

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 10TH DAY OF OCTOBER 2006, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

**A. ROLL CALL**

Bruce C. Goodson, Chairman, Roberts District  
John J. McGlennon, Vice Chairman, Jamestown District  
Jay T. Harrison, Sr., Berkeley District  
James O. Icenhour, Jr., Powhatan District  
M. Anderson Bradshaw, Stonehouse District

*As adopted on  
October 24, 2006*

Sanford B. Wanner, County Administrator  
Leo P. Rogers, County Attorney

**B. MOMENT OF SILENCE**

Mr. Goodson requested the Board and citizens observe a moment of silence.

**C. PLEDGE OF ALLEGIANCE** - Jimmy Giron, an eighth-grade student at Toano Middle School, led the Board and citizens in the Pledge of Allegiance.

**D. PRESENTATION**

Ms. Charlene Talcott, Clean County Commission Chair, gave an update on the efforts initiated by the organization, including beautification, conservation, and recycling in anticipation of the events of 2007. Ms. Talcott commented on the Clean County Commission's involvement with HRClean and stated volunteers were always needed to help with these efforts.

Mr. Goodson thanked Ms. Talcott for her presentation.

Mr. Goodson recognized Mr. McGlennon's recent appointment to the Governor's Urban Policy Task Force.

**E. PUBLIC COMMENT**

1. Mr. Rudy Butler, VACo President and Supervisor from Goochland County, commented on the upcoming National Association of Counties conference to take place in 2007; commented on transportation; tax rates; growth throughout the Commonwealth of Virginia; and mentioned the upcoming Richmond Regional Planning District Metropolitan Planning Organization meeting in the City of Richmond and transportation priorities to be addressed.

Mr. Goodson thanked Supervisor Butler and commented on the benefits of VACo membership.

2. Mr. Robert Duckett, Peninsula Housing and Builders Association Public Affairs Director, commented on the Powhatan Creek and Yarmouth Creek Watershed Management Plan revisions, stating that the current requirement of a 100-foot buffer should be sufficient.

3. Ms. Bambi Walters, 5112 Shoreline Court, stated concern regarding the breach of the Lake Powell Dam and suggested the property go into a private trust rather than go to the County.

4. Mr. Ed Oyer, 139 Indian Circle, commented on the economy and future spending.

5. Ms. Ann Hewitt, 147 Raleigh Street, representing Friends of Powhatan Creek Watershed, encouraged the Board to approve the revisions to the Powhatan Creek and Yarmouth Creek Watershed Management Plans to help improve water quality and preserve the surrounding ecosystem.

#### **F. CONSENT CALENDAR**

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

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

1. Minutes – September 26, 2006, Regular Meeting
2. Temporary Appointment of Acting Zoning Administrator

### **RESOLUTION**

#### **TEMPORARY APPOINTMENT OF ACTING ZONING ADMINISTRATOR**

WHEREAS, pursuant to Section 24-5 of the Code of the County of James City, the Board of Supervisors is responsible for appointing the Zoning Administrator; and

WHEREAS, an appointment of an Acting Zoning Administrator is necessary on a temporary basis beginning November 1, 2006, and ending May 31, 2007; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby appoints Melissa C. Brown as Acting Zoning Administrator for the time period specified herein.

#### **G. PUBLIC HEARINGS**

Mr. Goodson recognized Jack Fraley, Chairman of the Planning Commission, in attendance.

1. Case Nos. Z-2-06/MP-3-06/SUP-19-06, Mason Park (Continued from September 12, 2006)

Mr. Jose Ribeiro, Planner, stated Mr. Vernon Geddy has submitted an application, on behalf of Steven Miller of HHHunt Homes-Hampton Roads, LLC, to rezone approximately 9.11 acres from R-8, Rural Residential District, to R-2, General Residential District, with proffers. Additionally, the applicant has applied for a special use permit to allow an open space cluster development with a gross density of 1.65 dwelling units per acre. Mason Park, as the proposed subdivision will be called, consists of 15 single-family detached units with detached garages. The property is located on the south side of Jamestown Road bounded by a private residence (zoned R-8), a segment of the Landfall at Jamestown subdivision (zoned R-2) to the south and east, a large parcel of vacant land (zoned R-8) to the west, and by two multifamily subdivisions, Foxfield (zoned R-5) and Jamestown 1607 (zoned R-2) to the north and across Jamestown Road. The property, including adjacent properties to the south, east, and west, falls within an area designated as Low-Density Residential according to the 2003 Comprehensive Plan. The properties across Jamestown Road from the site are designated Moderate-Density Residential and Low-Density Residential.

The property fronts and is accessed by 4-H Club Road (State Route 680) and a frontage road that runs adjacent and parallel to Jamestown Road. Because Jamestown Road right-of-way coincides with the 4-H Club Road right-of-way, the property is considered to front a Community Character Corridor (CCC) (Jamestown Road) and therefore subject to special considerations such as additional frontage buffers and enhanced landscaping fronting the property. The property also lies within the Jamestown Island-Greensprings Road Community Character Area.

Staff found the proposal generally consistent with the 2003 Comprehensive Plan.

At its meeting on August 7, 2006, the Planning Commission voted 7-0 to approve the application.

Staff recommended approval of the request for street width reduction for the Mason Park subdivision, the rezoning, the special use permit, and the master plan application for Mason Park with the acceptance of the voluntary proffers and approval of the special use permit conditions.

Mr. Goodson opened the Public Hearing.

I. Mr. Vernon M. Geddy, III, representing the applicant, gave a brief overview of the development plans and requested approval of the application.

Mr. Icenhour asked what the square footage range of the houses in the development would be.

Mr. Steven Miller, HHH Builders, stated the square footage ranged from 2,400 square feet to 3,200 square feet with a variety of floor plans.

Mr. Icenhour asked if the houses were all two-story.

Mr. Miller stated this was correct.

Mr. Bradshaw asked Mr. Miller to describe green building practices.

Mr. Miller gave a brief overview of green building practices that are currently in use, including engineered lumber, low-emission glass, and specific site-planning practices.

Mr. Goodson asked how a rain barrel works.

Mr. Ted Caliber, AES Consulting Engineers, stated rainwater is collected from the roof and held in the barrel until full and then it is flushed in a normal manner and can be used to water plants.

2. Mr. Ray Baysley, 4060 South Riverside Drive, requested denial of the application due to the reduced street width requirement.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Harrison asked staff to respond to the feedback on the reduced street width request and commented on the reduced impervious cover of this application.

Mr. Ribeiro stated staff had contacted the James City County Fire Department and James City County Police Department and that there have been no record of any issues with this kind of request, but there was concern stated about unregulated parking but this was not specifically for subdivisions that had requested street width reductions but narrow streets in general. Mr. Ribeiro stated that the Police Department had the authority to issue parking tickets to cars parked illegally.

Mr. Bradshaw asked staff to state which subdivisions have had public and private streets width reductions.

Mr. Ribeiro responded according to County records, three other street width reduction requests were approved, including Greensprings West Phase 3, approved by the Board on July 11, 2000; Windham Adams, approved by the Board on July 11, 2005; and Ironbound Square Phase 1, approved by the Board on May 9, 2006.

Mr. Bradshaw asked for confirmation that there was no history for two of those subdivisions as they had not been built, but one of the subdivisions had been built, which requested a reduction of public and private streets.

Mr. McGlennon asked for confirmation that a reduced street width request was approved for Governor's Land

Mr. John Horne, Development Manager, stated that there are some private streets in Governor's Land.

Mr. McGlennon stated this is an important issue to address, and after consultation with County emergency response staff, including the Fire and Police departments, the stated concerns were about limbs falling from trees into the narrower streets and as a result there is a proffer to make this less likely to happen. Mr. McGlennon asked Mr. Ribeiro to explain this.

Mr. Ribeiro stated the developer has proffered that the homeowners association would trim and upkeep the vegetation along the side of the road to help prevent this risk.

Mr. McGlennon asked for confirmation that the developer will plant vegetation that grows upward rather than outward to help reduce the risk of limbs falling.

Mr. Ribeiro stated this was correct.

Mr. Bradshaw stated this was an innovative solution.

Mr. McGlennon stated he is satisfied with the response from the Fire and Police departments and felt comfortable that public safety would not be compromised based on the professional opinion of the emergency responders.

Mr. Icenhour asked how much of the property was developable.

Mr. Ribeiro stated non-developable areas were defined as areas located in wetlands, Resource Protection Area (RPA) buffers and slope land, and the gross acreage of Mason Park was 9.11 acres, wherein 0.68 acres is considered to be non-developable area.

