. This proposal would maintain an undisturbed 150-foot buffer along the eastern property line nearest adjacent residential homes and an undisturbed 50-foot buffer along the western property line bordering Interstate 64. A second rural land use standard seeks to minimize visual impact from public roads and not disturb agricultural/forestal uses. This proposal seeks to retain the wooded rural character of the site to the greatest extent possible by locating all operations interior to the site and by requiring the clearing of only 25 percent of the site. In addition, the use does not prevent most of the site from being returned to forestry use should the wood processing and manufacturing operation cease. The proposed use is similar to a forestry type use in that it involves handling and cutting of timber and the use of heavy trucks and equipment.

The noise generated on the site through the daily operations of trucks and equipment are typical for rural areas. The tub grinder itself makes less noise than a tractor. Unlike an agricultural operation, the tub grinder which would be used on the site will only be necessary when the applicant has accumulated sufficient material on site to justify the expense of leasing the equipment. The applicant anticipates that this will only occur every other month and use of the grinder will only be necessary for a few days at a time. The typical daily noise volume generated on adjoining areas will not be significantly different than the noise levels generated by the Interstate on any given day. This proposal meets these land use standards.

### **RECOMMENDATION**

The Planning Commission conducted three public hearings on this application and received a significant number of comments at each of the hearings. A substantial amount of written information was received from citizens and interested parties and has been included as attachments to this report. **Significant changes were made to the conditions over the course of the three public hearings to address questions and concerns raised by Commission members and citizens.** Several conditions were added and others were revised to clarify areas of concern raised during the public hearings. Staff consulted with several agencies who would be required to review a site plan for this proposal should the Board of Supervisors approve this application and incorporated language into the conditions which addressed their areas of concern. At the request of the Planning Commission, several conditions were revised to require Planning Commission approval of such items as the location of the 2.5-acre wood material storage area, the location of the tub grinder, and the maximum height of stored wood materials. **It is important to note that several of the recommended additions and changes to the conditions rely heavily upon the good faith of the applicant to comply with the terms of the restrictions.** Staff would find it difficult to adequately monitor conditions which limit source material, limit the transport of material to vehicles registered to Hertzler Clearing and Grading, restrict the height of materials stored on the site, and eliminate the use of groundwater and chemicals in the decomposition process. **Condition No. 14 would allow staff to rescind the special use permit if any of the conditions were proven to have been violated.**

Staff finds the proposal, with the attached conditions, generally consistent with the surrounding zoning and development and generally consistent with the Comprehensive Plan. Staff recommends the Board of Supervisors approve this application with the conditions found in the attached resolution. At its August 7, 2000, meeting, the Planning Commission concurred with staff and voted to recommend approval of this application by a vote of 6 to 0, with one absence.

Should the Board of Supervisors wish to approve this special use permit, staff and the Planning Commission recommends the following conditions:

1. Construction on this project shall commence within 24 months from the date of approval of this special use permit or this permit shall become void. Construction shall be defined as securing permits for land disturbance, building construction, clearing and excavation, and the pouring of footings.
2. An erosion and sediment control and runoff management plan shall be approved by the Environmental Director prior to final site plan approval. This plan shall also address the method of containment for the materials in the wood processing area and stabilization of the berms. All required State permits shall be acquired prior to final site plan approval.
3. This permit shall allow the construction of a 5,000-square foot office/warehouse, the storage and repair of Hertzler Clearing and Grading vehicles and heavy equipment, the storage of cleared stumps and wood material, and the grinding of stumps and wood material into mulch. The total disturbed area for this project, including the location of the office/warehouse, vehicle and equipment storage and repair area, and 2.5-acre wood storage, manufacturing, and processing area, shall not exceed 25 percent of the site, except with prior approval of the Board of Supervisors. No portion of the project shall be located within 400 feet of Barnes Road with the exception of the entrance road.
4. The location of the disturbed area shall be approved by the Director of Planning or his designee prior to final site plan approval.
5. The storage, manufacturing, and processing of wood, mulch and wood materials shall be limited to a 2.5-acre area identified on a site plan to be approved by the Development Review Committee. The use of groundwater or chemicals shall not be used to aid in the decomposition of material.
6. The sale of wood, mulch, or wood materials shall not be permitted on the site.
7. The use or operation of the tub grinder shall be permitted only between the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday. Stumps and other accumulated material contained within the 2.5-acre area for storage, manufacturing, and processing of wood, mulch and wood materials shall be ground into mulch a minimum of four times and a maximum of six times per calendar year. Operation of the tub grinder shall be limited to a maximum of 15 days per calendar year with a minimum of 30 days elapsing between each usage. The applicant shall be required to submit written notification to the Planning Director a minimum of one week prior to each usage of the tub grinder.
8. The tub grinder shall be located so as to minimize potential adverse impacts on adjacent properties including, but not limited to noise, dust, debris, and odor. The final location for the tub grinder shall be shown on a site plan to be approved by the Development Review Committee.
9. A minimum 150-foot undisturbed buffer shall be provided along the eastern property line and a minimum 50-foot buffer shall be provided along the western property line adjacent to Interstate 64. The buffers shall contain enhanced landscaping, so that the required number of plant material equals at least 133 percent of the County's Landscape Ordinance requirements with at least 33 percent of the required number of trees being evergreen. The landscaping plan shall be approved by the Director of Planning or his designee prior to final site plan approval.
10. All traffic improvements required by the Virginia Department of Transportation or the Development Review Committee along Barnes Road (Route 601) shall be installed or bonded prior to issuance of a certificate of occupancy for any structure on the site.
11. The storage and repair of vehicles and heavy equipment on the site shall be limited to vehicles and equipment registered to Hertzler Clearing and Grading. No vehicles shall be allowed to transport

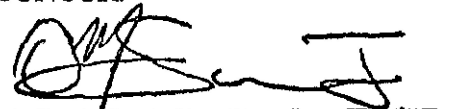


wood, mulch, or wood materials onto or off of the property except those registered to Hertzler Clearing and Grading. No more than ten vehicles shall be used as part of this commercial operation and no more than four shall be used to transport materials onto or off of the property.

12. Source material to be transported onto the property for storage, manufacturing, and processing shall be limited to materials cleared, gathered, or removed from Hertzler Clearing and Grading residential and commercial job sites.
13. A maximum height for accumulated stumps, mulch, and other wood materials contained within the 2.5-acre wood storage, manufacturing, and processing area shall be identified on a site plan containing a line of sight cross section to be approved by the Development Review Committee. The line of site cross section shall also identify the finished grade of the 2.5-acre wood storage, manufacturing, and processing area.
14. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

  
Christopher M. Johnson

CONCUR:

  
O. Marvin Sowers, Jr.

CMJ/gb  
sup-7-00.wpd

Attachments:

1. Unapproved Planning Commission Minutes of the August 7, 2000, meeting
2. Planning Commission Minutes of the July 5, 2000, meeting
3. Planning Commission Minutes of the June 5, 2000, meeting
4. Location Map
5. Planning Commission Rural Lands Transition Policy
6. Noise Levels in our Environment Fact Sheet; source: League for the Hard of Hearing
7. Sound Test Sites and Results, May 12, 2000
8. Memorandum received from Deputy Fire Marshall Joe Davis, June 15, 2000
9. Resolution

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 12TH DAY OF SEPTEMBER, 2000, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

**A. ROLL CALL**

Ronald A. Nervitt, Chairman, Powhatan District  
Bruce C. Goodson, Vice Chairman, Roberts District

John J. McGlennon, Jamestown District  
Jay T. Harrison, Sr., Berkeley District  
James G. Kennedy, Stonehouse District  
Sanford B. Wanner, County Administrator  
Frank M. Morton, III, County Attorney

**B. PLEDGE OF ALLEGIANCE**

Mr. Nervitt requested that following the Pledge, a moment of silence be observed in memory of U. S. Representative Herbert H. Bateman.

Mr. Kelvin Pressey, a sophomore at Jamestown High School, led the Board and citizens in the Pledge of Allegiance.

**C. PUBLIC COMMENT**

1. Mr. Brian Rafferty, 59 Summer East, said that he has been a reporter for the Virginia Gazette for the past 5-1/2 years and thanked the Board and staff for its relationship with the press and its willingness to have open dialogue. He said that the County has been experiencing a decrease in the middle class and needs to take steps to stabilize the middle class by bringing in businesses that will foster the middle class.

**D. CONSENT CALENDAR**

Mr. Nervitt stated that Item No. 4, Bonded Industrial Access Road for James River Commerce Center, has been removed from the Consent Calendar by staff.

Mr. Nervitt inquired if any Board member wished to remove an item from the Consent Calendar.

Mr. Harrison asked that Item No. 3, Award of Contract - Greensprings Trail be pulled.

Mr. McGlennon made a motion to approve the remaining items on the Consent Calendar.



On a roll call, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY: (0).

1. Minutes
  - a. August 8, 2000, Regular Meeting
2. Appropriation of Funds – Fatherhood Grant

## RESOLUTION

### APPROPRIATION OF FUNDS - FATHERHOOD GRANT

WHEREAS, the Greater Williamsburg Fatherhood Coalition (Coalition) has received a grant of \$18,000; and

WHEREAS, James City County is the fiscal agent for the Coalition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following amendments and changes in appropriations for FY 2001:

#### Revenues:

|                                       |                 |
|---------------------------------------|-----------------|
| From the Virginia Fatherhood Campaign | <u>\$18,000</u> |
|---------------------------------------|-----------------|

#### Expenditures:

|                          |                 |
|--------------------------|-----------------|
| Big Brothers/Big Sisters | <u>\$18,000</u> |
|--------------------------|-----------------|

5. Virginia Power Right-Of-Way Agreements for New Underground Wires

## RESOLUTION

### GRANTING VIRGINIA POWER EASEMENTS

#### FOR NEW UNDERGROUND WIRES

WHEREAS, Virginia Power has requested easements across County-owned land along Greensprings Road and along Route 199 for the purpose of installing new underground wires; and

WHEREAS, these new underground wires will improve power service to County residents and businesses.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to execute these Right-of-Way Agreements on behalf of James City County.

### 3. Award of Contract – Greensprings Trail

Mr. Needham S. Cheely, III, Director of Parks and Recreation, stated that during FY 1999, the Board of Supervisors accepted a \$52,140 matching grant that the Division of Parks and Recreation was awarded by the Virginia Department of Conservation and Recreation to assist with various surface improvements to provide a smooth, all-weather trail.

The sole bidder, Eco-Systems, Inc., submitted a base bid for the work to be completed on the trail and bid alternatives for puncheon footbridges and additional surfacing material for an entire project of \$125,612.

Staff recommends the Board approve the resolution awarding the contract for trail improvements at the Greensprings Trail to Eco-Systems, Inc., in the amount of \$125,612.

The Board and staff held a discussion concerning discouraging bikes on the trail and beaver activity affecting path development.

Mr. McGlennon made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY (0).

## RESOLUTION

### AWARD OF CONTRACT - GREENSPRINGS TRAIL

WHEREAS, funds are available from a Virginia Department of Conservation and Recreation grant in conjunction with the Greenways and Open Space Account for trail improvements at the Greensprings Trail; and

WHEREAS, the Board of Supervisors of James City County, Virginia, accepted the \$52,140 grant to help with the various surfacing needed to make the Greensprings Trail accessible; and

WHEREAS, Eco-Systems, Inc., provided a responsive and responsible bid in the amount of \$124,612.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby authorize the County Administrator to execute a contract between James City County and Eco-Systems, Inc., in the amount of \$124,612.

### E. PUBLIC HEARINGS

#### 1. Case No. SUP-20-00. Hipple Family Subdivision

Mr. Paul D. Holt, III, Senior Planner, stated that a family subdivision had been approved earlier this year (February 22, 2000 under Case No. SUP-2-00) with a condition which stated that final subdivision approval must be received within six months or the SUP was void. He reiterated that Mr. Michael Hipple had applied for a special use permit to allow a new family subdivision lot on 1.0 acre, zoned A-1, General Agricultural, located at 106 Jolly Pond Road, further identified as Parcel No. (1-7) on James City County Real Estate Tax Map No. (31-1).



Staff determined that the proposal was consistent with surrounding zoning and development and with the Comprehensive Plan.

Staff and the Planning Commission recommended approval of the special use permit with the conditions listed in the resolution.

Mr. Nervitt opened and, as no one wished to speak, closed the public hearing.

Mr. Harrison made a motion to approve the resolution.

On a roll call, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY: (0).

## RESOLUTION

### CASE NO. SUP-20-00. HIPPLE 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 process; and

WHEREAS, the applicant has requested a special use permit to allow for a family subdivision in an A-1, General Agricultural District, of a parcel generally one± acre in size located at 106 Jolly Pond Road, further identified as a portion of Parcel No. (1-7) on James City County Real Estate Tax Map No. (31-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-21-00 as described herein with the following conditions:

1. This special use permit is valid for only one (1) family subdivision for one parcel generally one acre in size.
2. Final subdivision approval must be received from the County within 180 days from the issuance of this special use permit or the permit shall become void.
3. The subdivision parcel submitted for approval shall be generally located between existing Parcel 3 and existing Parcel 4.
4. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

### 2. Case No. SUP-7-00. Hertzler Clearing and Grading

Mr. Christopher M. Johnson, Planner, stated that Mr. Steven L. Hertzler had applied for a special use permit to allow the construction of a contractor's warehouse and office, the storage and repair of heavy equipment, and the manufacture of wood products on 28.6 acres, zoned A-1, General Agricultural, located at 9537 Barnes Road, further identified as Parcel No. (1-12A) on James City County Real Estate Tax Map No. (4-3).

Staff determined, with conditions, that the proposal was generally consistent with surrounding zoning and development and with the Comprehensive Plan.

In concurrence with staff, the Planning Commission, by a vote of 6-0, recommended approval of the special use permit with conditions listed in the resolution.

The Board and staff held a discussion concerning prior code violations by the applicant, sound test results, surrounding land zoning, restrictions on the amount of materials permitted to be hauled onto the site, the depth of the surrounding water tables, contrast of this proposal with the existing Waltrip site, restrictions concerning the height of the debris pile, and the restrictions concerning the days and hours of operations.

Mr. Nervitt opened the public hearing.

1. Mr. Steven L. Hertzler, applicant, stated that his business is to clear land of stumps, brush, and other debris. The equipment is moved from work site to work site and the business has grown to a point that a central base of operations is necessary. The land would be used for storage, equipment repair, and as a main office. The land would also be utilized to dispose of rake-up debris.

Mr. Goodson inquired how tall the debris mounds would be, if the business would utilize water for its operations, and if the trucks would use Barnes Road.

Mr. Hertzler stated that the mounds would be used for sound control and beautification of the site and may reach fifteen feet in height; the business would not utilize water for its operation; and Barnes Road to Route 60 is not in condition to be utilized by his trucks.

Mr. Kennedy inquired about the Code violations and the possible sales of mulch from the site.

Mr. Hertzler stated that once he was informed that he was doing work in violation of the Code, he promptly stopped and corrected the violation. He stated that there would be no sales of mulch on the site.

Mr. Harrison inquired about someone approaching the business to purchase some of the mulch, what would happen if the business failed, and what step would the applicant take to restore the land to its original condition.

Mr. Hertzler stated that there would be no sales from the site.

Mr. McGlennon inquired about the economic feasibility of a commercial venture with a limited base producing a poor product.

Mr. Hertzler stated that the rake-up debris is of poor quality. Currently, he has to pay to dispose of this debris. By using land he owns for disposal, the business may save some money.

Mr. Nervitt inquired how the applicant is going to save money and stated that this proposed land use seems to him like a dump.

2. Mr. Brian Schrecengost, 126 Racefield Drive, stated that the approval of this permit would decrease the surrounding land value. He requested to know what common objects make about 60 decibels of sound for comparison to the tub grinder. Mr. Schrecengost further stated the quality of living may drop and requested to know what would happen if a fire occurred.



3. Ms. Margaire Watkins, 9737 Old Stage Road, stated that there have been two major fires in Barhamsville which required tanker trucks to make water trips to supply enough water to contain the fire, the land and proposed use will be good breeding grounds for copperhead snakes and increase the truck traffic on Old Stage Road. She also requested to know who will enforce the special use permit restrictions.

4. Ms. Rosa Mayes, 135 Racefield Drive, stated that the neighbors oppose the proposed land use, the roads are not strong, wide, level, nor straight enough for industrial trucks, and there is the concern about school buses meeting these trucks on the road. She requested to know if the applicant will keep to the restrictions, and how many more accidents must occur on this road.

5. Mr. Ronald T. Lee, 132 Racefield Drive, read a letter to the Board from Ms. Jane Maston, 193 Barnes Road, who could not attend this meeting. The letter stated that she has concerns about the noise level for adjacent landowners, the hours of operations, the quality of life and health that will decrease due to the increased dust, and that the truck traffic is dangerous to children.

Mr. Lee questioned what the staff planners actually know about the Hertzler business and stated that had he known about this business moving into his neighborhood, he would not have chosen to move there.

6. Mr. Barry Trott, 145 Skillman Drive, stated his concern about the increased traffic and the safety of those biking and walking along the roads with the large construction trucks, and is concerned about the goodwill of the applicant if he has incurred several code violations.

7. Mr. Howard Anby, 9313 Barnes Road, stated his concern of construction trucks traveling the hairpin turns on Barnes Road, the number of stumps permitted to accumulate on the land, that renting a grinder is cheaper than paying to have someone else dispose of the debris, the odor emitted by mulch piles, and the statement by the staff that this proposed use is a complement to the neighborhood.

8. Mr. Brian Oyer, 9025 Barnes Road, stated that traffic on Barnes Road has increased over the years, a 70-lot development has been approved and the road is not conducive to heavy truck usage. He stated that Massie trucks cannot pass on the road. He disagrees with the statement made at the Planning Commission that the mulch would change to top soil and requests the Board vote no and do not defer this matter.

9. Ms. Betty Smith, 9347 Barnes Road, provided the Board with pictures of tub grinders, signatures collected in opposition to this land use, and stated her concerns that she did not want this or any business in her neighborhood, and that the present day traffic cannot compete with Hertzler trucks on Barnes Road.

10. Ms. Tyla Matteson, Sierra Club, encouraged the Board to deny this application which would decrease the quality of life, increase truck traffic, cause the loss of wildlife, increase the threat of fire, and stated concerns about the leakage from the mulch pile into to the groundwater in addition to the leakage from trucks.

11. Ms. Shireen Parsons, 306 Miller Street Christiansburg, Virginia, stated that this type of business is inappropriate for this neighborhood, offers no benefit to the community, and voiced concerns about the lack of limits on truck visits and protection for the community.

12. Ms. Kathleen Kennedy, 9405 Barnes Road, stated that the neighbors of this land are in the top of the poor, these homes are investments, the community feels as though they are being glossed over; and voiced her concerns that there are three blind curves on this road, it is narrow and has no shoulder; and asked the Board to protect the citizens, and the children who are citizens too.

13. Ms. Lynne Faltraco, Rutherford County, Unionville, North Carolina, stated her opposition to chip mills and voiced her concerns about trucks affecting road safety, devalued land, air quality problems, water usage associated with chip mills, and asked the Board to deny this permit.

Ms. Faltraco handed out a packet with her extended comments to the Board members.

14. Mr. James McRoy, 9427 Barnes Road, stated he adamantly objected to this permit, and voiced his concerns regarding the prior violations and noise pollution.

15. Mr. Peter Ladriere, 137 Racefield Drive, inquired if the Board can guarantee the land use will not hurt the surrounding land value, limit the number of trucks, protect the shallow wells, ensure water quality, and place a noise barrier requirement on the land use.

16. Mr. Jerry Woodson, 133 Racefield Drive, stated that although they are outside the primary service area of the County, they are citizens of the County and should be protected, the applicant should seek a more suitable site for this proposed land use, and requested the Board deny this permit, not defer.

17. Mr. Matthew Mayes, 135 Racefield Drive, stated that as a drive of commercial trucks, the road cannot handle this type of commercial truck traffic.

18. Mr. Ralph Derosa, President of the Stonehouse Homeowners Association, stated concerns about truck traffic on Route 30 and requested the Board deny this permit.

As no one else wished to speak, Mr. Nervitt closed the public hearing.

The Board held a discussion concerning the value of citizen input, the process set by the government for citizens to provide input, the Planning Commission's role in land use decisions, and the Planning office's role in land use decisions.

Mr. Kennedy made a motion to deny the permit.

On a voice vote, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY: (0).

Mr. Nervitt recessed the Board for a break at 9:31 p.m.

Mr. Nervitt reconvened the Board at 9:43 p.m.

### 3. Case No. SUP-17-99. PrimeCo Communication Tower

Mr. Paul D. Holt III, Senior Planner, stated that Mr. Vernon Geddy, III, and Mr. Marc Cornell, on behalf of the applicant, has applied for a special use permit to construct a communications tower on 14 acres, zoned A-1, General Agricultural, located at 4881 Centerville Road, further identified as Parcel No. (1-56) on James City County Real Estate Tax Map No. (36-2).

Mr. Holt stated that, with conditions, the proposed height of the tower would appear comparable with surrounding vegetation and thus, compatible with all the surrounding zoning, uses, and the Comprehensive Plan.

The Planning Commission recommended approval of the application by a vote of 6-0.



Staff recommends the Board approve the application with conditions.

The Board and staff held a discussion concerning the height of the tower, the balloon test for visibility, and the reduced height request.

Mr. Nervitt opened the public hearing.

1. Mr. Geddy stated that this tower would provide service coverage to a portion of the County that has a gap in coverage along Centerville Road and western portions of Ford's Colony. The tower meets County performance standards.

Mr. Goodson asked how many other service providers could use the tower.

Mr. Geddy stated that there is room for three users on this tower and the permit allows for a second tower to be constructed on the site. The second tower would have room for three users too.

Mr. Nervitt asked if the second tower would be leased, requested to know who owns the land, and if the access lane to the tower could be at an angle to aid in hiding the tower base.

Mr. McGlennon asked if leasing the land had a requirement or obligation to allow a second tower.

Mr. Nervitt closed the public hearing as no one else wished to speak.

Mr. Goodson made a motion to approve the resolution.

On a roll call, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY: (0).

### RESOLUTION

#### CASE NO. SUP-17-00. PRIMECO TOWER ON CENTERVILLE ROAD

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 process; and

WHEREAS, James City County has developed certain policies for the placement of wireless communications facilities; and

WHEREAS, the applicant has requested a special use permit to allow for the construction of a 175-foot tall monopole tower and associated electronic equipment on a 14± acre parcel located at 4881 Centerville Road and more specifically identified as Parcel No. (1-56) on the James City County Real Estate Tax Map No. (36-2); and

WHEREAS, the Planning Commission recommended the proposal be approved by a vote of 6-0 at its public hearing of August 7, 2000.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-17-00 as described herein with the following conditions:

1. This special use permit shall be valid for a total of two (2) towers. The maximum height of all towers shall not be greater than 175 feet; however the towers shall be so designed as to accommodate future vertical expansions. Prior to final site plan approval, the applicant shall demonstrate to the satisfaction of the Planning Director, that the lease area is adequate to accommodate two towers and supporting equipment. The portion of the lease area for the future tower and equipment shall remain free of all structures until such time the second tower is constructed and the additional tower shall be subject to administrative approval only. In order to maximize the number of colocating opportunities, all supporting equipment pads, sheds, buildings and huts shall have the minimum footprint necessary and shall be located within the lease area as approved by the Director of Planning.
2. Each individual tower shall be designed and constructed for at least three (3) users and shall be certified to that effect by an engineering report prior to site plan approval.
3. Towers shall be located on the site in a manner that maximizes the buffering effects of trees as determined by the Planning Director. Tree clearing shall be limited to the minimum necessary to accommodate the tower and related facilities as determined by the Planning Director. Access drives shall be designed in a manner that provides no view of the tower's base or related facilities as determined by the Planning Director. A minimum buffer of 100 feet in width of existing mature trees shall be maintained around the tower. This buffer shall remain undisturbed except for the access drive and necessary utilities for the tower.
4. A final inspection shall be obtained within one (1) year of approval of this Special Use Permit, or the permit shall become void.
5. Unless otherwise approved by the Director of Planning, all supporting equipment sheds, buildings and huts shall be of a similar design to that generally used on a single-family residence and shall be approved by the Director of Planning prior to final site plan approval. A gable or shed roof shall be used on all equipment sheds, buildings, and huts as determined by the Director of Planning prior to final site plan approval.
6. Following construction of the facility, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation and total anticipated capacity of the structure, including number and type of antennas which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements and other safety considerations set forth in the BOCA Basic Building Code and Section 222(F) of the standards adopted by the Electronics Industries Association, or any amendment thereof, have been met.
7. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

**F. BOARD CONSIDERATION****1. Case No. SUP-18-99. Olde Towne Road Timeshares (deferred from August 8, 2000)**

Mr. O. Marvin Sowers, Director of Planning, stated that Mr. Vernon Geddy, III, on behalf of the applicant, has made a written request for deferral of this case.

Without Board objection, Mr. Nervitt deferred the case.

**2. Regional Issues Committee Resolution – Corridor Beautification**

Mr. John T. P. Horne, Manager of Development Management, stated that the Regional Issues Committee (RIC) is presenting to York County Board of Supervisors, the City Council of the City of Williamsburg, and the James City County Board of Supervisors a resolution for corridor beautification in the Historic Triangle.

Mr. Horne stated that staff recommends adoption of the resolution.

The Board and staff discussed current beautification efforts and the status of the trees to be transplanted from Upper County Park.

Mr. Harrison made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY: (0).

**RESOLUTION****CORRIDOR BEAUTIFICATION**

WHEREAS, the Regional Issues Committee (RIC) has approved a resolution proposing certain actions to beautify entry corridors in the Historic Triangle; and

WHEREAS, the Board of Supervisors wishes to support the proposal of the RIC with appropriate actions in James City County

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby endorses the proposal by the Regional Issues Committee as expressed in its resolution dated July 18, 2000 (attached), and directs staff to undertake appropriate actions to assist in the implementation of the proposal.

**G. PUBLIC COMMENT – None****H. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated that a report is being assembled based on the information from the committee.



Mr. Wanner stated that he and the City Manager had met and developed a proposal for the Board of Supervisors and City Council. Mr. Wanner recommended that the City/County staff send the study materials from the committee to the Board of Supervisors and City Council by mid September and that the Board of Supervisors and City Council members review those materials and make any requests for additional information and materials to the City Manager or County Administrator by early October.

The Board of Supervisors and City Council would then request or direct by mid October the County Administrator and City Manager to develop recommendations on a preferred option(s) and a timeline for implementation of the recommendations.

The City Manager or County Administrator will provide recommendations to the Council and Board at individual work sessions in November, and then the Board and Council will take action on those recommendations.

If it is determined by the Board or Council to have a joint work session, one would be scheduled.

The Board, County Administrator, and staff discussed how the information would be distributed, influences on VDOT, funding mechanism, willingness to look at short-term alternatives; aesthetic considerations, pedestrian access, and sound walls.

Mr. Wanner stated a copy of the briefing on the Convention Center Feasibility Study was provided to the Board. The City Council voted to continue the process and set up some mechanism to keep this idea alive.

Mr. Wanner recommended the Board recess for a James City Service Authority Board of Directors meeting, following which the Board of Directors will have a closed session pursuant to Section 2.1-344(A)(3) to consider acquisition of a parcel of property for public use. The Board of Supervisors would then reconvene for a closed session pursuant to Section 2.1-344(A)(1) to consider personnel matters(s), the appointment of individuals to County boards or commissions following which the Board would adjourn until September 26, 2000.

Mr. Wanner requested Mr. Richard Sebastian give a brief overview of the Real Estate Assessment Cycle.

Mr. Sebastian, Director of Real Estate Assessment, stated that the reassessment has completed and the annual reassessment notices have been mailed.

From July 1, 1999, to July 1, 2000, the assessed value of real estate has changed by 9.75 percent. Many of these changes resulted from new construction, subdivision of property, and changes other than reassessment.

Due to reassessment, 27 percent of all parcels had changed in value. The overall percentage of change in total real property value is 2.84 percent. The average increase for those properties with changes was 6.96 percent.

For commercial property, the property value increased by four percent overall.

Mr. Sebastian gave an overview of the appeal process. The appeal period will end on October 5, 2000. Following the staff appeal, there is a 30-day appeal period to the Board of Appeals. That appeal period will end on November 6, 2000. A final appeal may be made to the Circuit Court.

The Board and staff held a discussion concerning the frequency of assessments in neighborhoods and how close the assessment matched budget revenues.

A public hearing on the assessment increase will be held at the next Board meeting on September 26, 2000.

# **I. BOARD REQUESTS AND DIRECTIVES**

Mr. Kennedy stated that September 24 will be the dedication for the new Stonehouse Elementary School. On September 30 there will be a parade for Chickahominy Day, and October 9 will be the next "Meet the Supervisor" open public meeting at the Library in Croaker for Stonehouse District residents.

Mr. Harrison thanked the citizens for their participation during this meeting and requested that the Board consider adopting a formal time limit for public comments and public hearings.

Mr. Nervitt requested the Acting Police Chief to move forward with a safety locks for guns program in the County.

Mr. Nervitt recessed the Board at 10:49 p.m.

# **J. CLOSED SESSION**

Mr. Nervitt reconvened the Board at 10:51 p.m. and made a motion to convene into closed session as recommended by the County Administrator.

On a roll call, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY: (0).

Mr. Nervitt reconvened the Board into open session at 11:00 p.m.

Mr. Nervitt made a motion to approve the closed session resolution.

On a roll call, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY: (0).

## **RESOLUTION**

### **CERTIFICATION OF CLOSED MEETING**

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.1-344.1 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters

lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and, ii) only such public business matters were heard, discussed or considered by the Board as were identified in the motion and Section 2.1-344(A)(1) to consider a personnel matter(s), the appointment of individuals to County boards and/or commissions.

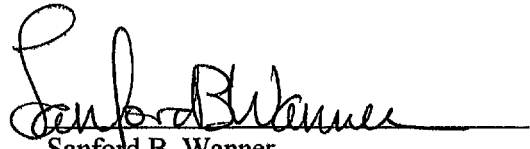
Mr. Goodson made a motion to appoint Dr. Barbara B. Richardson to the Social Services Advisory Board for a four-year term, term expiring on June 30, 2004; and to appoint Mr. M. Anderson Bradshaw to the Water Conservation Committee for a three-year term, term expiring on September 12, 2003.

On a roll call, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY: (0).

Mr. Nervitt made a motion to adjourn.

On a roll call, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY: (0).

The Board adjourned at 11:01 p.m.

  
Sanford B. Wanner  
Clerk to the Board

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**RESOLUTION OF THE  
REGIONAL ISSUES COMMITTEE  
CORRIDOR BEAUTIFICATION**

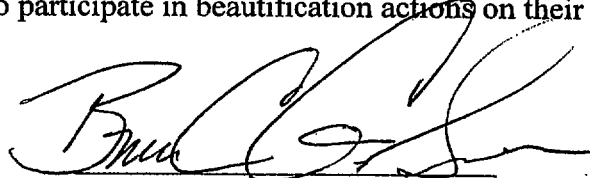
**WHEREAS**, the Regional Issues Committee has been charged with identifying issues of regional significance in the Historic Triangle; and

**WHEREAS**, the appearance of the entry corridors in the area is an important factor in making the area attractive to residents and visitors; and

**WHEREAS**, the Regional Issues Committee wishes to foster cooperation and appropriate public standards for certain corridor improvements.

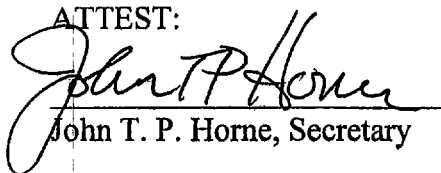
**NOW, THEREFORE, BE IT RESOLVED** by the Regional Issues Committee that Williamsburg, York County, and James City County should undertake the following corridor beautification efforts along all entry corridors leaving from Route 199 to the City of Williamsburg, including their intersections with Route 199.

- Landscape planting and roadway median and edge maintenance.
- Installation of uniform route number and road name signage, consistent with the designs now in use in the City of Williamsburg.
- Establishment of a program, in cooperation with the Chamber of Commerce, to encourage private landowners to participate in beautification actions on their property.



Bruce C. Goodson, Chairman

ATTEST:



John T. P. Horne, Secretary

Adopted by the Regional Issues Committee, this 18<sup>th</sup> day of July, 2000.

**SPECIAL USE PERMIT 7-00. Hertzler Clearing and Grading  
Staff Report for the August 7, 2000 Planning Commission Public Hearing**

This report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

**PUBLIC HEARINGS**

Planning Commission:  
Board of Supervisors:

Building C Board Room; County Government Center  
June 5 (deferred); July 5 (deferred); August 7, 2000, 7:00 p.m.  
September 12, 2000, 7:00 p.m.

**SUMMARY FACTS**

Applicant/Landowner:

Steven L. Hertzler

Proposed Use:

Contractor's office and warehouse, storage and repair of heavy equipment, and the manufacture and sale of wood products.

Location:

9537 Barnes Road; Stonehouse District

Tax Map and Parcel No.:

(4-3)(1-12A)

Primary Service Area:

Outside

Parcel Size:

28.6 acres

Existing Zoning:

A-1, General Agricultural

Comprehensive Plan:

Rural Lands

Surrounding Zoning:

North: A-1, General Agricultural  
South: B-1, General Business  
East: A-1, General Agricultural  
West: A-1, General Agricultural

Staff Contact:

Christopher M. Johnson – Phone 253-6685

**STAFF RECOMMENDATION:**

Staff finds the proposal, with conditions, generally consistent with the surrounding zoning and development and generally consistent with the Comprehensive Plan. Staff believes that the conditions attached to the special use permit will assure orderly development of the site and provide a development that compliments the surrounding rural community. Staff continues to recommend the Planning Commission approve this proposal with the conditions listed in the staff report.

The Planning Commission, at their meeting on July 5, 2000, deferred action on the Hertzler Clearing and Grading Special Use Permit in order to allow staff and the applicant to address concerns shared by citizens as well as several proposed changes and additions to the conditions. Staff has worked with the applicant to address the concerns shared at both the June 5, 2000, and July 5, 2000 public hearings and has recommended several changes and additions to the conditions attached to this special use permit. Each of the proposed revisions and issues is discussed in further detail below.

#### Condition #3

At the request of the Commission, staff has revised this condition to more accurately define the construction and activities that would be permitted within the disturbed area of this project. Staff incorporated language from condition #7 in the previous staff report to clarify this issue. The 5,000 square foot office/warehouse, vehicle and equipment storage and repair area, and the 2.5 acre wood storage, manufacturing and processing area are to be contained within the total disturbed area which is not permitted to exceed twenty five percent of the site without prior Board of Supervisors approval. The total disturbed area for the project will be approximately seven acres. Language has also been added to this condition which adds clarity to the exact nature of the permitted activities in the wood storage, manufacturing and processing area. A high capacity chip mill operation would not be a permitted activity under this condition.

#### Condition #4

This condition was included in the previous staff report as part of condition #7.

#### Condition #5

At the request of the Commission, staff has drafted language which eliminates the use of chemicals and ground water to aid in the decomposition of material into topsoil. Staff incorporated language previously contained in condition #3 which requires that the 2.5 acre area be identified on a site plan to be approved by the Development Review Committee.

#### Condition #6

Staff pulled the language which eliminates all sales of wood, mulch and wood materials out of a previous condition to make it more clear for citizens who expressed concerns at the initial public hearing about the potential traffic impacts that on site sales would have on the surrounding community.

#### Condition #7

At the request of the Commission and several speakers at last month's public hearing, staff has added language to this condition which further restricts the use of the tub grinder on the site. The condition proposed at last month's public hearing called for material to be ground at least quarterly and for no more than 2 days per quarter. Due to the seasonal ebb and flow of the applicants clearing and grading work, staff feels that condition language that requires the applicant to grind material a minimum of four times and a maximum of six times per calendar year is more appropriate than to require quarterly grinding on the site. The proposed condition also adds a restriction that limits the operation of the grinder to fifteen days per calendar year with a minimum of 30 days between each usage. The applicant is also required to notify the Planning Director in writing at least one week prior to each usage. The intent of this condition is to alleviate concerns that the tub grinder could be in continual operation on the site and cause a more significant impact than would be expected considering the applicants anticipated work



levels. This condition, as well as condition #13, also addresses concerns raised over the height of stumps, mulch, and other materials contained in the 2.5 acre wood storage area.

Condition #10

At the request of the Commission, staff has included the recommendation of the Development Review Committee to this condition requiring the installation or bonding of any traffic improvements prior to the issuance of a certificate of occupancy for any structure on the site. Staff anticipates that VDOT will require that the installation of a commercial entrance and improvements to the sight distance along Barnes Road.

Condition #11

Staff has revised the language of this condition to clarify several questions regarding the transportation of materials onto and off of the site and the potential traffic impacts posed by this operation. Staff proposes that the operation be limited to the use of no more than ten vehicles with no more than four used in the transportation of materials onto or off of the site. Further, only vehicles registered to Hertzler Clearing and Grading will be allowed to transport materials onto and off of the site. The applicant presently has two dump trucks, three pickup trucks, a single axle chip truck, a log trailer and a low-boy trailer. The only vehicles used to transport materials from job sites are the two dump trucks. If the applicant is limited to four vehicles for hauling and ten vehicles total, it is reasonable to infer that the expected traffic impacts associated with this operation would be minimal.

Condition #12

At the request of the Commission, staff has added this condition which restricts the material brought to the site for storage, manufacturing and processing to those source materials cleared and removed from Hertzler Clearing and Grading job sites.

Condition #13

In response to concerns raised at last month's public hearing over the potential height of materials stored on the site prior to grinding, staff has drafted a condition which requires Development Review Committee approval of the maximum height above finished grade for material contained in the 2.5 acre wood storage, manufacturing and processing area. The finished grade for the 2.5 acre area has yet to be determined. Establishing a maximum height for material contained in this area prior to formal review of an engineered site plan would not provide much benefit to this application.

Several of the recommended changes to the conditions rely heavily upon the good faith of the applicant to comply with the terms of the restrictions. Staff would find it difficult to enforce conditions which limit source material, limit the transport of material to vehicles registered to Hertzler Clearing and Grading, restrict the height of materials stored on the site, and eliminate the use of ground water and chemicals in the decomposition process.


**RECOMMENDATION:**

Staff finds the proposal, with conditions, generally consistent with the surrounding zoning and development and generally consistent with the Comprehensive Plan. Staff believes that the revised conditions attached to the special use permit will assure orderly development of the site and provide a development that compliments the surrounding rural community. Staff continues to recommend the Planning Commission approve this proposal with the following conditions:

1. Construction on this project shall commence within 24 months from the date of approval of this special use permit or this permit shall become void. Construction shall be defined as securing permits for land disturbance, building construction, clearing and excavation, and the pouring of footings.
2. An erosion and sediment control and runoff management plan shall be approved by the Environmental Director prior to final site plan approval. This plan shall also address the method of containment for the materials in the wood processing area and stabilization of the berms. All required state permits shall be acquired prior to final site plan approval.
3. This permit shall allow the construction of a 5,000 square foot office/warehouse, the storage and repair of Hertzler Clearing and Grading vehicles and heavy equipment, the storage of cleared stumps and wood material, and the grinding of stumps and wood material into mulch. The total disturbed area for this project, including the location of the office/warehouse, vehicle and equipment storage and repair area, and 2.5 acre wood storage, manufacturing and processing area, shall not exceed twenty five percent of the site, except with prior approval of the Board of Supervisors. No portion of the project shall be located within 400-feet of Barnes Road with the exception of the entrance road.
4. The location of the disturbed area shall be approved by the Director of Planning or his designee prior to final site plan approval.
5. The storage, manufacturing and processing of wood, mulch and wood materials shall be limited to a 2.5 acre area identified on a site plan to be approved by the Development Review Committee. The use of ground water or chemicals shall not be used to aid in the decomposition of material.
6. The sale of wood, mulch or wood materials shall not be permitted on the site.
7. The use or operation of the tub grinder shall be permitted only between the hours of 8:00 a.m. and 6:00 p.m. Monday through Saturday. Stumps and other accumulated material contained within the 2.5 acre area for storage, manufacturing and processing of wood, mulch and wood materials shall be ground into mulch a minimum of four times and a maximum of six times per calendar year. Operation of the tub grinder shall be limited to a maximum of fifteen days per calendar year with a minimum of 30 days elapsing between each usage. The applicant shall be required to submit written notification to the Planning Director a minimum of one week prior to each usage of the tub grinder.
8. The tub grinder shall be located so as to minimize potential adverse impacts on adjacent properties including, but not limited to noise, dust, debris, and odor. The final location for the tub grinder shall be shown on a site plan to be approved by the Development Review Committee.
9. A minimum 150-foot undisturbed buffer shall be provided along the eastern property line and a minimum 50-foot buffer shall be provided along the western property line adjacent to Interstate 64. The buffers shall contain enhanced landscaping, so that the required number of plant material equals at least 133 percent of the County's Landscape Ordinance requirements with at least 33 percent of the required number of trees being

evergreen. The landscaping plan shall be approved by the Director of Planning or his designee prior to final site plan approval.

