

BOARD OF SUPERVISORS OF THE
COUNTY OF CUMBERLAND, VIRGINIA

RESOLUTION

ADOPTION OF GUIDING PRINCIPLES
FOR REACHING AGREEMENT ON THE
COBBS CREEK RESERVOIR PROJECT

July 26, 2010

At a meeting of the Board of Supervisors of Cumberland County, Virginia, in the Circuit Courtroom at Cumberland Courthouse, Virginia commencing at 9:00 a.m., July 26, 2010, the following action was taken during the meeting of the Board at which time County staff provided input with regard to the above-referenced matter:

On a motion made by Supervisor Robert Oertel, it was moved that the Board of Supervisors of Cumberland County approve and adopt, in accordance with the following Resolution, certain guiding principles with regard to negotiations and discussions for the Cobbs Creek Reservoir project;

Following presentation of the Resolution, the Board of Supervisors adopted and approved the Resolution according to the votes stated below:

<u>Present:</u>	<u>Vote:</u>
Timothy M. Kennell, Chairman	aye
Robert J. Oertel	aye
William F. Osl, Jr.	nay
Van H. Petty	aye
Elbert R. Womack	aye

Dated: _____

Attested: _____

Judy Ownby, Clerk
Board of Supervisors
Cumberland County

WHEREAS, since 2002, Cumberland County has been working with Henrico and Powhatan Counties to site a reservoir in Cumberland for storage of river water and for releases to the James River under certain low flow conditions to meet the current and future needs of the various jurisdictions as well as to enhance the James River environment (the “Project”); and

WHEREAS, the Project has been proposed to be sited along the Cobbs Creek basin, is expected to have a safe yield of approximately 47 million gallons of water per day, and is to be sited wholly within Cumberland County; and

WHEREAS, the Board of Supervisors has held numerous meetings and public hearings in furtherance of the Project; and

WHEREAS, Cumberland County submitted applications for and received permits from the Virginia Marine Resources Commission, Virginia Department of Environmental Quality and United States Army Corps of Engineers for, among other things, siting and initial construction of the Project; and

WHEREAS, Cumberland County recognizes the need, and therefore seeks, to set forth certain principles for agreement with the lead jurisdiction so that the Project may remain viable and that staff and others can receive direction on those matters of vital importance to Cumberland so that all can proceed with construction and ultimate operation of the Project; and

WHEREAS, after discussion, staff presentation and due deliberation with respect to such information, the Board of Supervisors gave reasonable consideration to furthering the goals of the County, its citizenry and general welfare and desires to affirm its findings and to set forth certain principles for continuing with the Project;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors, as follows:

- a. The foregoing recitals are hereby incorporated by this reference.
- b. Upon consideration of the proposed Project, Cumberland County has certain requirements for continuing with the Project and further can agree to certain terms and arrangements provided these certain principles are met.
- c. In light of the above, Cumberland County is willing to agree as follows and under the conditions and principles outlined herein:
 1. Cumberland will work in good faith with Henrico to develop a mutually agreeable Memorandum of Understanding (“MOU”) setting forth the general terms of the Project, respective roles of the parties and the documents necessary to complete the transaction contemplated therein.
 2. Henrico shall pay the full costs of permitting, engineering, acquiring property for, constructing, maintaining and operating the Project.
 3. Henrico shall seek to purchase all property necessary for the Project. Cumberland will support Henrico’s efforts, including using Cumberland’s power of eminent domain to acquire the necessary land and easements. However, