

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 27TH DAY OF NOVEMBER, 2001, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. ROLL CALL**

John J. **McGlennon**, Chairman, Jamestown District  
Bruce C. **Goodson**, Vice Chairman, Roberts District

Jay T. Harrison, Sr., Berkeley District  
James G. **Kennedy**, Stonehouse District  
Ronald A. Nervitt, **Powhatan** District

Sanford B. Wanner, County Administrator  
Frank M. Morton, **III**, County Attorney

**B PLEDGE OF ALLEGIANCE**

Ms. Erin Rock, a Junior at Jamestown High School, led the Board and citizens in the Pledge of Allegiance.

**C. PUBLIC COMMENT**

1. Mr. Michael **Asip**, principal of Toano Middle School, stated that the **Chickahominy** community has been working **in partnership** with **the Toano Middle School** and **requested the** Board appropriate funding to the **CIP** for a community resource center.

2. Mr. Ed Oyer, 139 Indian Circle, spoke to a variety of school items, including enrollment numbers and facility needs.

**D. PRESENTATIONS**

1. International Year of Volunteers – Volunteer **Recognition** – Dave **Gosselin**

Mr. **McGlennon** recognized Dave Gosselin for his 17 years of volunteer **service with** the baseball youth league in developing a program that enhances the abilities of the **youth in** competitive baseball and to provide access to the game for all youth interested in playing baseball.

2. International ~~Year~~ of Volunteers – Volunteer **Recognition** – Will Barnes

Mr. **McGlennon** recognized Will Barnes for his volunteer service and ongoing commitment to the beautification of the County through efforts such as organizing the potting of 10,000 seedlings given to the County as a grant and then the planting of those trees.

## E. HIGHWAY MATTERS

Mr. **Jim Brewer, Williamsburg** Resident Engineer of the Virginia Department of Transportation, stated that the Grove Interchange should be completed in January, that Monticello Avenue will be opened in December, and offered to address any concerns or questions from the Board.

Mr. **Goodson** requested the status of the Route **359** realignment.

Mr. Brewer stated that VDOT is working on the documentation and anticipates that it will be six months before VDOT puts the project out for bid.

Mr. McGlennon stated that he had been requested to **ask** VDOT to review the speed limit on Jamestown Road between the Jamestown Ferry and Lake Powell to see if the speed limit should be restored to **45 mph**.

Mr. Brewer stated that a formal request for a speed study would need to be received by VDOT for the consideration of the request.

Mr. McGlennon stated that residents have asked for improved illumination at the intersection of Route 5 and Route **199**.

Mr. Brewer stated that VDOT would look into the request.

## F. CONSENT CALENDAR

Mr. **McGlennon** inquired if a member of the Board wished to have an item pulled.

Mr. Harrison made a motion to adopt the items on the Consent Calendar.

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

1. Minutes

a. October **9,2001**, Regular Meeting

b. October **23,2001**, Regular Meeting

2. Arts Commission GrantR E S O L U T I O NARTS COMMISSION GRANT

WHEREAS, James City County has been awarded a State grant of \$5,000 on behalf of the **Williamsburg** Arts Commission, a regional group with a Board of Directors on which the County has appointed representatives.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of this grant and amends the County's FY 2002 Operating Budget and appropriation, as follows:

Revenues:

From the Commonwealth - Arts Grant	<u>+\$5,000</u>
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Expenditures:

Contributions - <b>Williamsburg</b> Arts Commission	<u>+\$5,000</u>
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3. **Jamestown Road Subarea Study – Contingency Transfer**R E S O L U T I O N**JAMESTOWN ROAD SUBAREA STUDY - CONTINGENCY TRANSFER**

WHEREAS, the Board of Supervisors of James City County has previously approved transfers from Operating Contingency to various agencies within James City County; and

WHEREAS, final quotes for the Jamestown Road Subarea Study have been received and a total of \$29,000 is **needed** to fund this project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby authorize **the** transfer of \$29,000 from Operating Contingency to the Planning Division in order to fund **the** Jamestown Road Subarea Study.

Revenue

Operating Contingency	<u>\$29,000</u>
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<u>Expense</u>	<u>\$29,000</u>
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4. **Land and ~~Water~~ Consercation Fund Grant - District Park Sports Complex**R E S O L U T I O N**LAND AND WATER CONSERVATION FUND GRANT -****DISTRICT PARK SPORTS COMPLEX**

WHEREAS, the **Virginia** Outdoors **Fund/Land** and Water Conservation Fund, in **cooperation** with the Department of Conservation and Recreation, has made matching funds available for the development of parks; and

WHEREAS, funds are needed to construct a new baseball field, four tee-ball fields, a playground, picnic areas, and additional paved parking amenities at James City County's District Park Sports Complex.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, accepts the \$122,000 grant **awarded** by the Land and Water **Conservation Fund** in cooperation with the Department of Conservation and Recreation to help with the **construction** at the District Park Sports Complex.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation:

Revenues:

From the Commonwealth \$122,000

Expenditures:

District Park Sports Complex Site Development  
Phase **III**, Account (01302203) \$122,000

5. Petty Cash – James City County Skate Park and Upper County Park

R E S O L U T I O N

PETTY CASH - JAMES CITY COUNTY SKATE PARK AND UPPER COUNTY PARK

WHEREAS, the Board of Supervisors of James City County has been requested to authorize a petty cash fund of \$100 for the James City County Skate **Park and** increase the **petty cash fund of** Upper County Park from \$100 to \$200.

**NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors** of James City County, Virginia, does hereby authorize the Treasurer to create petty cash of \$100 for the James City County Skate Park and to increase petty cash at the Upper County Park in the amount of **\$100**.

6. Revenue Sharing – Bikeway Matching Funds

R E S O L U T I O N

REVENUE SHARING - BIKEWAY MATCHING FUNDS

WHEREAS, James City County desires to have constructed a shoulder bikeway project on a portion of Route 614 (**Centerville** Road) in James City County; and

WHEREAS, part of the funding necessary for this project needs to be derived from revenue sharing funds allocated to the County in **1994/1995**.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to transfer \$60,000 from Project No. 47-0615-154,501 to Project No. **47-0614-172,n501**.

## G. PUBLIC HEARINGS

### 1. Real Estate Tax Increase

Mr. John McDonald, Manager of Financial and Management Services, requested that in accordance with Section 58.1-3321 of the Code of Virginia, the Board hold a public hearing to invite citizen comment on the projected **increase** in tax revenue of 3.06 percent **as** a result of the reassessment increase.

Mr. **McGlennon** stated that the public hearing is to respond to State requirements and the Board is not considering **or** taking action tonight to change the tax rate.

The Board and staff discussed adjusting the tax rate in response to the assessment increases and ~~the~~ status of the State Budget.

Mr. **McGlennon** opened the public hearing,

As no one wished to speak, Mr. **McGlennon** closed the public hearing.

Mr. **Nervitt** recommended the Board consider reducing ~~the~~ tax rate by an amount equivalent to the assessment increase above one percent.

### 2. Case Nos. SUP-20-01/HW-1-01, James City Energy Park – Electrical Generation Plant

Mr. Paul D. Holt, III, Planner, stated that Mr. Alvin P. Anderson and Mr. Gregory Davis have applied for a special use permit and height limitation waiver to allow the construction of an electrical generation plant on approximately 53 acres zoned M-2, General Industrial, located at the southern end of Blow Flats Road, further identified as a **portion** of Parcel No. (1-47) on the James City County Real Estate Tax Map No. (59-2).

Staff found the possible negative impacts from the proposed facility would be mitigated **to the** greatest extent possible with the conditions attached to the Special Use Permit, that the proposal would not negatively impact adjacent property or surrounding uses; and found the proposal consistent with the Comprehensive Plan **as** well as meeting the Zoning Ordinance criteria for **the** granting of a height limitation waiver.

The Planning Commission voted 6-0 to recommend approval of the application at its meeting on November 5, 2001.

Staff recommends approval of ~~the~~ Special Use Permit, subject to the attached conditions, and approval of the height limitation **waiver**.

The Board and staff discussed long-term anticipated tax revenue trends associated with the project, development guidelines for the enterprise zone, and by-right development options.

Mr. **McGlennon** opened the public hearing.

1. Mr. Greg Davis, on behalf of the applicant – James City Energy Park, LLC, provided the Board with an overview of the partners involved with the project, the anticipated **benefits** to the County, the lack of significant demands on County services associated with ~~the~~ project once built-out, and highlighted several SUP conditions and the Master Plan; and mentioned the additional permitting process required by the State and Federal agencies before the project can be authorized for operation. Mr. Davis also provided comparison information on the types of pollutant levels associated with various **forms** of fuel for electrical plants.

The Board, staff, and Mr. Davis discussed regional air quality levels and the impact of the project on the air quality, traffic impacts on Blows **Flats** Road, what levels of visible as well as odor emissions would be experienced from the plant, the 60 day request to burn oil if needed, negotiation process for natural gas, the levels of noise to be experienced by surrounding property users, and the impact of the plants' **natural** gas consumption rates on residential units utilizing natural gas.

2. Mr. Gil **Bartlett**, Chairman of the Industrial Development Authority, stated support for the project and **requested the** Board approve the project at this meeting; mentioned economic benefits to the County with this project's approval, and stated that conditions for permitting the project will be handled at the Federal and State levels.

3. Mr. Ed **Oyer**, 139 Indian Circle, stated opposition to the placement of the electrical generation plant in the Roberts District, requested the Board consider the **area** residents **in their decision making**, requested the Board only approve clean industries for the County, referenced a local news article regarding smog levels in Hampton Roads, stated concerns about the odor and pollution associated with storing oil and using gray water for cooling, and inquired if the electrical plants visited by County **representatives** utilized **greywater** for cooling.

The Board, staff, and applicant briefly discussed the cooling systems utilized by the visited electrical plants, and the DEQ standards associated with the Hampton Roads Sanitation District's (HRSD) discharge into the James River.

4. Mr. Edward **Byrd**, a resident of Lee Hall, stated that the HRSD discharge is clean when meeting DEQ standards, requested the amount of NO<sub>x</sub> to be produced by this plant as the NO<sub>x</sub> will impact the ozone, and commented on the noise data as being sturdy.

Staff commented that the HRSD plant has improved its operations and there is less odor associated with its discharge, and that staff did not recall there being recent permit violations against HRSD by DEQ.

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

Mr. **McGlennon** moved to amend the Special Use Permits' Condition Number 2 by changing the number of days the plant could operate on the back-up fuel source from 60 days to 30 days.

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

The Board held a brief discussion regarding the project's potential benefits to the County as well as concerns about the project. The board indicated that if the 30 day limit proved to be a problem, the applicant could, at a future date, request an amendment to the SUP.

Mr. **Goodson** made a motion to adopt the amended resolution.

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

**RESOLUTION****CASE NO. SUP-20-01. JAMES CITY ENERGY PARK -****ELECTRICAL GENERATION PLANT**

- 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 the construction of an average 540 megawatt electrical generation facility; and
- WHEREAS, ~~the~~ applicant has also requested a special use permit to allow for ~~the~~ construction of a petroleum storage facility; and
- WHEREAS, the applicant has also requested the Board of Supervisors grant a Height Limitation Waiver in accordance with Section 24-444 of the Zoning Ordinance; and
- WHEREAS, the requested Height Limitation Waiver is being processed concurrently as Case No. HW-1-01; and
- WHEREAS, the property is currently zoned M-2, General Industrial; and
- WHEREAS, the property is designated General Industry on the 1997 Comprehensive Plan Land Use Map; and
- WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Case No. SUP-20-01; and
- WHEREAS, the property is specifically identified as a portion of Parcel No. ~~(1-47)~~ on the James City County Real Estate Tax Map Number (59-2); and
- WHEREAS, on November 5, 2001, the Planning Commission recommended approval of the application by a vote of 6-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, **Virginia**, does hereby approve the issuance of SUP-20-01 as described herein with the following conditions:

1. This special use permit is valid for the construction and operation of an approximate 540 megawatt combined-cycle electrical generation plant (~~the~~ "Power Plant") to be located on approximately 53.53 acres as shown on the "Plat of Subdivision of Lot 4A Standing in the Name of **Greenmount** Associates," prepared by **LandMark** Design Group, and dated August 17, 2001.
2. The Power Plant shall use Natural Gas as its primary source of fuel. The back-up source of fuel for the Power Plant shall be limited to low sulfur oil. The primary natural gas fuel and the back-up oil fuel shall be delivered to the site via underground pipeline only. The Power Plant shall not operate for more than 30 days per calendar year on the back-up fuel source.
3. The Power Plant shall be limited to two combustion turbine generators, directly coupled with two multi-pressure level heat recovery steam generators, and one steam

turbine. Cooling for the Power Plant shall be in the form of a multi-cell induced draft cooling tower.

4. Prior to the issuance of a building permit, all permits then required by all local, State, and Federal laws, rules, and regulations shall be obtained by the applicant. The Power Plant shall be subject to all limitations placed on such permits.
5. This special use permit shall also be valid for a petroleum storage facility. Such facility shall be limited to a total of 7.0 million gallons of low sulfur oil, or a ten day supply, whichever is less, with said storage being for the sole purpose of providing a back-up fuel supply to the Power Plant. Secondary containment **berms**, dikes and facilities shall be designed and constructed to encompass all petroleum storage tanks on the property as approved by the Director of **the Environmental** Division, and shall meet all local, State and Federal requirements upon completion.
6. The Power Plant shall be designed, configured and constructed generally as follows, with the final design subject to the review and approval by the Director of Planning:
  - a. Turbine **building(s)** shall be constructed nearest the northern most property line, but no closer than 500 feet from the property line.
  - b. Heat recovery steam generators, **cooling** towers, storage tanks, stacks, and other **structure(s)** shall be constructed to the south (rear) of the turbine motor **building(s)**.
  - c. Only office buildings, **switchyard(s)** and/or **substation(s)**, the gas compressor **building(s)**, the gas metering **station(s)**, and transformers with **related/accessory** structures shall be north of the turbine motor building.
7. Start of construction, as defined in **the** James City County Zoning Ordinance, shall have commenced within 36 months of this special use permit approval, or the permit shall be void.
8. Unless this condition is otherwise modified by the Director of Planning, all site lighting shall be limited to fixtures which are mounted on light poles and/or other structures horizontally and shall be recessed fixtures with no bulb, lens or globe extending below the casing. The casing shall be opaque and shall completely surround the entire Light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. No glare, defined as 0.1 footcandle or higher shall extend outside the property lines.
9. Water used for process cooling shall not come from a Municipal water source or from a well. Potable water shall not be used for process cooling.
10. All non-evaporated processed water shall be returned from whence it came via underground pipeline. No discharge of cooling water shall be made to any on-site surface waters or groundwater.
11. The location of any and all pipelines which connect the site to the process water source shall be subject to review and approval by the Development Review Committee.



12. **The** location of any and all pipelines which connect the site to existing natural gas pipelines shall be subject to review and approval by the Development Review Committee.
13. The location of any and all pipelines which connect the site to the Colonial pipeline shall be subject to review and approval by the Development Review Committee **(DRC)**.
14. The installation of all underground pipelines shall comply with **all** State Erosion and Sediment Control Regulations as **specified in the 1992 Virginia Erosion and Sediment Control Handbook**, as amended.
15. A minimum of a 200-foot wide landscape buffer shall be maintained from each property line. This buffer shall remain generally undisturbed, with the exception of utility and road crossings, signs, lighting, and **stormwater** management facilities, all as approved by the DRC. Existing trees within this buffer shall be protected and maintained to the **greatest** extent possible. Prior to the issuance of temporary Certificate of Occupancy, the buffer, unless otherwise modified by the Director of Planning, shall be supplemented **with Loblolly** pine-seedlings, planted at a rate of 600 seedlings per-acre. In addition, a double row of wax myrtles shall be planted along the **northern** most property line.
16. Prior to the issuance of a land disturbing permit, a Traffic Management Plan shall be submitted to the Director of Planning for review and approval. Such **Traffic** Management Plan shall include time **and/or** day limitations on the use of Blow Flats Road and any other provision or limitation deemed necessary by the Director of Planning to mitigate impacts of traffic during the construction of the facility. Such Traffic Management Plan, as approved by the Director of Planning, shall also provide for either: **a.)** the maintenance and repairs to Blow Flats Road for damage caused to the road from the time a Land Disturbing Permit is issued until the time a final Certificate of Occupancy is issued: **AND/OR** **b)** the rerouting of **traffic** to and from the site from the time a Land Disturbing Permit is issued until the time a final Certificate of Occupancy is issued. Prior to the issuance of a Land Disturbing Permit, all conditions and/or limitations shall be implemented by the owner. Assurances to guarantee, and provide for, all recommendations of the approved Traffic Management Plan, in the form of a surety acceptable to the County Attorney, shall be submitted prior to the issuance of a Land Disturbing Permit.
17. The Power Plant shall utilize Best **Available Control** Technology (BACT) to limit air emissions from the facility, in a manner approved by the County Engineer. BACT controls for the project shall include, but not be limited to the following: (1) dry-low **NOx** (nitrogen oxides) combustors to reduce **NOx** emissions from the combustion turbines; (2) selective catalytic reduction (SCR) to further reduce **NOx** emissions from the combustion turbines, and the supplementary fired heat recovery steam generators (HRSG); (3) utilizing natural gas as the primary fuel to limit emissions of **NOx**, **SO2** (sulfur dioxide), and **PM/PM10** (particulate matter); and (4) **good** combustion practices to **limit** emissions of CO (carbon monoxide) and **VOCs** (volatile organic compounds).
18. Noise abatement equipment shall be installed on the Power Plant in a manner approved by the County Engineer **such that** noise levels at the front property line of 150 Blow Flats Road shall not exceed a nominal 55 decibels.

19. A **Conservation Plan** for the protection **and/or** mitigation of impacts to any animal species of special concern, **as** defined by the State of Virginia Department of Game and Inland Fisheries, shall be submitted to the Director of Planning for review and approval. The recommendations of said plan shall be incorporated in the site plan and shall be implemented prior to the issuance of a land disturbance permit.
20. No exterior loud speaker system shall be used.
21. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Mr. **Goodson** made a motion to adopt the Height Limitation Waiver resolution.

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

## **RESOLUTION**

### **CASE NO. HW-1-01. JAMES CITY ENERGY PARK -**

#### **ELECTRICAL GENERATION PLANT**

- WHEREAS, James City Energy Park has applied for a special use **permit** to allow for the construction and operation of an average 540 megawatt combined-cycle electrical generation plant (the "Power Plant") to be located on approximately 53.53 acres as shown on the "Plat of Subdivision of Lot 4A Standing in the Name of **Greenmount** Associates," prepared by **LandMark** Design Group, and dated August 17, 2001; and
- WHEREAS, this special use permit request is being processed concurrently as Case No. SUP-20-01; and;
- WHEREAS, James City Energy Park has applied for a height limitation waiver to allow for the construction of certain components of the Power Plant to exceed 60 feet in height; and
- WHEREAS, the Board of Supervisors may grant a height limitation waiver to allow the erection of structures in excess of 60 feet in height upon finding that the **requirements** of Section 20-444 of the James City County Zoning Ordinance have been satisfied; and
- WHEREAS, a public hearing was advertised, adjoining property owners notified and a hearing scheduled on Case No. **HW-1-01**; and
- WHEREAS, the Power Plant will be located on property more specifically identified **as** a portion of Parcel No. (1-47) on the James City County Real Estate Tax Map Number (59-2).

NOW, THEREFORE, BE IT RESOLVED that **the Board** of Supervisors of James City County, Virginia, does hereby approve the issuance of HW-1-01 as described herein with the following conditions:

1. The applicant shall inform the Federal Aviation Administration (FAA), that should obstruction marking **and/or** lighting be required, that it is the preference of James City County that such obstruction marking be of a type that utilizes red lighting and medium-intensity white **strobe lighting**, per **FAA requirements**. **Structure** painting and colors shall be subject to review and approval by the Director of Planning.

2. The following components of the Power Plant shall not exceed the following heights above **ground** level (AGL):
  - a. An exhaust stack: 250 feet
  - b. Electrical transmission **tower(s)**: 135 feet
  - c. Heat Recovery Steam **Generator(s)** (HRSG): 105 feet
  - d. The noise control equipment for the HRSG: 135 feet
  - e. Turbine **building(s)**: 105 feet
  - f. Cooling **tower(s)**: 80 feet
  - g. Cooling **tower(s)** inlet **filter(s)**: 80 feet
  - h. Electrical switch yard and its accessory structures: 80 feet
3. This height limitation waiver is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

### 3. Purchase of Development Rights Ordinance

Mr. Michael H. Drewry, Administrator of the Purchase of Development Rights Program, stated that an ordinance for the Board's consideration has been developed to establish a Purchase of Development Rights (PDR) Program in the County to acquire conservation easements voluntarily offered by property owners. This ~~is~~ will be a means to protect the County's community character and natural resources.

Mr. Drewry highlighted the contents of the Ordinance, and provided a timetable for the establishment and implementation of the PDR program.

The Board and staff discussed restrictions on building dwelling units within a PDR parcel, evaluation of billboards within potential PDR sites, acceptance of sites within or outside the Primary Service Area into the PDR program, State Code limitations on easements once established, and ranking criteria to be used in assessing the potential PDR sites.

Mr. McGlennon opened the public hearing.

1. Ms. Caren Schumacher, Executive Director of the Williamsburg Land Conservancy, stated the Conservancy holds over 600 acres and supports the PDR initiative to protect more land, and read a portion of a letter supporting the PDR program from the Board of Directors of the Williamsburg Land Conservancy.

2. Ms. Caroline Lowe, Williamsburg Land Conservancy, stated support for the PDR program to protect the wetlands, open spaces, farmlands, and forests of the County.

3. Mr. Lawrence Beamer, 60 Main Street, Newport News, stated that he has given the Williamsburg Land Conservancy 15 acres and anticipates giving more, and inquired if the PDR program is voluntary.

Staff stated that participation in the PDR program is voluntary. Mr. Beamer then stated his support for the program.

Mr. McGlennon closed the public hearing.

Mr. Kennedy made a motion to adopt the Ordinance.

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

Mr. **Harrison** requested a brief break

Mr. **McGlennon** recessed the Board for a break at 9:12 p.m.

Mr. **McGlennon** called the Board back into order at 9:20 p.m.

4. & 5. **AFD-6-86. Cranston's Pond – Ware Property Withdrawal (deferred from November 13, 2001) & Case No. Z-4-00/MP-01-01. Colonial Heritage at Williamsburg (deferred from November 13, 2001)**

Mr. **O. Marvin Sowers**, Director of Planning, summarized the issues raised by the Board at the November 13 meeting and provided information the applicant supplied in response to the issues such as: providing the Board with broad discretion on how to spend the money contributed by the applicant to mitigate the project's community impacts, the conveyance of property for public use or cash in lieu of one of the sites offered; and provided the Board with an overview of the current proffers offered against those dated October 16.

Staff found the master plan and rezoning application consistent with the Comprehensive Plan and compatible with surrounding land uses and zoning.

At its meeting on July 2, the Planning Commission voted 6-1 to recommend approval of the withdrawal and the rezoning application

Staff recommended approval of the proposed **AFD** withdrawal, as well as the rezoning and master plan application with the attached proffers.

The Board and staff discussed the unit density, proffer limiting the development until after the permit for water withdrawal has been received, the Board's ability to allocate proffered money to address community needs, and the option of accepting one of two potential public use sites or cash proffer.

Mr. **McGlennon** opened the public hearing.

1. Mr. **Greg Davis**, on behalf of the applicant, requested approval of both cases before the Board, and stated that the Boy Scout Colonial Virginia Council is represented if the Board wished to address questions to them too.

The Board, staff, and Mr. **Davis** discussed the developability of the offered two sites for public use, protection of the **Yarmouth** Creek Watershed, definition and proportion of land as open space, and the use of **BMPs**.

Mr. **Harrison** inquired about the future of Camp Chickahominy.

Mr. **Hugh Reily**, Colonial Virginia Council BSA representative, stated that the setting of the camp is not as ideal as when set up in 1964, the encroachment of development to the camp has hindered the rural desirability of a Scout camp. Mr. **Reily** stated that the Scouts are interested in developing a state of the art camp and that the reviewing of sites for recommendation for a new camp is being conducted.

Mr. **McGlennon** inquired about the applicant's intention for the use of Camp Chickahominy, if acquired.

Mr. **Davis** stated that the development will be expanded and reduce the overall density

2. Ms. Linda Wallace, 3085 Chickahominy Road, requested ~~the~~ **Board** utilize the community contributions cash proffer offered by the applicant for the development of a Chickahominy community center to benefit the community by addressing ~~the~~ needs of the citizens, and requested ~~the~~ Board not consider more golf courses as "community" centers as they are not accessible to all residents.

3. Ms. Viola Cowles, Chickahominy Community Improvement, concurred with Mr. Asip's comments and requested Capital Improvements Program contributions for a resource center to improve ~~the~~ community.

4. Mr. Dallas Grave, Jr., 3065 Chickahominy Road, requested ~~the~~ Board ~~fund~~ a **Chickahominy** resource center to give the children and grandchildren of ~~the~~ community the resources to improve themselves.

5. Mr. Malcom Green, 2735 Little Creek Dam Road, stated that the citizens of ~~the~~ **Chickahominy** area are not **looking** for a **handout**, but rather are **looking** for the County to provide the community with assistance through the **CIP**.

Mr. **Goodson** made a motion to approve the **AFD** withdrawal, the rezoning case, and the Master Plan

The **Board** discussed the impacts of this project on growth in the community, a Chickahominy Community Center, surrounding wetlands, the gated community aspect of the project, and necessity for the cluster ordinance.

Mr. **McGlennon** requested a roll call vote on the motion by Mr. **Goodson**.

On a roll call, the votes were: AYE: Harrison, **Kennedy**, **Nervitt**, **Goodson** (4). NAY: **McGlennon** (1).

## RESOLUTION

### AGRICULTURAL AND FORESTAL DISTRICT 6-86.

#### CRANSTON'S POND (WARE PROPERTY WITHDRAWAL)

WHEREAS, a request to withdraw approximately **90.79** acres owned by Trustee of the Ware Estate, identified as Parcel No. **(1-21)** on James City County Real Estate Tax Map No. **(23-4)**, has been filed with the James City County Board of Supervisors; and

WHEREAS, the Agricultural and Forestal District Advisory Committee, at its April **20, 2001**, meeting, recommended the property be withdrawn by a vote of **7-0**, with two absences; and

WHEREAS, in accordance with Section **15.2-4314** of the Code of Virginia, a public hearing was advertised and held by the Planning Commission, and at its July **2, 2001**, meeting, the Planning Commission recommended the property be withdrawn by a vote of **6 to 1**; and

WHEREAS, in accordance with Section **15.2-4314** of the Code of Virginia, a public hearing was advertised and held by the **Board** of Supervisors of James City County, Virginia; and

WHEREAS, the Board finds that the withdrawal request meets the criteria set forth in the Board of Supervisors Withdrawal Policy for Agricultural and Forestal District Parcels Within the Primary Service Area, dated September **24, 1996**.

- WHEREAS, the Code of **Virginia § 15.2-2298** and ~~the~~ James City County Code, Section **24-16**, authorize the acceptance of cash proffers by James City County from rezoning applicants, provided, however, i) that the rezoning itself gives rise to the proffered conditions, ii) such conditions have a reasonable relation to the rezoning, and iii) all such conditions are in conformity with the James City County Comprehensive Plan ("Plan"); and
- WHEREAS, the Plan includes a Public Facilities Chapter which establishes policy for provision of capital improvements necessitated by growth; and
- WHEREAS, ~~the~~ Board of Supervisors (Board) annually adopts a Capital Improvement Plan ("CIP") which implements the public funded portion of needed capital improvements; and
- WHEREAS, ~~the~~ Board finds that rezoning and development of properties for residential use may result in increased population and a commensurate increase in the need for capital improvements required to maintain the level of service provided by the County: the costs of certain of the capital improvements which are reflected in the **CIP** and Plan have been calculated on the basis of a typical new residential unit and the contribution of each such residential unit to funding of capital improvements through ~~the~~ tax rate has been calculated; and
- WHEREAS, ~~the Board~~ finds that rezoning and development of properties for commercial **and industrial** use may result in more intense use of public facilities and also in increased tax revenue and other economic benefits to the County; and
- WHEREAS, the Board also recognizes that each development proposal presents circumstances requiring particularized evaluation, with regard to the resulting costs and benefits accruing to the County.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the following shall be the general guidelines for consideration and acceptance of cash proffers and will be considered by the Board in conjunction with other land use factors applicable to particular development proposals and other proffers offered by rezoning applicants:

I. **APPLICABILITY**

These guidelines shall be applicable to all rezoning applications. Amounts set out in this policy, representing the cost of public facilities and public capital costs for each typical unit of a development, **are general guidelines only. Individual** rezoning applications present circumstances which are to be considered in evaluating applications and proffered conditions. Those circumstances and factors include:

1. Proffers of dedication of land, or construction of public facilities, or of amenities or facilities available for use in connection with a proposed development, which decrease the need for use of community facilities existing or planned by the County.
2. The economic benefits of industrial and commercial development and the contribution of a development proposal to the goal of development which is properly apportioned between residential, industrial and commercial type.
3. The scale of the proposed development and the scale of the incremental effect on community facilities of the residential development.

## 11. METHODOLOGY

### A. General Considerations

The impact of proposed developments on public facilities and the need for capital improvements will be reviewed on a case-by-case basis.

The basis for analyzing the needs to be generated by proposed residential development and the economic contribution of the development, shall be the projected capital costs and tax revenues set out in documents **referred** to below. Those costs and revenues are established for typical County residential units.

In general, the revenue generated by commercial and industrial development is expected to cover the capital costs of the development with the exception of "C" below. Each proposed development will be reviewed to identify any unusual or excessive requirements. The County's policy with respect to cash proffers in commercial and industrial rezoning shall be interpreted liberally in order to promote desirable economic development.

Road improvement needs generated by a proposed development will be reviewed on a case-by-case basis.

- B.** The costs of needed public facilities as described in documents prepared by the Department of Financial and Management **Services** (attached), titled "James City County, **Virginia** - Cash Proffer Methodology" dated October 2001 and applicable to each typical residential unit are summarized as follows and shall, in addition to other factors described in this policy, be the basis for consideration of cash proffers:

#### Public Schools

Single-Family Detached Residential	\$ 9,792
Attached Residential	6,859
Parks and Recreation	1,015
Community Development	984
Public Safety	596
General Services	332
Discount Rate 21.91%	
Total Maximum Cash Proffer	
Single-Family Detached Residential	\$ 9,933
Attached Residential	\$ 7,642

Proffers are expected to contain a provision ensuring that the Per Unit **Contribution(s)** paid in each year shall be adjusted annually beginning January 1, 2003, to reflect any increase or **decrease** for the preceding year in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (~~1982-84=100~~) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. The adjustment shall be made by multiplying the Per Unit Contribution for the preceding year by a fraction, the numerator of which shall be the CPI as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the CPI, then the Per Unit Contribution shall be adjusted based upon the figure that would have resulted had no change

occurred in the manner of computing CPI. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial and Management Services) shall be relied upon in establishing an **inflationary** factor for purposes of increasing the Per Unit Contribution to approximate the rate of **annual inflation** in the County.

3. In addition to the County wsts listed above, the James City Service Authority (JCSA) is charged with developing expanded sources of **drinking** water to serve new development. The JCSA is developing a brackish groundwater treatment facility at an estimated cost of **\$4.00** per gallon. **The cost** will be multiplied by the estimated water usage of a proposed residential or nonresidential development to calculate the drinking water capital costs of that development.
4. In order to support the housing goals of the Comprehensive Plan, the proffers associated with certain residential developments will be considered **for** reduction based on the sales price of the home. Guidelines for reduction are as follows:

The Proffer may be reduced on a sliding scale, from **100%** of the above public facility costs for homes priced at or above the median sales price for all homes in the **Williamsburg** area as reported for the previous year by the Virginia Association of Realtors, to **0%** for homes priced at or below a sales price consistent with the **definition** of "Affordable Housing" in the James City County Zoning Ordinance.

### III. ANALYSIS OF THE FINANCIAL BENEFITS OF DEVELOPMENT

- A. The contribution of a development to the cost of public improvements financed through the tax rate shall be based on the percentage of the tax rate **attributable** to debt service over the **20-year** period of a general obligation bond.
- B. Analysis of **in-kind** donations, such as **land or** facilities, should be based on the value set out in the written proffer, or a method agreed upon by the County staff and the applicant.

### IV. ADMINISTRATION

- A. Proffer payments shall be paid at the time of approval of the building permit for the residential unit or **commercial** or industrial development.
- B. These cash proffer guidelines shall be reviewed and updated each year in conjunction with **CIP** review and adoption.
- C. The Department of Financial and Management Services shall be responsible for administration of cash proffer funds pursuant to procedures adopted by the Department.
- D. In the event a building is **not** constructed after the issuance of the building permits, the cash proffer shall be refunded upon request and the building permit shall be void, and no occupancy of the building shall be permitted.



## V. CAPITAL IMPROVEMENT PROGRAM

The FY 2001-2002 James City County Budget was adopted by the Board of Supervisors on April 24, 2001, and includes the adopted FY 2002-2006 Capital Improvements Plan

## RESOLUTION

### CASE NO. Z-4-00/MP-01-01. COLONIAL HERITAGE AT WILLIAMSBURG

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, and Section 24-15 of the James City County Zoning Ordinance, a public hearing was **advertised**, adjoining property owners notified, and a hearing scheduled on Zoning Case No. **Z-4-00/MP-01-01**, with Master Plan, for rezoning 777 acres from A-1, General Agricultural, **and** M-1, Limited Business Industrial, to MU, Mixed Use, with proffers; and

WHEREAS, the Planning Commission of **James** City County, following its public hearing on July 2, 2001, recommended approval of Case No. **Z-4-00/MP-01-01**, by a vote of 6 to 1; and

WHEREAS, the property is located at 6175 Centerville Road, 6799 Richmond Road, 6895 Richmond Road, 6993 Richmond Road, and 6991 Richmond Road and **further identified** as Parcel Nos. (1-21), (1-22), (1-32), (1-11), and (1-32a) on James City County Real Estate Tax Map Nos. (23-4), (23-4), (24-3), (31-1), and (24-3) respectively.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. **Z-4-00/MP-01-01** and accept the voluntary proffers.

## H. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, stated that a recent news article stated that smaller schools are not always better, that Jamestown High School was built to be expanded if needed, **and** that projections for school enrollment show that there will not be a significant increase in the near future.

## J. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner recommended that following the Board Requests and Directives portion of the meeting, the Board recess briefly for a James City Service. Authority Board of Directors meeting, then come back into open session to go **into Closed Session pursuant** to section 2.2-3711 (A) (3) of the **Code** of Virginia to discuss the acquisition of parcels of property for public use.

Mr. Wanner recommended that following the conclusion of the agenda, the Board adjourn until 4 p.m. on November 28, 2001, for a work session.

## J. BOARD REQUESTS AND DIRECTIVES

Mr. **McGlennon** recessed the Board at 10:25 p.m.

Mr. **McGlennon** called the Board back into session at 10:27 p.m.

Mr. Harrison requested a brief break at 10:25 p.m.

Mr. McGlennon called the Board back into session at 10:35 p.m.

#### K. CLOSED SESSION

Mr. McGlennon made a motion to go into closed session pursuant to Section 2.2-3711 (A)(3) of the Code of Virginia to consider the acquisition of parcels of property for public use.

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

At 11:04 p.m. Mr. McGlennon called the Board back into open session

Mr. Kennedy moved to adopt the Certification of Closed Session

On a roll call, the vote was: AYE: Harrison, **Kennedy**, Nervitt, **Goodson**, **McGlennon** (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 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

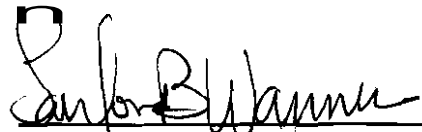
NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and, ii) only such public business matters were heard, discussed or considered by the Board as were identified in the motion, Section 2.2-3711(A)(3) to consider acquisition of parcels of property for public use.

#### L. ADJOURNMENT

Mr. **Goodson** made a motion to adjourn.

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

Mr. **McGlennon** adjourned the Board at 10:05 p.m.

  
Sanford B. Wanner  
Clerk to the Board

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## PROFFERS

## COLONIAL HERITAGE AT WILLIAMSBURG

THESE PROFFERS are made this 7th day of November, 2001, by and among:

U.S. HOME CORPORATION, a Delaware corporation ("U.S. Home") (to be indexed as grantor) and

VAJACK, LLC, a Virginia limited liability company ("Vajack") (to be indexed as grantor) and

MASSIE CORPORATION, a Virginia corporation ("Massie Corp.") (to be indexed as grantor) and

L. WALLACE SINK, Trustee of the Marital Trust under the Will of David W. Ware, deceased ("Sink") (to be indexed as grantor), and

THE COUNTY OF JAMES CITY, VIRGINIA ("County") (to be indexed as grantee), provides as follows:

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**RECITALS:**

**R-1.** Vajack is the owner of certain real property located in the County of James City, Virginia, containing 470± acres, more particularly described on **Exhibit A** attached hereto and made a part hereof.

**R-2.** Vajack is the owner of certain real property located in the County of James City, Virginia, containing 2.68± acres, more particularly described on **Exhibit B** attached hereto and made a part hereof. The property described on **Exhibits A and B** is referred to collectively herein as the "Vajack Property." Vajack is the successor in interest in the Vajack Property to Jack L. Massie and Virginia M. Massie, husband and wife ("Massies").

**R-3.** Massie Corp. is the owner of certain real property located in the County of James City, Virginia, consisting of 94± acres, more particularly described on **Exhibit C** attached hereto and made a part hereof (the "Massie Corp. Property").

**R-4.** Sink is the owner of certain real property located in the County of James City, Virginia, containing approximately 180± acres, more particularly described on **Exhibit D** attached hereto and made a part hereof (the "Ware Trust Property").

**R-5.** The real property described on Exhibits A through D inclusive shall be referred to collectively herein as the "Property"

**R-6.** U.S. Home is the contract purchaser of the Property,

**R-7.** Vajack, Massie Corp., Sink, U.S. Home and their collective successors and assigns who own record title to all of the Property and subsequent purchasers of Residential

Units (as hereinafter defined) and non-residential areas are referred to collectively herein as the "Owners". The term "Residential Unit(s)" as used herein shall be defined as any residential dwelling, house, condominium or other unit.

**R-8.** The Massies, prior to conveyance of the Vajack property, joined in the filing of an Application for rezoning (the "Application") of the Property. The Application has been designated by the County **as** Case No. **Z-04-00/MP-01-01**.

**R-9.** U.S. Home, Sink, **Massie Corp.** and the predecessors in title to Vajack have requested in the Application that the Property be rezoned to MU – Mixed Use district **as** described by Section 24-514 *et seq.* of the County's zoning ordinance in effect on the date hereof ("Zoning Ordinance") in order to permit the construction of an age restricted residential community and non-residential development.

R-10. The provisions of the Zoning Ordinance, Section 24-1, *et seq.* possibly may be deemed inadequate for protecting and enhancing orderly development of the Property in accordance with the County Comprehensive Plan. The Owners, in furtherance of the Application, desire to proffer certain conditions which, among other things, provide for some of the types of benefits specified in the low density residential provisions of the comprehensive plan and in the Cluster Development Standards and density bonus provisions of the Zoning Ordinance applicable to **R-1**, **R-2** and **R-5** districts that should be provided for densities greater than one dwelling unit per acre. These conditions are specifically limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the provisions of

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Section 15.2-2296 *et seq.* of the Code of Virginia (1950), as amended (the "Virginia Code"), and Section 24-16 of the Zoning Ordinance.

R-11. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

R-12. Phase I, II and III Archaeological Studies have been performed on the Vajack Property and the Massie Corp. Property and those studies **with** treatment plans required pursuant to paragraph 2 below have been approved by the County Director of Planning.

R-13. Copies of each of the Studies referenced in Recital paragraph R-12 and paragraph 2 below are on file in the office of the County Director of Planning.

R-14. A Community Impact Statement has been submitted to the County Director of Planning for review and approval by the County in connection with the rezoning request referenced above, and is on file in the office of the County Director of Planning. The County hereby acknowledges that the Community Impact Statement described above has been submitted and is on file in the office of the County Director of Planning.

NOW, THEREFORE, for and in consideration of the approval by the County of the rezoning of the Property, and pursuant to Section 15.2-2296 of the Virginia Code and Section 24-16 of the Zoning Ordinance, the Owners agree that they shall meet and comply with the following conditions and proffers as indicated in developing the Property.

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**PROFFERS:**

**SECTION I. Proffers Applicable to All Property.**

1. **Binding Master Plan.** The Property shall be developed generally in accordance with a Master Plan of Development pursuant to Section **24-515(b)** of the Zoning Ordinance entitled "Master Plan of Colonial Heritage at Williamsburg" made by AES Consulting Engineers and Land Design, Inc. and Williamsburg Environmental Group, Inc., dated November 1,2000, and revised April 2,2001, May 29,2001, and November 1,2001, which is incorporated by reference (the "Master Plan"). The Master Plan provides only for the general location of proposed streets, the general location of proposed areas of open space, buffer areas, recreation facilities, densities, and types of land use, and the general location of proposed areas for golf fairways, greens, drainage facilities, pedestrian connectivity and other amenities. Development plans may deviate **from** the Master Plan if the Planning Commission concludes after reviewing written comments from the Planning Director that the plan does not significantly alter the character of land uses or other features or conflict with any conditions placed on the approval of the rezoning. The County hereby acknowledges that the Master Plan described above has been submitted to and is on file in the **office** of the County Director of Planning. Prior to or concurrent with submission of development plans for each land bay within the Property, the Owners shall receive approval from the County's Director of Planning of a more detailed **master** plan for each land bay describing the dwelling unit and commercial land use types and layout for each land bay.

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2. Archaeological Study. A Phase I Archaeological Study for the entire site shall be submitted to the Director of Planning for his review and approval prior to land disturbance. A treatment plan shall be submitted to, and approved by, the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation, **and/or** identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places **and/or** those sites that require a Phase III study. If in the Phase II study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study area. All Phase I, Phase II and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standard and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the site and shall be adhered to during the clearing, grading and construction activities thereon.



### 3. Traffic.

**A.** U.S. Home has submitted to the Office of the County Director of Planning and the Virginia Department of Transportation ("VDOT") a traffic analysis dated October 23, 2000 entitled: "Traffic Analysis for U.S. Homes Site on Richmond Road" prepared by DRW Consultants, Inc. (the "Traffic Study"). The **Traffic** Study is on file with the County Department of Planning.

**B.** The following entrance and road improvements ("West Crossover Improvements") shall be installed to VDOT standards and specifications:

**(1)** A **traffic** signal at the west crossover as shown and defined in the Traffic Study (hereinafter "West Crossover").

**(2)** Construction of double left turn lanes on westbound Richmond Road at the West Crossover.

**(3)** Construction of a right-turn lane on eastbound Richmond Road at the West Crossover.

**(4)** Construction of three (3) exit lanes and two (2) entrance lanes at the site entrance at the West Crossover.

**(5)** Construction of a left-turn lane on eastbound Richmond Road at the West Crossover as necessary to accommodate the traffic signal described above.

**(6)** Modifications to crossover pavement to accommodate improvements listed herein.

C. In addition, the following entrance and road improvements ("East Crossover Improvements") shall be installed to **VDOT** standards and specifications:

(1) A traffic signal at the east crossover as shown on the Traffic Study (hereinafter "East Crossover").

(2) Construction of double left turn lanes on westbound Richmond Road at the East Crossover.

(3) Construction of a right turn lane on eastbound Richmond Road at the East Crossover.                      affi

(4) Construction of three (3) exit lanes and two (2) entrance lanes at the site entrance at the East Crossover.

(5) Construction of an eastbound left turn lane at the East Crossover as necessary to accommodate a traffic signal.

(6) Construction of East Crossover pavement to accommodate improvements listed herein.

(7) If commercial component or Nonresidential Use (as defined below) development precedes residential development and commercial component or Nonresidential access to the West Crossover is requested, then the West Crossover improvements cited above shall be required as a condition of the Nonresidential development approval upon determination of necessity by the County Director of Planning and approval by VDOT.

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D. (1) The East Crossover and West Crossover Improvements cited above may be phased in accordance with a commercial phasing plan described herein **and/or** in the Master Plan. Any phasing of East Crossover and West Crossover Improvements must be approved by VDOT and the County Director of Planning as a condition of the site plan approval for the commercial phase.

(2) After approval of the first phase of road improvements identified above and within **30** days of a request **from** VDOT, the Owners shall pay to VDOT a pro rata share (pro rata share based on the number of signals provided by the Owner divided by the total number of signals included) of any VDOT U.S. Route 60 (**Richmond** Road) signal coordination project that includes either or both of the East and West Crossovers committed for construction by the earlier of December 31, 2020 or the date of completion of development of the Property (defined below).

(3) For purposes of this paragraph, the date of completion of development of the Property shall be defined as the later of such date on which final site plan or final subdivision plan approval has been granted by the County for all portions of the Property devoted to both residential and commercial use

(4) The cost for a signal coordination project may include traffic signal equipment at intersections on Richmond Road and may include any necessary utility relocation within available right of way and easements to accommodate traffic signal equipment, but will not include any right of way acquisition **expense(s)** or road construction changes.

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E. For any right turn ~~in/right~~ turn out driveway on eastbound Richmond Road to provide access to the Nonresidential areas of the Property, a right turn lane on eastbound Richmond Road shall be installed to VDOT standards and specifications prior to ~~the~~ issuance of any temporary or permanent Certificate of Occupancy for buildings shown on the associated site plan.

F. In addition, the following entrance and road improvements shall be installed to VDOT standards and specifications:

(1) Construction of a left ~~turn~~ lane on northbound Centerville Road at the point of access.

(2) Construction of a right turn lane on southbound **Centerville** Road at the point of access.

(3) Construction of two (2) exit lanes and one (1) entrance lane at the point of access.

G. Plantings approved in advance by the County Director of Planning and VDOT, if necessary, shall be placed in the median of Richmond Road along those portions of Richmond Road which abut the Property.

H. (1) The entrance and road improvements described in subparagraphs B and C above shall be completed prior to approval of any final subdivision plat or final site plan for any lot, section or phase within the Property.

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(2) The plantings described in paragraph G above shall be completed or bonded in accordance with Section 19-72 of the County Code prior to approval of any building permit for any lot, section or phase within the Property.

I. The road improvements to Centerville Road described in subparagraph F above shall be completed or bonded prior to approval of any subdivision plat or final site plan for any lot, section or phase containing Residential Units within Land Bay V as shown on the Master Plan. The entrance and road improvements for Centerville Road described in subparagraph F above and the connection of the main road shown on the Master Plan connecting State Route 614 (Centerville Road) to U.S. Route 60 (Richmond Road) shall be completed or bonded prior to approval of any final subdivision plat or site plan for any lot, section or phase creating a cumulative total of 1,200 Residential Units within the Property. No Residential Units beyond 1200 shall be approved by the County until said improvements and connection have been completed or bonded. If said improvements and connection to Centerville Road have not then been completed, then the Owner shall provide an additional traffic impact analysis (reviewed and approved by the County Director of Planning and VDOT) to include:

(1) A count of actual traffic using the U.S. Route 60 (Richmond Road) access during the AM and PM peak hours.

(2) A determination of the actual trip generation rates of the existing Residential Units during the AM and PM peak hours.

(3) A forecast for the then remaining Residential Units on the Property to be built to determine if the sum of the traffic from said remaining Residential Units at actual

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trip generation rates without the State Route 614 (Centerville Road) connection added to the actual trips exiting and entering the Property at U.S. Route 60 (Richmond Road) is less than or greater than the Residential Unit traffic assigned to U.S. Route 60 (Richmond Road) in the Traffic Study.