10. All traffic improvements required by the Virginia Department of Transportation or the Development Review Committee along Barnes Road (Route 601) shall be installed or bonded prior to issuance of a certificate of occupancy for any structure on the site.
11. The storage and repair of vehicles and heavy equipment on the site shall be limited to vehicles and equipment registered to Hertzler Clearing and Grading. No vehicles shall be allowed to transport wood, mulch or wood materials onto or off of the property except those registered to Hertzler Clearing and Grading. No more than ten vehicles shall be used as part of this commercial operation and no more than four shall be used to transport materials onto or off of the property.
12. Source material to be transported onto the property for storage, manufacturing and processing shall be limited to materials cleared, gathered or removed from Hertzler Clearing and Grading residential and commercial job sites.
13. A maximum height for accumulated stumps, mulch, and other wood materials contained within the 2.5 acre wood storage, manufacturing and processing area shall be identified on a site plan containing a line of sight cross section to be approved by the Development Review Committee. The line of site cross section shall also identify the finished grade of the 2.5 acre wood storage, manufacturing and processing area.
14. This special use permit is not severable. Invalidity of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

  
Christopher M. Johnson  
Planner

Attachments:

1. Location Map



A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SEVENTH DAY OF AUGUST, TWO THOUSAND AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Martin Garrett, Chair  
John Hagee  
Don Hunt  
Willafay McKenna  
A. Joe Poole III  
Peggy Wildman

ALSO PRESENT

John Horne, Development Management Manager  
Andy Herrick, County Attorney  
Don Davis, Principal Planner  
Paul Holt, Senior Planner  
Jill Schmidle, Senior Planner  
Christopher Johnson, Planner

2. MINUTES

Upon a motion by Joe Poole, seconded by Willafay McKenna, the minutes of the July 5, 2000, meeting were approved by unanimous voice vote.

3. DEVELOPMENT REVIEW COMMITTEE

Martin Garrett presented the report in which the DRC heard three non-controversial cases. He stated the DRC recommended approval for Scotts Pond which submitted 97 lots for Section 2 development, Anheuser Busch Inc. which submitted a proposal for off-site parking spaces, and Mulberry Place Subdivision which contained 50 lots.

John Hagee stated he had a conflict of interest with Case No. SP-87-00 Anheuser Busch Inc. and would not be voting on it.

Willafay McKenna made a motion, seconded by Joe Poole, to approve the DRC report. In a unanimous voice vote, motion passed.

4. CASE NO. AFD-13-86. GOSPEL SPREADING CHURCH (GILLEY ADDITION) 2000 REES PROPERTY WITHDRAWAL.

Paul Holt presented the staff report stating the applicant had requested that approximately 80 acres of the 108 acre property be withdrawn from the Gospel Spreading Church (Gilley Addition) Agricultural and Forestal District. The AFD property was originally approved by the Board in 1986 and the Rees property was added in 1997. Staff found that the application met the withdrawal criteria as outlined in the staff report and recommended the property be withdrawn from the AFD. On July 17, 2000, the AFD Advisory Committee recommended the property be withdrawn by a 7-0 vote, with three absences.

Martin Garrett opened the public hearing.

Paul Brittle, representing the Powhatan Shores Homeowners Association adjacent to the ADF property, asked what percentage of the property was wetlands.

Paul Holt displayed a map which showed the areas within the wetlands. He stated the back three lots were divided into flag stems in order to avoid any disturbance of the wetlands and flood plain. He did not have a percentage but stated the wetlands did cover a large number of acres.

Paul Brittle stated their concern of additional development in the area was the drainage problems and how it would be addressed.

Paul Holt stated that the only potential development would be for the owner to sell the lots and to have one single family home built on each.

There being no further speakers, the public hearing was closed.

Willafay McKenna made a motion, seconded by Joe Poole, to approve staff's recommendation of withdrawal from the AFD. In a roll call vote, motion passed 6-0. AYE: McKenna, Hagee, Hunt, Poole, Wildman, Garrett (6); NAY: 0.

5. CASE NO. SUP-7-00. HERTZLER CLEARING AND GRADING.

Martin Garrett reopened the public hearing. He stated there had already been two meetings in which people spoke and encouraged only those with new information to speak tonight.

Christopher Johnson presented the staff report stating the Planning Commission deferred this project on July 5, 2000, in order to allow staff and the applicant to address concerns shared by citizens as well as several proposed changes and additions to the conditions. Staff had worked with the applicant to address those concerns but noted that staff would find it difficult to enforce conditions which limited the source material, transportation of materials to vehicles registered only to Hertzler Clearing and Grading, to restrict the height of materials stored, and to eliminate the use of ground water and chemicals in the decomposition on the site. Staff found the proposal consistent with the surrounding zoning, development and Comprehensive Plan. Staff continued to recommend approval of this application as outlined in the staff report.

Willafay McKenna understood the difficulty in enforcing these regulations but asked if they did violate one of the conditions, would staff then be able to enforce the conditions.

Joe Poole asked if the applicant was comfortable with the conditions required by staff.

Christopher Johnson stated the applicant was generally comfortable but did have a few issues with the language with the limitation on the number of days the tub grinder could be in operation. He stated the applicant wished that be changed to 20 days per year rather than 15 days as proposed by staff.

Martin Garrett opened the public hearing.

John MacDonald of 2088 Harpers Mill Road spoke on behalf of the applicant and stated it was time that someone spoke on behalf of Steven Hertzler. He said Steven Hertzler was trying to be a good neighbor and said it appeared that the residents had taken this project out of scale and that in reality this was a small operation. He continued to state the applicant would only be allowed four dump trucks to transport materials into and out of the site and the material storage area was only on 2.5 acres. He concluded that all 14 conditions were acceptable to the applicant.

Martin Garrett stated that Shireen Parsons spoke at the last meeting about chip mills and that he reviewed the materials she handed out at that time. He stated the applicant had not applied for a chip mill operation but for an operation to grind up trunks of trees. He further stated that the applicant would not be grinding up trees to make chips to sell for the manufacture of wood products.

Shireen Parsons of Christiansburg, VA stated that this was not a full scale chip mill at this time but this was very often how full scale chip mills were eventually located into a community.

Martin Garrett said that as mentioned at the last meeting the applicant would have to come before the Commission and Board if it wished to increase the size of the operation.

Shireen Parsons responded that once a project comes into an area, it was typical that a request to increase the size of a project would be approved. She stated that, after all the information and comments presented during the public hearing, she felt it was difficult to understand how the revised staff report could continue to recommend approval. She felt the staff report still left many questions unanswered. She reviewed several of the conditions of the revised proposal and concluded by recommending that the Commission deny this application.

Glen Besa, Director of the Sierra Club of VA, addressed the issue of stump dump fires and handed out information regarding a stump dump fire in Baltimore County, Maryland. He stated this was an industrial operation and therefore, should be put on an industrial site. He asked the Commission to deny this application.

Margaret Tucker of 187 Racefield Drive spoke against this application with her main concern being the traffic situation on Barnes Road.

Betty Smith of 9347 Barnes Road spoke against this application and stated she had a petition with additional signatures which she presented to the Commission members. She stated that landowners did have rights and, with the 106 signatures already on petition and the signatures she presented tonight, she asked if their rights were being taken away from them by this application. She stated that Steven Hertzler also had rights but felt this type of operation was in the wrong location. She asked the Commission to deny this application. She asked how many vehicle trips would be generated by his clients that would be in addition to the truck and employee traffic.

Christopher Johnson stated that, with no sales allowed on the site, he was not sure what clients she was referring to. He stated that the majority of the business came through solicitation by phone adding that he presently operates his business from his home.

John MacDonald of 2088 Harpers Mill Road again spoke on behalf and in support of Steven Hertzler stating it was unfair to compare the size of this operation to a chip mill.

Rosa Mayes of 135 Racefield Drive spoke against this application with traffic being her main concern.

Raymond Stewart of Barnes Road spoke of the 106 signatures he presented at the last Commission meeting and stated that this project was being proposed at the wrong location and asked to Commission to deny this application.

Brian Schrecengost a young resident of Racefield Road spoke against this application and asked the Commission to deny this application.

Tanya Howell of Racefield commented on another case when someone said "you knew that this was a possibility when you moved there, what was your concern. You knew that this parcel had been designated as one that might become industrial." She stated when families moved to Racefield Drive and Barnes Road there was not a thought as to what type of industry would be developed down the street. She felt for this property to be used in an industrial way was unfair.



There being no further speakers, the public hearing was closed.

Willafay McKenna stated as a Commission member she looked at the use of the property, its location, and the conditions that were placed on it. She stated the petitions were a much greater consideration to the members of the Board of Supervisors because their way of looking at projects may be somewhat different than the Commissions. She recommended approval for the following reasons: most of the property was located adjacent to I-64; only 25% of the property would be used for the business, leaving 75% undeveloped; the SUP would not go into effect until all improvements required by VDOT were made; and the excessive amount of conditions imposed on this project.

Don Hunt stated he had no comments to make on this application.

John Hagee stated his position did not change and he believed that this was a small time operation. He felt Steven Hertzler was trying to open a business in a rural area with a rural usage and he did not know of a better area. He felt this application had been blown out of proportion and agreed with the comments made by Willafay McKenna.

Joe Poole seconded the motion for approval. He stated he had strong concerns initially based on access to the site and his perceptions that this was a more intense use than he now believed it to be. He said based on the conditions set upon this application, he did not think that this project was as aggressive as a chip mill and was comfortable with approving the application.

Peggy Wildman stated that given the conditions proposed on this applicant, which she believed addressed all the issues of concern, this was a viable application and she supported it.

Martin Garrett agreed with the comments of Willafay McKenna and the other Commission members and wanted the citizens to know that their decisions were not easily made. He said the Commission did give this application a lot of thought and there was an education process on their part and he supported staff's recommendation of approval.

In a roll call vote, motion passed (6-0). AYE: McKenna, Hagee, Hunt, Poole, Wildman, Garrett (6); NAY: (0).

6. CASE NO. SUP-7-99. GRIESEN AUER RESIDENTIAL CLUSTER.

Jill Schmidle presented the staff report stating staff received signed proffers in legal form on August 1, 2000, which was not in accordance with the adopted policy for proffers. Staff previously had notified the applicant of the proffer policy and in accordance with this policy, staff recommended the Planning Commission defer this case to allow staff adequate time to review the proffers.

Martin Garrett opened the public hearing.

Greg Dodd of Horton and Dodd stated he understood staff's recommendation of deferral and if that was the pleasure of the Commission, he would limit his comments. He said that if they were ever going to converge to a public hearing that's bonafide for a vote, there were some issues that might be worthy of discussion. He yielded to the Commission as to whether they wanted to hear those issues tonight or wait until the September meeting.

Martin Garrett recommended deferral since the applicant had ample notification to provide proffers within the required time period.

Greg Dodd stated the policy presented a problem since they had out-of-town owners. He said the proffer system as devised was a dynamic system in that they try to evaluate what proffers might be acceptable to all concerned. He stated they had presented proffers to staff for acceptance and then they had to contact their out-of-town owners for signatures and that the 21-day policy might not be met. He said it appeared to be a never-ending process and he wanted the Commission to know the type of problems they have incurred.

John Hagee asked if the applicant had any example of the changes that had been made that delayed the cut-off requirement.

Gregg Dodd said one example that was paramount to this was land use of the property versus off-site road improvements that were being required. He said he had tried to separate the land use issues from the off-site improvement that were required by presenting a proffer that was strong enough so if they overcame the obstacle of land use, the County still had another obstacle for them to pass before the project would be valid, that being a road system that would satisfy the County and VDOT. He said the cost of developing the off-site road plan to the satisfaction of the County and VDOT and the possibility of denial of the land use was something of concern. He felt the two could be separated and the County still be protected.

John Hagee asked for a response from staff as to whether that could be worked out.

Andy Herrick, Assistant County Attorney, responded by cautioning the Commission from giving specific instructions or requesting specific information regarding proffers since they were voluntary commitments made by owners.

John Horne assured the Commission that staff understood that the application had been in for a time and they would make every effort to bring to the Commission a package that they would be able to vote on next month.

The public hearing remained open for the September 6, 2000, meeting.

7. CASE NO. SUP-8-00/SUP-9-00. LEE/BICKFORD BORROW PITS.

Paul Holt presented the staff report stating the applicant had applied to renew two existing special use permits to allow for the continued operation of borrow pits at the southern end of the County. The two permits would expire on December 22, 2000 and were last reviewed and approved by the Board of Supervisors in 1997 and 1992. Time limits were placed on the permits in order to give staff the opportunity to re-evaluate the impact of the operation. The applicant at this time had requested no time limit be placed on them. Staff found the proposal consistent with the Comprehensive Plan Land Use Designation, compatible with surrounding properties and zoning. Staff recommended approval as outlined in the staff report.

Willafay McKenna asked about the condition which stated only inert materials could be used as fill and asked if that would make the land unbuildable.

Paul Holt stated that to the contrary it was designed to make sure that the property would be buildable in the future.

Willafay McKenna also asked if the invasion into the RPA by the applicant occurred after the approval of the last special use permit.

Paul Holt stated that the invasion occurred before the special use permit was last renewed in 1997 and that the restoration that took place at the time was not acceptable to the Director of the Environmental Division. He added that this was an opportunity to make sure that everything would get done.

Peggy Wildman asked what impact the traffic would have on the Wal-Mart application.

Paul Holt stated the Wal-Mart site development plan had its own set of road improvements designed for Route 60 and under those improvements, the Wal-Mart traffic should blend with the existing traffic including traffic coming out of the borrow pits.

Joe Poole commented that the conditions as outlined in the report had been submitted without a time limit with the stipulation that there be an annual report on the activity on the site and asked why staff made that change.

Paul Holt stated staff was confident that, with the requirement of the annual report documenting the items that would otherwise be checked when renewing an SUP, adequate control could still be maintained as to the future of the property.

Martin Garrett opened the public hearing.

Vernon Geddy of Geddy, Harris, Franck, and Hickman representing the applicant, Henry Branscome, spoke on the history of the property stating the applicant had been running his business for the past 33 years. He felt there was a significant improvement in the permit conditions that would benefit both Branscome and the County. He commented that it would benefit the County since the yearly report would be done rather than waiting until the permit was up for renewal to go out to the site and check the progress. He said the only point of disagreement with staff related to condition #9. The applicant proposed a 100' buffer around the top of the primary ecological boundary in order to do select timber harvesting and outside the 100' buffer the applicant wanted to timber the property. He stated they did not want to lose the value of that amount of timber but more important they did not want to set a precedent that the 40 acres would never be available for industrial development. He concluded by stating that the issues of safety and economic development had been addressed and he asked that the Commission approve this application.

Alvin Anderson of Kaufman and Canoles and representing the owners of Greenmount tract spoke in opposition of this application. He said the Greenmount tract was approximately 760 acres south of Route 60 and the subject site before the Commission was approximately 420 acres both of which were in the James River Enterprise Zone. He stated that on one hand, the County had recently gained substantial momentum with the construction of the new Busch Gardens Interchange, the location of the Wal-Mart Distribution Center and the renewed discussions about improvements on Route 60. But, on the other hand, the County tonight was faced with a special use permit expansion and extension of time for a total land area of approximately 18% of the James River Enterprise Zone. He asked the Commission to focus on the following three questions: Did the expansion of the land area and the removal of the time limitation adversely affect the development potential of the Branscome property and the adjacent Greenmount property? Did the use of the property immediately adjacent to the Wal-Mart facility encourage or discourage similar type of development as that of Wal-Mart on the adjacent or surrounding properties? Would a developer choose to locate their facility on virgin property or the alternative site which would be in a large hole filled with inert materials? He requested on behalf of his clients that the Planning Commission not approve the expansion of the area nor that the time limit be extended or eliminated altogether.



Henry Branscome stated that he had been mining that area years before the Wal-Mart planned on coming to the area and even before the present owners purchased Greenmount. He said he had over 500 employees and that he was not just a small time business but a large one that was a part of James City County. He felt that his property, even though adjacent to the Greenmount tract, had nothing to do with Wal-Mart or any future development in that area. He also mentioned the extinct plant life on the parcel that could not be disturbed, commenting that there were only three to five of them within a 30' square block at the edge of the marsh. He asked the Commission if they would want to give 40 acres of their property for a 30' square block for a plant they did not even know.

John Hagee asked why the applicant didn't want to have a time restriction on the permit and asked what impact there would be if a five year time limit extension was placed on the business.

Henry Branscome stated if they bid on a \$20,000,000 to \$30,000,000 job there could be a half million yards of dirt on the project. He said sometimes these jobs could extend from two to three years.

John Hagee felt the Commission should keep its perspectives open in terms of what may happen in the future but also it needed to make sure it did not restrict the applicants business. He suggested that the Commission place a limit of five years and asked if the applicant had any problems with that.

Vernon Geddy stated a problem may arise if limited to five years if the applicant received a contract three years out that might require delivery of material over a three year time period. He said the applicant could not guarantee that the permit would be renewed at the end of five years and the applicant would be taking a great risk in bidding on a job that would require delivery of material past the expiration of the current special use permit.

John Hagee commented that there were 148 acres left to be mined and with three to five acres being disturbed per year, there could be mining activity for another 37 years. He felt that was too long of a period of time to allow for the permit.

There being no further speakers, the public hearing was closed.

Willafay McKenna was concerned about not having a time limit on the permit and the harvesting provisions that were not included in the last application. She was uncomfortable leaving this to annual reports to staff and felt that the greatest reason that the Commission put limits on the last two proposals was simply to be able to take a look at the project and actually see what had been done over the years. She suggested that there be a time limit of three years and if the Commission chose not to renew the permit again that the applicant be able to continue the operation until all jobs under contract were completed.

Martin Garrett commended the applicant on this business but also felt that a time limit was necessary for the benefit of the County. He said the timber harvesting issue was of concern to him and asked if they could deal with that issue separately. He asked for a motion on the time limit.

John Hagee made a recommendation to approve a 40 acre limit over a seven year period.

Several Commission members felt that a five year time limit was more acceptable than the suggested seven years.

Joe Poole made a motion, seconded by Peggy Wildman, to limit this special use permit to a five year limit with a 40 acre limit as suggested by the applicant.

In a roll call vote, motion passed 6-0. AYE: McKenna, Hagee, Hunt, Poole, Wildman, Garrett, (6); NAY: (0).

Don Hunt felt the applicant's point was well made regarding the harvesting of the area reserved for the protection of a plant.

Paul Holt clarified that the applicant's proposal was not to timber within the primary boundary but to selectively timber in the 100' buffer around that primary area and timber outside the 100' buffer. Staff's proposal was not to timber inside the primary area of approximately three acres and that no timbering be done in an additional 100' buffer from the primary area. He said in between the 100' buffer and the secondary boundary staff recommended it be selectively timbered or the hardwood. He added that this was based on the state's recommendation that it was as important to protect the actual plant as well as protect the plant's habitat.

John Hagee suggested the applicant preserve three acres in the primary with a 100' buffer and allow the applicant to timber the remainder of the property and provide adequate drainage protection.

Staff agreed with John Hagee's proposal.

There was additional discussion on the options by staff and the applicants.

John Hagee made a motion, seconded by Martin Garrett, to recommend approval of a 100' buffer around the three acre area and the remaining thirty-four acres be timbered provided that erosion control measures were put in place and approved by the Environmental Department.

In a roll call vote, motion failed 2-4. AYE: Hagee, Garrett, (2); NAY: Hunt, Willafay, Poole, Wildman.

After some discussion, Martin Garrett stated the Commission passed a portion on this application and they would defer the timbering issue until the next meeting. He made a motion, seconded by Willafay McKenna, to defer this case.

In a roll call vote, motion passed 6-0. AYE: McKenna, Hagee, Hunt, Poole, Wildman, Garrett (6); NAY: (0).