Mr. Icenhour asked if Mr. Ribeiro would show on a map where conservation areas were located.

Mr. Ribeiro showed the conservation areas on the map.

Mr. Icenhour asked for confirmation that one area would have aboveground sewer and asked what length and diameter of pipeline would be used.

Mr. Ribeiro stated the pipeline would be elevated and asked that Mr. Geddy come forward to answer the question.

Mr. Geddy stated the sewer line would come out of the ground near the bridge and would run approximately 200 to 250 feet.

Mr. McGlennon made a motion to adopt the resolutions.

Mr. Goodson stated this was an interesting example of cluster development that made exemplary strides to deal with environmental issues and stated his support.

Mr. Icenhour stated there were significant efforts made to protect the watershed; however the Powhatan Creek Watershed Creek Plan projected a future impervious cover of 16.4 percent. He stated this plan has made a great effort to minimize impervious cover, yet impervious cover on the project was 18 percent and the result on the quality water was the ultimate assessment. Mr. Icenhour also stated concern about what could happen to an elevated sewer line in light of what recently happened in the County with an underground waterline. Mr. Icenhour stated his disappointment that there was not at least a proffer to further affordable housing efforts in the County.

Mr. Bradshaw commented on the responsiveness of the applicant in relation to feedback on environmental and water quality, and though the County does not have the best measure of water quality, the applicant has worked very well with the County.

Mr. Harrison stated the applicant has bent over backwards to address environmental concerns and stated there were great efforts made to work with the County, but expressed that he had hoped for some kind of provision for affordable housing and stated his concern.

Mr. McGlennon stated his disappointment with the lack of affordable housing provision, but that the applicant has reached a standard for evaluation of proposals based on the pace of development and commented that the neighbors had their concerns about the development address. Mr. McGlennon continued that the impervious cover was an imperfect measure especially considering that the rainwater was being collected on the rooftops to mitigate the impacts. Mr. McGlennon stated something needed to be done to slow down development, and he felt this development helps to address this.

On a roll call vote, the vote was AYE: Harrison, McGlennon, Bradshaw, Goodson (4). NAY: Icenhour (1).

### **RESOLUTION**

#### **CASE NO. Z-02-06/MP-03-06. MASON PARK**

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 Case No. Z-02-06/MP-03-06, with Master Plan, for rezoning 9.11 acres from R-8, Rural Residential District, to R-2, General Residential District, with proffers; and

WHEREAS, the Planning Commission of James City County, following its Public Hearing on August 7, 2006, recommended approval by a vote of 7 to 0; and

WHEREAS, the property is located at 1916 Jamestown Road and can be further identified as Parcel No. (1-17) on James City County Real Estate Tax Map No. (46-4).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-02-06/MP-03-06 and accepts the voluntary proffers.

### **RESOLUTION**

#### **CASE NO. SUP-19-06. MASON PARK**

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

WHEREAS, Mr. Vernon Geddy, III, has applied for an SUP to allow an open space cluster development to construct 15 single-family detached dwelling units with an overall density of 1.65 dwelling units per acre; and

WHEREAS, the property is located on land zoned R-8, Rural Residential District, and can be further identified as Parcel No. (1-17) on James City County Real Estate Tax Map No. (46-4); and

WHEREAS, the Planning Commission, following its Public Hearing on August 7, 2006, voted 7 to 0 to recommend approval of this application.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. 19-06 as described herein with the following conditions:

1. Only one entrance shall be allowed onto 4-H Club Road, State Route 680.
2. If construction has not commenced on this project within 36 months from January 1, 2008, the SUP shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections.

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

## **RESOLUTION**

### **REDUCED STREET WIDTHS--MASON PARK**

WHEREAS, the required width of public streets located within subdivisions is set forth in the Virginia Department of Transportation's ("VDOT") Subdivision Street Design Guide (the "Guide"); and

WHEREAS, the Guide requires that the streets in the Mason Park subdivision be 28 feet in width; and

WHEREAS, in certain circumstances, the Guide allows for reductions in the required pavement width; and

WHEREAS, the landscape architect/senior planner for AES Consulting Engineers, on behalf of HHHunt Homes-Hampton Roads, LLC, has requested a reduction in the required pavement width from 28 feet (curb to curb) to 22 feet (curb to curb), with an associated reduction in the right-of-way from 50 feet to 40 feet for the Mason Park subdivision internal streets; and

WHEREAS, the landscape architect/senior planner for AES Consulting Engineers, on behalf of HHHunt Homes-Hampton Roads, LLC, has requested a waiver from Item No. 8, Intersection Trees, of the Reduced Street Width Policy adopted by the James City County Board of Supervisors on April 25, 2000; and

WHEREAS, VDOT has agreed to the proposed reduction; and

WHEREAS, VDOT may not approve a request for a reduction in subdivision street pavement width without a written request by the Board of Supervisors.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests that VDOT approve the reduction from 28 feet to 22 feet for the Mason Park subdivision internal streets.

BE IT FURTHER RESOLVED that the County will require off-street parking in the Mason Park subdivision in conformance with Section 24 VAC-30-91-110 of the VDOT *Subdivision Street Requirements*.

#### 2. Determination of Effect of Withdrawing Land from the Gordon's Creek AFD

Mr. Jason Purse, Planner, stated James City County intended to acquire land located within the Gordon's Creek AFD totaling approximately 40.285 acres as shown on the attached survey and the land will be used for the purpose of constructing the Williamsburg-James City County Public Schools' 8th elementary school.

As shown, lines have shifted slightly from what were originally intended to be used for this site. The change in boundary lines is necessary for the construction of turn lanes for the school, as well as the construction of the stormwater management facility and a portion of a playing field in the rear of the property.

Even though the new land being acquired totals only a few acres, the process for the whole site is being completed again to assure that no further delays occur in the process.

As a part of that process, pursuant to State Code Section 15.2-4313, the Board of Supervisors must make a determination that the acquisition of land in the Gordon's Creek Agricultural and Forestal District (AFD) will not have an unreasonably adverse effect upon the remainder of the Gordon's Creek AFD, or have an effect on the preservation and enhancement of agricultural and forestal resources within the District. As this site went through a site selection process and was determined by the Board of Supervisors and School Board to be the best location for this project, this public hearing process is not required by State Code. However, a public hearing was advertised and is being held in order to prevent any possible delays in construction for this project. The withdrawal site is internal to the largest section of the Gordon's Creek AFD. The parcel can be withdrawn without adversely affecting any other District parcel, because no parcel will be more than a mile away from the main body of the AFD. The remaining 120.46 acres of the original parent parcel will also remain in the AFD, as it was recently renewed for a term length of four years and three months.

Given the need for additional school facilities in the County, there is a projected completion date of September 2007. There is a very small window for starting and completing work on all areas of this site.

The construction sequence for this project requires the stormwater management facility be constructed near the beginning of the process because it is necessary to adequately mitigate environmental impacts of the site as the building pad is completed. As this area of the plan was not a part of the original boundary line for the site, this intent to acquire, and subsequent to withdraw from the AFD, is necessary before construction can commence. Any undue delay of this process will force postponement of the opening of the school.

The Agricultural and Forestal Advisory Committee, the Planning Commission, and the Department of Conservation and Recreation were notified of the County's intent to acquire land and to elicit any input they might have on the possible withdrawal of land on the District. Their responses on the effects of this acquisition are attached. A copy of the Intent to Withdraw letter was also sent to all land owners in the District.

Staff recommended adoption of the resolution.

Mr. Bradshaw asked if agricultural activity was being pursued on the property.

Mr. Purse stated there was no agricultural activity being pursued and indicated there was only forestal activity on the parcel.

Mr. Bradshaw asked if there was any agricultural activity being pursued in the District.

Mr. Purse stated that of the 29 parcels in the District, 22 consisted of solely timber, six were timber and agricultural, and one was solely agricultural.

Mr. Bradshaw asked if this withdrawal would reduce the size of the property below the minimum requirement to qualify for inclusion in the District.

Mr. Purse stated it would not.

Mr. Bradshaw asked if the withdrawal would reduce the size of the District below the minimum requirement for an AFD property.



Mr. Purse stated it would not.

Mr. Bradshaw asked if the withdrawal or the contemplated use of the property would prevent the remainder of the property to be used for forestal projects.

Mr. Purse stated they would not.

Mr. Bradshaw asked if the withdrawal or condemnation would prevent or restrict access to the District or the remainder of the parcel or adjoining property for forestry uses, asked for confirmation that there was an easement that allows access to the remainder of the property for continued forestry uses, and asked Mr. Purse to indicate this access way on the map.

Mr. Purse pointed to an access way with an easement for the continued use of an access road to the property

Mr. Bradshaw asked if the contemplated use of the property would change the drainage patterns in a manner that would be detrimental to timber.

Mr. Purse stated it would not.

Mr. Bradshaw asked if the contemplated use would provide water or sewer to the remainder of the property or the adjoining properties in a manner that would encourage the conversion to non-forestal uses.

Mr. Purse stated it would not.

Mr. Bradshaw asked what access to public utilities would be provided to adjoining properties.

Mr. Purse stated that an SUP application was filed in April 2006 that allowed for an extension of water and sewer to this property and the water and sewer lines crossed one property, and each of the properties is allowed one connection to the water and sewer line, limited to one single-family unit.

Mr. Bradshaw asked if any property owner in the District stated concerns about harm to the AFD if this property was withdrawn.

Mr. Purse stated that one property owner stated concern about overall growth in the County and stated general concern for preserving open space.

Mr. Goodson opened the Public Hearing.

1. Mr. Henry Howell, on behalf of the Letitia Hanson Trust and Travis Armistead, stated when the first time the withdrawal was requested, the owners were not notified but the information was brought before the AFD Advisory Committee, the Planning Commission, and the Board. Mr. Howell stated this time the owners were notified; however the AFD Advisory Committee and Planning Commission were only asked for comments. Mr. Howell stated he went to the property on Friday and that 40 acres of hardwood trees were leveled and asked what the alternate sites were, commenting that the County was required to disclose the alternative sites. Mr. Howell commented on the environmental impact of removing the trees and asked what the impact statement of drainage was based on, since mud had built up from runoff of the construction site. Mr. Howell also stated the statute required 90-day notice to the owners.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Bradshaw made a motion to adopt the resolution.

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

## **RESOLUTION**

### **DETERMINATION OF EFFECT OF WITHDRAWING LAND FROM THE**

#### **GORDON'S CREEK AFD**

WHEREAS, the Williamsburg-James City County Public Schools ("Schools") need to construct an eighth elementary school in order to meet the needs of the growing community; and

WHEREAS, the Schools and the County of James City, Virginia ("County") have determined that the 40.285 acres tract hereinafter described property is the necessary and proper location for a new elementary school; and

WHEREAS, the Schools and the County found that new boundary lines, different from the originally acquired land, would be needed to construct the turn lanes and stormwater management facility for the project; and

WHEREAS, although not required by State Code, a public hearing was advertised and the Department of Conservation and Recreation, the AFD Advisory Committee, and the Planning Commission were notified to provide advice on the matter.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, pursuant to Code Section 15.2-4313, determines that the acquisition of land in the Gordon's Creek Agricultural and Forestal District (AFD) will not have an unreasonably adverse effect upon the remainder of the Gordon's Creek AFD, or have an effect on the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the District.

3. Condemnation of 40.285± acres, with certain easements, of a 154± acre parcel of land, known as the "Jacksons" Tract, 4085 Centerville Road in James City County, and designated on JCC Real Estate Tax Map as parcel 3630100001, for a school site

Mr. Leo Rogers, County Attorney, stated the resolution would authorize the taking of approximately 40.285 acres off Brick Bat Road. Mr. Rogers stated that the Board adopted a resolution in December to take approximately 44 acres for a school site and in the design process, the boundary lines required additional property. Mr. Rogers explained that the County cannot arbitrarily change the Certificate of Take without the agreement of all the property owners. Mr. Rogers stated that the County has worked over the summer to acquire that consent and was unable to do so. Mr. Rogers stated that in this particular situation it was advisable to do a second condemnation, given the challenges that have been raised, to recondemn the whole property. Mr. Rogers stated the public school is no doubt a public need, but in order to prevent the delay of construction or opening of the school, the second condemnation would be necessary. Mr. Rogers recommended adoption of the resolution, which would allow for the filing of another Certificate of Take for the 40.285 acres.

Mr. Goodson opened the Public Hearing.

1. Mr. Henry Howell, on behalf of the Letitia Hanson Trust and Travis Armistead, stated there was a second condemnation for the same property, not provided for in any statute, so that property owners had to fight two condemnations at the same time. Mr. Howell stated legitimate issues were presented. Mr. Howell stated the County gets power from legislature for the powers of condemnation, and silence is a negation of the power. Mr. Howell stated there is no procedure to file a condemnation a second time. Mr. Howell requested the Board take time to consider this since there was a court date pending and hardwood forests had been cut down. Mr. Howell stated this was a test of all property owners as there was no question that an elementary school was a public use.

2. Mr. Ed Oyer, 139 Indian Circle, commented that he had a problem with condemnation.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Goodson asked Mr. Rogers if property notification was sent to all the property owners under this particular action.

Mr. Rogers stated that proper notification was sent to all property owners via certified mail as required by the statute and clarified that it was not required, but was something the County was committed to doing. Mr. Rogers stated that in this case staff made sure the property owners were all notified.

Mr. Bradshaw made a motion to adopt the resolution with the corrections.

Mr. Harrison stated that he supports this resolution on the basis of support of schools, but since there were more schools on the horizon that the County should perform the process correctly the first time.

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

A RESOLUTION, FOLLOWING A PUBLIC HEARING, TO AUTHORIZE THE ACQUISITION, BY  
VOLUNTARY CONVEYANCE OR CONDEMNATION, OF A 40.285-ACRE TRACT OF LAND,  
TOGETHER WITH CERTAIN EASEMENTS BEING A PORTION OF THE 164 ± ACRES OF REAL  
PROPERTY COMMONLY KNOWN AS THE "JACKSONS" TRACT, 4085 CENTERVILLE ROAD  
IN JAMES CITY COUNTY, OWNED BY SALLIE ARMISTEAD WILSON, INDIVIDUALLY AND  
AS SUCCESSOR TRUSTEE UNDER THE DEED AND TRUST AGREEMENT MADE BY ROBERT  
T. ARMISTEAD AND SARAH H. ARMISTEAD DATED DECEMBER 27, 1970; MARY  
ARMISTEAD HOGGE, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE UNDER THE DEED  
AND TRUST AGREEMENT MADE BY ROBERT T. ARMISTEAD AND SARAH H. ARMISTEAD  
DATED DECEMBER 27, 1970; R. TRAVIS ARMISTEAD, JR., INDIVIDUALLY AND AS

SUCCESSOR TRUSTEE UNDER THE DEED AND TRUST AGREEMENT MADE BY ROBERT T. ARMISTEAD AND SARAH H. ARMISTEAD DATED DECEMBER 27, 1970; LETITIA A. HANSON, TRUSTEE UNDER THE LETITIA ARMISTEAD HANSON REVOCABLE TRUST; MICHAEL J. CAVANAUGH, TRUSTEE UNDER THE LETITIA ARMISTEAD HANSON REVOCABLE TRUST AND JAMES CITY COUNTY, VIRGINIA, FOR PUBLIC PURPOSES, AND FURTHER TO AUTHORIZE ENTRY UPON SUCH PARCEL PRIOR TO COMPLETION OF CONDEMNATION

PROCEEDINGS AND TO WIT:

CONSTRUCTION OF AN ELEMENTARY SCHOOL

- WHEREAS, the Williamsburg-James City County Public Schools ("Schools") need to construct an eighth elementary school in order to meet the needs of the growing community; and
- WHEREAS, the Schools and the County of James City, Virginia ("County") have determined that the 40.285 acre tract hereinafter described is the necessary and proper location for a new elementary school; and
- WHEREAS, on December 13, 2005, the Board of Supervisors of James City County adopted a Resolution authorizing the acquisition of a 44-acre tract of land which in large part is the same as the 40.285 acres hereinafter described, however, due to the refinement of the plans, the boundary is now different in certain regards and certain easements not described in the December 13, 2005, resolution are now necessary; and
- WHEREAS, the December 13, 2005, resolution identified the owners of the herein described Property as Sarah H. Armistead, Trustee/Executor, Letitia A. Hanson and Michael J. Cavanaugh, Trustees under the Letitia Armistead Hanson Revocable Trust and further stated that the County may proceed against any successors in title; and
- WHEREAS, the County, prior to filing the Certificate of Take, learned that the ownership of this property was uncertain, and probably includes, in whole or in part, Sallie Armistead Wilson, Mary Armistead Hogge and Robert T. Armistead, as individuals and/or Trustees, of the Deed and Trust Agreement made by Robert T. Armistead and Sarah H. Armistead dated December 27, 1970, and each was given proper notice prior to filing the Certificate of Take; and
- WHEREAS, counsel for one or more of the owners who was provided notice of the pre-Resolution and post-Resolution offers and the filing of the Certificate of Take, complained that, despite the savings clause, all property owners were not specifically referenced in the December 13, 2005 Resolution; and
- WHEREAS, the County adopted a second Resolution on April 25, 2006, correcting the names of the owners, but identifying the same land as identified in the December 13, 2005 Resolution; and
- WHEREAS, the County and the Schools have moved forward with the acquisition of the property described in the aforesaid prior Resolutions by filing the Certificate of Take and a petition in

condemnation and by entering upon the property for the design and engineering of the new elementary school; and

WHEREAS, the County believes that the original Certificate is valid, but it needs certain additional land and easements not described in the initial Certificate; and

WHEREAS, certain of the landowners, by counsel, have objected to the efficacy of the first Certificate and have moved to dismiss the pending condemnation proceeding and the matter has been set down for hearing; and

WHEREAS, despite the County's confidence that the original Certificate is valid, the critical nature of this public school project is such that the County cannot accept any risk that the project be delayed in any way and it further being necessary to add certain land and easements and to subtract certain other land; and

WHEREAS, the County has exhausted all reasonable efforts to settle and resolve preliminary challenges to the first Certificate; and

WHEREAS, after holding a public hearing the Board of Supervisors determined that the removal of the hereinafter described 40.285± acres of land from the Gordon's Creek Agricultural and Forestal District will not have an unreasonable adverse effect on state or local policy or the remaining land in the Gordon's Creek Agricultural and Forestal District; and

WHEREAS, after holding a public hearing, the Board of Supervisors of James City County is of the opinion that a public necessity exists for the acquisition of the hereinafter described property for the construction and operation of a new elementary school in order to provide an adequate public education system and for such public purposes as to provide for the preservation of the health, safety, peace, good order, comfort, convenience, morals, and welfare of the County and that public necessity requires entry onto the property prior to the completion of condemnation proceedings.

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

1. The acquisition of the hereinafter described property for a public school is declared to be a public necessity pursuant to Section 15.2-1903, Code of Virginia (1950), as amended, and to constitute an authorized public undertaking pursuant to Section 15.2-1901.1, Code of Virginia (1950), as amended, and it is further declared that the acquisition and use of such property by the County will constitute a public use as defined by Section 15.2-1900, Code of Virginia (1950), as amended, and that said public use is approved pursuant to Section 15.2-1903 and it is directed that the County and/or the law firm of Randolph, Boyd, Cherry and Vaughan acquire the property for said use by voluntary transfer or condemnation if necessary.
2. A public necessity exists that the County enter upon and take the hereinafter described property for the purposes described hereinabove prior to or during the condemnation proceedings and the County declares its intent pursuant to Section 15.2-1905 C, Code of Virginia (1950), as amended, to so enter and take the property under the power granted the County by Chapter 3 of Title 25.1, Code of Virginia (1950), as amended (Section 25.1-300, et seq.).

3. Prior to the initiation of condemnation proceedings the County Attorney and/or the law firm of Randolph, Boyd, Cherry and Vaughan is directed to make a bona fide effort to purchase the property by compliance with Section 25.1-204 Code of Virginia (1950), as amended. The offer shall be based upon the revised, approved appraisal in the amount of \$508,601 by Michael Simerlein which includes \$449,888 for the fair market value of the land and easements acquired and \$58,713 for damages to the residue.
4. The names of the present owners of the property to be acquired, if the current Certificate is invalidated, are: Sallie Armistead Wilson, individually and as Successor Trustee under the Deed and Trust Agreement made by Robert T. Armistead and Sarah H. Armistead dated December 27, 1970; Mary Armistead Hogge, individually and as Successor Trustee under the Deed and Trust Agreement made by Robert T. Armistead and Sarah H. Armistead dated December 27, 1970; R. Travis Armistead, Jr., individually and as Successor Trustee under the Deed and Trust Agreement made by Robert T. Armistead and Sarah H. Armistead dated December 27, 1970; Letitia A. Hanson, Co-Trustee under the Letitia Armistead Hanson Revocable Trust; Michael J. Cavanaugh, Co-Trustee under the Letitia Armistead Hanson Revocable Trust and James City County, Virginia, as their respective interests may appear.
5. A substantial description of the property is:

40.285 acres in fee simple located on the north side of Route 613, Brick Bat Road and more particularly described on a plat of survey titled "Plat Showing 40.285 acres of Land and Various Easements Lying on the North Line of Brick Bat Road (State Rte 613)" by Paul N. Huber, land surveyor of Timmons Group, dated June 8, 2006 a copy of which (3 pages) is attached hereto and recorded herewith.

Reserving unto the owners a variable width access easement comprising 31,107 square feet, more or less, to run with the land, as described in the "Note" appearing on the aforesaid plat and running partial along the western boundary of the aforesaid property as shown on said plat.

Together with the following easements as shown on the aforesaid plat: Permanent Slope Easement, Variable ("Var.") Width JCSA Utility easement for conveyance to the James City Service Authority comprising 2,377 square feet, more or less.

BEING apart of the same property as that conveyed to Rosa L. Armistead by deed of W.A. Bozarth, et als. dated June 7, 1920, recorded April 11, 1921 in James City Deed Book 19, page 241, the said Rosa L. Armistead having died seized and possessed of the said property at her death on August 11, 1956 and by her will dated September 20, 1953, and recorded in James City County Will Book 6, at page 195, she devised the said property to R. T. Armistead and Letitia Hanson; and

BEING a part of the same property a partial interest in which was conveyed to THE LETITIA ARMISTEAD HANSON REVOCABLE TRUST, Letitia Armistead Hanson and Michael J. Cavanaugh,

Trustees, from Letitia Armistead Hanson, by Deed of Gift dated December 5, 2003 and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and James City County, Virginia as Document No. 030038497; a portion of such property being subject to the Certificate of Take recorded as Instrument No. 060000510 on January 9, 2006 in the Clerk's office of the Circuit Court of Williamsburg and James City County.

6. In the event that the original Certificate is held valid the County Attorney and/or firm of Randolph, Boyd, Cherry and Vaughan is directed to move to amend any Certificate filed pursuant to this Resolution to delete therefrom any land not needed and to adjust the compensation offered and the new Certificate shall remain valid only as to new land acquired in fee and the easements taken and reserved.
7. In the event the landowners elect to withdraw the funds under this Certificate, the prior Certificate, identified in paragraph 5 above, shall with leave of the Court be invalidated and the funds thereunder refunded to the County.
8. In the event any of the property described in paragraph 5 of this resolution has been conveyed, the County Attorney and/or the law firm of Randolph, Boyd, Cherry and Vaughan is authorized and directed to institute proceedings against the successors in title.
9. An emergency is declared to exist and this resolution shall be in effect from the date of its passage.

4. Case No. HW-4-06- Dominion Virginia Power Cellular Antenna Colocation - Height Waiver

Ms. Ellen Cook, Planner, stated Nathan Holland of T-Mobile has requested a height limitation waiver on property zoned R-8. Accessory and non-accessory wireless communications facilities that utilize alternative mounting structures may be erected to a total height of 60 feet from grade, or, with approval of a height limitation waiver by the Board, may exceed 60 feet in height but not to exceed 120 feet. The applicant has specifically requested that a height limitation waiver be granted to allow for the placement of a cellular antenna mounted at 104 feet, with a total antenna height of 107 feet on an existing 100-foot-tall Dominion Virginia Power Pole. A utility transmission structure such as the Dominion Power Pole qualifies as an alternative mounting structure as defined under the Zoning Ordinance. The Dominion Pole is an existing pole within the Dominion Virginia Power easement that runs through Country Village Mobile Home Park.

Ms. Cook stated placement of an antenna on the pole would also involve installation of support equipment at the base of the pole. A site plan for the antenna and support equipment would be required if the height waiver were approved. The Wireless Communications Facilities Section of the Zoning Ordinance specifies certain requirements that a site plan would need to address, including provisions for screening of support equipment, submission of documentation that the antennas will not interfere with radio/T.V. broadcasts or with public safety communications, and documentation that the non-ionizing electromagnetic radiation emitted by the antennas will fall within Federal Communications Commission guidelines.

Staff found the proposal consistent with the requirements stated under Section 24-354 of the Zoning Ordinance.

Staff recommended approval of the application.

Mr. Bradshaw asked if this was relatively new technology to collocate on power poles.

Ms. Cook stated this was the first instance in the County, but there are others in surrounding jurisdictions.

Mr. Goodson stated that he had seen cases of cellular tower on a power pole five or six years ago.

Mr. Wanner stated power transmission antennas were being used when cellular companies were weary of dealing with local government for location of cellular towers.

Mr. Bradshaw stated that it made sense to mask the tower so as not to be seen or to put the tower on something that was already tall and conspicuous.

Mr. Goodson commented on a technical article several years ago that addressed locating cellular towers on power poles.

Mr. Goodson opened the Public Hearing.

1. Mr. Ed Oyer, 139 Indian Circle, asked if this was the tower that was requested to be located in Kingsmill.

Mr. Goodson stated that it was not.

Mr. Oyer asked if the tower would be on a wooden pole or a steel stanchion.

Staff responded the tower would be on a steel stanchion.

Mr. Oyer stated there was no balloon test for this tower and commented that he would see the tower from his house.

Mr. Goodson asked for confirmation that balloon tests were not done for tower extensions.

Ms. Cook stated that in the event an SUP were amended to allow for the colocation, then a balloon test would be required; however, since this was solely a height waiver, a balloon test was not required by the ordinance.

Mr. McGlennon stated the balloon test would be performed to see what the added impact of the structure would be, but as the structure was already present, the balloon test would not add any particular information to the evaluation of the impact.

Mr. Goodson stated flying a balloon would not be practical in that area.

Mr. Bradshaw asked for confirmation that seven feet were being added to the structure and the pole itself was already 100 feet tall.

Ms. Cook stated this was correct and that 107 feet would be the maximum height of the tower.

Mr. Goodson asked if she could display the picture of the sample off Richmond Road.

Mr. Goodson commented that the structure was already there, but only the tower would be added.



Ms. Cook stated this was correct.

2. Mr. Steven Waller, representing T-Mobile, clarified that as a rule, balloon tests are not conducted around electrical lines and the electrical line in this area prevented performing a balloon test. Mr. Waller stated the photograph of a similar tower was a good representation.

Mr. Bradshaw asked the applicant if the color of the tower would be obtrusive.

Mr. Waller stated the towers are usually painted to match the pole.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Bradshaw made a motion to adopt the resolution.

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

## **RESOLUTION**

### **CASE NO. HW-4-06. DOMINION VIRGINIA POWER CELLULAR ANTENNA CO-LOCATION**

WHEREAS, Mr. Nathan Holland of T-Mobile Northeast has applied for a height limitation waiver to allow for the placement of a cellular antenna array on an existing Dominion Power Pole with a maximum antenna height of 107 feet; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. HW-4-06; and

WHEREAS, the proposed antenna array will be located on property zoned R-8, Rural Residential, and is further identified as Parcel No. (1-1) on James City County Real Estate Tax Map No. (59-2); and

WHEREAS, after a public hearing the Board of Supervisors finds that the requirements of Section 24-354 of the James City County Zoning Ordinance have been satisfied, in order to grant a 47-foot waiver to the height limitation requirements to allow for the erection of a wireless communications facility that utilizes an alternative mounting structure in excess of 60 feet in height.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. HW-4-06, granting the Applicant a 47-foot height limitation waiver to allow for the placement of a wireless communications facility that utilizes an alternative mounting structure.

## **H. BOARD CONSIDERATION**

1. Revisions and Readoptions of Watershed Management Plans
  - a. Powhatan Creek
  - b. Yarmouth Creek

Mr. Mike Woolson, Senior Watershed Planner, stated the two resolutions were brought forward to revise and readopt current watershed management plans for the Powhatan Creek and Yarmouth Creek Watersheds. Mr. Woolson stated the revisions were based on two work sessions with the Board and comments from the Planning Commission meeting on September 11, 2006. Mr. Woolson stated staff took these comments and formulated proposed changes as outlined in the September 26, 2006, Reading File memorandum. Mr. Woolson stated staff was proposing recommended changes in the two resolutions and recommended approval.

Mr. Bradshaw asked Mr. Woolson how the new plan applies to BMP credits.

Mr. Woolson stated the BMP point credit would be allowable under the stormwater ordinances, but the language was not included in the resolutions for clarity purposes.

Mr. Bradshaw asked about changes for the Zones 2 and 3 buffers and stated the language in the resolution indicated the requirements were based on site characteristics and inquired about examples of these characteristics.

Mr. Woolson stated there would be internal and external characteristics that would be considered, such as a ridgeline or an area of steep slopes, and a buffer requirement may be extended beyond the regulatory 100-foot buffer, for instance, to protect the slopes from erosion. Mr. Woolson stated that an external characteristic would be an inland property that had already been built up, and the regulatory 100-foot Chesapeake Bay buffer could be modified or expanded for some reason, or may include buffers on either side of the property. However this evaluation was based on a characteristic in isolation and the process was more complex in specific cases, with the Planning Commission and Board being the ultimate arbitrators.

Mr. Bradshaw asked if the evaluation procedure assumed a 100-foot regulatory buffer to begin with or if the buffer requirement began at zero and was built up according to the characteristics of the property.

Mr. Woolson stated in discussions with engineers, it was assumed that the evaluation would begin with a full buffer and the developer would show where the buffer could be reduced, but he was unsure how the process would work at this point.

Mr. Bradshaw asked what assumptions staff would start with in evaluation of properties.

Mr. Woolson stated that developers are required to take an environmental inventory that outlines all the wetlands, steep slopes, and other characteristics on the site, and this document would be evaluated to determine what would be reasonable.

Mr. Bradshaw questioned the language of limiting impervious cover "to the maximum extent possible" and asked Mr. Woolson to explain to the citizens.

Mr. Woolson stated it was not the intent to limit the development on the parcel, but to ensure that the percentage of impervious cover is the lowest necessary for the proposed use.

Mr. Bradshaw stated the phrase "to the maximum extent possible" was historically used.

Mr. Woolson stated this was correct; that phrase was used structurally in the Chesapeake Bay Ordinance.

Mr. Goodson stated his support for the increased protection of Powhatan Creek, but he did not understand how to quantify a property characteristic to qualify for a certain size buffer.

Mr. Woolson stated one of the other qualifiers would be the specific parcel size, in that if a lot would be useless with a specific buffer size, the buffer would be reduced.

Mr. Goodson stated the public sector and private sector engineers are coming forward with different opinions and that a detailed ordinance would need to be written.

Mr. McGlennon stated these revisions were in reference to a variable-width buffer and ultimately the judgment would be placed on the Board to determine the proper size and that he did not know how to address this concern in this particular resolution.

Mr. Goodson stated that the ordinance needed to be revised to include more detailed information.

Mr. Horne stated this was the first step of a two-step process, which would express the policy of the Board in legislative cases, such as a rezoning or special use permit. Mr. Horne stated the second phase would include ordinance-related modifications. Mr. Horne stated that a property owner had the right to come before the Planning Commission and the Board to evaluate the fairness of the staff recommendation for a parcel. Mr. Horne stated these policies tend to stabilize over time and clarified that this was not an ordinance, but a clarification of the Board's intent in a legislative case.

Mr. Goodson stated this was the beginning of a process.

Mr. Horne stated that no ordinance would come forward for legislative cases and the second phase which modifies the ordinance would come forward in the event the Board wished to modify requirements for existing properties but this resolution would merely establish policy in regard to legislative cases.

Mr. Harrison stated steering committee meetings have occurred and stated this Board has taken action to formally adopt what has developed in committees. Mr. Harrison stated the Board was allowing for citizen input and enabling the Board to have the judgment when a case came forward.

Mr. Icenhour thanked staff for the effort they have put into this issue and requested that the policy not be applied arbitrarily, but with a good rationale. Mr. Icenhour stated he was pleased with the language regarding impervious cover in the resolution, as he believed impervious cover should be evaluated on a case-by-case basis. Mr. Icenhour stated his concern for undeveloped properties and that he would like to reevaluate the existing ordinance.

Mr. Icenhour made a motion to adopt the resolutions.

Mr. Bradshaw commented on the importance of stormwater management in light of the recent rainstorms and who should be involved in the reduction of stormwater runoff and stated at a Soil and Conservation District presented information on levels of nitrogen runoff at a conference he attended on Saturday which reported that agriculture is responsible for less than 10 percent, point sources and sewage runoff accounted for less than 40 percent, and individual homeowners are responsible for more than 50 percent of stormwater runoff. Mr. Bradshaw stated research needs to be done to reduce existing properties and the runoff being contributed by homeowners currently.

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

**RESOLUTION**

**REVISION AND RE-ADOPTION OF THE**

**POWHATAN CREEK WATERSHED MANAGEMENT PLAN**

WHEREAS, James City County employed the Center for Watershed Protection to prepare a Watershed Management Plan to protect the Powhatan Creek Watershed; and

WHEREAS, the Watershed stakeholders identified eight goals; and

WHEREAS, the draft plan contains 24 priorities/tools for protecting the Powhatan Creek Watershed; and

WHEREAS, the James City County Board of Supervisors adopted, in concept, the Powhatan Creek Watershed Management Plan on February 26, 2002.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, formally adopts the Powhatan Creek Watershed Management Plan.

BE IT FURTHER RESOLVED that the Board hereby adopts Priority No. 2 of the Powhatan Creek Watershed Management Plan as amended and restated below.

Priority No. 2 shall be entitled "Riparian Buffers" and include the following:

- 2a. Implement the RPA requirements per current County Chesapeake Bay Preservation Ordinance.
- 2b. Implement a 50-foot intermittent stream buffer and a 50-foot non-RPA wetland buffer in legislative cases.
- 2c. Implement a three-zone riparian buffer in the tidal mainstem and non-tidal mainstem of Powhatan Creek. The first zone (Zone 1) is the regulatory, 100-foot RPA buffer. The second zone (Zone 2) is a variable width buffer, up to 175 feet, based upon site characteristics. The third zone (Zone 3) is a 25-foot buffer. Zone 1 restrictions are outlined in the Chesapeake Bay Preservation Ordinance. Zone 2 restrictions are similar to Zone 1, with the exception that stormwater management facilities and passive recreation facilities may be located within this zone. Zone 3 restrictions are no impervious cover (primary residence, decks, patios, garages, sidewalks, driveways, pools, sheds, gazebos, etc.) and no septic systems or fields. Zone 1 and Zone 2 must have a Natural Open Space Easement recorded for those areas prior to plan approval. This is to be applied in legislative cases.
- 2d. Implement buffer management criteria per the current County Chesapeake Bay Preservation Ordinance.
- 2e. Directing required open space or natural areas derived from clustered development to riparian buffer areas.
- 2f. Continue watershed education on buffer management.

BE IT FURTHER RESOLVED that the Board hereby adopts Priority No. 3 of the Powhatan Creek Watershed Management Plan as amended and restated below.

Priority No. 3 – All new land development should consider the amount and effect of proposed impervious cover and include measures to limit impervious cover to the maximum extent possible. On-site and/or off-site measures should be developed that protect sensitive wetland and stream ecosystems, such as infiltration of stormwater and stream restoration to lessen the effects of new impervious cover within the watershed.

BE IT FURTHER RESOLVED that the Board hereby adopts Priority No. 4 of the Powhatan Creek Watershed Management Plan as originally worded.

Priority No. 4 – Cluster down. The ability to reduce lot sizes in low-density zoning areas to create additional open space.

BE IT FURTHER RESOLVED that the Board hereby adopts Priority No. 11 of the Powhatan Creek Watershed Management Plan as amended and restated below.

Priority No. 11 – All new land development should consider the amount and effect of proposed impervious cover and include measures to limit impervious cover to the maximum extent possible. On-site and/or off-site measures should be developed that protect sensitive wetland and stream ecosystems, such as infiltration of stormwater and stream restoration, to lessen the effects of new impervious cover within the watershed.

## **RESOLUTION**

### **REVISION AND RE-ADOPTION OF THE**

### **YARMOUTH CREEK WATERSHED MANAGEMENT PLAN**

WHEREAS, the Yarmouth Creek Watershed is a resource of local and national significance; and

WHEREAS, the Board authorized staff to prepare a Management Plan to help the County and landowners protect the watershed and its natural resources; and

WHEREAS, stakeholders, staff, and consultants have met over a period of 12 months to share information, set goals, and develop the Watershed Management Plan; and

WHEREAS, by resolution dated October 14, 2003, the Board adopted the Yarmouth Creek Watershed Management Plan dated July 14, 2003, with the exception of Priority No. 3, Special Stormwater Criteria; and

WHEREAS, by resolution dated December 14, 2004, the Board adopted the Special Stormwater Criteria.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts Priority No. 3 of the Yarmouth Creek Watershed Management Plan dated July 14, 2003.

BE IT FURTHER RESOLVED that the Board hereby adopts Priority No. 14 of the Yarmouth Creek Watershed Management Plan as amended and restated below.

Priority No. 14 shall be entitled “Riparian Buffers” and include the following:

- 14a. Implement the RPA requirements per current County Chesapeake Bay Preservation Ordinance.
- 14b. Implement a 50-foot intermittent stream buffer and a 50-foot non-RPA wetland buffer in legislative cases.
- 14c. Implement a three-zone riparian buffer in the tidal mainstem and non-tidal mainstem of Yarmouth Creek. The first zone (Zone 1) is the regulatory, 100-foot RPA buffer. The second zone (Zone 2) is a variable width buffer, up to 175 feet, based upon site characteristics. The third zone (Zone 3) is a 25-foot buffer. Zone 1 restrictions are outlined in the Chesapeake Bay Preservation Ordinance. Zone 2 restrictions are similar to Zone 1, with the exception that stormwater management facilities and passive recreation facilities may be located within this zone. Zone 3 restrictions are no impervious cover (primary residence, decks, patios, garages, sidewalks, driveways, pools, sheds, gazebos, etc.) and no septic systems or fields. Zone 1 and Zone 2 must have a Natural Open Space Easement recorded for those areas prior to plan approval. This is to be applied in legislative cases.
- 14d. Implement buffer management criteria per the current County Chesapeake Bay Preservation Ordinance.
- 14e. Directing required open space or natural areas derived from clustered development to riparian buffer areas.
- 14f. Continue watershed education on buffer management.

## **I. PUBLIC COMMENT**

1. Ms. Bambi Walters, 5112 Shoreline Court, asked if the 300-foot buffer footage would begin from the RPA streamward boundary landward in the event of shoreline delineation.

Mr. Bradshaw stated the buffer was along the mainstems of the two creeks and beyond that, the resolutions do not clarify.

Ms. Walters asked if the buffer was measured from the creek itself or from a feature such as a wetland.

Mr. Darryl Cook, Environmental, stated the buffer has been defined with a maximum of 300 feet, with the first 100 feet of the buffer to fulfill the State regulation and then the 175-foot and 25-foot dimensions are an expansion of that.

Ms. Walters asked for confirmation that the buffer could end at the feature such as the wetland.

Mr. Cook stated this was correct.

Mr. Goodson reminded the public that this is for legislative actions such as rezonings, and changes have not been adopted that apply to current property owners.

Mr. Bradshaw clarified that this applies to the mainstems of the creeks.

Ms. Walters stated that she would like to clarify that the buffer would be more than 300 feet with the addition of property features such as a wetland or slope.

Mr. Cook stated that it could be greater than 300 feet.

Mr. Goodson reminded Ms. Walters that the Public Comment period was not the proper forum for questions, and encouraged her to contact staff directly.

#### **J. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated the Parks and Recreation Division was currently updating the Parks and Recreation Master Plan and that/ citizens were encouraged to participate in the process through public meetings which will be announced in advertisements in County buildings and on the County website.

Mr. Wanner continued that Mr. McGlennon has requested information about how citizens receive information during emergency or crisis and stated that there was a new link on the James City County website to a survey that allows citizens to provide input.

Mr. Wanner stated that roads in James City County are State roads and for road closure information, you may access the Virginia Department of Transportation webpage at [www.virginiadot.org](http://www.virginiadot.org) and the County's website for emergency road closure information.

Mr. Wanner stated when the Board concluded its business, it would adjourn until 4 p.m. on October 24, 2006, for a work session on the elimination of the County decal and the Legislative Agenda. Mr. Wanner recommended the Board go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for consideration of a personnel matter, the appointment of individuals to County boards and/or commissions, specifically the Economic Development Authority and the Williamsburg Regional Library Board of Trustees; pursuant to Section 2.2-3711(A)(7) of the Code of Virginia for the consultation of legal counsel and staff members pertaining to actual litigation; and pursuant to Section 2.2-3711(A)(3) of the Code of Virginia for the consideration of the acquisition of real properties for public use.

#### **K. BOARD REQUESTS AND DIRECTIVES**

Mr. Harrison asked staff to go to St. George's Hundred to evaluate sinkholes and stormwater damage in the area.

Mr. Bradshaw stated he attended the Community Conservation Partnership Kickoff, a partnership of the Colonial Soil and Water Conservation District, James City County, with funding from the Virginia Cooperative Extension Service, which has a grant program wherein neighborhoods may apply for money to make environmental improvements such as nutrient management, tree planting, BMP management, and others with State funding. Mr. Bradshaw stated community members can get more information from Beth Davis, Environmental Education Coordinator with the James City Service Authority; Tressell Carter, Neighborhood Connections; or Leanne Dubois from the Virginia Cooperative Extension Service.

Mr. McGlennon commented that the Board would be talking about the situation regarding Lake Powell.

Mr. Harrison commented on having the online survey available in public places such as the community centers.

Mr. Harrison made a motion to go into Closed Session.

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

Mr. Goodson recessed the Board into closed session at 9:15 p.m.

#### **L. CLOSED SESSION**

Mr. Goodson reconvened the Board into Open Session at 10:27 p.m.

Mr. McGlennon made a motion to adopt the Closed Session resolution.

On a roll call vote, the vote was AYE: Harrison, Icenhour, McGlennon, Bradshaw, Goodson (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)(1), to consider personnel matters, the appointment of individuals to County boards and/or commissions; Section 2.2-3711(A)(7) of the Code of Virginia to consult with legal counsel pertaining to actual litigation; and Section 2.2-3711 (A)(3), to consider acquisition of parcel(s) of property for public use.

No action was taken in Closed Session.




**M. ADJOURNMENT**

Mr. McGlennon made a motion to adjourn.

On a roll call vote, the vote was AYE; Harrison, Icenhour, McGlennon, Bradshaw, Goodson (5).  
NAY: (0).

At 10:28 p.m., Mr. Goodson adjourned the Board until 4 p.m. on October 24, 2006.

  
Sanford B. Wanner  
Clerk to the Board

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PROFFERS

THESE PROFFERS are made this 29th day of August, 2006 by FLF, LLC, a Virginia limited liability company (together with its successors and assigns, the "Owner") and HHHUNT HOMES OF HAMPTON ROADS, LLC, a Virginia limited liability company ("Buyer").

RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 1916 Jamestown Road, Williamsburg, Virginia and being Tax Parcel (46-4)(1-17), being more particularly described on Exhibit A attached hereto (together, the "Property"). The Property is now zoned R-8.

B. Buyer has contracted to purchase the Property conditioned upon the rezoning of the Property.

C. Owner and Buyer have applied to rezone the Property from R-8 to R-2, General Residential District, with proffers.

D. Buyer has submitted to the County a master plan entitled "Master Plan Rezoning and Special use Permit for Mason Park for HHHunt - Hampton Roads, LLC." prepared by AES Consulting Engineers dated April 24, 2006, last revised August 3, 2006 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.



E. Owner and Buyer desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned R-2.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2298 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITION

1. **Master Plan.** The Property shall be developed generally as shown on the Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development. There shall be no more than 15 single-family detached dwelling units within detached garages on the Property.

2. **Owners Association.** There shall be organized an owner's association (the "Association") in accordance with Virginia law in which all lot owners in the Property, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing the Association

shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs and recreation areas, and shall require that each initial purchaser of a lot make a capital contribution to the Association for reserves in an amount at least equal to one-sixth of the annual general assessment and that the Association (i) assess all members for the maintenance of all properties owned or maintained by the Association and (ii) file liens on members' properties for non-payment of such assessments. The Governing Documents shall grant the Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents.

**3. Water Conservation.** (a) Water conservation standards shall be submitted to the James City Service Authority ("JCSA") as a part of the site plan or subdivision submittal for development on the Property and Owner and/or 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 and irrigation wells, 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 JCSA prior to final subdivision plat approval.

(b) The Governing Documents shall provide that no more than 30% of the area of any residential lot on Property may be irrigated. Common areas shall not be irrigated from public water resources. Any irrigation well for the development shall be approved by the JCSA General Manager and will only be permitted to withdraw from the Aquia or Potomac aquifers.

**4. Cash Contributions for Community Impacts.** For each dwelling unit on the Property the one time cash contributions set forth in this Section 4 shall be made.

(a) A contribution of \$1,093.00 for each lot on the Property shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system, the need for which is generated by the physical development and operation of the Property.

(b) A contribution of \$1,000.00 for each lot on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and

operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of the Property, including, without limitation, for emergency services equipment replacement and supply, off-site road improvements, library uses, and public use sites.

(c) A contribution of \$4,011.00 for each lot on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of the property, including, without limitation, school uses.

(d) A contribution of \$500.00 for each lot on the Property shall be made to the County in order to mitigate impacts on the County from the physical development of the Property. The County may use these funds for any project in the County's Capital Improvement Plan, the need for which is generated by the physical development and operation of the Property, including, without limitation, for off-site stream restoration elsewhere in the Powhatan Creek watershed.

(e) The contributions described above, unless otherwise specified, shall be payable for each dwelling unit on the

Property at or prior to the final approval of the site plan or subdivision plat for such lot.

(f) The per lot contribution(s) paid pursuant to this Section shall be adjusted annually beginning January 1, 2007 to reflect any increase or decrease for the preceding year in the Marshall and Swift Building Costs Index (the "Index"). In no event shall the per lot contribution be adjusted to a sum less than the amounts set forth in paragraphs (a), (b), (c), and (d) of this Section. The adjustment shall be made by multiplying the per lot contribution for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the Index as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the Index, 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 the Index. In the event that the Index is not available, a reliable government or other independent publication evaluating information heretofore used in determining the Index (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 lot contribution to approximate the rate of annual inflation in the County.

5. **Jamestown Road Buffer.** There shall be a minimum 150 foot buffer along the Jamestown Road frontage of the Property generally as shown on the Master Plan. The buffer shall be exclusive of any lots. The entrance and entrance road designed as shown generally on the Master Plan, landscaping and berms, the soft surface trails and 8' multi-use paved trail as shown generally on the Master Plan, and with the approval of the Development Review Committee, utilities, fences, bioretention facilities, lighting, entrance features and signs shall be permitted in the buffer. A combination of preservation of existing trees, and landscaping (meeting or exceeding ordinance requirements as to quantity but utilizing plant materials with a size of at least 125% of ordinance requirements) shall be provided within the buffer in accordance with a landscaping plan approved by the Director of Planning which, when the landscaping has reached maturity, shall screen the adjacent homes and garages from the direct view of vehicles traveling on Jamestown Road. The buffer shall be planted or the planting bonded prior to the County being obligated to issue certificates of occupancy for dwelling units located on the Property.



**6. Side Perimeter Buffers.** The perimeter buffer on the north side of the Property between the Jamestown Road buffer and the natural open space easement area proffered by paragraph 9 (b) shall contain "enhanced landscaping" (defined as plant materials with a size of at least 125% of ordinance requirements) in accordance with a landscaping plan approved by the Director of Planning. The perimeter buffer on the south side of the Property between the Jamestown Road buffer and the natural open space easement area proffered by paragraph 9 (b) shall be landscaped in accordance with a landscaping plan approved by the Director of Planning. At the request of the Director of Planning after review of the landscape plan submitted by Owner, Owner shall install "enhanced landscaping" (defined as plant materials with a size of at least 125% of ordinance requirements) in this buffer. The buffers shall be planted or the planting bonded prior to the County being obligated to issue certificates of occupancy for dwelling units located on the Property.

**7. Entrance.** There shall be one entrance into the Property to and from State Route 680 as generally shown on the Master Plan. The entrance shall be designed and constructed in accordance with the current Virginia Department of Transportation standards of entrances to state highways,

including provision for sight distances. There shall not be a median in the entrance road.

**8. Recreation.** Owner shall provide a tot lot and open play field with approximate dimensions of 60 feet by 90 feet, approximately .84 acres of parkland, approximately .51 miles of trail with exercise stations, and a gazebo. All recreation facilities shall be constructed in accordance with County standards and shall be conveyed to the Association. In lieu of a court and ball field, Owner shall make a cash contribution in an amount equal to \$1,425.00 escalated from 1993 dollars to dollars for the year the contributions are made using the formula in Section 4(f) to the County at the time set forth in section 4(e). All cash contributions proffered by this Proffer 8 shall be used by the County for recreation capital improvements. The exact locations of the facilities proffered hereby and the equipment to be provided at such facilities shall be subject to the approval of the Director of Planning.