(4) If it is determined that the sum of said remaining Residential Unit traffic at actual trip generation rates without the State Route 614 (Centerville Road) connection added to the actual trips exiting and entering the Property at U.S. Route 60 (Richmond Road) is greater than the Residential Unit traffic assigned to U.S. Route 60 (Richmond Road) in the Traffic Study, then the additional traffic impact analysis will determine either:

(a.) That the traffic **from** said remaining Residential Units based on actual **trip** generation rates will not change the levels of service (letter grade) presented in the Traffic Study in which event subdivision **and/or** final site plan approval may proceed beyond the 1,200 units described above, or

(b.) Additional road improvements identified by the Traffic Study and needed on U.S. Route 60 (Richmond Road) to provide the levels of **service** (letter grade) presented in the Traffic Study for the remaining Residential Units at actual trip generation rates will be provided by the Owner.

(5) The improvements identified in 3(I)(4)(b) above, if any, shall be installed or bonded as described below prior to final site plan or subdivision approval for any

Residential Units beyond **1200**. Except as provided to the contrary above, the Owner may obtain final plat or site plan approval by providing for completion of the required improvements and by entering into an agreement with the County and **furnishing** to the County a certified check, bond with surety or letter of credit satisfactory to the County, along with such agreements which are satisfactory to and approved by the County Attorney, all as more particularly set forth in Section **19-72** of the County Code.

J. Furthermore, the following additional measures shall be undertaken:

(1) Prior to issuance of a building permit for the 600th Residential Unit on the Property, a trip generation study of the residential development of the Property shall be conducted and submitted to the County Director of Planning and VDOT for review and approval. The trip generation study shall conduct counts (**7** a.m. to **9** a.m. and **4** p.m. to 6 p.m.) and document actual two-way **A.M.** and P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued by the County as of the date of the study, but such counts shall be limited to entering and exiting counts at all residential points of access to the Property.

(a.) In the event that such actual two-way **A.M.** and/or P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued is greater than the residential trip generation rates projected in the Traffic Study, additional steps shall be taken as described in subparagraph 4 below to mitigate traffic impacts upon Richmond Road **and/or** Centerville Road.

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(b.) In the event that actual trip generation rates are equal to or less than those projected in the Traffic Study, development of Residential Units may proceed pending additional traffic studies as **described** below.

(2) Prior to issuance of a building **permit** for the 1,200<sup>th</sup> Residential Unit on the Property, a trip generation study of the residential development of the Property shall be conducted and submitted to the County Director of Planning and VDOT for review and approval. The trip generation study shall conduct counts (**7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.**) and document actual two-way A.M. and P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued by the County as of the date of **the** study, but such counts shall be limited to entering and exiting counts at all residential points of access to the Property.

(a.) In the event that the actual two-way A.M. and/or P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued is **grcater** than the residential **trip** generation rates projected in the Traffic Study, additional steps shall be taken as described in subparagraph 4 below to mitigate traffic impacts upon Richmond Road and/or Centerville Road.

(b.) In the event that actual trip generation rates are equal to or less than those projected in the Traffic Study, development of Residential Units may proceed pending additional traffic studies as described **bc**low.

(3) Prior to issuance of a building **permit** for the 1,600<sup>th</sup> Residential Unit on the Property, a trip generation study of the residential development of the Property shall

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be conducted and submitted to the County Director of Planning and VDOT for review and approval. The trip generation study shall conduct counts (7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.) and document actual two-way A.M. and P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued by the County as of the date of the study, but such counts shall be limited to entering and exiting counts at all residential points of access to the Property.

(a) In the event that the actual two-way A.M. and/or P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued is greater than the residential trip generation rates projected in the Traffic Study, additional steps shall be taken as described in subparagraph 4 below to mitigate traffic impacts upon Richmond Road and/or Centerville Road.

(b.) In the event that actual trip generation rates are equal to or less than those projected in the Traffic Study, development of Residential Units may proceed.

(4) In the event that such actual trip generation rates as determined above produced by Residential Units on the Property exceed those projected by the Traffic Study, additional roadway improvements shall be made after each trip generation study or, at the option of the County, cash **payment(s)** may be made to the County after each trip generation study in order to fund road improvements, additional signal coordination, capacity improvements on Richmond Road or **Centerville** Road, or other capacity needs generated by development of the Property as may be determined appropriate and approved in advance by the County Director of Planning; provided, however, that the aggregate cost of improvements **and/or** cash **payment(s)**

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described herein during the entire development of the Property shall not exceed a total of Five Hundred Thousand and ~~No~~/100 Dollars (\$500,000.00).

4. Underground Utilities. All existing and new utilities, including electrical and telephone wires, conduits and all sewer and water pipes within the Property (but outside of the area currently dedicated to the transmission lines for Dominion Virginia Electric & Power, Dominion Virginia Natural Gas and the City of ~~Newport~~ News) shall be underground, except as approved by the County Director of Planning.

5. Bus/Transit Facilities. A bus pull-off area and bus stop shelter shall be constructed on both Richmond Road and ~~Centerville~~ Road adjacent to the Property. Design and location of the pull-off and shelter shall be approved in advance by the County Transit Administrator.

6. Natural Resources. **Notwithstanding** the fact that all of the Property lies outside the Yarmouth Creek Natural Area, as mapped and described in the document entitled *Conservation Planning for the Natural Areas of the Lower Peninsula of Virginia*, the Owners shall commission a natural resource inventory of the Property which will map and describe unique and sensitive habitats for any known threatened **and/or** endangered species, as well as any rare species of concern ("Natural Heritage Resources") which are listed by the Virginia Department of Conservation and Recreation's Division of Natural Heritage ("DCR/DNH"). These investigations will be conducted by personnel who are qualified to conduct such studies and be submitted to and approved by the County Director of Planning prior to issuance of a land disturbance **permit** for any portion of the development of the Property occupied by any Natural Heritage Resource. If the natural resource inventory confirms that a Natural Heritage Resource

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exists on the Property, a conservation management plan will be prepared, submitted, and approved by the County Director of Planning, as well as any other agency responsible for the **protection/conservation** of the specific species inventoried prior to issuance of any land disturbance permit for the affected portion of the Property. All inventories and conservation management plans shall meet or exceed **DCR/DNH** standards. All approved conservation management plans shall be incorporated into the development plan of the Property and if unavoidable impacts will occur as a result of clearing, grading or construction, an appropriate mitigation plan will be developed by the Owners and approved by the County Director of Planning and the appropriate regulatory agency prior to issuance of a land disturbance permit for any portion of the development of the Property occupied by any Natural Heritage Resource.

7. Sidewalks. Sidewalks shall be constructed on one side of the road along those portions of Richmond Road and **Centerville** Road which abut the Property. These sidewalks shall be constructed prior to issuance of a building permit by the County for the 250<sup>th</sup> Residential Unit within the Property. Should VDOT or other permitting issues delay completion of the sidewalks described in this paragraph, the Owners may be issued building permits beyond 250 Residential Units after bonding pursuant to §19-72 of the County Code.

8. Public Use Site or Cash Contribution.

A. In order to mitigate impacts upon the County of development of the Property, either cash payments pursuant to paragraph B below, or a conveyance of real property pursuant to paragraph C below shall be made to the County. The election to receive cash payments or real property as described below shall be made by resolution adopted by the County Board of Supervisors on or before the later of (i) thirty (30) calendar days after a draft

groundwater withdrawal permit for a desalinization plant has been issued as described in Section II, paragraph 15 below, or (ii) September 30, 2002, *time being of the essence*. Should the County Board of Supervisors fail to adopt a resolution making the election described above within the time period described herein, the election shall be made by U.S. Home.

**B.** In the event that cash payments to the County are elected as described above, the following terms shall apply:

(1.) A contribution shall be made to the County in the amount of Seven Hundred Fifty Thousand and ~~No/100~~ Dollars (\$750,000.00) to be used by the County for acquisition or improvement of a Public Use **Site(s)**, or any other project in the County's capital improvement plan, the need for which is generated by development of the Property. This contribution shall be payable at the rate of Seven Hundred Fifty and ~~No/100~~ Dollars (\$750.00) for each of the first one thousand (1,000) Residential Units developed on the Property (the "Per Unit Contribution"), payable upon the earlier of the time of final subdivision plat or final site plan approval by the County of each said Residential Unit or grouping, phase or section of Residential Units.

(2.) The Per Unit **Contribution(s)** paid in each year shall be adjusted annually beginning January 1, 2003 to reflect any increase or decrease for the preceding year in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the Per Unit Contribution be adjusted to a sum less than Seven Hundred Fifty and ~~No/100~~ Dollars (\$750.00) per Residential Unit. The adjustment shall be made by multiplying the Per Unit Contribution for the preceding year by a

**fraction**, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPI as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the CPI, then the Per Unit Contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing CPI. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the Per Unit Contribution to approximate the rate of annual inflation in the County.

C. In the event that conveyance of real property to the County is elected as described above, the following terms shall apply:

(1.) The Owners shall convey to the County for use as a public use site that certain portion of the Property more particularly shown and described on the attached plat/drawing entitled: "COLONIAL HERITAGE – PUBLIC USE SITE A" ("Public Use Site A"). Public Use Site A shall be subject to restrictive covenants benefiting the Owners and the Association, prohibiting uses **and/or** development except as described in subparagraph 3. Public Use Site A shall be conveyed to the County on or before such date as is three (3) years from the date of final approval of the rezoning of the Property with these Proffers by the County Board of Supervisors; or in the alternative at any time prior to the conveyance of Public Use Site A to the County, the Owners may convey a site in accordance with subparagraph 2.

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(2.) The Owners may, at their sole and exclusive option, convey to the County for use as a public use site that certain property shown on the attached plat entitled: "COLONIAL HERITAGE – PUBLIC USE SITE B" ("Public Use Site B"). Public Use Site B shall be conveyed subject to restrictive covenants benefiting the Owners and the Association, prohibiting uses and/or development except as described in subparagraph 3 below.

(3.) The public use site conveyed to the County pursuant to this proffer (either Public Use Site A or Public Use Site B described above) shall be conveyed subject to restrictive covenants running with the land which shall limit the use **and/or** development of the public use site to uses intended to mitigate the impacts of development of the Public Use Site on the Property and to protect and enhance development of the remainder of the Property. Accordingly, use of the public use site described and conveyed above shall be restricted to the following uses permitted by the MU-Mixed Use Zoning District ("MU Ordinance") defined within the County Code as of the date hereof:

- Community recreation facilities, including parks, playgrounds, swimming pools, ballfields, tennis courts, and other similar recreation facilities
- Fire station
- Health, exercise **and/or** fitness center
- Hospital
- Indoor sport facility
- Library
- Parking lot
- Public meeting hall
- School(s)

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## SECTION II. Proffers Applicable to Residential Property

1. **Age Restriction.** Occupancy of Residential Units developed upon the Property shall be age restricted to persons fifty-five (55) years of age or older in accordance with the following parameters:

**A.** It is the intent of the parties that Residential Units shall be occupied by persons fifty-five (55) years of age or older and that no Residential Unit shall be occupied by a person under the age of eighteen (18). In some instances, persons under the age of fifty-five (55) but over the age of eighteen (18) shall be entitled to occupy Residential Units, subject, at all times, to the laws and regulations governing age fifty-five (55) and over restricted housing as more particularly set forth and described in subparagraph B below.

**B.** Each Residential Unit within the Property shall have a master bedroom and bath on the main floor of such unit and shall be developed and operated in compliance with applicable federal and state laws and regulations regarding housing intended for occupancy by persons fifty five (55) years of age or older, including but not limited to: the Fair Housing Act, 42 U.S.C. §3601 et seq. and the exemption therefrom provided by 42 U.S.C. §3607(b)(2)(C) regarding discrimination based on familial status; the Housing for Older Persons Act of 1995, 46 U.S.C. §3601 et seq.; the Virginia Fair Housing Law Va. Code §36-96.1 et seq.; any regulations adopted pursuant to the foregoing; any judicial decisions arising thereunder; any exemptions and/or qualifications thereunder; and any amendments to the foregoing as now or may hereafter exist. Specific provisions of the age restriction described above and provisions for enforcement of same shall be set forth in a declaration of restrictive covenants and property owners' association documents described in Section II, paragraph 8 below.

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2. Density. No more than two thousand (2,000) Residential Units shall be developed upon the Property.

3. Water Source: Cash Contribution. A contribution shall be made to the County in the amount of Seven Hundred Fifty and ~~No~~/100 Dollars (\$750.00) for each Residential Unit developed on the Property (the "Per Unit Contribution"). The County shall make these monies available for development of water supply alternatives.

A. Such contributions shall be payable for each of the Residential Units developed within the Property upon the earlier of the time of **final** subdivision plat or final site plan approval by the County for the particular Residential Unit or grouping, phase or section of Residential Units.

B. The Per Unit **Contribution(s)** paid in each year shall be adjusted annually beginning January 1, 2003 to reflect any increase or decrease for the preceding year in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the Per Unit Contribution be adjusted to a sum less than Seven Hundred Fifty and ~~No~~/100 Dollars (\$750.00) per Residential Unit. The adjustment **shall** be made by multiplying the Per Unit Contribution for the preceding year by a fraction, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of **which** shall be the CPI as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the CPI, then the Per Unit Contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing CPI. In the event that

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the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for **purposes** of increasing the Per Unit Contribution to approximate the rate of annual inflation in the County.

4. **Neighborhood Recreation Facilities.** The following recreation facilities shall be provided, open to all residents of the Property, maintained and regulated by the Association (defined below):

A. Park land which meets or exceeds the Guidelines (defined below) shall be established by U.S.Home. Included shall be an eighteen (18) hole golf course, an approximately 10 acre clubhouse site with a clubhouse facility of at least 15,000 square feet and related amenities. Clubhouse amenities shall include a room for library use which shall accommodate a cooperative program between the **Williamsburg** Regional Library (or successor public library) and the Association (defined in Section II, paragraph 8 **below**). Clubhouse amenities shall also include an aerobic exercise room and locker rooms.

B. Tennis courts numbering not fewer than three (3).

C. An indoor and an outdoor swimming pool with an aggregate area of all pools (whether one or more, indoor, outdoor or both) not less than twenty-five (25) meters by twenty-five (25) meters.

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D. The golf course, clubhouse and swimming pool(s) and tennis courts shall be completed before issuance of the Certificate of Occupancy for the 450<sup>th</sup> Residential Unit within the Property.

E. (1) An area for a public greenway shall be conveyed to the County generally as shown on the Master Plan. Such greenway shall be located exclusively within the resource protection area ("RPA"), as defined on the date hereof, and as generally shown on the Master Plan and not exceeding 30 feet in width.

(2) The greenway described herein shall be conveyed subject to restrictive covenants prohibiting all motorized vehicles from operating thereon, and further prohibiting all buildings or structures thereon.

(3) The Owners, or the Association as successor in interest to the Owners, shall convey the greenway described herein only at such time as a public greenway has been acquired by, conveyed or dedicated to the County at either terminus of the greenway shown upon the Master Plan, physically connecting the greenway on the Property to other public greenways and to a public greenway system maintained by the County.

(4) The general location of greenways within the Property shall be described in advertising, promotional and disclosure materials published by the Owners.

5. Transitional Screening

A. A landscape area shall be established between all commercial and residential use areas within the Property. Such landscape area shall be thirty-five (35) feet in

width, and shall contain plantings which meet or exceed the landscape area standards of Section **24-94** of the Zoning Ordinance. This landscape area may be located on areas within the Property which are designated for commercial or residential uses, or partly on both, but no portion of said landscape area shall be part of any individual lot designated for a Residential Unit.

B. A buffer of one hundred fifty (150) feet shall be maintained between any lot and the **Centerville** Road right-of-way as it exists on the date hereof. In areas of this buffer which are not presently wooded, a minimum of three (3) trees per four hundred (400) square feet of buffer area shall be planted; not less than fifty percent (50%) of such trees shall be evergreen species.

C. The buffer proffered in paragraph B of this Section II paragraph 5 may, with the approval of the Planning Director, include **entrance/exit** roads, directional **signage**, underground utilities, underground and above ground drainage facilities, bus stops, curbs, gutters, sidewalks, fences and signs.

6. Golf Course Water Usage. Unless otherwise specifically approved by the Board of Directors of the James City Service Authority, no groundwater or water supplied by a public water system as defined in the Zoning Ordinance shall be used for irrigation purposes upon the golf course developed upon the Property. The term "groundwater" as used in this paragraph shall not include surface water, surface water runoff, stormwater, water from stormwater management facilities (including those facilities commonly known as or defined by the County Code, Virginia Code or applicable regulations, best management practices or **BMPs**), water from ponds, lakes or other impoundments not supplied by wells. Design features, including the use of

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drought tolerant grasses and **plantings**, a water conservation plan, and drought management plan shall be implemented to reduce the total irrigated area of the golf course in order to accomplish the limitation on use of public water and groundwater contained within this **paragraph**.

7. Additional Water Conservation.

A. The Owners and the Association shall be responsible for developing water conservation standards to be submitted to and approved by the James City **Service** Authority. The Association shall be responsible for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of **irrigation** systems, the use of approved landscaping materials, and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards shall be approved by the James City Service Authority prior to the first subdivision plat approval for a Residential Unit within the Property.

B. No irrigation **well(s)** shall be established or utilized for any Residential Unit within the Property.

8. Property Owners Association. A residential property owners' association ("Association") shall be established in accordance with the Virginia Property Owners' Association Act, §55-508 *et seq.* of the Virginia Code, in which all owners of Residential Units within the Property, by virtue of their property ownership, shall be members. The articles of incorporation or organization and bylaws of the Association and declaration of restrictive covenants enforceable by the Association shall be submitted to and reviewed by the County Attorney for consistency with this proffer. Such governing documents shall require or provide for, *inter alia* the following:

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A. The Association shall adopt an annual maintenance budget and assess all members for the maintenance of all properties owned **and/or** maintained by the Association, including private roads.

B. The Association shall be granted the right to adopt and enforce rules and regulations with respect to the use of common areas and with respect to other areas of responsibility of the Association.

C. The Association shall have the power to assess its members in order to provide for the budget described above, and shall further have the power to levy special assessments, and to have a lien upon property owned by its members for collection and enforcement of such assessments, and for the cost of remedying violations of the rules and regulations established by the Association. Separate owners' associations may be established for individual sections within the Property, and impose supplemental restrictive covenants on individual sections or areas of the Property.

D. The Association shall have the power and shall enforce the age restrictions described above, including without limitation the application of such restrictions upon sale **and/or** resale of any Residential Unit.

E. The Association shall administer the Automatic External Defibrillator program described in Section II, paragraph 14 below.

F. The Association shall be charged with the obligation to provide for not less than one (1) uniformed security guard to be continuously stationed at the main entrance to the Property from Richmond Road. Such security guard need not be, but may be at the

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discretion of the Association (subject to appointment procedures established by law), (i) a special police officer(s) and/or conservator(s) of the peace, and/or (ii) armed.

G. The Association shall conduct or facilitate a golf instructional program for children of low income families residing in the County, so as to expose children to the game of golf. Such instructional program shall be conducted no less frequently than two (2) times per calendar year.

9. Private Streets. All streets (as defined by the County Code) within the residential portions of the Property shall be private and shall conform to VDOT construction standards. All private streets shall be certified to the satisfaction of the County engineer as required by Section 19-49 of the County Code. Curb and gutter shall be constructed on any streets on which a Residential Unit fronts.

10. Deed Provisions. Every deed by which any lot or parcel created for a Residential Unit is first conveyed to any owner by the Owners shall contain reference to the age restriction provisions of Section II, paragraph 1 above.

11. Streetscapes. Any and all residential development within the Property shall be in conformity with the County Streetscape Guidelines Policy as in effect on the date hereof. No Residential Unit(s) shall front on any portion of the main arterial street shown on the Master Plan running from U.S. Route 60 (Richmond Road) to State Route 614 (Centerville Road).

12. Sidewalks/Pedestrian and Bicycle Trails.

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A. (1) Sidewalks shall be constructed on at least one (1) side of every internal street or road constructed within the Property, and sidewalk construction shall be completed at the same time as the adjacent road is constructed.

(2) Sidewalks (or a combination of **sidewalks** and the pedestrian trails described in subparagraph B below) shall be constructed on both sides of any internal street on which multiple family or two-family (as defined in the County Code) Residential Units front.

(3) At any point where sidewalks or pedestrian trails described herein cross and connect to another sidewalk or trail across the main arterial street shown on the Master Plan connecting U.S. Route 60 (**Richmond Road**) with State Route 614 (Centerville Road), striping, **signage**, and pavement texturing shall be designed and implemented to assure the visibility of such crossing. All such measures shall be subject to the approval of the County Director of Planning.

B. A system of pedestrian and bicycle trails shall be constructed in connection with each phase, section or land bay shown on the Master Plan (which trail system shall include the sidewalks described above) conforming to the following design guidelines:

(1) All pedestrian trails shall be not less than four (4) feet in width and all bicycle trails shall be not less than eight (8) feet in width.

(2) Access to abutting land bays shown on the Master Plan and connection of cul-de-sacs shall be established where practical as determined by the County Planning Director.

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(3) Interconnectivity for pedestrian traffic between the commercial or Non-Residential Use (defined below) areas of the Property shall be established as a part of pedestrian trail **and/or** sidewalk systems created pursuant to this paragraph.

(4) Trails shall avoid lands with greater than twenty-five percent (25%) slopes, environmentally sensitive areas and areas designated as resource protection areas where practical as determined by the County Chesapeake Bay Administrator.

(5) Paved surfaces shall be provided, except as limited by environmentally sensitive areas, wherein pervious, soft surfaces underlaid with filter cloth shall be employed, as determined by the County Director of Planning.

(6) One and one-half (1.5) miles of trail shall be provided for each 590 Residential Units constructed within the Property and all construction of such trails shall be assured by agreement with the County and by furnishing to the County a certified check, bond with surety or letter of credit satisfactory to the County as set forth in Section 19-72 of the County Code.

(7) Except as provided or contradicted above, the trails shall be designed to meet or exceed the standards of the County Comprehensive Parks and Recreation Plan proffer guidelines, as in effect on the date hereof ("Guidelines").

(8) Pedestrian and bicycle trails may, but shall not be required to be located within the buffers established pursuant to Section II, paragraphs 5(A), (B) and (C).



C. All sidewalks constructed within the Property shall meet or exceed the standards of Section 24-35 of the County Code.

13. EMS Equipment/Signalization: Cash Contribution.

A. A contribution shall be made to the County in the amount of Seventy Thousand and ~~No/100~~ Dollars (\$70,000.00) for ~~fire~~ and rescue equipment replacement and supply and traffic signal preemption equipment. This payment shall be made at the rate of Seventy and ~~No/100~~ Dollars (\$70.00) per Residential Unit (the "Per Unit Contribution") for the ~~first~~ one thousand (1,000) Residential Units within the Property, and shall be payable upon the earlier of the time of final subdivision plat or final site plan approval by the County of each said Residential Unit or grouping, phase or section of Residential Units or, in the case of signal preemption equipment, when said equipment is installed.

B. The Per Unit **Contribution(s)** paid in each year shall be adjusted annually beginning January 1, 2003 to reflect any increase or decrease for the preceding year in the Consumer Price **Index**, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the Per Unit Contribution be adjusted to a sum less than Seventy and ~~No/100~~ Dollars (\$70.00) per Residential Unit. The adjustment shall be made by multiplying the Per Unit Contribution for the preceding year by a fraction, the numerator of which shall be the CPI as of **December 1** in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPI as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the CPI, then the Per Unit Contribution shall be adjusted based upon the figure that would have resulted

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had no change occurred in the manner of computing CPI. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing **an** inflationary factor for purposes of increasing the Per Unit Contribution to approximate the rate of annual inflation in the County.

C. **A** contribution shall be made to the County in the amount of Fifty Thousand and ~~No/100~~ Dollars (\$50,000.00) for application to the purchase of a new ~~paramedic/first~~ aid vehicle or unit. These funds may be, at the discretion of the Board of Supervisors of the County, applied to other capital needs of the County Emergency Medical Services deemed by the County to be generated by development of the Property. This payment shall be made prior to final site plan or subdivision plat approval for any Residential Units beyond 400 within the Property.

14. Automatic External Defibrillator ("AED") Program. **An** AED program shall be established for administration by the Association within the Property which shall comply with Section 32.1-111.14:1 *et seq.* of the Code of Virginia, as written on the date hereof, and Virginia State Board of Health regulations promulgated pursuant thereto. Not less than one defibrillator per building to be used as a part of the AED program shall be supplied by the Owner for use in this AED program for every building constructed for public occupancy on the Property of the Association (exclusive of golf course maintenance buildings, equipment sheds, pump houses, storage buildings, Residential Units and other outbuildings of less than 2,000 square feet. The

existence of such AED program and an implementation schedule shall be confirmed by the County Fire Chief prior to any final site plan or subdivision plat approval.

15. Limitation On Land Disturbance Permit Issuance.

A. No land disturbance permit shall be issued by the County for any development of any portion of the Property containing Residential Units until either a draft groundwater withdrawal permit for a desalinization plant has been issued by the Department of Environmental Quality to the County or another suitable source of water has been identified by the County. The existence and adequacy of any such other suitable source of water shall be subject to approval by the County Board of Supervisors prior to issuance of land disturbance permit(s) for the Property absent the issuance of the draft groundwater withdrawal permit described above.

B. Notwithstanding the aforesaid, the Owners may file with the County all necessary site plans, subdivision plans, building plans, etc.; however, the approval of such plans by the County shall not result in the issuance of any permits for construction unless and until the said draft groundwater withdrawal permit has been issued or another suitable source of water has been identified by the County.

16. Cash Contributions For Additional Community Impacts.

A. An additional contribution shall be made to the County in the amount of Four Hundred Thirty-Eight and No/100 Dollars (\$438.00) for each of the first one thousand (1,000) Residential Units developed on the Property (the "Per Unit Contribution"), in order to mitigate additional impacts on the County arising from the physical development and/or physical

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operation of the Property. The County may make these monies available for any project in the County's capital improvement plan, the need for which is generated by the physical development **and/or** physical operation of the Property.

B. The contributions described above, unless otherwise specified, shall be payable for each of the Residential Units developed within the Property at the time of final subdivision plat or final site plan approval by the County for the particular Residential Unit or grouping, phase or section of Residential Units.

C. The Per Unit **Contribution(s)** paid in each year shall be adjusted annually beginning January 1, 2003 to reflect any increase or decrease for the preceding year in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the Per Unit Contribution be adjusted to a sum less than Four Hundred Thirty-Eighty and ~~No/100~~ Dollars (\$438.00) per Residential Unit. The adjustment shall be made by multiplying the Per Unit Contribution for the preceding year by a **fraction**, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of **which** shall be the CPI as of December 1 in the preceding year. In the event a substantial change is made **in** the method of establishing the CPI, then the Per Unit Contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing CPI. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary

factor for purposes of increasing the Per Unit Contribution to approximate the rate of annual inflation in the County.

### **III. Proffers Applicable to Commercial Property**

1. Area of Nonresidential Uses. A portion of the Property as shown on the Master Plan shall be developed for Nonresidential Uses defined in Section 24-521 **and/or** Section 24-522 of the Zoning Ordinance as written on the date hereof ("Nonresidential Use").

2. Development Plans. Design review standards for Nonresidential Use development shall be established by the **Owner(s)** and provided to the County Director of Planning for approval. Thereafter, conceptual plans and conceptual elevations for development shall be approved prior to site plan approval for any Nonresidential building by the County Development Review Committee of the Planning Commission with a procedure generally as provided by Section 24-142 et seq. of the Zoning Ordinance so as to assure **conformity** with such design review standards, including but not limited to the following:

- (a) location and uses of buildings,
- (b) building orientation,
- (c) landscaping, open space and buffers,
- (d) location and number of entrances,
- (e) pedestrian and vehicular connections,
- (f) building height, and size of any single building

- (g) architectural design,
- (h) setbacks from adjacent properties or roadways,
- (i) signs.

Such approval shall be designed to address the uniformity, appearance and quality of Nonresidential Use of the Property, and shall not be unreasonably withheld.

3. Homeowners' Association Not to Control Commercial Property. The Association shall not control any of the Property developed for Nonresidential Uses. This provision shall not be read to preclude establishment of a separate association created in connection with development of areas of Nonresidential Use within the Property.

4. Strip Shopping Center(s) Prohibited. No retail construction/development or nonresidential use shall be undertaken in Land Bay VI that consists of a row or line of building fronts or separately occupied businesses which are one (1) unit deep, parallel or principally oriented to Richmond Road. A majority of the parking spaces provided shall not be located between the buildings and Richmond Road but shall instead be located beside **and/or** behind the buildings. Street frontage along Richmond Road shall primarily consist of buildings and open space. At least two pedestrian connections shall be provided from U.S. Route 60 (Richmond Road), one shall be provided from the main spine road, and one from Land Bay I. All pedestrian connections shall be **paved** and be at least four feet wide. All commercial uses within Land Bay VI shall be interconnected for both pedestrian and motor vehicular access. It is the intent of this proffer to prohibit development commonly known as "strip commercial development."

Development plans for Land Bay VI shall be approved by the Planning Director as to **their** compliance with these proffers.

5. Richmond Road Buffer. A buffer of fifty (50) feet shall be maintained between any parcel, lot or property line within the Property and the Richmond Road right-of-way as it exists on the date hereof. The buffer proffered in this Section III, paragraph 5 may, with the approval of the Planning Director, include **entrance/exit** roads, directional **signage**, underground utilities, underground and above ground drainage facilities, bus stops, curbs, gutters, sidewalks, fences and signs.

#### **IV. Miscellaneous Provisions**

1. Headings. All section and subheadings of these Proffers are for convenience only and shall not be read as a part of these Proffers or utilized in interpretation thereof.

2. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged by any court of competent jurisdiction to be **invalid** or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or provision hereof.

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3. Conflicts. In the event that there is any conflict between these Proffers and the Zoning Ordinance, the conflict shall be resolved by the County's Zoning Administrator subject to the appeal process to the Board of Supervisors and the Courts as otherwise provided by law.

4. Successors and Assigns. This Proffer Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns.

5. Void if Rezoning not Approved. In the event that the **requested** rezoning is not approved by the County, these Proffers shall be null and void.

6. Cash Proffer Condition. Notwithstanding any provision of these Proffers, no cash payment, contribution or cash proffer described above shall be due or payable prior to such date as the draft groundwater withdrawal permit described in Section 11, paragraph 15 above has been issued, or another suitable source of water has been identified by the County so as to allow issuance of a land disturbance **permit** as described in that paragraph.

7. Cash Proffer Disposition. In the event that any cash **payment(s)** or real property conveyed as required under the terms of these proffers are not used by the County for the **purpose(s)** designated within twenty (20) years from the date of receipt by the County, the amounts or Property not used shall be used at the discretion of the Board of Supervisors of the County for any other project in the County's capital improvement plan, the need for which is generated by the development of the Property.

8. Inflation Adjustment of Cash Proffered. The payments described in Section I paragraph 3(J)(4), and Section II, paragraph 13(B) above shall be inflation adjusted to reflect changes in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All



Items (1982-84=100) (the "CPI") prepared and reported by the U.S. Bureau of Labor Statistics of the United States Department of Labor.

A. The adjustment shall be made by increasing or decreasing the payment (or any portion thereof) due by the percentage change in CPI **from** (i.) the date of the resolution described in Section IV paragraph 9 below through (ii) the last day of the month most recently preceding the date on which the cash payment is due, payable or paid.

B. In no event shall the unadjusted proffered cash **payment(s)** be adjusted to a sum less than the amount specified in the particular paragraphs described herein.

C. In the event **that** the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of adjusting proffered cash payments to reflect the rate of inflation in the County after approval of the Application.

9. Signature by County. The County's Director of Planning has executed these Proffers solely for purpose of **confirming** the filings and submissions described in the Recitals section above, and confirming approval **by** the County Board of Supervisors of the rezoning of the Property with these Proffers by a resolution dated November 27, 2 0 0 1 .

NOV 30 07:55

U.S. HOME CORPORATION, a Delaware  
corporation

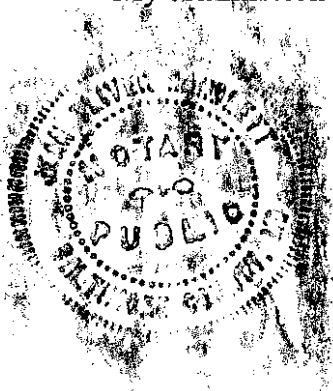
By: [Signature]  
Name: Wm P Gerald Jr  
Title: Regional V.P.

COMMONWEALTH OF VIRGINIA  
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of November, 2001, by Wm. P. Gerald Jr., Regional V.P. of U.S. Home Corporation, a Delaware corporation, in its behalf.

[Signature]  
Notary Public

My commission expires: March 6, 2004



NOV 30 2001 0796

VAJACK, LLC, a Virginia limited  
liability company

By: Jack L. Massie  
Jack L. Massie, Trustee

By: Virginia M. Massie  
Virginia M. Massie, Trustee

Trustees of the Jack L. Massie and Virginia  
M. Massie Revocable Trust as restated  
November 28, 2000

COMMONWEALTH OF VIRGINIA  
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me this 15 day of November  
2001, by Jack L. Massie and Virginia M. Massie, Trustees of the Jack L. Massie and Virginia M.  
Massie Revocable Trust as restated November 28, 2000.

Lakewood M. Harrison  
Notary Public

My commission expires: July 31, 2002



NOV 30 07 97

MASSIE CORPORATION, a Virginia  
corporation

By: Jack L. Massie  
Name: Jack L. Massie  
Title: President

COMMONWEALTH OF VIRGINIA  
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me this 15 day of November  
2001, by Jack L. Massie, President, of Massie Corporation, a  
Virginia corporation, in its behalf.

Laverne M. Hunter  
Notary Public

My commission expires: July 31, 2002

NOV 30 07 98

L. Wallace Sink (SEAL)

L. Wallace Sink, Trustee of the Marital Trust under  
the Will of David W. Ware, deceased

STATE OF VIRGINIA  
City of Hampton, to-wit:

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2001,  
by L. Wallace Sink, Trustee of the Marital Trust under the Will of David W. Ware, deceased.

Helen H. DeCoursey (SEAL)  
Helen H. DeCoursey, Notary Public

My commission expires:  
September 30, 2003



NOV 30 0799

THE COUNTY OF JAMES CITY,  
VIRGINIA

By: [Signature]  
Name: O. M. Sowers, Jr.  
Title: Director of Planning

## COMMONWEALTH OF VIRGINIA

City/County of James City, to wit:

I, the undersigned, a Notary Public in and for the County and State aforesaid, do certify that O. Marvin Sowers, Jr., whose name is signed to the foregoing document, has acknowledged the same before me.


Given under my hand this 28th day of November, 2001.

Mary Frances Rieker  
Notary Public

My commission expires: October 31, 2005

NOV 30 0800

APPROVED AS TO FORM:

  
County Attorney

COMMONWEALTH OF VIRGINIA

City/County of James City, to wit:

I, the undersigned, a Notary Public in and for the County and State aforesaid, do certify that Leo P. Rogers, whose name is signed to the foregoing document, has acknowledged the same before me.

Given under my hand this 28th day of November, 2001.

  
Notary Public

My commission expires: October 31, 2005.

NOV 30 08 01

**EXHIBIT A****A PORTION OF THE VAJACK PROPERTY**

That certain tract or parcel of land in **Powhatan** Magisterial District, James City County, Virginia, containing 470 acres, more or less, being all of the tract of 480 acres that **was** conveyed to Leon H. **Cooley** by deed from Louise Trosvig and husband, dated January 14, 1918 and recorded in the Clerk's Office of said County in Deed Book 17, at page 272, less 10 acres, a part thereof which was conveyed by deed to Leon H. **Cooley** and wife to Louise Trosvig, dated April 3, 1920 and **recorded** in said Clerk's **Office** in Deed Book 18, at page 450.

Said tract of 480 acres is bounded on the East by the Telegraph Road, now known as U. S. Highway No. 60; on the North by the land of W. G. W. Farthing and **Farmville** Spring Swamp, which separates it from the land of R. L. **Henley** and William H. E. Morecock; on the West by the Swamp which separates it from the land of R. L. **Henley** and H. B. Warren; on the South by the land of T. P. **Marston**, the land of E. C. **Wynne** and a 20 acre tract.

Said tract of 10 acres, shown as excluded above, is bounded and described **as** follows:

Commencing at the Northeast corner of the tract of land now owned **by** Louise Trosvig on the Main Road from **Williamsburg** to Richmond, **running** north along said road from Williamsburg to Richmond, running north along said road 7 rods; thence West between parallel lines with the land of Louise Trosvig 103 rods to a point; thence south 38 rods to the land of C. C. Branch to the southwest corner of the land of Louise Trosvig; thence north along the line of Louise Trosvig to a corner of her land; thence east along the line of Louise Trosvig to the Main Road, the point of beginning.

Excepting from the above description, however, 1.28 acres conveyed to the Commonwealth of Virginia, for additional right of way for State Highway No. 60 as will appear from deed recorded in Deed Book 20, at page 221.

It being the same property conveyed to JACK L. MASSIE ~~from~~ Jack L. Massie and Virginia M. Massie, his wife dated October 25, 1971 and duly recorded November 18, 1971 in the Clerk's Office of the Circuit Court of James City County in Deed Book 133 page 757.

LESS, SAVE AND EXCEPT that parcel conveyed to the Commonwealth of Virginia for Route 60, in Deed Book 95, at page 83 and the Order entered in Deed Book 109, at page 635, in the aforesaid Clerk's Office.

LESS, SAVE AND EXCEPT that parcel conveyed to the James City Service Authority in Deed Book 186, at page 531, in the aforesaid Clerk's Office.

LESS, SAVE AND EXCEPT that parcel conveyed to Virginia M. Massie, in Deed Book 237, at page 398, in the aforesaid Clerk's Office (described ~~herein~~ as the "Virginia M. Massie Property").

NOV 30 - 0802



It being the same property conveyed to Vajack, LLC by deed dated NOVEMBER 28, 2000, from JACK L. MASSIE AND VIRGINIA M. MASSIE, duly recorded NOVEMBER 30, 2000, in the Clerk's Office of the Circuit Court for the City of WILLIAMSBURG and COUNTY OF JAMES CITY, VIRGINIA as Instrument No. 000022356.

NOV 30 2000

**EXHIBIT B****A PORTION OF THE VAJACK PROPERTY**

All that certain, piece or parcel of land, situate, lying and being in the County of James City, Virginia, and containing **2.68** acres as described on that certain plat entitled "**Survey of 2.68 Acres** for conveyance to Virginia M. **Massie**", which said plat **was** dated May 17, 1983, and prepared by Paul C. Small, Land Surveyor, the said parcel fronting 234.18 feet on Route **60**, and **running** back therefrom between parallel lines along the Northerly side of said plat N 72 degrees **00' 00"** E a distance of **553.82** feet, and **running** back therefrom on the Southerly side S 71 degrees 12' 19" W a distance of **469.36** feet, the said parcel having a Westerly line which is N 19 degrees **27' 17"** W and **running** a distance of **228.20** feet.

It being the same property conveyed to Vajack, LLC by deed dated **NOVEMBER 28, 2000**, from JACK L. MASSIE AND VIRGINIA M. **MASSIE**, duly recorded **NOVEMBER 30, 2000**, in the Clerk's Office of the Circuit **Court** for the City of **WILLIAMSBURG** and COUNTY OF JAMES CITY, VIRGINIA as Instrument No. **000022356**.

NOV 30 2004

**EXHIBIT C****THE MASSIE CORP. PROPERTY**

All that certain lot, piece or parcel of land situate, lying and being in James City County, Virginia, designated as "94 ACRES +" on that certain plat entitled "TITLE SURVEY, 94+ ACRES LOCATED ON THE NORTH LINE OF **CENTERVILLE ROAD** STANDING IN THE NAME OF ELIZABETH CARTER, REF. W.B. 6-478, JAMES CITY COUNTY, VJRGINIA" dated June 27, 1985 and made by **AES**, a professional corporation, which said plat is attached hereto to be recorded herewith for a more complete description of the property herein conveyed, in Plat Book 41, at page 32.

It being the same property conveyed to MASSIE CORPORATION a Virginia corporation from ELIZABETH CARTER, **unmarried**, individually and as Executrix of the Estate of Signor **Bradby**, deceased dated July 24, 1985 and duly recorded August 14, 1985 in the Clerk's Office of the Circuit Court of James City County in Deed Book 278 page 734.

LESS, SAVE AND EXCEPT that certain parcel of land shown on a plat entitled "BOUNDARY LINE ADJUSTMENT BETWEEN **WILLIAM A. & ALINE W. WALLACE** AND THE MASSIE CORPORATION, LOCATED IN JAMES CITY COUNTY, VIRGINIA" made by Spearman & Associates, P.C., dated December 28, 1990, a copy of which is attached hereto and made a part hereof and shown thereon as: "AREA FOR CONVEYANCE = 3967.75 S.F. OR 0.091 ACRE", said parcel being bounded as follows: Beginning at a point which marks the southerly boundary of the properties of the Grantor and Grantee on Route 614 and thence proceeding N 14 degrees 30' 00" W. a distance of 194.95 feet to a point, thence proceeding N 88 degrees 30' 00" E. a distance of 41.77 feet to a point, thence proceeding S 02 degrees 07' 45" E. a distance of 189.97 feet to the point of beginning.

LESS, SAVE AND EXCEPT that parcel conveyed to the Commonwealth of Virginia for Route 614, in Deed Book 634, at page 397, in the aforesaid Clerk's Office.

NOV 30 0805

EXHIBIT D

## THE WARE TRUST PROPERTY

Approximately one hundred eighty (180) acres of land being all of the approximately two hundred five (205) acre tract owned by L. Wallace Sink, Trustee of the Marital Trust Under the Will of David W. Ware, fronting on Richmond Road, James City County, Virginia which was conveyed to David W. Ware by James E. Farthing, et als., by deed dated August 4, 1966 recorded in the Clerk's Office of the Circuit Court for **Williamsburg/James** City County, Virginia in Deed Book 107, page 670 and being more particularly described in such deed and shown on a plat attached thereto entitled, "Plat of Survey, A Tract Containing 205.79 acres, owned by David W. Ware" dated June 22, 1966 made by R. H. Highland, C.L.S. LESS **AND** EXCEPT: 25 +/- acres fronting on Richmond Road and bounded on the west by a line running parallel to Richmond Road at a distance **from** Richmond Road which will mark the westerly boundary line of a twenty five (25) acre parcel.

IT being part of the same property devised unto L. WALLACE SINK, TRUSTEE OF THE MARITAL **TRUST** UNDER THE WILL OF DAVID W. WARE, DECEASED, by Deed of Confirmation, **from** L. WALLACE SINK, ADMINISTRATOR C.T.A. OF THE ESTATE OF DAVID W. WARE, DECEASED, dated October 14, 1994, recorded November 17, 1994, in Deed Book 715, at page 97, in the Clerk's Office of James City County, Virginia.

#6010116v32 - U.S. HOME/PROFFERS

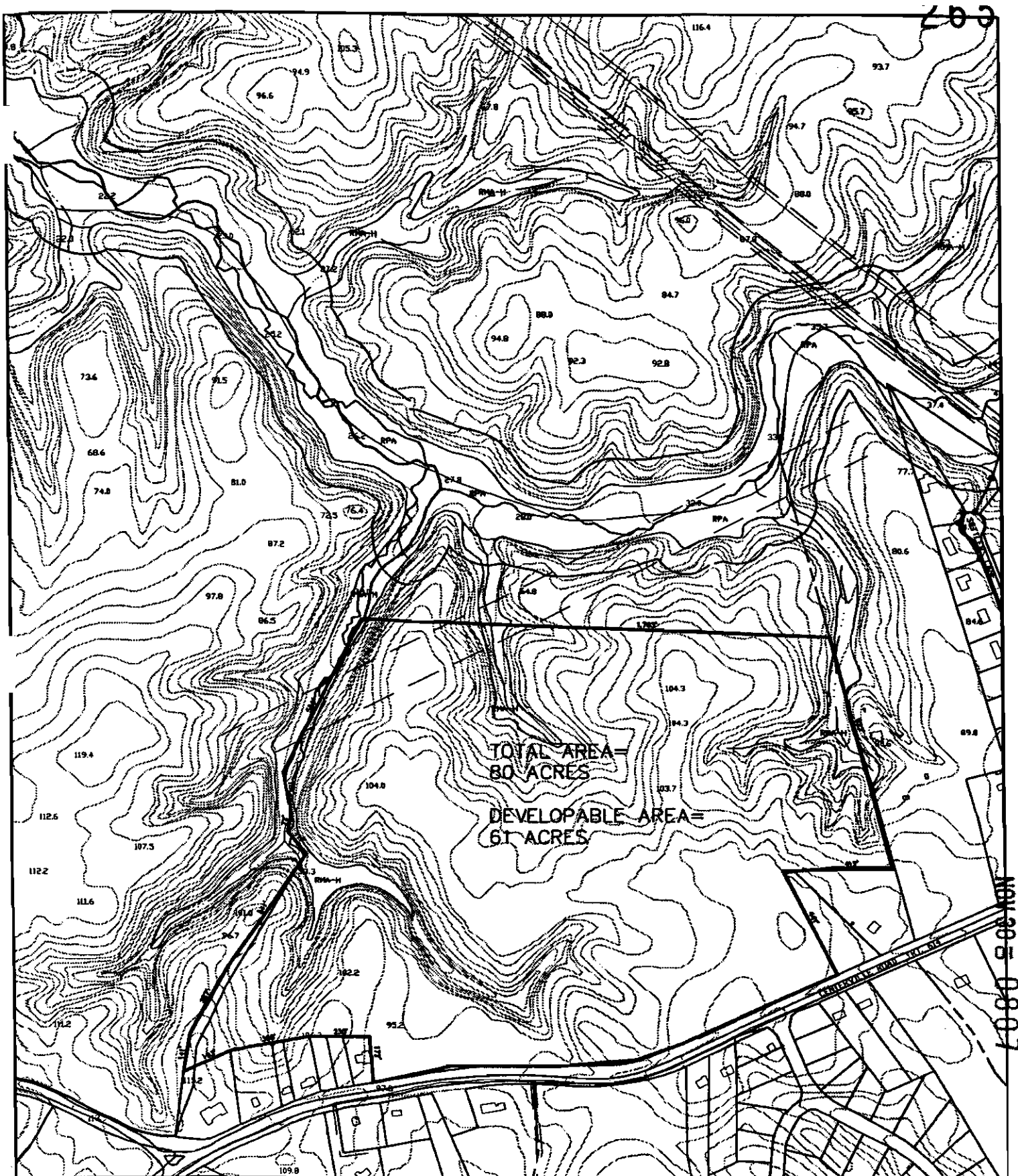
VIRGINIA: City of Williamsburg and County of James City, to Wit:  
In the Clerk's Office at the Circuit Court for the City of  
Williamsburg and County of James City the 30  
day of Nov, 2001 this Proffer  
was presented with the certificate annexed and admitted  
to record at 5:02 P.M. o'clock.

Teste:

By [Signature]  
Deputy Clerk

PLAT ATTACHED (2)

NOV 30 08 06



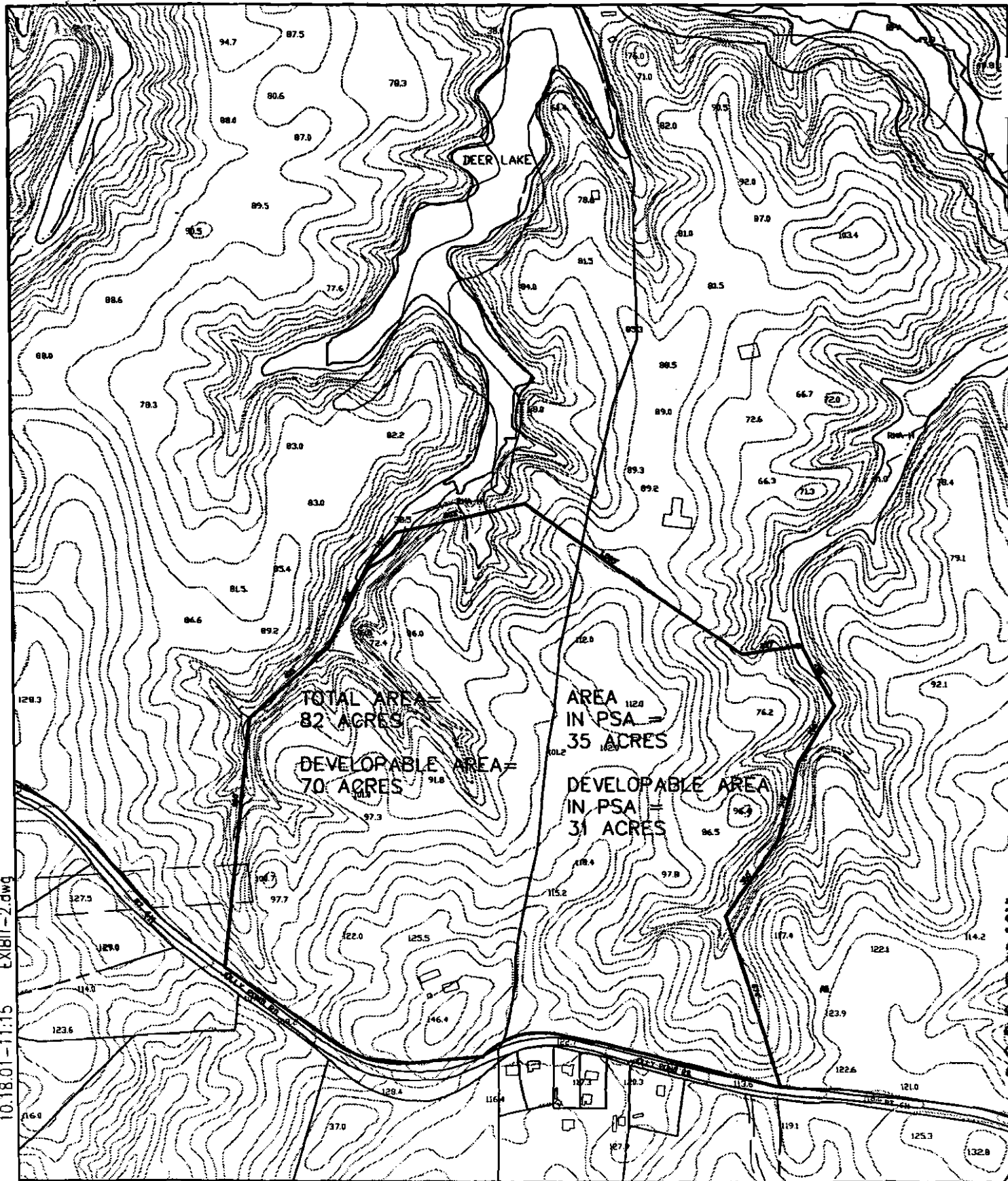
## Consulting Engineers

## Engineers, Surveyors, Planners

**Williamsburg, Virginia**

Designed <b>AES</b>	Drawn <b>AES</b>
Scale <b>1"=500'</b>	Date <b>10/18/01</b>
Project No. <b>8881</b>	
Drawing No. <b>1 OF 2</b>	

COLONIAL HERITAGE -  
PUBLIC USE SITE A



10.18.01-11:15 EXHIBIT-2.dwg

10.18.01-11:15 EXHIBIT-2.dwg

HBK



Consulting Engineers

Engineers, Surveyors, Planners

Williamsburg, Virginia

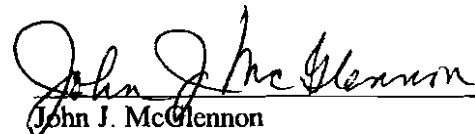
Designed AES	Drawn AES
Scale 1"=500'	Date 10/18/01
Project No. 8881	
Drawing No. 2 OF 2	

# COLONIAL HERITAGE - PUBLIC USE SITE B

NOV. 27, 2001

ORDINANCE No. 168A-6BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIAAGRICULTURAL AND FORESTAL DISTRICT 6-86.CRANSTON'S POND WARE PROPERTY WITHDRAWAL

- WHEREAS, a request to withdraw approximately **90.79** acres owned by **Trustee** of the Ware Estate, identified as Parcel No. (1-21) on James City County Real Estate Tax Map No. **(23-4)**, has been filed with the James City County Board of Supervisors; and
- WHEREAS, the Agricultural and Forestal District Advisory Committee, at its April 20, 2001, meeting, recommended the property be withdrawn by a vote of 7-0, with two absences; and
- WHEREAS, in accordance with Section 15.2-4314 of the Code of Virginia, a public hearing **was** advertised and held by the Planning Commission, and at its July 2, 2001, meeting, the Planning Commission recommended the property be withdrawn by a vote of 6 to 1; and
- WHEREAS, in accordance with Section 15.2-4314 of the Code of Virginia, a public hearing was advertised and held by the Board of Supervisors of James City County, Virginia; and
- WHEREAS, the Board finds that the withdrawal request meets the criteria set forth in the Board of **Supervisors** Withdrawal Policy for Agricultural and Forestal District Parcels Within the Primary Service Area, dated September 24, 1996.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, **Virginia**, hereby removes approximately 90.79 acres owned by the Ware Estate and served by **Trustee** L. Wallace Sink, as referenced herein **from** the 1,164.369-acre Cranston's Pond Agricultural and Forestal District.



John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner  
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
HARRISON	AYE
KENNEDY	AYE
NERVITT	AYE
GOODSON	AYE
MCGLENNON	NAY

Adopted by the Board of Supervisors of **James** City County, Virginia, this 27th day of November, 2001.

ADOPTED

JAN 22 2002

ORDINANCE NO. 182A-6BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIARENEWAL OF ARMISTEADAGRICULTURAL AND FORESTAL DISTRICT (AFD-1-89)

**WHEREAS,** the owner of the ~~properties~~ comprising the existing 311.83-acre Armistead Agricultural and Forestal District has requested to renew the District for a period of four years; and

**WHEREAS,** James City County has completed a review of the **Armistead Agricultural** and Forestal District; and

**WHEREAS,** in accordance with Section 15.2-4311 of the Code of Virginia, ~~property~~ owners have been notified, public meetings ~~have~~ been held, public hearings have been advertised, and **public** hearings have been held on the continuation of the Armistead Agricultural and Forestal District; and

**WHEREAS,** the Agricultural and Forestal District Advisory Committee at its meeting on December 20, 2001, recommended approval of the application; and

**WHEREAS,** the Planning Commission, following its public hearing on January 14, 2002, recommended approval of the application.

NOW, THEREFORE, BE IT **RESOLVED** by the Board of Supervisors of James City County, Virginia,

1. That the Armistead Agricultural and Forestal District is hereby continued for a period of four years beginning the 27th day of January, 2002, in accordance with the provisions of the Virginia Agricultural and Forestal District Act. Virginia Code Section 15.24300 et. seq.

2. That the district shall include the following **parcels**:

(31-2)(1-17)	Sarah H. Armistead	84.01 acres
(31-2)(1-14)	Sarah H. Armistead	54.03 acres
(31-3)(1-29)	Sarah H. Armistead	132.01 acres
(31-4)(1-1)	Sarah H. Armistead	<u>41.78</u> acres

Total: 311.83 acres

provided, however, that all land **within** 25 feet of the road right-of-way of Centerville Road (Route 614) shall be excluded from the District, and that all land within 45 feet of the road right-of-way of **Longhill** Road (Route 612) be excluded from the District.

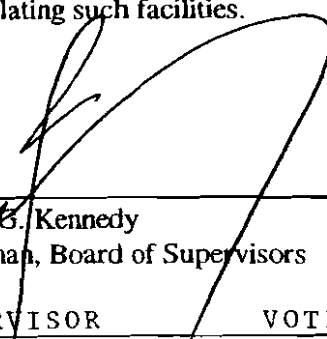
3. That pursuant to the Virginia Code, Section 15.2-4312, **as** amended, the Board of Supervisors requires that no parcel in the Armistead Agricultural and Forestal



- 2 -


District be ~~developed~~ to a more intensive use without prior ~~approval~~ of the Board of Supervisors. **Specifically**, the following restrictions **shall apply**:

- a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to ~~be created~~ for residential use by members of the owner's immediate family. ~~Parcels~~ of up to 5 acres, including necessary access roads, ~~may be subdivided for~~ the siting of telecommunications towers and related equipment, provided, ~~a) The subdivision does not cause the total acreage of the District to drop below 200 acres; and b) The subdivision does not result in a remnant parcel of less than 25 acres.~~
- b. No land outside ~~the~~ Primary Service Area (PSA) and within the Agricultural and Forestal District ~~may be rezoned~~ and no application for such rezoning shall be filed earlier than six months prior to the expiration of ~~the~~ district. Land inside the Primary Service Area (PSA) and within the Agricultural and Forestal District may be ~~withdrawn~~ from the District in accordance with the Board of Supervisors policy ~~pertaining~~ to Withdrawal of Lands from Agricultural and Forestal Districts ~~Within~~ the Primary Service Area, adopted September 24, 1996.
- c. No special use permit ~~shall be~~ issued except for agricultural, forestal or other activities and uses ~~consistent~~ with the State Code Section 15.2-4300 et. seq. which are ~~not~~ in conflict with the policies of this district. The Board of Supervisors, at its ~~discretion~~, may issue special use permits for wireless communications facilities on AFD properties which ~~are in~~ accordance with the County's policies and ordinances regulating such facilities.

  
James G. Kennedy  
Chairman, Board of Supervisors

SUPERVISOR	VOTE
MCCLENNON	AYE
BROWN	AYE
GOODSON	AYE
HARRISON	AYE
KENNEDY	AYE

ATTEST:



Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of January, 2002.

afd189.res

JAN 22 2002

ORDINANCE NO. 190A-4BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIARENEWAL OF WILLIAMSBURG FARMSAGRICULTURAL AND FORESTAL DISTRICT (AFD-1-93)

WHEREAS, the owner of the properties comprising the existing 301.5-acre **Williamsburg Farms** Agricultural and Forestal District has requested that the District be renewed for a **period** of four years; and

WHEREAS, the owner has filed a written notice in accordance with Section **15.2-4311** of the Code of **Virginia** requesting that approximately 7.2-acres be withdrawn from Parcel No. **(1-10)** on James City County Real Estate Tax Map No. **(48-4)** during the review of the **Williamsburg Farms** Agricultural and Forestal District; and

WHEREAS, James City County has **completed** a review of the Williamsburg Farms Agricultural and Forestal District; and

WHEREAS, in accordance with Section **15.2-4311** of the Code of Virginia, property owners have been notified, public meetings have been held, public hearings have been advertised, and public hearings have been held on the continuation of the **Williamsburg Farms** Agricultural and Forestal District; and

WHEREAS, the Agricultural and Forestal District Advisory **Committee** at its meeting on December 20, 2001, recommended approval of the application; and

WHEREAS, the Planning Commission, following its public hearing on January 14, 2002, recommended approval of the application.

NOW, THEREFORE. BE IT RESOLVED by the Board of Supervisors of James City County, Virginia,

1. That the Williamsburg Farms Agricultural and Forestal District is hereby continued for a period of four years beginning the 27th day of January, 2002, in accordance with the provisions of the Virginia Agricultural and Forestal District Act. Virginia Code Section 15.2-4300 et. seq.

2. That the district shall include the following parcels:

(48-4)(1-10)	Williamsburg Farms, Inc.	265.30 acres
(48-4)(1-12)	Williamsburg Farms, Inc.	<u>29.00</u> acres

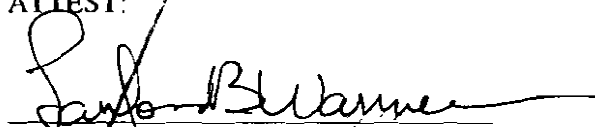
Total:	<u>294.30</u> acres
--------	---------------------

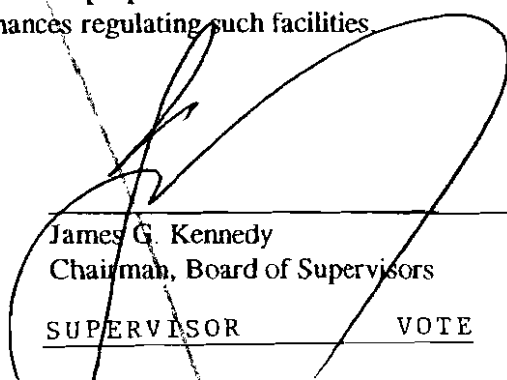
provided however, that all land within 25 feet of the road right-of-way of Lake Powell Road (Route 618) shall be excluded from the District.

- 2 -

3. That pursuant to the **Virginia Code**, Section **15.2-4312**, as amended, the Board of Supervisors requires that no parcel in the **Williamsburg Farms Agricultural and Forestal District** be developed to a more **intensive** use **without** prior approval of the **Board of Supervisors**. Specifically, the **following** restrictions shall apply:
- a. ~~The~~ subdivision of land is ~~limited~~ to 25 acres or more, except where the Board of ~~Supervisors~~ **authorizes smaller** lots to be created for residential use by ~~members~~ of the owner's ~~immediate~~ family. Parcels of up to 5 acres, including ~~necessary~~ accessroads, ~~may be subdivided for the siting of~~ telecommunications towers ~~and related equipment, provided, a)~~ The subdivision does not cause the total ~~acreage~~ of the ~~District~~ to drop below 200 acres; and ~~b)~~ The subdivision does not ~~result~~ in a remnant parcel of less than 25 acres.
  - b. No land outside ~~the~~ Primary Service Area (**PSA**) and within the Agricultural and Forestal District may be rezoned and no application for such rezoning shall be filed ~~earlier than~~ six months prior to ~~the~~ expiration of the district. Land inside ~~the~~ Primary Service Area (**PSA**) and within the Agricultural and Forestal District may be withdrawn from the District in accordance with the Board of Supervisors policy pertaining to Withdrawal of Lands from **Agricultural** and Forestal Districts Within the Primary Service Area, adopted September 24, 1996.
  - c. No ~~special~~ use permit shall be issued except for agricultural, forestal or other ~~activities~~ and uses **consistent** with the State Code Section **15.2-4300 et. seq.** ~~which~~ are not in conflict ~~with~~ the policies of this district. The Board of Supervisors, at its discretion, may issue special use permits for wireless ~~communications facilities on AFD properties~~ which are in accordance with the County's policies and ordinances ~~regulating such facilities~~.

ATTEST:

  
 Sanford B. Wanner  
 Clerk to the Board

  
 James G. Kennedy  
 Chairman, Board of Supervisors

SUPERVISOR	VOTE
MCGLENNON	AYE
BROWN	AYE
GOODSON	AYE
HARRISON	AYE
KENNEDY	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of January, 2002.

afd193.res

NOV 27 2001

ORDINANCE NO. 194BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE OF THE COUNTY OF JAMES CITY, VIRGINIA. PROVIDING THAT THE CODE OF ORDINANCES, COUNTY OF JAMES CITY, BE AMENDED BY ADDING CHAPTER 16A, PURCHASE OF DEVELOPMENT RIGHTS PROGRAM, SECTIONS 16A-1 THROUGH 16A-13.

BE IT **ORDAINED** by the Board of Supervisors of ~~the~~ County of James City. Virginia, that Chapter 16A, Purchase of Development Rights Program, is hereby added to the Code of James City by adding Section 16A-1, Short title; ~~Section~~ 16A-2, Purpose; Section 16A-3, Applicability; Section 16A-4, Definitions; Section 16A-5, Designation of program administrator; powers and duties; Section 16A-6, Purchase of development rights program committee established; powers and duties; Section 16A-7, Appraisal review committee established; powers and duties; Section 16A-8, Eligibility criteria; Section 16A-9, Ranking system; Section 16A-10, Conservation easement terms and conditions; Section 16A-11, Application and evaluation procedure; Section 16A-12, Purchase of development rights procedure; Section 16A-13, Restriction on buy-back; extinguishment and exchange of easements.

#### *CHAPTER 16A. PURCHASE OF DEVELOPMENT RIGHTS PROGRAM*

##### ***Sec. 16A-1. Short title.***

*This chapter shall be known and may be cited as the "Purchase of Development Rights ("PDR") Program."*

##### ***Sec. 16A-2. Purpose.***

*The purposes of this chapter include, but are not limited to:*

**Ordinance to Amend and Reordain**  
**Chapter 16A. Purchase of Development Rights Program**  
**Page 2**

(1) *Establishing a program enabling the county to acquire conservation easements voluntarily offered by owners to serve as one means of assuring that James City County's resources are protected and efficiently **used**;*

(2) *Establishing and preserving open-space and the rural character of the county;*

(3) *Preserving farm and forest land;*

(4) *Conserving and protecting water resources and **environmentally** sensitive lands, waters and other natural resources:*

(5) *Conserving and protecting biodiversity and wildlife and aquatic habitat;*

(6) *Assisting in shaping the character and direction of the **development** of the community:*

(7) *Improving the quality of life for the inhabitants of the county; and*

(8) *Promoting recreation and tourism through the preservation of scenic and historical resources.*

**State** law reference – Va. Code § 10.1-1700 et seq.

**Sec. 16A-3. Applicability.**

*The PDR **program** shall be available for all qualifying lands in the county, except those lands under the ownership or control of the United States of America, the Commonwealth of Virginia, or an*

*Ordinance to Amend and Reordain*  
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*agency or instrumentality thereof: Any conservation easement acquired pursuant to this chapter shall be voluntarily offered by the owner.*

**Sec. 16A-4. Definitions.**

*The following definitions shall apply in the interpretation and implementation of this chapter:*

*Administrator. Administrator is that person placed in a managerial position over the daily operations of the PDR program. The administrator shall serve as a direct liaison to the program.*

*Board. The Board of Supervisors of James City County.*

*Conservation easement. A nonpossessory interest in one or more parcels by one or more qualified easement holders under section 16A-10(d) of the Code of the County of James City acquired under the Open-Space Land Act (Virginia Code § 10.1-1700 et seq.), whether the easement is appurtenant or in gross, voluntarily offered by an owner and acquired by purchase or donation pursuant to the PDR program, imposing limitations or affirmative obligations for the purpose of retaining or protecting natural or open-space values of the parcel or parcels, assuring availability for agricultural, forestal, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of the parcel or parcels.*

*Dwelling. Any structure which is designed for use for residential purposes.*

*Owner. The owner or owners of the freehold interest of the parcel.*

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*Parcel. A lot or tract of land, **lawfully** recorded in the clerk's **office** of the circuit court of the City of Williamsburg and County of James City. A conservation easement may contain one or more parcels, for purposes of this chapter the term "parcel" shall include ail parcels covered by, or proposed to be covered by, the conservation easement.*

**Sec. 16A-5. Designation of program administrator; powers **and** duties.**

*(a) Designation. The administrator shall report to the assistant manager of community services.*

*(b) Powers and duties. The administrator shall administer the PDR program and shall have powers and duties **to**:*

*(1) Establish reasonable and standard procedures and fo rm consistent with this chapter for the administration and implementation of the program*

*(2) Promote the program, in cooperation with the PDR committee, by providing **educational** materials to the public and conducting informational meetings.*

*(3) Investigate and pursue, in **conjunction** with the **county**, state, federal and other program available to provide additional public and **private** resources to fund the program and to maximize private participation.*

*(4) Evaluate all applications to determine their eligibility and their ranking score, rank applications based on their ranking score, and **make** recommendations thereon to the PDR committee.*

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- (5) *Coordinate the preparation of appraisals.*
- (6) *Negotiate with owner relating to conservation easement terms and value.*
- (7) *Provide staff support to the board, the PDR committee, and the appraisal review committee.*
- (8) *For each conservation easement accepted into the program establish baseline data, and assure that the **terms** and conditions of the easement are monitored and complied with by coordinating a monitoring program with each easement holder.*

**Sec. 16A-6.** *Purchase of development rights **committee** established; powers and duties.*

- (a) *Establishment. The PDR committee is hereby established, as follows:*
  - (1) *The committee shall consist of five members appointed by the board. Each member shall be a property owner in and of James City County. The **committee** should, but is not required to be, comprised of members who are knowledgeable in the fields of conservation, conservation biology, planning, real estate, **land** appraisal, farming and forestry and may also include members of conservation easement holding agencies and conservation organizations.*
  - (2) *The members of the committee shall serve at the pleasure of the board. The initial terms of the members shall be as follows: **two** members shall be for one year; two members shall be for two years; and one member shall be for three years. Each term **after the** initial term shall be for three years.*



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(3) *The members of the committee shall serve without pay, but the board may, in its discretion, reimburse members for actual and necessary expenses incurred in the **performance** of **his/her** duties.*

(4) *The committee shall elect a chairman, vice chairman and secretary at its **first** meeting each calendar year. The secretary need not be a member of the committee.*

(5) *The administrator shall be an ex **officio** member of the **committee**.*

(b) *Powers and duties. The PDR committee shall have **the** powers and duties to:*

(1) *Promote the program, in cooperation and under the guidance of the administrator, by providing **educational** materials to the public and conducting **informational** meetings.*

(2) *Review the ranking of applications recommended by the administrator, and make recommendations to the administrator and the board as to which conservation easements should be purchased.*

(3) *Annually review the program's eligibility and ranking criteria and recommend to the administrator any changes needed to maintain the program's consistency with **the** comprehensive plan, or to improve the administration, implementation and effectiveness of the program.*

(4) *A quorum shall consist of three members present and the committee shall operate on a "majority rule" basis.*

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**Sec. 16A-7.** *Appraisal review **committee** established; powers and duties.*

(a) *Establishment. The appraisal review committee is hereby established, as provided herein:*

(1) *An appraisal review committee shall be created as a subcommittee of the PDR **committee** and operate directly under its supervision.*

(2) *The subcommittee shall consist of a minimum of three members. The subcommittee shall be comprised of at least one real **estate** professional, one member of the PDR committee, and the **county** assessor. The members shall be appointed by the PDR committee.*

(3) *The members of the subcommittee shall serve at the pleasure of the PDR committee. Each member, other than the county assessor, shall serve a one year term. The county assessor shall be a permanent member of the subcommittee.*

(4) *The county assessor shall be the chairman of the subcommittee.*

(b) *Powers and duties.*

*The appraisal review **committee** shall have the power and duty to **review** appraisals to assure they are consistent with appropriate appraisal guidelines and practices, and to make recommendations thereon to the PDR committee, and provide final approved appraisal results to the PDR committee, and the administrator.*

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**Sec. 16A-8. Eligibility criteria**

*In order for a parcel to be eligible for a conservation **easement**, it must meet the following criteria: (i) the use of the parcel subject to the conservation easement must be consistent with the comprehensive plan; (ii) the proposed **terms** of the conservation easement must be consistent with the minimum conservation easement **terms** and conditions set forth in section 16A-10, unless **modified** by the board; and (iii) the parcel must be located in the County of James City.*

**Sec. 16A-9. Ranking system**

*In order to effectuate the purposes of this chapter, parcels for which conservation easement applications have been received shall be evaluated by utilizing a ranking system. The initial ranking system and changes to the ranking system shall be approved by the county administrator and the director of development management. The ranking system **may** be used to prioritize the acquisition of conservation easements.*

**Sec. 16A-10. Conservation easement **terms** and conditions.**

*Each conservation easement shall conform with **the** requirements of the Open-Space Land Act of 1966 (Virginia Code § 10.1-1700 et seq.) and this chapter. The deed of easement shall be in a form approved by the county attorney, and shall contain, at a minimum, the following provisions:*

*(a) Restriction on new dwellings. No new dwellings may be constructed on a parcel except as provided hereafter: the deed of easement may allow one new dwelling per 100 acres, with the dwelling location **specified** by plat on or before the conservation easement is established*

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(b) *Conservation easement **duration**.* A conservation easement acquired under the terms of this chapter shall be perpetual.

(c) *Other restrictions.* In addition to the foregoing, the parcel shall be subject to standard **restrictions** contained in conservation easements pertaining to uses and activities allowed on the parcel. These standard restrictions shall be delineated in the deed of easement and shall include, but not necessarily be limited to, restrictions pertaining to: (i) accumulation of trash and junk; (ii) display of billboards, signs and advertisements; (iii) grading, **blasting** or earth removal; (iv) conduct of **industrial** or commercial activities on the parcel; and (v) monitoring ~~of~~ the easement.

(d) ***Designation** of easement holders.* The county shall be the easement holder, and if designated by the board, one or more other public bodies, as defined in Virginia Code Section 10.1-1700, or one or more organizations then **qualifying** as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, shall also be an **easement** holder.

**Sec. 16A-11. Application and **evaluation procedure**.**

*Each application for a conservation easement shall be processed and evaluated as follows:*

(a) *Application; program materials ~~to~~ be provided ~~to~~ owner.* The application materials provided **by** the administrator to an **owner** shall include, **at** a minimum, a standard application form and information **about** the PDR program.

(b) *Application form.* Each application shall be submitted to ~~the~~ administrator on a standard form prepared **by** the **administrator**. The application form shall require, at a minimum, that the owner provide: the **names** of all owners **of** the parcel, the address and telephone **number** of each

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owner, the acreage of the parcel, the James City County tax map and parcel number, the zoning designation of the parcel, and permission for ~~the~~ administrator and an independent appraiser and such other staffs may be appropriate to enter the **property** after reasonable notice to the owner to evaluate the parcel, and for the county assessor or an independent appraiser to appraise the property. The application form shall also include a space for an owner to indicate whether **he/she** volunteers to have his parcel be subject to greater restrictions than those contained in the standard deed of easement, and to delineate those voluntary, additional restrictions.

(c) Additional application information required by administrator. The administrator may require an owner to provide additional information deemed necessary to determine: (i) whether the proposed easement is eligible for purchase; (ii) the ranking of the parcel; and (iii) the value of such easement.

(d) Submittal of application. Applications shall be submitted to the administrator. An application fee may be required. An application may be submitted at any time during an open application period. However, applications received after an open application period deadline, shall be held by the administrator until the next open application period.

(e) Evaluation by administrator. The administrator shall evaluate each application received and determine whether the application is complete. If the application is incomplete, the administrator shall inform the owner in **writing** of the information that must be submitted in order for the application to be deemed complete. When an application is deemed complete, the administrator shall **determine** whether the parcel satisfies the eligibility criteria set forth in section **16A-8** and, if it does, shall determine the number of points to be attributed to the parcel by applying the ranking system in accordance with section **16A-9**. The administrator shall then rank each parcel with the parcel scoring the most points being the highest ranked and descending there from. The administrator shall submit the list of ranked parcels to the PDR committee after each open application period.

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(f) *Evaluation by PDR committee. The PDR committee shall review the list of ranked parcels submitted by the administrator. The PDR committee shall forward to the administrator and the board recommendations of which conservation easements should be purchased.*

(g) *Evaluation by board. The board shall review the list of ranked parcels submitted by the PDR committee and **identify** on which parcels it desires conservation easements. The board shall then prioritize the parcels on which it will seek to purchase conservation easements. Nothing in this chapter shall obligate the board to purchase a conservation easement on any property that is eligible for purchase.*

(h) *Requirements and deadlines may be waived. Any requirement or deadline set forth in this chapter may be waived by the board **if**, for good cause, it is shown that urgent **circumstances** exist **that** warrant consideration of *M* application. Under such circumstances, the board may purchase a conservation easement **at** any time it **deems** necessary.*

(i) *Reapplication. An owner of a parcel not selected by the board for purchase of a conservation easement may reapply in **any future** open application period.*

**Sec. 16 A-12. Purchase ~~of~~ development rights procedure.**

*Each purchase of a conservation easement shall proceed as follows:*

(a) *Identification of initial pool. From the list of parcels received under section 16A-11, the board shall designate the initial pool of parcels **identified** for conservation easements to be purchased.*

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(b) *Determining purchase price. Negotiations with the properly owners regarding the easement **terms** shall be coordinated by the administrator. Upon completion of these negotiations, the administrator shall arrange for an appraisal of the properties by the county assessor or an independent appraiser. Each completed appraisal shall be submitted to the administrator. The results of the appraisal shall be reviewed **by** the appraisal review committee which shall review **and** approve each appraisal. Final approved appraisal results shall be provided to the PDR committee and the administrator.*

(c) *Invitation to sell. The county administrator shall invite the owner of each parcel included in the initial pool of parcels to sell to the county a conservation easement on that parcel for an amount based upon the appraised value of such conservation easement, subject to the **terms** and conditions of a proposed deed of easement. The invitation to sell shall be in writing and shall include the purchase price, the proposed deed of easement, and the date by which a written offer must be received by the administrator in order to be accepted. The invitation may contain a form offer to be returned by the owner **if the** owner desires **to** sell a conservation easement.*

(d) ***Offer to sell. Each** owner who desires to sell **and/or** donate a conservation easement shall submit a written **offer** that must be received by the administrator by the date contained in the invitation to sell. The offer should include a statement that substantially states the following: “(The owner) offersto sell **and/or** donate a conservation easement to the County of James City, Virginia for the sum of (purchase price), subject to the terms and conditions set forth in the proposed deed of easement enclosed with the invitation to sell.” Nothing in this chapter shall compel an owner to submit an offerto sell.*

(e) *Acceptance. **An** offer to sell a conservation easement shall be accepted by the board in writing, following an action by the board authorizing acceptance.*

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(f) *Conservation easement established. A conservation easement shall be established when the **owner** and an authorized representative of the holder of the easement have each signed the deed of easement. The deed shall be recorded in the **office** of the clerk of the circuit court of the City of **Williamsburg** and County of James City. A single conservation easement may be established for more than one parcel under the same ownership.*

(g) *Offers not made; offers not accepted; invitation to other owners. If an owner invited to sell elects not to do so, or if the **offer** to sell is not accepted by the board, then the county administrator may send an invitation to sell to the **owner(s)** of the next highest **prioritized parcel(s)** remaining on the list of parcels identified in section **16A-11(g)**.*

(h) *Costs. If the board accepts an offer to sell a conservation easement, **the** county shall pay the grantor's **tax, if** any, and the county may pay all other costs, including environmental site assessments, surveys, recording costs, if any, and other charges associated with closing. However, the county shall not pay expenses or fees incurred by the property owner for independent appraisals or legal, financial, or other advice, or expenses or fees in connection with the release and subordination of **liens** to the easement purchased by the county.*

**Sec. 16A-13. Restriction on buy-back; extinguishment and exchange of easements.**

(a) *Restriction on buy-back. The owner shall not have the option to reacquire **any** property rights relinquished under the conservation easement, except as provided hereafter, the deed of easement may allow an exchange of easements **as** follows:*

(1) *Petition to board. Upon the expiration of 25 years from the date on which a conservation easement was recorded, the owner or successor in interest to the property which is*



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subject to the easement **may** petition the board for the extinguishment of such easement in exchange for the conveyance to the county **of** a conservation easement on a **different** parcel of property meeting all **of the** eligibility requirements **as** set forth in section 16A-8.

(2) *Requirements.* No such extinguishment and exchange of easement shall be authorized, unless a **majority** of the board find that:

(i) *The extinguishment and exchange is determined to be essential to the orderly development and growth **of the** county;*

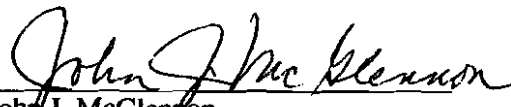
(ii) *The extinguishment and exchange is in accordance with the comprehensive plan for the county in effect at the time **of the** extinguishment and exchange;*

(iii) *The extinguishment and exchange does not adversely affect the county's interests in **accomplishing** the purposes of this ordinance;*

(iv) *. There is substituted other real property which is (a) of at least equal fair market value and at least equal **acreage**; (b) of greater value as permanent open-space land than the land upon which **the** easement is extinguished, (c) of as nearly as feasible equivalent usefulness and location for **use** as permanent open-space land as is the land upon which the easement is extinguished and (d) is in accordance with the Virginia Open-Space Land Act. (Virginia Code §10.1-1700 et seq.).*

(3) *Expenses.* The petitioner shall bear all expenses and fees in connection with the exchange, including, but not limited to purchase of the substituted easement, site assessments, surveys, closing costs, recording fees and taxes, title search, **and** title insurance if required.

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John J. McGlenon  
Chairman, Board of Supervisors

ATTEST:

  
Sanford B. Wanner  
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
HARRISON	AYE
KENNEDY	AYE
NERVITT	AYE
GOODSON	AYE
MCGLENNON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 27<sup>th</sup> day of November, 2001.

*PDR.ord.wpd*