#### 8. CASE NO. SUP-17-00. PRIMECO TOWER ON CENTERVILLE ROAD.

Paul Holt presented the staff report stating the applicant had applied for a 175 foot monopole tower at 4881 Centerville Road with various accessory equipment huts and pads at the base of the tower to support the necessary electronic equipment. Staff believed that, with the proposed conditions and the distance of the setback, the proposed height of the tower would appear comparable with surrounding vegetation and was compatible with the surrounding zoning and uses. Staff recommended the Commission approve this application as outlined in the staff report.

Joe Poole recalled that when there were discussions on towers several years ago and it might even be in the Performance Standards of 1998, if these facilities ever became obsolete or did not function as originally designed would they be removed at the owner's expense? He asked if that, in fact, was enforceable.

Paul Holt stated that requirement was not written into the conditions because during the ordinance update it was written into the Zoning Ordinance so it would be enforceable and the company would be required to submit a bond.

Martin Garrett opened the public hearing.

Vernon Geddy of Geddy, Harris, Franck, and Hickman representing the applicant stated the applicant had worked hard to locate a site to cover the gap between the two existing facilities. He stated the application meet all the performance criteria and he urged the Commission to recommend approval to the Board.

There being no further speakers, the public hearing was closed.

Willafay McKenna made a motion, seconded by Joe Poole, to recommend approval of this application. In a roll call vote, motion passed 6-0. AYE: McKenna, Hagee, Hunt, Poole, Wildman, Garrett (6); NAY: (0).

9. PLANNING DIRECTOR'S REPORT

Don Davis informed the Commission that the Planning Division had had employee turnover but was once again fully staffed.

Peggy Wildman thanked the Community Character Committee and the Planning Division for their efforts in producing the Community Appearance Guide.

Don Hunt commented that he spoke with a citizen regarding the Greisenauer case that will be discussed at the September meeting stating the citizen's objection was the proposed density for the project.

There being no further business, the August 7, 2000, Planning Commission adjourned at approximately 9:50 p.m.

  
Martin A. Garrett, Chairman

  
O. Marvin Sowers, Secretary



file

**SPECIAL USE PERMIT 7-00. Hertzler Clearing and Grading  
Staff Report for the July 5, 2000 Planning Commission Public Hearing**

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This report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

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**PUBLIC HEARINGS**

Planning Commission:

Building C Board Room; County Government Center

Board of Supervisors:

June 5, 2000, (deferred); July 5, 2000, 7:00 p.m.

August 8, 2000, 7:00 p.m.

**SUMMARY FACTS**

Applicant/Landowner:

Steven L. Hertzler

Proposed Use:

Contractor's warehouse and office, storage and repair of heavy equipment, and the manufacture and sale of wood products.

Location:

9537 Barnes Road; Stonehouse District

Tax Map and Parcel No.:

(4-3)(1-12A)

Primary Service Area:

Outside

Parcel Size:

28.6 acres

Existing Zoning:

A-1, General Agricultural

Comprehensive Plan:

Rural Lands

Surrounding Zoning:

North: A-1, General Agricultural

South: B-1, General Business

East: A-1, General Agricultural

West: A-1, General Agricultural

Staff Contact:

Christopher M. Johnson – Phone 253-6685

**STAFF RECOMMENDATION:**

Staff finds the proposal, with conditions, generally consistent with the surrounding zoning and development and generally consistent with the Comprehensive Plan. Staff believes that the revised conditions attached to the special use permit will assure orderly development of the site and provide a development that does not detract from the surrounding rural community. Staff continues to recommend the Planning Commission approve this proposal with the conditions listed in the staff report.

The Planning Commission, at their meeting on June 5, 2000, deferred action on the Hertzler Clearing and Grading Special Use Permit due to several questions which were raised concerning the proposed conditions and the applicant's intended business on the site. Staff has worked with the applicant to address these issues and has recommended several changes to the conditions attached to this special use permit. Each of the proposed revisions and issues is discussed in further detail below.

#### Wood Processing Operation

The applicant has stated that he anticipates bringing a maximum of 30 loads of material per month onto the site. A typical load brought to the site would consist of approximately 10 cubic yards of small stumps and chipped brush material. The tub grinder which would be leased every two to three months is capable of processing 80 loads per day and reduces the volume approximately 3 to 1 resulting in a mulch by-product of 10 loads per month. Covering the 2.5 acre wood processing area with one-foot of mulch will require 400 loads of material. At 10 loads of mulch per month, this would require 40 months of work. The 2.5 acre area would be covered with almost 3 feet of mulch after ten years.

During the first several years of operation, the resulting by-product will be used to create berms along the perimeter of the wood processing area and mulch areas along the entrance road. Subsequently, the applicant intends on allowing the accumulated mulch piles spread over the 2.5 acre wood processing area to decompose into topsoil. This process can take upwards of five years depending on how often the material is turned over and treated. Staff has added a condition (#2) which requires that the method of containment for the materials in the wood processing area and stabilization of the berms are addressed during the erosion and sediment control and runoff management plan review by the Environmental Director prior to final site plan approval. While the sale of wood, mulch and wood materials is not permitted on the site, the applicant will be allowed to transport topsoil and material for sale at the appropriate time under the proposed conditions.

#### Fire Potential

Some concern has been raised by residents in the surrounding community over the potential for mulch or debris waste fires. The Fire Department reviewed this proposal and concluded that while the potential for spontaneous combustion does exist, mulch or debris waste fires are typically simple to control and normally remain self contained. These fires do not pose a high risk to citizens or firefighters and the Fire Department has not experienced any significant problems with similar properties.

#### Sale of Wood, Mulch or Wood Products

A question was raised during the public hearing regarding the applicants ability to sell wood, mulch or wood material wholesale. This condition originally stated that no retail sales would be permitted on the site. Staff has revised this condition by eliminating the word "retail," thus preventing all sales on the site. The applicant is not restricted in his ability to transport material off the site for sale elsewhere.

#### Traffic

Staff added Condition #9 to address the concerns raised by Commission members and adjacent property owners over traffic created by the proposal. Three pickup trucks, two dump trucks, a single axle chip truck, a log trailer and a low-boy trailer are presently registered to Hertzler Clearing and Grading. The applicant has stated that the pickup trucks make an average of one

to two trips per day to and from the site and typically go home with employees each night. Both of the trailers and the single axle chip truck would typically make one trip per day each to and from a job site. The dump trucks make an average of three to four trips per day to and from the site. Staff estimates that the number of vehicle trips to and from the site will be approximately 24 to 34 per day. Given the relatively low trip volume generated by the development and the fact that all traffic improvements are required to be installed or bonded prior to the issuance of an occupancy permit (Condition #8), staff feels that the traffic impacts generated by this proposal will have a minimal effect on the surrounding community.

#### RECOMMENDATION:


Staff finds the proposal, with conditions, generally consistent with the surrounding zoning and development and generally consistent with the Comprehensive Plan. Staff believes that the addition of condition #9 and revisions to conditions #2 and #3 will assure orderly development of the site and provide a development that does not detract from the surrounding rural community. Staff continues to recommend the Planning Commission approve this proposal with the following conditions:

1. Construction on this project shall commence within 24 months from the date of approval of this special use permit or this permit shall become void. Construction shall be defined as securing permits for land disturbance, building construction, clearing and excavation, and the pouring of footings.
2. An erosion and sediment control and runoff management plan shall be approved by the Environmental Director prior to final site plan approval. This plan shall also address the method of containment for the materials in the wood processing area and stabilization of the berms. All required state permits shall be acquired prior to final site plan approval.
3. This permit shall allow the construction of a 5,000 square foot warehouse/office, the storage and repair of trucks and heavy equipment and an area for the storage, manufacturing and processing of wood, mulch and wood materials. The storage, manufacturing and processing of wood, mulch and wood materials shall be limited to a 2.5 acre area identified on a site plan to be approved by the Development Review Committee. No portion of the project shall be located within 400-feet of Barnes Road with the exception of the entrance road. The sale of wood, mulch or wood materials shall not be permitted on the site.
4. The use or operation of the tub grinder shall be permitted only between the hours of 8:00 a.m. and 6:00 p.m. Monday through Saturday.
5. The tub grinder shall be located so as to minimize potential adverse impacts on adjacent properties including, but not limited to noise, dust, debris, and odor. The final location for the tub grinder shall be shown on a site plan to be approved by the Development Review Committee.
6. A minimum 150-foot undisturbed buffer shall be provided along the eastern property line and a minimum 50-foot buffer shall be provided along the western property line adjacent to Interstate 64. The buffers shall contain enhanced landscaping, so that the required number of plant material equals at least 133 percent of the County's Landscape



Ordinance requirements with at least 33 percent of the required number of trees being evergreen. The landscaping plan shall be approved by the Director of Planning or his designee prior to final site plan approval.

7. The location of the disturbed area shall be approved by the Director of Planning or his designee prior to final site plan approval. The total disturbed area on the site shall not exceed twenty five percent of the site, except with prior approval of the Board of Supervisors.
8. All traffic improvements required by the Virginia Department of Transportation along Barnes Road (Route 601) shall be installed or bonded prior to issuance of a certificate of occupancy for any structure on the site.
9. The storage and repair of trucks and heavy equipment on the site shall be limited to vehicles and equipment registered to Hertzler Clearing and Grading. No more than ten vehicles shall be used to transport materials and equipment or stored on the property associated with the commercial operation. No vehicles shall be allowed to transport wood, mulch or wood materials onto or off of the property except those registered to Hertzler Clearing and Grading.
10. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

  
Christopher M. Johnson  
Planner

**Attachments:**

1. Location Map

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FIFTH DAY OF JULY, TWO THOUSAND AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Martin Garrett, Chair  
John Hagee  
Don Hunt  
Wilford Kale  
Willafay McKenna  
A. Joe Poole III  
Peggy Wildman

ALSO PRESENT

John Horne, Development Management Manager  
Marvin Sowers, Director of Planning  
Leo Rogers, Deputy County Attorney  
Paul Holt, Senior Planner  
Jill Schmidle, Senior Planner  
Christopher Johnson, Planner

2. MINUTES

Upon a motion by Joe Poole, seconded by Willafay McKenna, the minutes of the June 5, 2000, meeting were approved by unanimous voice vote.

3. DEVELOPMENT REVIEW COMMITTEE

John Hagee presented the report in which the DRC heard four cases at its June 28, 2000, meeting. He stated the DRC recommended approval for the Mid-County Park lighting improvements for its recreation area and that the DRC had some concern regarding the hours of the night time operation and wanted to make sure someone was there to turn the lights off after evening events; Williamsburg Plantation Master Plan Amendment, in which two units were added due to the loss of eight units because of the widening of Route 199; Capt. George's Restaurant which requested a set back reduction for a Gazebo; and a conceptual plan for Sections 3 and 4 of the Westmoreland Subdivision.

Willafay McKenna made a motion, seconded by Peggy Wildman, to approve the DRC report. In a unanimous voice vote, motion passed.

4. CASE NO. SUP-8-00/SUP-9-00. LEE/BICKFORD BORROW PITS.

Paul Holt presented the staff report stating the applicant had requested the Commission defer this case until its August 7, meeting.

This case was deferred and the public hearing was continued to the next meeting.

5. CASE NO. SUP-17-00. PRIMECO TOWER ON CENTERVILLE ROAD.

Paul Holt presented the staff report stating the applicant had requested the Commission defer this case until its August 7, meeting.

Martin Garrett opened the public hearing. There being no speakers, the public hearing was continued to the next meeting.

6. CASE NO. SUP-7-99. GRIESEN AUER RESIDENTIAL CLUSTER.

Jill Schmidle presented the staff report stating the applicant had requested the deferral of this case until the next meeting of August 7.

Martin Garrett opened the public hearing. There being no speakers, the public hearing was continued to the next meeting.

7. CASE NO. SUP-7-00. HERTZLER CLEARING AND GRADING.

Wilford Kale made a motion that the public hearing be reopened for this case. Joe Poole seconded his motion and by unanimous voice vote, the public hearing was reopened.

Christopher Johnson presented the staff report summarizing the questions raised by the Commission during its last meeting concerning the proposed conditions and the applicants intended business on the site. Staff had recommended several changes to condition #2 and #3 and added condition #9 as outlined in the staff report. Staff continued to recommend approval of this application.

Willafay McKenna asked why only a 50 foot buffer was required along I-64 when larger buffer areas had been required along that road and Route 199 with other applications.

Christopher Johnson stated, in this case, the topography was considerably above I-64 and staff felt that the retention of a 50 foot undisturbed buffer and the placement of berms adequately mitigated the impact.

Martin Garrett made a motion to add information under condition #8 "All traffic improvements required by VDOT *or the DRC* along Barnes Road....." Willafay McKenna seconded his motion and in a unanimous voice vote, motion passed.

Wilford Kale asked for clarification on the number of truck trips estimated at 24 to 36.

Christopher Johnson stated that into and out of a site counted as two vehicle trips and those numbers would mean 12 to 18 trucks based on the number of vehicles the applicant currently has in his operation.

Steven Hertzler thanked the Commission for reviewing this application and said he was surprised at the amount of opposition. He stated he reviewed the conditions presented by staff and supported staff and their recommendation. He said he'd answer any questions the Commission may have.

Shireen Parsons of Christiansburg, Virginia and a member of the Joint Subcommittee Studying the Impact of Satellite Chip Mills on Virginia's Economy and Environment appointed by the Virginia Legislature spoke on the growing number of wood chip mills in Virginia. She presented to the Commission members a copy of her statement which included comments and questions with respect to the recommended conditions presented in the staff report for this application, an article from the Washington Post on "*Chipping Away at the South's Forests*," and an article by Ted Williams from Mother Jones magazine. She urged the Commission to read all materials before deciding on the permit application before them tonight. She added that the residents in this area received a video tape featuring a chip mill community in North Carolina and stated it was an excellent representation on the impacts to a community of this industry, including chemical and water use, leaching, truck traffic, hours of operation, buffers, and reimbursement for damages.

Joe Poole asked Christopher Johnson to clarify that the area of activity would be restricted to 2-1/2 acres on the 28.6 acre site.

Christopher Johnson stated the wood processing area would be restricted to 2-1/2 acres with 7 acres, or 25% of the site, of total clearing.



Joe Poole asked Ms. Parsons to elaborate on her comment regarding the 100 mile radius.

Shireen Parsons stated that the 2 acre site was sufficient for a high capacity chip mill. She stated chip mill sources were trees taken from a radius of one hundred miles. She said the deforestation within that circle was devastating.

Raymond Stewart of 9583 Barnes Road spoke in opposition of this application and again showed a petition signed by 106 citizens of the County who also opposed this application.

Betty Smith of 9347 Barnes Road commented on Steven Hertzler's statement that he just wanted to slip in, be seen, and not be noticed. She asked how that could be done with the noise that would be generated from the trucks and wood grinding machine. She said his business was presently being run from three locations and by bringing it to one location there was no question that this would be a full fledged business and would have some impact on the adjacent property owners. She requested that the Commission deny this application.

Glen Besa, Director of the Virginia Chapter of the Sierra Club, stated if the Commission approved this application with the limits set forth in the staff report there was valid concern that the operation could be significantly enlarged into a full scale chip mill. He felt that the conditions presented in the staff report were not precise enough to protect the citizens. He stated that if business was slow in the terms of selling mulch then what the applicant would end up with would be a stump dump, something that had not been addressed. He stated there were no restrictions as to whether the applicant had to grind the stumps or not and no limit to the height of the stump dump and expressed concerns about fires occurring that are difficult to put out. He concluded by saying the use could be converted into a full-fledged chip mill and that if the Commission had to vote on this tonight, they had no choice but to deny this application.

John Hagee asked Glen Besa to elaborate on his comment that this could evolve into a bonafide chip mill.

Glen Besa said he believed that what Shireen Parsons referred to were operations for the chips to be used in paper products and for the manufacture of fiber board. He said those were serious problems and said that this operation could be converted into a high capacity chip mill.

John Hagee asked how it could be converted.

Glen Besa stated it could be converted by amending the special use permit.

John Hagee commented that the applicant would have to come before the Commission.

Glen Besa said yes, they would have to but he again stated the problems were with the current conditions and the facts that were set forth in the staff report.

Joe Poole asked if the concept of a stump dump was discussed by staff and the fire department.

Christopher Johnson stated the issue was discussed with the Deputy Fire Marshall in addition to debris and waste fires. He said the Deputy Fire Marshall stated that similar operations of a larger scale had not posed the County any problems. He added that the Fire Department reviewed the proposal stating they had no objections to this application and felt that any fire that could develop on the area would largely be self-contained and would have no problem addressing any fire response to the site.

Tyla Mattoson spoke as the Conservation Chair for the Virginia Chapter of the Sierra Club and encouraged the Commission to deny this application. She stated a chip mill or stump dump would diminish the quality of life for the residents living in the vicinity. She stated the noise, the fire hazard and loss of vegetation were only a few reasons not to permit this proposal. She asked the Commission to look at the permitted height and total volume of debris that would accumulate and examine the harm which may befall the quality of the ground water or wetland areas when chemicals are used in this operation.

Willafay McKenna asked Steven Hertzler what sources of materials would be used.

Steven Hertzler stated that 90% of the work was residential clearing and that he did not purchase tracts of land to timber. He said they were not trying to set up a chip mill to mass produce chips. All he intended to do was to recycle material that builders asked him to remove from residential lots and a few commercial lots.

Willafay McKenna asked the applicant if he would be reluctant to have a condition that would limit him to that source.

Steven Hertzler stated he had no problem.

Willafay McKenna asked if he would be using chemicals or water to hasten the process.

Steven Hertzler stated no to both questions.

Willafay McKenna asked if he had any problem with limiting the use of the tub grinder to a specified number of days per year.

Steven Hertzler stated that the conditions in the staff report were already above the number of days he would need and therefore had no problem for further limitation.

Willafay McKenna asked staff to clarify what was stated in condition #7, which mentioned the total disturbed area on the site shall not exceed 25% of the site, and condition # 3, where staff cited that the 2-1/2 acres included everything.

Christopher Johnson stated that the 2-1/2 acres was part of the 7 acres and that everything, including a 5,000 office-warehouse building and storage and repair of his vehicles, would be on the total of 7 acres.

Willafay McKenna asked that it be made clear that the 2-1/2 acres was for the wood processing and that the 7 acres included everything else.

Willafay McKenna asked Steven Hertzler if he would be opposed to having a condition which required the materials hauled into the site be ground quarterly in order to avoid accumulation.

Steven Hertzler had no objection to her suggestion of adding that condition.

Willafay McKenna asked how many of the eight trucks he owned would be hauling materials to the site and would he have any problem with having a condition that would limit the total number of trucks that could haul onto the site and limiting it only to his trucks.

Steven Hertzler stated he only had two dump trucks that would be hauling clearing material to the site and would have no problem with adding a condition that would limit the number of trucks he could use.

Willafay McKenna made a motion to approve this very limited application. She stated that the information that had been presented to the Commission for this application has emphasized recycling of materials that were otherwise unuseable. Therefore, she proposed that the Commission vote on this with the following additions:

1. Condition #3 - there would be a more careful definition of the area so that they know that 25% of the site was going to include everything that was planned for the site, including the 5,000 sq. ft. building, the maintenance area and storage, and the 2-1/2 areas for the wood processing.
2. That a condition be placed that required the applicant to grind the stumps at least quarterly.
3. That a condition be placed that limited the number of days of operation to 2 days per quarter.
4. That a condition be placed that limited the applicants processing on the site to clearing material from development sites collected by his own company.
5. That a condition be placed that no chemicals or water are to be used on the 2-1/2 acre area where the wood is mulched or turned into top soil.

Martin Garrett commented that the material that Steven Hertzler would be hauling was for other contractors and this may be a loophole for timbering activities.

Marvin Sowers stated it was staff's interpretation that debris from land clearing that was part of an approved development project was what the Planning Commission wanted to allow and not from a forestry operation. He stated that there was a clear difference in permitting and that the County was not involved in permits for forestry but were for land development of residential or commercial sites.

Willafay McKenna stated that if the conditions was specifically written in that manner then that would satisfy what she was looking for.

Leo Rogers made a point of clarification that the Commission did have one more deferral. He stated the first time the case came before the Commission was on June 5, 2000, and the Commission had 90 days from that date to act which would be their August 7 meeting.

Martin Garrett closed the public hearing and commented on the rural areas of the County. He stated there were certain things that were rural by nature, such as, forestry and agricultural and not all of those things that were part of forestry or agricultural were always compatible with citizens living next door to them. He stated that almost any endeavor that took place in rural areas of this County would have to pass at least a half dozen houses if not more because there was that much development within the County. He felt that this application was forestry related and was appropriate to this site.

Martin Garrett seconded the motion by Willafay McKenna.

Don Hunt commented that across the street from his property the Commission approved the new Dodge Dealership which was now in the process of clearing and said he was in as rural an area as anyone. He stated that the developer burned the stumps and just about smoked out the Kristiansand Subdivision and said this application would reduce such burning and that the Commission needed to make a choice.



Wilford Kale commended Willafay McKenna for her due diligence in her SUP recommendations and supported those recommendations, however, as he stated last month, he did not feel that this was the proper location for this project. He said he was convinced that Steven Hertzler's intentions were good but according to one of the conditions, the applicant could bring in forty truck loads per day for 30 days and he would not be able to grind all that during a 2 day period. He said the applicant would then have to return to the Commission stating that business had been very good and with the estimated 12,000 or so approved lots it had the opportunity to be a very successful business. Again he stated he did not like the location and spoke not only of the adjacent property owners but also of the community that was across the interstate. He believed the site was inappropriate due to the traffic, the road was in horrendous condition, and the potential damage to the surrounding area included damage from mulch being washed off-site, and he had too many questions at this time to support this application.

John Hagee agreed with both Martin Garrett and Willafay McKenna and felt where else could this project be located but in an agricultural area. He felt there were enough restrictions on this application and if Steven Hertzler's business were to expand to any great degree, he commented he did not feel that the business was taking on the capacity that was suggested by Shireen Parsons, and he would have to come before the Commission if he wanted to. John Hagee looked at this application as a man in business that saw an opportunity to improve it and he fully supported this SUP request.

Peggy Wildman also supported this application given the requirements added by Willafay McKenna this evening. She felt this was a very small parcel of land and she did not see it becoming a major issue due to the limitations placed on the application. Her only concern was the traffic but overall this was an appropriate site.

Joe Poole had strong concerns regarding the location and access to the site. He agreed that this would be a small operation but also worried about the traffic on Barnes Road. He stated he could support a deferral but not approval of this application tonight.

Joe Poole made a motion to defer as a substitute for Willafay McKenna's motion for approval.

Willafay McKenna seconded Joe Poole's motion of deferral until the August 7 meeting.

John Hagee asked what specific information they was looking for in this deferral.

Willafay McKenna understood that they would have in writing the conditions as spoken about tonight. She commented that they would be voting on a concept if they voted tonight.

Joe Poole stated that in addition to having the conditions in writing, he would also like to review some of the materials referenced this evening.

Martin Garrett asked for all those in favor of deferral. In a unanimous voice vote, the Commission approved deferral of this application to its August 7, 2000, meeting.

Martin Garrett commented that the Commission had heard a lot from the public tonight regarding this case and requested that anyone wishing to speak at the next meeting not repeat themselves but, if they had new information to offer, the Commission would be happy to listen to them.

8. CASE NO. SUP-18-99. OLDE TOWNE ROAD TIMESHARES.

Jill Schmidle presented the staff report stating that on September 8, 1999, the Planning Commission voted 7-0 to deny this application due to the impact it would have on Olde Towne Road. She stated the Board deferred this case on November 23, 1999, to allow the applicant the opportunity to provide additional information. Since that time, the applicant made significant changes to the project which staff felt warranted the proposal be returned to the Commission. Staff found the revised proposal consistent with the surrounding zoning and single-family, multi-family, and timeshare uses, requirements of the residential cluster zoning ordinance and the Comprehensive Plan. Staff recommended the Commission recommend approval of this application as outlined in the staff report.

Martin Garrett commented that staff stated that fiscal impacts would be better with timeshares than with 131 by-right single-family units and asked how many years staff ran that information out.

Jill Schmidle believed it was run out for ten years but would check on that information.

Martin Garrett stated that the fiscal impact information was incorrect and if it were run out 50 years, timeshares would not be beneficial to this community.

Wilford Kale asked how much of the land was undevelopable under the current guidelines.

Jill Schmidle stated that 23.47 acres were undevelopable.

Wilford Kale asked how many acres were left and how many units per acre were there.

Martin Garrett asked that during the Comprehensive Plan weren't there discussions and wasn't it decided that undevelopable property would not be counted as being given to the County.

John Hagee stated that the discussion allowed nondevelopable land to be included in the buffers but not in the terms of recreation. He added that the applicant had provided 49% of the developable land for open space and recreation.

Wilford Kale explained that what he was looking for was the total number of units per acre on the entire developable portion of the site. He stated he believed that even though the applicant reduced the number of units they still were providing a proposal that was three times larger than what could be done by-right in single-family units. He said his concern was that this was not an improved project over what was originally presented in November nor over what by-right use would be. He said the only thing that made a dramatic impact initially was the absence of school children.

John Hagee asked if they were looking at 131 by-right lots, what would be the requirement for open space and recreation.

Jill Schmidle stated that 10% - 15% of the net developable area of the site was required for recreation.

John Hagee said that by-right 15% of the acreage for recreation would be approximately 20 acres and what the applicant was offering was 50 acres out of the developable land. He commented that this proposal was giving an additional 30 acres of developable land for open space recreation.

Joe Poole commented that traffic was an issue to him back in September and said that staff indicated that traffic decreased. He asked if that was due to the opening of Route 199 and what was the level of service for Olde Towne Road.

Jill Schmidle stated that with the opening of Route 199 the level of service on Olde Towne Road remained at a level of service "D."

John Hagee said he spoke with someone from VDOT and it was suggested since the opening of Route 199 that there be another traffic count done on Olde Towne Road.

Martin Garrett opened the public hearing.

Vernon Geddy of Geddy, Harris, Franck and Hickman spoke on behalf of the applicant. He introduced the property owner Phil Richardson and from the Berkeley Group, J. P. Otino and Frank Eck. He gave a brief history of the property and of Jim Lambert, owner of the Berkeley Group. He stated the company had been in business for 26 years and had 19 timeshare resorts in various stages of development and sales including the Williamsburg Plantation project directly across from Route 199 from this site. He stated it was important to note that this was not a rezoning request but a special use permit under the new cluster ordinance for a density of over one unit per acre and could be developed by-right into a 130 unit subdivision of single family homes. He said this proposal was different because it was limited by conditions as a timeshare use and could not be changed without the approval of the Board of Supervisors. He stated staff had done an excellent job in outlining the significant changes made by the applicant in the staff report. He stated that as previously discussed traffic appeared to be of concern at this location and since the last meeting a number of new studies and work had been done. He stated traffic counts were taken last September and October by the applicant's traffic consultant and at that time it showed traffic reductions of approximately 25% in the AM peak and 9% in the PM peak. As staff stated more recent information revealed a more significant reduction of traffic as a result of the opening of Route 199. He also said to confirm the accuracy in the trip generation numbers actual counts were taken at the Powhatan Plantation and the Fairfield Communities Resorts. Finally, he stated that a study was done of the level of service at the Olde Towne Road/Longhill Road intersection and the results showed the intersection now operated at the level of service C. He also spoke of the 3,500 foot multi-use path and the mulched path that would be tied into the greenways systems developed by Parks and Recreation. He concluded by stating the applicant supported the recommendation of approval by the staff and said he would answer any questions of the Commission.

Joe Poole asked if the traffic analysis prepared by Dexter Williams on behalf of the applicant was reviewed by VDOT and if so, what was their determination.

Jill Schmidle stated VDOT did review the traffic study and concurred with Dexter Williams' recommendation.

Peggy Wildman had some concern regarding the two BMPs being the sole source for water for landscaping and the shallow well as a backup. She asked if there was bad drought how would the applicant handle the situation.

Vernon Geddy said the applicant would design landscaping that would be drought resistant.

Peggy Wildman asked why the weekend was not taken into account during the traffic studies and did they take into consideration that vacationers might make multiple trips in one day to and from the timeshares.



Vernon Geddy stated they used the week day because that was when the vast majority of non-vacationing public would be going to and from work and when the traffic was the heaviest. He also stated that multiple trips into and out of the timeshares were taken into account during the study.

Allan Clark of 615 Beechwood Drive in the Piney Creek Estates Subdivision in Williamsburg was concerned about water and traffic and asked the Commission to reject this plan. He stated it was only a few months ago that members of this Commission commented that they had nothing against timeshares but thought timeshares did not belong here. He said he and residents of Piney Creek Estates agreed with the Commission then as they do now. He said he was also very concerned about the multi-use path that would be constructed within the 35 foot buffer area between the adjacent property owners. He concluded by again asking the Commission to reject this proposal.

A resident of Piney Creek Estates commented that both James City County and the City of Williamsburg were more interested in the financial affairs of the communities rather than anything that affected the citizens and asked the Commission why Williamsburg needed another timeshare community.

Bob Stowers of 1619 Beechwood Drive applauded the applicant who listened to the Planning Commission and the Board of Supervisors when they heard negative issues regarding the project. He stated the applicant heard negative issues because these timeshares were not a good idea then and they are not a good idea now. He asked what benefits the community would gain from this type of proposal and asked the Commission to deny this application.

There being no further speakers, Martin Garrett closed the public hearing.

Martin Garrett questioned the necessity of the bike path since most bikers do not use paths but stay on the main roadways and felt if they were to protect the adjacent homeowners the path should not be placed so close to their property lines.

Willafay McKenna stated that if she had young children she would not send them out onto the County roadways but would prefer these type of bike paths.

John Hagee stated that the Commission needed to rethink what they were trying to encourage in the cluster ordinance. He felt this was a difficult case but thought that what the ordinance encouraged were bike paths and usable recreation space. He stated that all the years he's been on the Commission clusters had been encouraged because they do provide a benefit but it appeared that whenever a cluster proposal came forward, the Commission found ways not to like it. He thought that the Commission could not discriminate against timeshares and that they had to look at them as they would any other residential type of proposal. He felt that of all the timeshares within the County this area seemed to be the best location since it was just off of the main tourist corridor of Richmond Road.

Martin Garrett stated that the purpose of the cluster was to allow for significant space between the cluster and what was next to it and in this case they had placed a bike path very close to the property line. He stated if all that were left natural then the residents in Piney Creek Estates would be protected.

Wilford Kale commented that one or both of the paths would have to get state approval since they would encroach upon wetlands and there was a good chance that the mulched path would never get approved. He stated he felt this was a bad location, it was not low-density, the traffic was

a problem, and the County was not actually benefitting. He said he could not support this application.

Martin Garrett stated there was no data available since timeshares were too new. He did not feel this proposal would be a long term asset for the community and could not support this application.

Willafay McKenna spoke in favor of the application because she was pleased with the changes the applicant had made. She felt the proposal offered an opportunity to connect a long area of bikeways that would not be done if this were a by-right development and there would be an economic impact that would be favorable to the County. She did not think that they should look to see if these timeshares were beneficial 50 years from now since they don't do it for any other type of development. She commented that, according to the table provided for the traffic, the average for a timeshare development for trips in and out was lower than a residential area.

A brief discussion on traffic along Olde Towne Road took place among the Commission members.

John Hagee felt the use and location of the property was ideal for this project and felt it also met the cluster requirements and supported this application.

Joe Poole had to give the applicant credit for the improvement from what was initially presented but stated he was still not as supportive of this project as he would like to be due to the location and the issue of traffic on Olde Towne Road. He felt a by-right use of this property would be less of an impact than this proposal.

Martin Garrett felt at this point the Commission was not ready to take a vote on this project and asked if it would help to defer this another month.

Joe Poole stated it would not help him by waiting.

Peggy Wildman stated that her question regarding the water situation was answered.

Don Hunt said that the shallow wells were not a water source for the timeshare use but specifically for irrigation to water the grass.

Willafay McKenna said there were several things they should look at when it came to development on this parcel. If it was done by-right there could only be a 35 foot buffer between Piney Creek and the other development; that the question brought up by Peggy Wildman needed to be resolved and if the development went by-right what impervious surface would be required within the interior property. She also commented on the petition that was signed by residents in favor of this proposal.

John Horne stated the applicant said he would not object to a deferral if that was what the Commission desired. He also suggested that since the Commission would be deferring every case tonight, August would be a long agenda and, it would be helpful if they gave staff some direction as to what additional information the Commission wanted.

Martin Garrett didn't think staff could bring back anything additional that would help the Commission.

Joe Poole made a motion, seconded by Wilford Kale, to deny this application. In a roll call vote, motion failed 3-4. AYE: Kale, Poole, Garrett (3); NAY: McKenna, Hagee, Hunt, Wildman (4).

Don Hunt made a motion for approval, seconded by John Hagee. In a roll call vote, motion passed 4-3. AYE: McKenna, Hagee, Hunt, Wildman (4); NAY: Kale, Poole, Garrett (3).

9. PLANNING DIRECTOR'S REPORT.

Marvin Sowers reminded the Commission of the scheduled work session with the Board of Supervisors on July 10 at 7 PM in the Board Room.


Don Hunt stated he spoke to the his Board Supervisors and said that one topic that was expected to come up was water issues.

Martin Garrett asked if any Commission member had any topics they wished to discuss, please let him know prior to the meeting.

Martin Garrett stated that the Commission needed a better definition of what land use in this County ought to be and suggested that this might be brought up. He said that he would inform the Board that the Commission won't do a whole lot with respect to cash proffers until they received direction from the Board.

There being no further business, the July 5, 2000, Planning Commission adjourned at approximately 9:45 p.m.

  
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Martin A. Garrett, Chair

  
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O. Marvin Sowers, Secretary



## **SPECIAL USE PERMIT 7-00. Hertzler Clearing and Grading Staff Report for the June 5, 2000 Planning Commission Public Hearing**

This report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

### **PUBLIC HEARINGS**

Planning Commission:

Building C Board Room; County Government Center

Board of Supervisors:

June 5, 2000, 7:00 p.m.

July 11, 2000, 7:00 p.m.

### **SUMMARY FACTS**

Applicant/Landowner:

Steven L. Hertzler

Proposed Use:

Contractor's warehouse and office, storage and repair of heavy equipment, and the manufacture and sale of wood products.

Location:

9537 Barnes Road; Stonehouse District

Tax Map and Parcel No.:

(4-3)(1-12A)

Primary Service Area:

Outside

Parcel Size:

28.6 acres

Existing Zoning:

A-1, General Agricultural

Comprehensive Plan:

Rural Lands

Surrounding Zoning:

North: A-1, General Agricultural

South: B-1, General Business

East: A-1, General Agricultural

West: A-1, General Agricultural

Staff Contact:

Christopher M. Johnson -- Phone 253-6685

### **STAFF RECOMMENDATION:**

Staff finds the proposal, with conditions, generally consistent with the surrounding zoning and development. Staff also finds the proposal generally consistent with the Comprehensive Plan. Therefore, staff recommends the Planning Commission approve this application with the conditions listed in the staff report.

### **Description of Project**

Mr. Steven L. Hertzler has applied for a special use permit to allow the construction of a contractor's warehouse and office, the storage of heavy equipment, and the manufacture of wood products at 9537 Barnes Road. The property is zoned A-1, General Agricultural and is further identified as Parcel No. (1-12A) on James City County Real Estate Tax Map No. (4-3). A mobile home is currently located on the site and is the residence of the applicant's father. The applicant owns a clearing and grading business which currently has six full time employees but has had as many as eight employees in recent months. If approved, this special use permit would allow Mr. Hertzler to construct a 50-foot by 100-foot warehouse and office building on the site, store his trucks and heavy equipment, and allow the storage, grinding and mulching of wood materials on the site. Approximately seven acres (one quarter of the site) is proposed to be cleared for this operation. A tub grinder would be leased approximately every 2-3 months and brought to the site to grind stumps and other wood materials into mulch on a 2.5 acre area located in interior area of the site. The mulch would not be sold to the public and would remain on the site. The applicant has stated that because of the high concentration of dirt in the mulch, it is not suitable for resale. A condition has been added which eliminates the retail sale of mulch, wood and wood materials on the site. The site would be used solely by Hertzler Clearing and Grading as part of their daily operations and no dumping will be allowed by other individuals or companies at the site.

### **Description of the Grinder Apparatus**

The type of grinder to be used on this property periodically is a Moorbark tub grinder, Model 1300. The grinder measures 38 feet in length and 13 feet in height. This particular model is powered by a 750 horsepower Caterpillar engine. The production varies depending on the type of material being processed but is capable of grinding 320 cubic yards per hour. The machine weighs 36 tons. Stumps, wood and wood debris are loaded into a large rotating tub which moves the wood over a hammer mill. Heavy hammers tear the wood to bits utilizing a grinding motion. When the bits are small enough, they fall through a screen onto a conveyor and the mulch is then stockpiled. A tractor would spread the mulch out on clear areas. The grinder achieves a three to one reduction from raw materials to the end product.

### **Field Visit / Sound Test**

On May 12, 2000, several Planning Commission members joined staff on a visit to the property for the purpose of viewing the tub grinder and conducting sound tests from adjacent residential properties. The tub grinder was not located at the point where it would ultimately be used as that area has yet to be cleared. Staff and the applicant tried to locate the grinder in a manner which would best approximate the distance and sound levels adjacent residential properties would encounter if a special use permit is granted for this operation. It should be noted that if approved the grinder would be approximately the same distance from one of the residences as it was from one of the test sites. A map is included as an attachment that identifies the locations where sound tests were observed and lists the recorded noise levels. Readings taken at the residential test sites when the grinder was not in operation ranged from 50 dBA to 56 dBA with the primary source of background noise coming from Interstate 64. The readings taken at the various residential test sites with the grinder in operation ranged from 55 dBA to 60 dBA. Staff conducted sound tests in advance of the official test to compare results and did not observe any appreciable difference in decibel levels between the two tests.

According to the Occupational Safety and Health Administration (OSHA), continued exposure to noise over 85 dBA will eventually harm hearing. While OSHA has no mandated definition for what constitutes a substantial increase over existing sound levels, state highway departments typically use either a 10 dBA increase or a 15 dBA increase in noise levels to define "a substantial increase" in existing noise levels. Neither the Department of Environmental Quality (DEQ) and the Environmental Protection Agency (EPA) specifically define what constitutes a substantial increase. The measured noise level increase falls well within this acceptable range of increase. Examples of noises which might be typically observed in a rural setting include freeway traffic 70 dBA, a tractor 90 dBA, a leafblower 110 dBA, a power lawn mower 65-95 dBA and an ambulance siren 120 dBA. As a comparison, a decibel reading of 84 dBA was observed from a distance of approximately 200-feet when the tub grinder was in operation.

### ***Surrounding Zoning and Development***

The property is bordered on the west by Interstate 64 and further to the west by the Racefield subdivision which is zoned A-1, General Agricultural. Single family homes and undeveloped properties are located to the north and east of the site and are also zoned A-1. The undeveloped and wooded 185-acre Hazelwood Farms property to the south of the site across Barnes Road is zoned B-1, General Business. Examples of by-right uses for B-1 include automobile service stations, professional office buildings, lumber and building supply stores, restaurants, schools, retail and service stores and wholesale and warehouse facilities. As the Stonehouse planned community continues to develop, the B-1 properties south of Barnes Road will face increasing development pressure. Staff finds the proposal, with conditions, consistent with the surrounding zoning and development.

### ***Physical Features and Environmental Considerations***

The 28.6 acre site is largely flat and wooded. Topography and existing land slopes are roughly the same throughout the site, however, a separate stormwater management facility may be required southeast of the Warehouse/Office area for stormwater quantity and quality purposes due to impervious areas associated with the construction of approximately 500 feet of entrance road. Most of the roadway area collects to a low point in topography about midpoint between Barnes Road and the main site and would bypass the site's primary stormwater management facility located in the interior of the site. Wood product storage and processing may require a general Virginia Pollutant Discharge Elimination System (VPDES) permit for Discharges of Storm Water Associated with Industrial Activity from the Virginia Department of Environmental Quality (VDEQ). Regardless if a VPDES permit is required by VDEQ, the stormwater pollution prevention plan must comply with County erosion and sediment control and stormwater management plan requirements established by the County's Erosion and Sediment Control and Chesapeake Bay Preservation Ordinances.

### ***Transportation***

Access to the property would be from Barnes Road (Route 601). The Virginia Department of Transportation has indicated that a commercial entrance will be required for the site. VDOT has also indicated that a project included on the Six Year Secondary Road Plan on Barnes Road to improve drainage and grading and to lay plant mix from 0.5 miles east of Route 60 to 0.85 miles east of Route 60 should not impact this site. The applicant has indicated that the three trucks



used as part of his operation would average three to four trips per day into and out of the site. Given the relatively low trip volume anticipated at the site, VDOT does not anticipate the need for turn lanes. VDOT did not identify road width as an issue in their preliminary review of this proposal.

### ***Public Utilities***

The property lies outside the Primary Service Area (PSA). The site is served by an on-site well and an on-site treatment and disposal system.

### ***Comprehensive Plan***

#### **Land Use Designation**

The property is designated as Rural Lands on the Comprehensive Plan Land Use Map. Rural Lands are areas containing farms, forests and scattered houses, exclusively outside the Primary Service Area, where a lower level of public service delivery exists or where utilities and urban services do not exist and are not planned for the future. Appropriate primary uses include agricultural and forestal activities and certain recreational and public uses which may require a spacious site and which are compatible with the natural and rural setting. Most retail and commercial uses which will serve Rural Lands will be located at planned commercial locations on major thoroughfares inside the PSA. However, a few of the smaller uses and uses which require a specialized location may be located and approved on a case by case review, provided such uses are compatible with the natural and rural character of the area, in accordance with the Development Standards of the Comprehensive Plan. These uses should be located in a manner that minimizes effects on agricultural and forestal activities, and located where public services and facilities, especially roads, can adequately accommodate them.

#### **Land Use Standards**

Rural Land Use standards call for the natural, wooded, and rural character of the County to be preserved with particular attention given to locating structures and uses outside of sensitive areas, maintaining existing topography, vegetation and tree lines to the maximum extent possible and limiting the height of structures to an elevation below the height of surrounding mature trees. This proposal would maintain an undisturbed 150 foot buffer along the eastern property line nearest adjacent residential homes and an undisturbed 50-foot buffer along the western property line bordering Interstate 64. A second rural land use standard seeks to minimize visual impact from public roads and not disturb agricultural/forestal uses. This proposal seeks to retain the wooded rural character of the site to the greatest extent possible by locating all operations interior to the site and by requiring the clearing of only 25 percent of the site. In addition, the use does not prevent most of the site from being returned to forestry use should the wood processing and manufacturing operation cease type use. The proposed use is similar to a forestry type use in that it involves handling and cutting of timber and the use of heavy trucks and equipment.

The noise generated on the site through the daily operations of trucks and equipment are typical for rural areas. The tub grinder itself makes less noise than a tractor. Unlike an agricultural operation, the tub grinder which would be used on the site will only be necessary when the applicant has accumulated sufficient material on site to justify the expense of leasing the


equipment. The applicant anticipates that this will only occur every other month and use of the grinder will only be necessary for a few days at a time. The typical daily noise volume generated on adjoining areas will not be significantly different than the noise levels generated by the Interstate on any given day. This proposal meets these land use standards.

### **Recommendation**

Staff finds the proposal, with conditions, generally consistent with the surrounding zoning and development generally consistent with the Comprehensive Plan. Staff recommends the Planning Commission approve this proposal with the following conditions:

1. Construction on this project shall commence within 24 months from the date of approval of this special use permit or this permit shall become void. Construction shall be defined as securing permits for land disturbance, building construction, clearing and excavation, and the pouring of footings.
2. Site plan approval shall be required.
3. This permit shall allow the construction of a 5,000 square foot warehouse/office, the storage of trucks and heavy equipment and an area for the storage, manufacturing and processing of wood, mulch and wood materials. The storage, manufacturing and processing of wood mulch and wood materials shall be limited to a 2.5 acre area identified on a site plan to be approved by the Development Review Committee. No area of the operation shall be located within 400-feet from Barnes Road with the exception of the entrance road. No retail sales of wood, mulch or wood materials shall be permitted on the site.
4. The use of the tub grinder shall be permitted to operate only between the hours of 8:00 a.m. and 6:00 p.m. Monday through Saturday.
5. A minimum 150-foot undisturbed buffer shall be provided along the eastern property line and a minimum 50-foot buffer shall be provided along the western property line adjacent to Interstate 64. The buffers shall contain enhanced landscaping, so that the required number of plant material equals up to 133 percent of the County's Landscape Ordinance requirements with up to 33 percent of the required number of trees being evergreen. The landscaping plan shall be approved by the Director of Planning or his designee prior to final site plan approval.
6. The tub grinder shall be located so as to minimize potential adverse impacts including, but not limited to noise, dust, debris, odor, etc) on adjacent properties and the final location for the tub grinder shall be approved by the Development Review Committee.
7. The location of the disturbed area shall be approved by the Director of Planning or his designee prior to final site plan approval. The total disturbed area on the site shall not exceed twenty five percent of the site, except with prior approval of the Board of Supervisors.
8. Traffic improvements along Barnes Road (Route 601) shall be installed or bonded prior to issuance of a certificate of occupancy for any structure on the site.

9. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

  
Christopher M. Johnson  
Planner

**Attachments:**

1. Location Map
2. Noise Levels in our Environment Fact Sheet
3. Sound Test Sites and Results
4. Policy Committee Guidelines for Transitional Uses in Rural Lands



A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE FIFTH DAY OF JUNE, TWO THOUSAND AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Martin Garrett, Chair  
Don Hunt  
Wilford Kale  
Willafay McKenna  
A. Joe Poole III  
Peggy Wildman

ALSO PRESENT

Marvin Sowers, Director of Planning  
Leo Rogers, Deputy County Attorney  
Christopher Johnson, Planner

ABSENT

John Hagee

2. MINUTES

Upon a motion by Joe Poole, seconded by Don Hunt, the minutes of the May 1, 2000, meeting were approved by unanimous voice vote.

3. DEVELOPMENT REVIEW COMMITTEE

Joe Poole presented the report in which the DRC heard three cases at its May 31, 2000, meeting and one case prior to tonight's meeting. He stated the DRC recommended approval for The Pointe at Jamestown which came before the DRC to discuss the drainage structures to assure conformance; Mulberry Place which came before the DRC because there were several issues regarding drainage structures and paths. He stated the DRC was expecting a resubmittal of Mulberry Place. He said the final case was for the Greensprings Plantation RV lot in which a screen fence and landscaping were reviewed. He stated that at tonight's meeting, the DRC reviewed and recommended approval for landscape buffer variances for Powhatan Townhomes.

Peggy Wildman made a motion, seconded by Wilford Kale, to recommend approval of the DRC report. In a unanimous voice vote, motion passed.

4. CASE NO. SUP-7-99. GRIESEN AUER RESIDENTIAL CLUSTER.

Christopher Johnson presented the staff report stating the applicant had requested the deferral of this case to the July 5 meeting.

Martin Garrett opened the public hearing. There being no speakers, the public hearing was continued to the next meeting.

5. CASE NO. SUP-8-00/SUP-9-00. LEE/BICKFORD BORROW PITS.

Christopher Johnson presented the staff report stating the applicant had requested the Commission defer this case until its July 5 meeting.

Martin Garrett opened the public hearing. There being no speakers, the public hearing was continued to the next meeting.

6. CASE NO. SUP-10-00. St. Bede Catholic Church.

Christopher Johnson presented the staff report stating the Commission deferred this case from

its May 1, 2000, meeting in order that the applicant address the concerns raised over the proposed buffer along the adjacent properties in The Meadows subdivision and the traffic impacts caused by the proposed development. He stated staff reviewed the revised master plan and had recommended several changes to the conditions attached to the special use permit as outlined in the staff report. Staff found the proposal, with conditions, consistent with the surrounding zoning and development and Comprehensive Plan. Staff continued to recommend that the Planning Commission approve this proposal as outlined in the staff report.

Martin Garrett opened the public hearing.

Father William Carr, pastor of St. Bede, spoke on the history of Catholicism in Williamsburg and how the church had evolved into the large congregation that exists today and for their need to have such a large church in James City County. He explained the process of the design and landscaping for this site and as good neighbors, informed the adjacent properties owners of their intent. He asked that the Commission support this application by their recommendation of approval. Father Carr then introduced Eliza Eversole.

Eliza Eversole, Co-Chair of the Building Committee and a resident of James City County, stated that the master plan presented to the Commission had taken several years to develop and throughout the process they had made many changes. She said the most significant change was the location due to the generous gift of land by the Diggs family. She said this wonderful property on Ironbound Road had provided St. Bede with tremendous opportunities for its 7,000 members, the thousands of visitors that worship with them each year, and for future generations. She continued by stating that they reviewed many options and central to their all deliberations was the idea to preserve the natural beauty of the land, reflect the area they lived in, and honor the Catholic traditions. She stated at the May meeting there were two major concerns: traffic and side setback and buffers for The Meadows subdivision. She said that the responses to those concerns had given the church the opportunity for a good plan to be even better. She introduced Alvin Anderson who reviewed those modifications.

Alvin Anderson of Kauffman and Canoles stated in the Comprehensive Plan the suggested use for this parcel was for low-density residential which permits, with a special use permit, houses of worship. He stated that, using conservative estimates, a minimum of 75 single-family dwelling lots could be constructed on this parcel which, according to VDOT projections, would generate 750 vehicle trips per day, seven days a week. He noted that the serpentine nature of the parking lot had been straightened since the last meeting and moved approximately 20 feet further inward and the undisturbed buffer minimum was 50 feet adjacent to the rear lot lines of The Meadows. He said that beyond the 50 foot buffer there would be, in addition to landscaping, additional landscaping plus a 60 inch fence or wall where any paved surface in the parking lots was within 70 feet of the rear lot line. He stated St. Bede and its representatives gave considerable attention to the neighbors next door and had worked at length with staff to get the conditions that were acceptable and would permit the development. He concluded by asking that the Commission make a recommendation of approval to the Board of Supervisors.

Martin Garrett asked Alvin Anderson about his mention of the paved surface because Liza Eversole stated that the parking lots would not be paved.

Alvin Anderson clarified his comment by stating that "from the edge of the 'parking surface' to the rear of the lot line.

Gary Besnier of 110 Whistle Walk in The Meadows commented on the traffic study and recalled the huge problems that occurred when the Jamestown Road bridge washed out and felt that on Sundays these problems will occur at intersections around the church. He said his house was the one most affected by this application and asked if they could move the church 20 feet why couldn't they move it another 50 feet. He concluded by saying he wanted to be a good neighbor and asked that St. Bede be a good neighbor to him.

Geri Farrell of 3424 Wexford Run spoke in support of this application.

Alex Kuras of 112 Pasbehegh Road spoke in favor of this application and asked the Commission to recommend approval to the Board.

Jack Carey of 422 Hempstead Road and a member of the St. Bede Building Committee stated they wanted to be good a neighbor but, as a steward of the monies given by the parishioners, they could not always do what everyone wanted.

Robert Morris of 103 Birdie Road and a member of the Building Committee spoke on the issue regarding the parking lots and whether the building could be moved just anywhere. He stated the master plan was designed for future expansion for a youth activities building, social facility, and a parish office and that they were centrally located to the site.

Marie Maloney of 4504 Village Park Drive East and a member of St. Bede spoke in support of this project.

Edward Lull of 100 N. Berwick and Chairman of the Parish Council of St. Bede spoke of the gift of land given to the church and their obligation to use it as the giver had intended. He stated this church will enhance the beauty and status of James City County now and for the next 50 years. He asked that the Commission approve this application.

Bernard Farmer of 14 Tempsford Lane and a member of the parish spoke briefly from an engineering standpoint on how good design occurred and how it evolved from an understanding of the unique characteristics of the land, topography, vegetation, and open areas. He said, with that understanding and a thorough knowledge of the requirements of the design, the two came together to create a concept that satisfied both what was already there and what needed to be put there. He encouraged the Commission to recommend approval of this project.

There being no further speakers, Martin Garrett closed the public hearing.

Martin Garrett made a motion, seconded by Willafay McKenna, to accept staff's proposal. He commented that as opposed to some colleagues at the last meeting, he did not conceive of any transportation problems. He stated that whenever there were recreational, cultural, or religious events there would be a lot of cars congregated into a small space and there would be some congestion. He did not feel that a transportation problem was one that was at issue and if it was, it had been well covered in the staff proposal.

Wilford Kale stated at the last meeting, the Commission did not have a VDOT report nor did they have all of the proposals for the traffic study. He said that he was never opposed to the project but did have several concerns that still were not alleviated. He stated he measured off 70 feet from Gary Besnier's property line and said if there was no berm or fence for that lot, the angles of the far right parking lot would throw light directly onto his home. He said he knew he was trying to solve a problem for one property owner and understood it couldn't always be done but asked when it came to the construction of the project and they saw the homes that would be affected, that they should extend the berm or fence.

Martin Garrett asked Wilford Kale if he wished to recommend that the berm or fence be extended.

Wilford Kale said he would like to see either the fence or berm protect lots 11 and 13 and stated he didn't know which one would be better.

Glenda White of 104 Whistle Walk, lot 10, said that due to the loss of some large trees during



the past several storms, the location of her home sitting down low, and the skylights on the back of her home, there would be an impact on her property. She also had concern regarding the run-off from the property.

Wilford Kale asked Leo Rogers if he could amend the motion to state that either a berm or fence be placed in front of the property.

Leo Rogers said a motion to amend could be made at any time. He suggested an amendment to the motion that stated the Director of Planning, during the construction process, may approve the site plan or amendments to the site plan that would allow for additional screening and contain some objective factors that would denote whether it would be a fence or berm.

Martin Garrett asked if this would go before the DRC. He then asked Wilford Kale if he would defer to the DRC.

Wilford Kale agreed to defer this issue of the buffer area to the DRC.

Joe Poole stated he was impressed with the sensitivities of the design submitted by the applicant and agreed with Wilford Kale that the last piece of the puzzle needed to be fine tuned. He felt it had been done by the applicant from the plan that was presented tonight. He also commented that he did not want to be diswayed by a threat that if it were not a church it could be housing. He said he supported this application with the conditions provided in the staff report.

Willafay McKenna seconded what Joe Poole had stated and added that maybe when this project was built, it might just be a welcomed site that people may not want to close off the view. She said she was pleased that this month they were able to address the issues that met the concerns brought up at the May meeting. She thought it was an appropriate place for this project and fully supported this application.

Peggy Wildman said she was also pleased with the solutions brought back that addressed the major concerns at the last meeting. She supported this application and felt the project would be a beautiful addition to the County.

Don Hunt fully supported the application. He commented that he had to take issue with one thing because he himself was a land owner. He stated that the last person to fill in the puzzle should not be penalized by having additional requirements placed upon them and felt that would be a serious mistake.

Wilford Kale commented on the spirit in which the parish leaders of St. Bede responded to the statements that were made at the Commission meeting last month. He said he received a number of positive calls regarding this plan and was pleased with the plans that were brought back tonight.

In a roll call vote, motion passed 6-0. AYE: McKenna, Hunt, Kale, Poole, Wildman, Garrett (6); NAY: (0).

#### 7. CASE NO. SUP-7-00. HERTZLER CLEARING AND GRADING.

**NOTE:** The Planning Commission made a field trip to the site on May 12, 2000, for the purpose of viewing the tub grinder and conducting sound tests from adjacent residential properties.

Christopher Johnson presented the staff report stating that Steven Hertzler had applied for a special use permit to allow the construction of a contractor's office and warehouse, storage of heavy equipment, and the manufacture of wood products at 9537 Barnes Road. Staff found the proposal, with conditions, generally consistent with the surrounding zoning and development, and Comprehensive Plan. Staff recommended that the Planning Commission make a recommendation of approval for this

application as outlined in the staff report.

Willafay McKenna asked if, in reading the language in condition #4 which allowed the tub grinder to be operated between the hours of 8 a.m. and 6 p.m., Monday through Saturday, that meant if they wanted to operate the tub grinder they could operate it approximately 300 days a year.

Christopher Johnson stated he believed that the way the condition was drafted the applicant could use it for an unlimited number of days, but due to the scale of the operation, they would not have enough material on the site for a daily operation. He stated the applicant would be renting the equipment and bringing it to the site, so the financial obligation of having the equipment beyond the time of use would be significant.

Willafay McKenna said there was no condition to lease and asked what could happen if they purchased the equipment.

Christopher Johnson said it could be possible but due to the scale of the operation, he did not feel the applicant had any desire or intention to purchase the equipment. He added that if the applicant needed to expand the 2-1/2 acre site for the mulch operation, the condition that limited them to the 2-1/2 acres would necessitate the applicant to look for another site.

Peggy Wildman asked if there was a particular rationale in the designation of 8 a.m. through 6 p.m. of operating hours.

Christopher Johnson stated that, based on discussions with the applicant, it was concluded that the time period gave them enough leeway when they have the equipment that they did not have to use it for more days than necessary. He said it would also give protection to surrounding properties that it would not be used during hours when most people were expected to be home.

Don Hunt asked if the interstate generated a decibel level of 70 and the tub grinder also generated 70 decibels, did that mean that there would be a total of 140 decibels or did it mean that you could not distinguish one noise from the other.

Christopher Johnson said it was not a doubling of the decibel level but you would hear two different sounds of 70 decibels that might produce a total of 73 or 74 decibels. He said the results of testing at the site and at adjacent properties were in the staff report.

Martin Garrett opened the public hearing.

Raymond Steward of 9583 Barnes Road, adjacent to the applicant's property, spoke of his concerns about the noise level, water runoff, truck traffic, and narrow road width. He said the applicant stated he had no more than two or three trucks but at this time a number of trucks, some of them not being the applicants, had been hauling as though the applicant already had approval of this application. He was opposed to this project and asked the Commission to deny this application. He handed out a petition with 50 signatures for the Commission members.

Rosa Mayes of 135 Racefield Drive stated that the neighborhoods on Barnes Road, Racefield Drive, and Belmont Drive firmly opposed this application. She said she moved to the upper part of the County in order to stay away from the downtown areas, major traffic areas, and the impact of massive growth from commercial or industrial permits. She stated that safety was number one in their way of life and felt they should not have to sacrifice their safety for this application. She stated that the roads were not designed for heavy duty equipment and felt, due to the number of trucks already entering the area, about 10 to 15 per day, the applicant was already operating a business on that property without any approval. She expressed concerns about well impacts and presented a petition of 56 signatures of neighbors opposed to this application.

Betty Smith of 9347 Barnes Road said she moved to this area because she was forced out of her home by businesses with the construction of the Coliseum Mall and did not want to be forced out again. She spoke of the mud trails on the road leading out of the applicant's property and also felt that there were activities taking place without any permits. She stated her main concern was the traffic and strongly opposed this application.

There being no further speakers, Martin Garrett closed the public hearing.

Martin Garrett said he could not speak for the Rural Lands Committee which met several times regarding rural lands but felt there were things that this County did not need in the way of growth. He said the rural areas of this County were the only places where certain type of things should be and felt this enterprise was not detrimental but beneficial to the upper County. He said he did not disagree with the traffic concerns that would be created but stated the applicant may be required to improve the entrance with a turn lane. He felt this application was appropriate for the rural area.

Willafay McKenna said she was prepared to recommend approval. She was convinced by the data received that the noise generation of the project was not going to impact the immediate properties. She also referred to the conditions that applied to this application stating there would be no commercial sales and that this operation was a means to get rid of bi-products from development on other sites. She said it was her understanding that because the mulched materials would stay on site that it would improve the land and with the restrictions placed on the property, would be a means of helping the environment by recycling the wood. She emphasized there would be no sales taking place at this site and commented to Betty Smith that with that limitation of sales, her concerns of excessive traffic were met.

Christopher Johnson clarified that there were three uses in the A-1 ordinance that required this application receive a special use permit. One was the manufacture and sale of wood products, the other was the storage and repair of heavy equipment, and last being a contractors office and warehouse. He said those three categories were listed in the public hearing ad and the adjacent property owner letters but the conditions in the staff report eliminated the sale from the site and there are added controls over the location of the disturbed area, limitation on the amount of disturbed area, and on the location of the warehouse and office.

Wilford Kale asked if work had begun at the site.

Christopher Johnson said work had been done on the site to clear for an entrance road so the tub grinder could be placed in an area to best approximate the distance for accurate sound tests that were performed during the site visit. He stated there was already a cleared area on the property for a mobile home where the applicant's father presently resided. He said the actual operation of this business was not occurring on the site at this time.

Raymond Stewart said he was retired and lived next door to the property and stated he had been watching the applicant hauling materials onto the property for the last eight months.

Willafay McKenna noted for the adjacent property owners that the last sentence in condition #3 stated that no retail sales of wood, mulch, or wood materials shall be permitted on the site.

Betty Smith asked the applicant what he would be doing with the wood chips created from the stumps and other debris that would be hauled onto the property.

Tim Fannin representing Hertzler Clearing and Grading stated the materials that would be generated by this operation would be stored on the property, spread out and turned into top soil. He stated they would create berms along the interstate and along the backside of the property. He said they did not anticipate the materials adding up to much due to the low scale of the operation. As for the



run off concerns, he stated the Department of Environmental Quality would require them to address those issues when they applied for permits for the discharges of the stormwater.

Martin Garrett announced that the public hearing had been closed. He again stated that wood products could not be sold and if they were, it would be in violation of the law.

Christopher Johnson stated the residents were responding to the public hearing ad and the adjacent property owner letters given the use categories in the A-1 ordinance.

Martin Garrett again explained to the residents that the condition placed on the applicant by staff stated that there could be no sale of wood products.

Rosa Mayes said she understood that they could not sell retail but questioned if they could sell wholesale.

Martin Garrett asked Leo Rogers if they could add to the condition the word "wholesale."

Leo Rogers said he understood the product would be produced on the property and possibly transported elsewhere for sale so the Commission could restrict any sales operations whatsoever. He added that the way the condition read, wholesale operations were permitted.

Willafay McKenna stated that at this point she felt the Commission was not in a position to vote on this application. She stated that if the operation was going to prepare materials that would be used on other development sites, the Commission needed to look at that since they didn't know how long the process took to make topsoil and how much traffic the 2-1/2 acres would generate for that purpose. She said that questions have arisen tonight that she felt needed to be answered and requested deferral.

There were no objections to the deferral by the Commission members.

Joe Poole said he was supportive of this application. He did, however, have some concern regarding the traffic and asked staff to research if they had ever had a condition elsewhere that limited the number of truck trips at a site.

Don Hunt felt that the traffic on Barnes Road needed to be better addressed.

Wilford Kale stated this type of operation was preferable in rural lands, but questioned if this was the preferable site.

Joe Poole commented that the sound issue was not as critical as the traffic and the ramifications associated with what the product became and how it would be moved in and out.

Martin Garrett asked the Commission what specific information that they would need from the applicant.

Joe Poole stated they needed to know what happens to the mulch when it becomes top soil, how the product would be transported to and from sites, the volume of the product, and the time frame from mulch to top soil.

Wilford Kale also added if this would be a natural or enhanced mulch operation.

Marvin Sowers asked for clarification for direction by stating staff was under the impression that the Commission was definitely against retail and wholesale but, may be interested in some type of limited conditions which would allow material to be removed from the site sometime in the future so that the site could continue to be viable, but had concerns about the volume on the site, how long it took to

accumulate, and how often the trucks had to make the trips.

A citizen asked that the Commission also investigate the odor from the mulch and gave an example of an existing business and the odor that occurred there.

Don Hunt felt it was an unfair comparison since the one operation used sulphur dioxide and other chemicals to digest their wood products. He felt that the odors were not related.

Christopher Johnson asked the Commission if the applicant could address some of these issues, such as, the amounts of the material and his long range look at this operation.

Martin Garrett requested that this be postponed in order to get all the information into one package.

This case was deferred to the meeting of July 5, 2000.

#### 8. PLANNING DIRECTOR'S REPORT.

Marvin Sowers stated there would be a public input meeting on the Rt. 199/Jamestown Road Study on June 15, 2000, at 7 p.m. in the Williamsburg Community Building. He stated the purpose of the meeting was to present additional alternatives that were currently being evaluated and to receive public input.

Marvin Sowers stated that on June 6, 2000, there would be a meeting on the Rt. 60 relocation in Grove at the James River Elementary School at 7 p.m. He stated this meeting was for public input in advance of the VDOT public hearings that would be held this fall.

Marvin Sowers spoke on the special use permit application that will be heard at their July 5, 2000, meeting filed by PrimeCo Communications. He stated they were applying for a 199' tower off of Centerville Road and there would be a balloon test from 8 a.m. to 9 a.m. on June 15, 2000 with the alternate date being June 16, 2000.

Joe Poole asked about the Olde Towne Road Timeshares application that would be heard at the July 5, 2000 meeting. He wanted to know if the density the applicant was proposing was the same as the density originally proposed.


Marvin Sowers stated the density was reduced.

#### 9. ADJOURNMENT

There being no further business, the June 5, 2000, Planning Commission adjourned at approximately 9:00 pm.

NOTE: On May 31, 2000, the Planning Commission attended a presentation by Barbara Schuler from Custom Gardens on the design and landscape of BMP's.

  
Martin A. Garrett, Chair

  
O. Marvin Sowers, Jr. Secretary

**Unapproved Minutes of the November 2, 2022  
Planning Commission Regular Meeting**

**SUP-20-0010. Hertzler Clearing and Grading**

Mr. Josh Crump, Principal Planner, stated that Ms. Mary Hertzler has applied for an SUP to allow the operation of a contractor's office, warehouse, and the manufacturing of wood products at 9537 Barnes Road. Mr. Crump stated that the property is zoned A-1, General Agricultural, is designated Rural Lands on the Comprehensive Plan Land Use Map and is located outside the PSA. Mr. Crump noted that the business is currently operating on the property and this application has been submitted to bring the use into conformance with the Zoning Ordinance.

Mr. Crump stated that in 2020, the Zoning Division met with the property owner after receiving a complaint regarding the operation of the business. Mr. Crump stated that staff discussed the activities and violations occurring and that an SUP would be needed to bring the use into conformance. Mr. Crump noted that the applicant stated that the business has been operating from the property for approximately 20 years.

Mr. Crump further stated that in the year 2000, an SUP application was submitted for the operation of a contractor's office, warehouse, storage and repair of heavy equipment, and the manufacture and sale of wood products. Mr. Crump stated that the application was considered by the Planning Commission and recommended for approval and was then considered by the Board of Supervisors where it was ultimately denied.

Mr. Crump stated that since this time, the area utilized for the business operation has increased without the appropriate approvals or permitting from the County. Impacts to the Resource Protection Area (RPA) include land disturbance and clearing of trees, the construction of a pond, and the construction of a driveway onto a neighboring property. Mr. Crump stated that the construction of the pond and driveway have also impacted existing wetlands. Mr. Crump stated that these existing site conditions are shown on the master plan.

Mr. Crump further stated that staff has reviewed the application to address the impacts of the business. Mr. Crump stated that the Stormwater and Resource Protection Division (SRP) has reviewed the application regarding stormwater management design for the current business operations. Mr. Crump noted that the proposed SUP conditions would require impacts to the RPA and wetlands be remediated, proof of appropriate permits for impacts to the wetlands, and that the stormwater management design be sufficient for all development on the property.

Mr. Crump stated that additional proposed conditions include, but are not limited, to restricting the hours of operation of certain activities from 8 AM to 5 PM to reduce potential noise impacts, prohibiting sales on the property, prohibiting signage associated with the business, restricting vehicular access to the business to only come from Barnes Road, providing buffering and screening the business from Barnes Road and adjoining properties, various fire safety measures, limiting the height of light poles, and prohibiting any light trespass onto adjoining properties.



Mr. Crump stated that if the SUP were to be approved, a site plan would be required for the business and would need to show all existing improvements being brought into full conformance with the master plan, conditions, Zoning Ordinance, and other applicable regulations. Mr. Crump further stated that the proposed conditions would require that the site plan be submitted within 12 months of the date of approval of the SUP and receive final site plan approval within 24 months of the date of approval of the SUP. Mr. Crump stated that the proposed conditions would also require that County staff inspect the property within six months of the date of approval of the SUP to verify existing site conditions and within 36 months of the date of approval of the SUP to verify that all improvements shown on the site plan are completed and that the site is fully in compliance with the SUP and the site plan.

Mr. Crump stated that staff finds that the proposal is compatible with surrounding zoning and development and consistent with the 2045 Comprehensive Plan and recommends that the Planning Commission recommend approval of this application, subject to the proposed conditions.

Mr. O'Connor opened the floor for questions from the Commission.

Ms. Null requested confirmation that the pond was installed without the necessary permits; a previous SUP request in 2000 was denied; and the business has been operating for 22 years without an SUP.

Mr. Crump confirmed.

Ms. Null inquired if any complaints had been received during that time.

Mr. Crump stated that staff received complaints in 2001, 2002, 2004, 2011, and 2019.

Ms. Null noted that another complaint had been received in the last week also.

Ms. Null inquired about the complaint received in 2019.

Mr. Crump stated that staff met with the property owner in 2019 to discuss remediation and that the current SUP application was submitted in 2020.

Ms. Null commented that the business has been operating for 22 years without any permits.

Mr. Haldeman inquired about the future of the business and the property if this application is denied.

Mr. Crump stated that all business activities would cease, and the property would need to be brought into compliance with the Zoning ordinance and the Chesapeake Bay Ordinance. Crump further stated that it would require removing all business equipment, logs, debris and provide Resource Protection Area (RPA) mitigation. Mr. Crump stated that staff would work with the County Attorney's Office to achieve compliance.

Mr. Krapf inquired if the SUP Condition for staff being allowed to inspect the property could be broadened to allow staff more latitude to access the property in the event of further complaints.

Mr. Holt stated that he would not recommend changing the SUP Conditions at this time. Mr. Holt further stated that as proposed, the SUP Conditions allow staff to enter the property to verify existing conditions and later to confirm that all of the improvements have been made and are consistent with the master plan and the site plan. Mr. Holt further stated that once the final site conditions are verified, it would be like any other property where, should a complaint be received, staff would first look to work with the property owner which usually resolves the situation. Mr. Holt stated that in the few instances where the property owner is not responsive, staff can work with the County Attorney's Office to find other options.

Mr. O'Connor inquired if the mixed mulch and soil stockpile should have a silt fence.

Mr. Holt stated that staff would review this during the site plan process; however, it would not be a requirement for stockpiles in active use.

Mr. O'Connor noted that the stockpile is adjacent to the pond. Mr. O'Connor inquired whether the stockpile activities could be inspected periodically to ensure that the stockpile is in good shape and compliant with Erosion and Sediment Control (E&S) regulations.

Mr. Holt stated that should the property move to site plan review, all of the E&S requirements and remediation will be factored in.

Dr. Rose inquired about the owner of the neighboring property where the driveway was constructed.

Mr. Crump stated that the property is also owned by the applicant.

Dr. Rose inquired if approving the SUP would give the County more opportunity to ensure that the conditions are continuously met.

Mr. Crump stated that there would be an inspection of existing conditions and staff would work with the applicant during the site plan review to ensure that all remediation was completed, and regulations met. Mr. Crump stated that once the site plan was approved, staff would inspect the property to ensure that everything is constructed and in compliance with the site plan and existing regulations and requirements.

Mr. Holt stated that approval of the SUP does not convey extra authority to staff to access the property; however, should there be complaints, it is easier for staff to determine if the operation is in conflict with the SUP, the master plan, and the site plan.

Dr. Rose inquired whether the business would be allowed to operate another 20 years without permits and approvals.

Mr. Holt stated that if the SUP is denied, the existing conditions would have to be brought into compliance with the Zoning Ordinance and the Chesapeake Bay Act. Mr. Holt stated that following the previous SUP denial, the violations were abated; however, at some point the activities commenced again. Mr. Holt stated that in this instance there would be follow up to ensure that the property was in compliance and the environmental impacts were remediated.

Mr. Rodgers inquired about the historical information on the property and the Board of Supervisor's rationale for denying the SUP.

Mr. Crump stated that there appeared to be a lot of public comment against the application; however, the minutes do not provide detail on the rationale of the Board of Supervisors.

Mr. Holt noted that the minutes were more action-oriented minutes and did not provide robust details of the discussion.

Mr. Rodgers inquired why the County did not pursue action against the property sooner.

Mr. Holt stated that the County's long-standing practice is to respond on a complaint basis.

Ms. Null noted that there were several complaints over the years and inquired why no action was taken sooner.

Mr. Holt stated that the County did receive complaints in the past. Mr. Holt noted that without the ability to access the property, the typical inspection is legally limited to what can be seen from a public right-of-way. Mr. Holt stated that there are forested conditions on the site and it is not always easy to observe the day to day operations. Mr. Holt stated that his thought is that these complaints were investigated but there was not enough evidence available through the permitted investigative options.

Ms. Null stated that her concern is that approving this application may lead to other businesses operating without the appropriate approvals.

Mr. Haldeman inquired if this application is substantially similar to the one submitted in 2000.

Mr. Crump stated that to his knowledge it is very similar.

Mr. O'Connor opened the Public Hearing.

Mr. Krapf, Mr. Haldeman, and Mr. Polster stated that they each had spoken with Mr. Geddy regarding the application.

Mr. Vernon Geddy, Geddy, Harris, Franck, and Hickman, LLP, made a presentation to the Commission in support of the application.

Mr. Polster inquired if the Hertzlers were aware of the work done on the proposed master plan.



Mr. Chase Grogg, Landtech Resources, Inc., stated that the Hertzlers contracted with Landtech to provide the topographic and boundary survey of the property. Mr. Grogg stated that they Hertzlers also contracted with Roth Environmental Consultants to get the wetlands delineated and confirmed by the Army Corps of Engineers. Mr. Grogg further stated that The Army Corps of Engineers has been on site and found no wetlands violations.

Mr. Polster inquired if this pond would be subject to the County's review of Best Management Practices (BMPs) every five years.

Mr. Grogg stated that the pond would be subject to review and further, that it would have a maintenance plan.

Mr. Polster inquired if the mulch and soil stockpiles would require any type of concrete storage facility.

Mr. Grogg stated that the concrete facilities could be helpful and that they could consider them during the site plan review.

Mr. Holt noted that the concrete barriers are mostly necessary when dealing with a final product where its integrity needs to be preserved.

Mr. Polster stated that his question stemmed from the possibility of the manure leaching out and impacting the pond

Mr. Joshua Mayes, 135 Racefield Drive. addressed the Commission in opposition to the application.

As no one further wished to speak, Mr. O'Connor closed the Public Hearing.

Mr. O'Connor opened the floor for discussion.

Mr. O'Connor inquired if there would be improvements on Barnes Road associated with the development of the Hazelwood Property.

Mr. Holt stated that the conditions for the Hazelwood property specifically state that there shall not be any improvements to Barnes Road.

Mr. Haldeman inquired if the property owner has been paying taxes on the property assessed as a business or assessed as undeveloped property.

Mr. Holt stated that staff would follow up with real estate assessment.

Mr. Polster stated that the Traffic Impact Analysis for the Hazelwood property discussed modifications to the traffic signal at Barnes Road.

Mr. Krapf inquired if the prior SUP denial meant that none of the existing operations should be on the site.

Mr. Crump responded that the prior SUP was to bring the property into conformance with the Zoning Ordinance and that all uses were denied.

Mr. Krapf made a recommendation to amend SUP Condition 9A to read: Existing vegetation in the buffer areas shall be retained and supplemented as necessary with additional plantings, a majority of which shall be native species to meet the requirements of Section 24-96 of the County Code.

Mr. Krapf stated that the Planning Commission role is not one of enforcement but determining if the use is appropriate for the property and conforms with the zoning Ordinance and the Comprehensive Plan. Mr. Krapf stated that if the SUP is approved, the recommended conditions will bring the use into conformance. Mr. Krapf further stated that no matter how poorly the process was handled for 20 years, this would become a legally conforming business. Mr. Krapf stated that there have been other cases where businesses have been operating without the proper approvals and they have been brought into compliance. Mr. Krapf noted that this is no different although it is on a larger scale.

Dr. Rose stated that it is apparent that there have been ongoing impacts to the area and that those impacts to the community will continue regardless of whether the activities come up to code.

Mr. Polster stated that he believes the applicant is making a good faith effort to bring the property into compliance. Mr. Polster noted that the majority of adjacent properties are owned by the applicant and serve as a buffer to other property owners. Mr. Polster further stated that this is a business which should benefit the County with revenue from business taxes. Mr. Polster stated that the property owner is trying to do the right thing and they should be given the opportunity to make the necessary improvements. Mr. Polster stated that he intends to support the application.

Ms. Null stated that many of the complaints were related to excessive noise outside of normal hours. Ms. Null inquired about who would be responsible for enforcing the hours of operation.

Mr. Polster stated that the County would be able to fall back on the SUP conditions where there is a complaint.

Mr. O'Connor stated that he feels that approving the application would essentially be rewarding bad behavior; however, the Commission is neither a punitive body nor an enforcement body. Mr. O'Connor stated that the Commission's job is to work with the application that was submitted from a land use perspective. Mr. O'Connor stated that he views this application as meeting the Comprehensive Plan goal of encouraging and preserving an agricultural and forestal economy in rural lands. Mr. O'Connor stated that there have been concern about truck traffic for other similar uses and those applicants came into compliance with the SUP conditions. Mr. O'Connor further stated that it is important to look at what would come out of approving the application. Mr. O'Connor stated that ultimately there would be a site that is compliant and good for the wetlands with thriving business that is a different economic use for rural lands.

Mr. Polster made a motion to recommend approval of the application with the amended SUP Condition 9A.

On a roll call vote, the motion to recommend approval of SUP-20-0010. Hertzler Clearing and Grading did not carry (3-4)



## John Risinger

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**From:** Paul Holt  
**Sent:** Tuesday, November 1, 2022 11:15 AM  
**To:** John Risinger  
**Cc:** Josh Crump  
**Subject:** FW: [External]Reasons to deny Hertzler clearing SUP AGAIN!

FYI and for your use and project file.  
Please include with citizen correspondence for the BOS packet too.

---

**From:** Tim OConnor <Tim.OConnor@jamescitycountyva.gov>  
**Sent:** Tuesday, November 1, 2022 9:19 AM  
**To:** Paul Holt <Paul.Holt@jamescitycountyva.gov>; PlanComm <PlanComm@jamescitycountyva.gov>  
**Subject:** Fw: [External]Reasons to deny Hertzler clearing SUP AGAIN!

Timothy P. O'Connor  
James City Planning Commission  
757-871.6962

---

**From:** [Bbsoyer@aol.com](mailto:Bbsoyer@aol.com) <[bbsoyer@aol.com](mailto:bbsoyer@aol.com)>  
**Sent:** Saturday, October 29, 2022 8:14 PM  
**To:** Tim OConnor <[Tim.OConnor@jamescitycountyva.gov](mailto:Tim.OConnor@jamescitycountyva.gov)>; Barbara Null <[Barbara.Null@jamescitycountyva.gov](mailto:Barbara.Null@jamescitycountyva.gov)>; [richard.krapf@jamescitycountyva.org](mailto:richard.krapf@jamescitycountyva.org) <[richard.krapf@jamescitycountyva.org](mailto:richard.krapf@jamescitycountyva.org)>  
**Subject:** [External]Reasons to deny Hertzler clearing SUP AGAIN!

First I have lived on and traveled Barnes Rd for over 40 years. You may not be aware but an SUP for this very operation was denied many years back. But they went ahead and snubbed their nose at the county and did what they wanted to do anyway.

Barnes Rd was not able to support this traffic then nor now. If memory served me they then stated they would not use Barnes to travel toward Rt 60 only out to Rt30. Well they have been traveling to Rt60 for years and the trucks certainly don't care for the posted speed limit.

The Hertzler trucks were destroying the road shoulder on Barnes turning off Rt30 left onto Barnes. So in the wisdom of VDOT they removed the stop sign that used to be located in the middle of the intersection and paved the small triangle where the sign was. This has probably help contribute to the death of 2 people on Oct 28 2020. The ultra wide intersection now encourages people turning left to cut the corner turning where as the previous set up forced you to make a hard left and stay in your lane. A van was turning left on Barnes and probably with the super wide intersection was sure they could beat the motorcycle on Rt 30 heading toward Toano. Well both people on the motorcycle hit the van and were killed. To approve this permit after already having the original denied would pretty much tell people its ok to do as you please since the County really doesn't care.

This needs to be denied and the Hertzlers made to stop operating an illegal activity.

Brian Oyer  
757-603-0185

**ITEM SUMMARY**

DATE: 12/13/2022

TO: The Board of Supervisors

FROM: Terry Costello, Senior Planner

SUBJECT: SUP-22-0007. Branscome Resource Recovery and Aggregate Storage

---

**ATTACHMENTS:**

|   | Description      | Type            |
|---|------------------|-----------------|
| ☐ | Staff Report     | Staff Report    |
| ☐ | Deferral Request | Backup Material |

**REVIEWERS:**

| Department             | Reviewer           | Action   | Date                 |
|------------------------|--------------------|----------|----------------------|
| Planning               | Holt, Paul         | Approved | 11/22/2022 - 7:43 AM |
| Development Management | Holt, Paul         | Approved | 11/22/2022 - 7:43 AM |
| Publication Management | Pobiak, Amanda     | Approved | 11/22/2022 - 8:14 AM |
| Legal Review           | Kinsman, Adam      | Approved | 11/22/2022 - 8:30 AM |
| Board Secretary        | Saeed, Teresa      | Approved | 12/5/2022 - 10:57 AM |
| Board Secretary        | Rinehimer, Bradley | Approved | 12/5/2022 - 11:04 AM |
| Board Secretary        | Saeed, Teresa      | Approved | 12/6/2022 - 3:09 PM  |

**SPECIAL USE PERMIT-22-0007. Branscome Resource Recovery and Aggregate Storage Deferral  
Staff Report for the December 13, 2022, Board of Supervisors Public Hearing**

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**SUMMARY FACTS**

Applicant: Mr. Julian Lipscomb

Landowner: Branscome Inc.

Proposal: There is an active borrow pit (i.e., surface mine) on the property that is subject to conditions of a previously approved Special Use Permit (SUP) (SUP-18-0011). However, concrete and other materials are also being brought to the site, crushed, and then utilized at the Branscome Asphalt Plant on Merrimac Trail or sold on-site to other contractors. A resource recovery and aggregate storage facility is a specially permitted use on property zoned M-2, General Industrial. The applicant has requested an SUP to be able to operate this portion of the business in compliance with the Zoning Ordinance

Location: 750 Blow Flats Road

Tax Map/Parcel No.: 6030100002

Property Acreage: ± 281 acres

Zoning: M-2, General Industrial  
Military Influence Overlay District

Comprehensive Plan: General Industry

Primary Service Area: Inside

Staff Contact: Terry Costello, Senior Planner

**PUBLIC HEARING DATES**

Planning Commission: October 5, 2022, 6:00 p.m.

Board of Supervisors: November 8, 2022, 5:00 p.m. (Postponed)  
December 13, 2022

**SUMMARY STAFF RECOMMENDATION**

At its meeting on November 8, 2022, the Board postponed action on this item until the December 13, 2022, meeting. Staff recommends that the Board of Supervisors postpone this application to the March 14, 2023, Regular Meeting pursuant to the applicant's request (see Attachment No. 1).

TC/md  
SUP22-7BrscmDefer

Attachment:  
1. Deferral Request

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*This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.*



**GEDDY, HARRIS, FRANCK & HICKMAN, L.L.P.**

ATTORNEYS AT LAW

1177 JAMESTOWN ROAD

WILLIAMSBURG, VIRGINIA 23185

TELEPHONE: (757) 220-6500

FAX: (757) 229-5342

MAILING ADDRESS:

POST OFFICE BOX 379

WILLIAMSBURG, VIRGINIA 23187-0379

VERNON M. GEDDY, JR. (1926-2005)

STEPHEN D. HARRIS

SHELDON M. FRANCK

VERNON M. GEDDY, III

SUSANNA B. HICKMAN

ANDREW M. FRANCK

SHERRI L. NELSON

November 18, 2022

Mr. Jason Purse  
Assistant County Administrator  
101-D Mounts Bay Road  
Williamsburg, VA 23185

Mr. Paul Holt  
Director, Community Development  
101-A Mounts Bay Road  
Williamsburg, VA 23185

Re: SUP-22-0007 Branscome Resource Recovery and Aggregate Storage

Dear Jason and Paul:

I am writing on behalf of our client, Branscome, Inc, to follow up our meeting yesterday in which we discussed two alternatives to potentially provide Branscome access to US Route 60 by way of Greenmount Parkway rather than Blow Flats Road. To give the group time to pursue these alternatives, Branscome request that the Board of Supervisors defer further consideration of the application until its March 14, 2023 meeting. Please let me know if you need anything further.

Very truly yours,



Vernon M. Geddy, III

VMGIII

Cc: Mr. Jay Lipscomb  
Mr. Parker Mills

**ITEM SUMMARY**

DATE: 12/13/2022

TO: The Board of Supervisors

FROM: Stephanie Burton, Training and Development Coordinator

SUBJECT: Employee Engagement Survey Results

---

**ATTACHMENTS:**

|   | Description  | Type         |
|---|--------------|--------------|
|  | Presentation | Presentation |

**REVIEWERS:**

| Department      | Reviewer      | Action   | Date                |
|-----------------|---------------|----------|---------------------|
| Board Secretary | Saeed, Teresa | Approved | 12/6/2022 - 3:49 PM |



# 2022 EMPLOYEE ENGAGEMENT RESULTS

JAMES CITY COUNTY – BOARD OF SUPERVISORS

Human Resources  
December 13, 2022



# WHY EMPLOYEE ENGAGEMENT IS IMPORTANT



**Bottom line:**  
employee  
engagement  
*drives*  
organizational  
performance!

Engaged employees find their work more meaningful  
and deliver better results.



A high level of engagement foster healthy  
relationships, encourage innovation, retain employees,  
and deliver better services for our citizens.



Improving government performance  
**increases public confidence.**

# AT A GLANCE



## Items with the Highest and Lowest Levels of Agreement

### HIGHEST Percentage Level of Agreement

|     |  |
|-----|--|
| 94% | My work contributes to the success of the department (Q2)                |
| 92% | Good understanding of mission & goals (Q1)                               |
| 91% | Products & services are important (Q3)                                   |
| 85% | Customers needs are top priority (Q4)                                    |
| 81% | Workplace is safe (Q15)  |
| 79% | Respect manager as competent professional (Q5)                           |
| 79% | My manager understands the benefit of maintaining work/life balance (Q7) |
| 79% | My supervisor gives me praise and recognition (Q24)                      |

### LOWEST Percentage Level of Agreement

|     |  |
|-----|--|
| 43% | Satisfaction with pay and benefits (Q28)                                       |
| 44% | Policies for promotion & advancement are fair (Q19)                            |
| 45% | Poor performance is effectively addressed (Q8)                                 |
| 53% | Senior management is held accountable for achieving results (Q22)              |
| 53% | Satisfied with career growth opportunities (Q29)                               |
| 56% | Senior management is genuinely interested in employee opinions and ideas (Q17) |
| 58% | Information and knowledge is shared openly (Q9)                                |
| 59% | We work to attract, develop, and retain a diverse workforce (Q16)              |

# ORG PURPOSE AND DIRECTION



## Performance Alignment Index



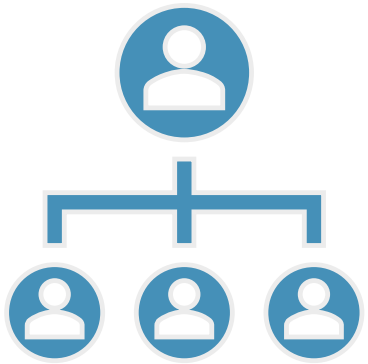
| # | Item   | 2018 | 2020 | 2022       | 2YR<br>chg. | 4YR<br>chg. |
|---|--|------|------|------------|-------------|-------------|
| 1 | I have a good understanding of the mission and goals         | 94%  | 95%  | <b>92%</b> | -3%         | -2%         |
| 2 | I understand how my work directly contributes to the success | 95%  | 98%  | <b>94%</b> | -4%         | -1%         |
| 3 | The quality of our products and services are very important  | 86%  | 97%  | <b>91%</b> | -6%         | 5%          |
| 4 | Customer needs are the top priority                          | 85%  | 94%  | <b>85%</b> | -9%         | 0%          |



# LEADERSHIP



## Leaders Lead Index



| # | Item   | 2018 | 2020 | 2022       | 2Yr chg. | 4Yr chg. |
|---|--|------|------|------------|----------|----------|
| 5 | I respect my manager as a competent professional                       | 81%  | 84%  | <b>79%</b> | -5%      | -2%      |
| 6 | My manager demonstrates strong leadership skills                       | 63%  | 76%  | <b>71%</b> | -5%      | 8%       |
| 7 | My manager understands the benefits of maintaining a work/life balance | 82%  | 85%  | <b>79%</b> | -6%      | -3%      |
| 8 | Poor performance is effectively addressed                              | 36%  | 51%  | <b>45%</b> | -6%      | 9%       |

# INFORMATION SHARING / WORK ENVIRONMENT

## Enviromental Index



| #  | Item  | 2018 | 2020 | 2022       | 2YR<br>chg. | 4YR<br>chg. |
|----|---|------|------|------------|-------------|-------------|
| 9  | Information and knowledge are shared openly           | 55%  | 64%  | <b>58%</b> | -6%         | 3%          |
| 10 | My manager does a good job of sharing information     | 71%  | 78%  | <b>68%</b> | -10%        | -3%         |
| 11 | I have all the information I need to do my job        | 81%  | 79%  | <b>72%</b> | -7%         | -9%         |
| 12 | There is a strong feeling of teamwork and cooperation | 66%  | 74%  | <b>61%</b> | -13%        | -5%         |
| 13 | I have the resources I need to do my job well         | 83%  | 85%  | <b>76%</b> | -9%         | -7%         |
| 14 | The pace of the work enables me to do a good job      | 78%  | 82%  | <b>70%</b> | -12%        | -8%         |
| 15 | My workplace is safe                                  | 84%  | 86%  | <b>81%</b> | -5%         | -3%         |

# DIVERSITY, EQUITY, & INCLUSION



## DEI Index



| #  | Item   | 2018 | 2020 | 2022       | 2YR chg. | 4YR chg. |
|----|--|------|------|------------|----------|----------|
| 16 | We work to attract, develop, and retain a diverse workforce              | 69%  | 70%  | <b>59%</b> | -11%     | -10%     |
| 17 | Senior management is genuinely interested in employee opinions and ideas | 56%  | 61%  | <b>56%</b> | -5%      | 0%       |
| 18 | The organization respects its employees                                  | 69%  | 78%  | <b>66%</b> | -12%     | -3%      |
| 19 | Policies for promotion and advancement are fair                          | 54%  | 53%  | <b>44%</b> | -9%      | -10%     |
| 20 | My manager treats employees fairly                                       | 70%  | 76%  | <b>70%</b> | -6%      | 0%       |
| 21 | I am comfortable sharing my opinions at work                             | 71%  | 75%  | <b>65%</b> | -10%     | -6%      |



# ACCOUNTABILITY & PERFORMANCE MANAGEMENT



## Accountability Index

| #  | Item   | 2018 | 2020 | 2022       | 2YR chg. | 4YR chg. |
|----|--|------|------|------------|----------|----------|
| 22 | Senior management is held accountable for achieving results      | 54%  | 64%  | <b>53%</b> | -11%     | -1%      |
| 23 | My manager is always consistent when administering policies      | 66%  | 72%  | <b>62%</b> | -10%     | -4%      |
| 24 | My supervisor gives me praise and recognition                    | 77%  | 82%  | <b>79%</b> | -3%      | 2%       |
| 25 | I receive feedback that helps me improve my performance          | 75%  | 78%  | <b>73%</b> | -5%      | -2%      |
| 26 | My manager is actively interested in my professional development | 65%  | 69%  | <b>64%</b> | -5%      | -1%      |



# JOB SATISFACTION

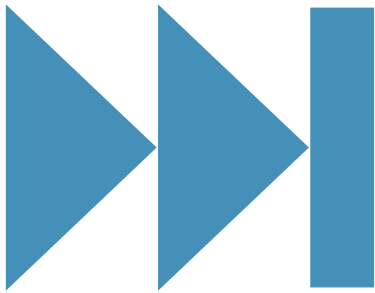


## My Satisfaction Index



| #  | Item  | 2018 | 2020 | 2022       | 2YR chg. | 4YR chg. |
|----|---|------|------|------------|----------|----------|
| 27 | Overall, job satisfaction                     | 81%  | 84%  | <b>74%</b> | -10%     | -7%      |
| 28 | Satisfaction with pay and benefits            | 52%  | 54%  | <b>43%</b> | -11%     | -9%      |
| 29 | Satisfaction with career growth opportunities | 57%  | 57%  | <b>53%</b> | -4%      | -4%      |
| 30 | Satisfaction with current work-life balance   | 72%  | 78%  | <b>66%</b> | -12%     | -6%      |

## NEXT STEPS



- Use data to identify initiatives to address factors impacting employees' dissatisfaction.
- Directors are meeting with managers and team leads to identify focus areas for improvement opportunities
- HR will use Directors' input to identify county-wide initiatives
  - Then monitor & track progress of key initiatives
- Continue conversations with the workforce throughout the year



# 2022 EMPLOYEE ENGAGEMENT RESULTS

JAMES CITY COUNTY – BOARD OF SUPERVISORS



Human Resources  
December 13, 2022

**ITEM SUMMARY**

DATE: 12/13/2022


TO: The Board of Supervisors

FROM: Latara Rouse, Communication Manager

SUBJECT: FY 2022 Annual Report

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**ATTACHMENTS:**

|   | Description  | Type         |
|---|--------------|--------------|
|  | Presentation | Presentation |

**REVIEWERS:**

| Department      | Reviewer      | Action   | Date                |
|-----------------|---------------|----------|---------------------|
| Board Secretary | Saeed, Teresa | Approved | 12/6/2022 - 3:14 PM |

James  
City  
County  
VIRGINIA

Jamestown  
1607



# FY2022 Annual report



# Community development

- Adopted Comprehensive Plan, *Our County, Our Shared Future - James City County 2045*
- Made progress on transportation improvement projects
- Initiated work on Natural and Cultural Assets Plan



[jamescitycountyva.gov](http://jamescitycountyva.gov)



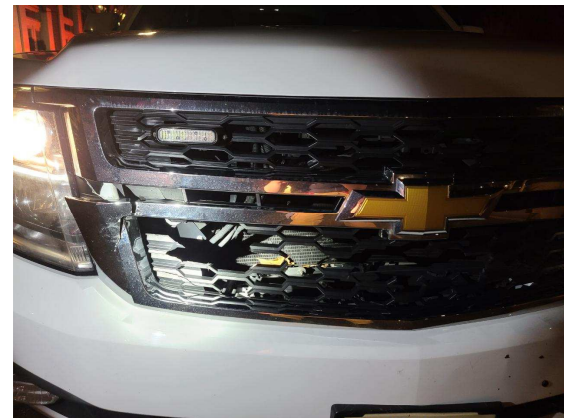
# Economic development

- Finalized property sale for Green Mount Logistics Center
- Supported a 10,000 SF expansion for Coresix Precision Glass
- Secured \$700,000 grant for Small Business Relief Program
- Helped establish glass-only recycling program



# Financial & management services

- Reassessed values for over 35,000 parcels
- Introduced process improvements for procurement projects and contract management
- Facilitated planning for ARPA-funded projects
- Reestablished the Accident Review Committee



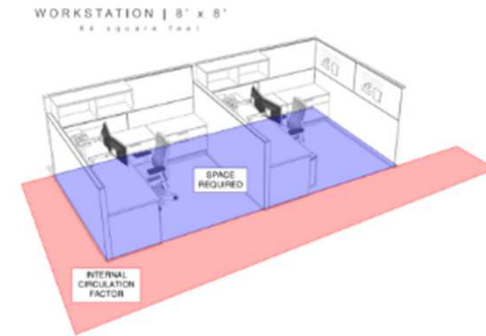
# Fire department

- Developed new training procedures to improve cardiac arrest survivability
- Gained approval from FEMA for an Evacuation Assembly Center in JCC
- Created a CONECT Medical Case Manager position



# General services

- Completed the Facilities Master Plan
- Partnered with Economic Development and O-I Glass to establish glass-only recycling program
- Created the Litter League





# Human resources

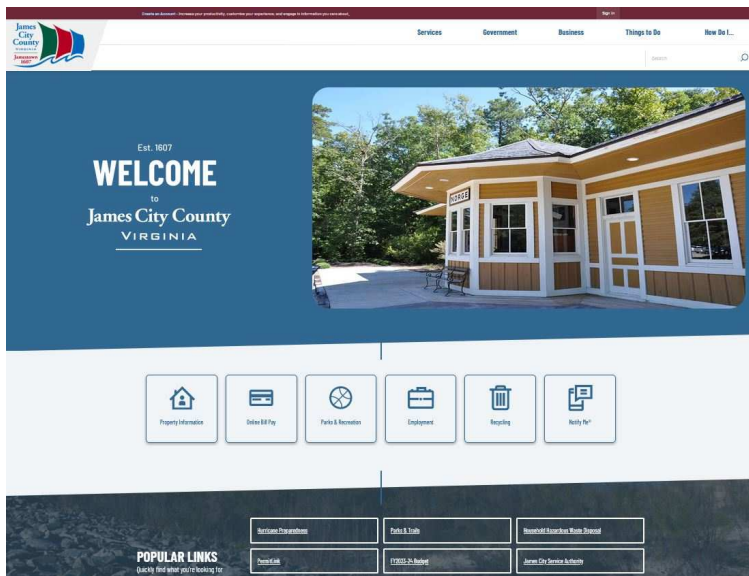
- Held its first in-person events for open enrollment
- Increased the minimum starting wage



- Brought on 295 new hires
  - 126 full-time
  - 43 part-time
  - 126 temporary/on-call

# Information resources management

- Relaunched the JCC, Economic Development and JCSA websites
- Replaced the production lighting in the Board Room



jamescitycountyva.gov

# Parks & recreation

- Reopened the James City County Marina
- Won top honors from VRPS:
  - Most Innovative Marketing Strategy
  - Best New Environmental Sustainability
- Maintained a 54% revenue recovery rate
- Partnered with over 40 community organizations to offer programs and services



# Police department

- Initiated a drone team as part of its Field Force Unit
- Hosted National Night Out at the Law Enforcement Center for the first time
- Received Mothers Against Drunk Drivers M.A.D.D. Award - Outstanding Work in DUI Enforcement





# Social services

- Received \$2,559,000 in Federal and State funding to operate current Housing Assistance programs for 324 households
- Trained 25 new staff, 12 resource parents and 30 community members on the Bridges out of Poverty framework
- Served 25 youth and 23 caregivers as part of the Kinship Navigator Program



# Williamsburg regional library

- Received the Virginia Library Association's 2021 Public Library Innovator Award
- Partnered with Parks & Recreation to launch a free high-speed Wi-Fi zone in the Grove community
- Honored as one of the top public libraries in the country





## Connect with us

- 757-253-6728
- [jamescitycountyva.gov](http://jamescitycountyva.gov)
- JCCTV (Cox Cable channel 88 and [jamescitycountyva.gov/tv](http://jamescitycountyva.gov/tv))
- [JCCAlert.org](http://JCCAlert.org)
- [facebook.com/jamescitycounty](https://facebook.com/jamescitycounty)
- [twitter.com/jamescitycounty](https://twitter.com/jamescitycounty)
- [youtube.com/jamescitycounty](https://youtube.com/jamescitycounty)

**ITEM SUMMARY**

DATE: 12/13/2022

TO: The Board of Supervisors

FROM: Teresa Saeed, Deputy Clerk

SUBJECT: Consideration of a personnel matter, the appointment of individuals to County Boards and/or Commissions, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia

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**REVIEWERS:**

| Department      | Reviewer      | Action   | Date                |
|-----------------|---------------|----------|---------------------|
| Board Secretary | Saeed, Teresa | Approved | 12/2/2022 - 4:15 PM |



**ITEM SUMMARY**

DATE: 12/13/2022

TO: The Board of Supervisors

FROM: Rebecca Vinroot, Director of Social Services

SUBJECT: Williamsburg/James City County Community Action Agency Board Appointments

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**ATTACHMENTS:**

| Description | Type |
|-------------|------|
|-------------|------|

**REVIEWERS:**

| Department             | Reviewer         | Action   | Date                 |
|------------------------|------------------|----------|----------------------|
| Social Services        | Vinroot, Rebecca | Approved | 12/2/2022 - 9:22 AM  |
| Publication Management | Pobiak, Amanda   | Approved | 12/2/2022 - 10:21 AM |
| Legal Review           | Kinsman, Adam    | Approved | 12/5/2022 - 2:47 PM  |
| Board Secretary        | Saeed, Teresa    | Approved | 12/6/2022 - 3:08 PM  |
| Board Secretary        | Purse, Jason     | Approved | 12/6/2022 - 3:11 PM  |
| Board Secretary        | Saeed, Teresa    | Approved | 12/6/2022 - 3:34 PM  |

**ITEM SUMMARY**

DATE: 12/13/2022

TO: The Board of Supervisors

FROM: Teresa Saeed, Deputy Clerk

SUBJECT: Adjourn until 4 pm on January 10, 2023 for the Organizational Meeting

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**REVIEWERS:**

| Department      | Reviewer      | Action   | Date                |
|-----------------|---------------|----------|---------------------|
| Board Secretary | Saeed, Teresa | Approved | 12/2/2022 - 4:16 PM |