**9. Environmental Protections.** (a) Owner shall submit to the County a master stormwater management plan as a part of the development plan submittal for the Property, including facilities and measures necessary to meet the County's 10 point stormwater management system requirements and the special stormwater criteria applicable in the Powhatan Creek watershed,

and, in addition, including additional bioretention facilities and other low impact design features generally as illustrated on the Master Plan which include, without limitation, dry swales, porous pavement in driveway parking areas and at least one rain barrel per unit, and other design features such as use of grass strips in driveways to reduce impervious cover consistent with the goals of the Powhatan Creek Watershed Management Plan, for review and approval by the Environmental Division. The Governing Documents shall provide that lot owners may repair, maintain and replace low impact design features located on their lot, such as porous pavement, rain barrels and grass strips in driveways, only with comparable features. The master stormwater management plan may be revised and/or updated during the development of the Property with the prior written approval of the Environmental Director. The County shall not be obligated to approve any final development plans for development on the Property until the master stormwater management plan has been approved. The approved master stormwater management plan, as revised and/or updated, shall be implemented in all development plans for the Property.

(b) Prior to the issuance of any land disturbing permits for development pursuant to the Master Plan, Owner shall grant a natural open space easement to the County over the area within

the limits shown as "Existing Tree Line, Also Limits of Priority Conservation Areas C-42/C-43" on Exhibit B hereto. The easement area shall remain undisturbed except the easement shall permit, with the prior approval of the County Engineer, the installation of a sewer line crossing the easement area and an outfall for the storm water management pond and the installation of a soft surface walking trail to be designed and field located to avoid the necessity of clearing any mature trees.

**10. Archaeology.** A Phase I Archaeological Study for the Property 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.

**11. Architectural Review.** Owner shall prepare and submit design review guidelines to the Development Review Committee setting forth design and architectural standards for the development of the Property generally consistent with the typical architectural elevations included in the Community Impact Statement submitted with the Application for Rezoning, requiring that all garages on the Property be detached and located to the rear of the house and incorporating appropriate

and suitable green building practices as recommended in the NAHB Model Green Building Guidelines, 2006 edition, for the approval of the Director of Planning prior to the County being obligated to grant final approval to any development plans for the Property (the "Guidelines"). Once approved, the Guidelines may not be amended without the approval of the Director of Planning. Owner shall establish a Design Review Board to review all building plans and building elevations for conformity with the Guidelines and to approve or deny such plans. Prior to the issuance of a building permit for each house and garage on the Property, architectural plans for such house and garage shall be submitted to the Director of Planning for his review for consistency with the Guidelines. The Director of Planning shall review and either approve or provide written comments setting forth changes necessary to obtain approval within 30 days of the date of submission of the plans in question. All houses and garages shall be constructed in accordance with the approved plans. In the case of plans that will be used on more than one lot, Director of Planning approval need only be obtained for the initial building permit. All exterior colors on homes and garages shall be from the Martin Senour "Williamsburg" exterior paint color palette or the Sherwin Williams "Preservation

Palette" excluding the "Postwar Romanticism" colors from the latter.

**12. Preservation of Specimen Trees.** Owner shall submit a tree survey of the buffers on Property with the site plan for development of the Property and shall use its best efforts to preserve trees located within the 150 foot Jamestown Road buffer identified on the survey as specimen trees to be preserved.

**13. Streetscape Guidelines.** The Owner shall provide and install streetscape improvements in accordance with the applicable provisions of the County's Streetscape Guidelines policy except as described in the letter to the County from AES Consulting Engineers dated August 28, 2006 modifying the applicant's request for reduced street widths, a copy of which is on file in the Planning Department. The streetscape improvements shall be shown on development plans for the Property and submitted to the Director of Planning for approval during the subdivision approval process. Streetscape improvements shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to the approval of the final subdivision plat of the Property. The Association shall provide annual maintenance of all street trees to ensure that no branches intrude into any internal subdivision roadway below the 13' 6" fire vehicle clearance requirement.

14. Nutrient Management Plan. The Association shall be responsible for contacting an agent of the Virginia Cooperative Extension Office ("VCEO") or, if a VCEO agent is unavailable, a soil scientist licensed in the Commonwealth of Virginia or other qualified professional to conduct soil tests and to develop, based upon the results of the soil tests, customized nutrient management plans (the "Plans") for all common areas within the Property and each individual lot. The Plans shall be submitted to the County's Environmental Director for his review and approval prior to the issuance of building permits for houses on the Property. Upon approval, the Association shall be responsible for ensuring that any nutrients applied to common areas which are controlled by the Association be applied in strict accordance with the Plan. The Owner shall provide a copy of the individual Plan for each lot to the initial purchaser thereof. Within 12 months after issuance of the Certificate of Occupancy for the final dwelling unit on the Property and every three years thereafter, a turf management information seminar shall be conducted on the site. The seminar shall be designed to acquaint residents with the tools, methods, and procedures necessary to maintain healthy turf and landscape plants.



15. **Sidewalks.** There shall be sidewalks five feet in width installed along one side of all streets within the Property generally as shown on the Master Plan. Owner shall, in lieu of installing a sidewalk along the Route 680 frontage of the Property, install an 8' wide paved trail across the Route 680 frontage of the Property connecting to the adjacent parcels to the north and south and to Route 680 in the general location shown on the Master Plan.

16. **Curb and Gutter.** Streets within the Property shall be constructed with curb and gutter provided, however, that this requirement may be waived or modified along those segments of street, including entrance roads, where structures are not planned.

17. **Entrance Sign.** Any entrance sign shall be a monument style sign no more than four feet in height. Owner shall submit an elevation of the entrance sign to the Director Of Planning for his reviewed and approval prior to installation of the sign.

18. **Construction Start.** No construction activity other than the demolition of existing structures and installation of landscaping shall take place before January 1, 2008.

WITNESS the following signatures.

FLF, LLC

By:

Griffin W. Fernando

Title:

MEMBER/OWNER

HHHunt Homes of Hampton  
Roads, LLC

By:

Title:

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF Albemarle, to-wit:

The foregoing instrument was acknowledged this 5  
day of September, 2006, by Griffin W. Fernando, as  
Griffin W. Fernando of FLF, LLC, a Virginia limited liability company,  
of behalf of the company

Christine C. Hankins  
NOTARY PUBLIC

My commission expires: September 30, 2007.

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged this \_\_\_\_\_  
day of \_\_\_\_\_, 2006, by \_\_\_\_\_, as  
of HHHunt, Homes of Hampton Roads, LLC on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_.

WITNESS the following signatures.

FLF, LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

HHHunt Homes of Hampton  
Roads, LLC

By: [Signature]  
Title: MANAGER

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged this \_\_\_\_\_  
day of \_\_\_\_\_, 2006, by \_\_\_\_\_, as  
\_\_\_\_\_ of FLF, LLC, a Virginia limited liability company,  
of behalf of the company

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_.

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 29th  
day of August, 2006, by Steve U. Miller, as Manager  
of HHHunt, Homes of Hampton Roads, LLC on behalf of the company.

[Signature]  
NOTARY PUBLIC

My commission expires: 12/31/09.

## EXHIBIT A

### PARCEL ONE

All that certain lot, piece or parcel of land containing 4.91 acres by survey, but conveyed in gross and not by acre, situate, lying and being in Jamestown District, James City County, Virginia, as shown on that certain plat entitled "JAMESTOWN DISTRICT, JAMES CITY COUNTY, VA., PLAT SHOWING BOUNDARY SURVEY OF A PARCEL OF LAND FOR FRANK AND MARY K. FERNANDEZ, BEING PART OF AMBLER'S PLANTATION", dated December 10, 1963, and made by Vincent D. McManus, Certified Surveyor, said plat being recorded in the Office of the Clerk of Circuit Court for the City of Williamsburg and the County of James City Virginia in Deed Book 94, page 55, to which plat reference is here made for a more particular description.

### PARCEL TWO

All that certain lot or parcel of land situate in Jamestown District, James City County, Virginia, set up, shown and described on a plat of survey thereof entitled "Plat of part of A.C. Ammons prop.: Standing in the name of Charles W. Bulifant, Jamestown District, James City County, Va., " made by Stephen Stephens, Certified Land Surveyor, in April 1963, and whereon said land is shown to contain 4.202 acres, and is described by metes and bounds, courses and distances, and said plat is recorded in Plat Book 20, page 40, and is hereby made a part hereof by reference.

Parcels One and Two are a portion of the property conveyed to FLF, LLC by Deed dated July 14, 1998 recorded in the aforesaid Clerk's Office as Instrument No. 980014306, as corrected by Deed of Correction dated February 9, 2000 recorded in the aforesaid Clerk's Office as Instrument No. 000007980.

Prepared by:

Geddy, Harris, Franck & Hickman, LLP  
1177 Jamestown Road  
Williamsburg, Virginia 23185

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 6 Nov 06  
at 2:44 PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.  
STATE TAX LOCAL TAX ADDITIONAL TAX

\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk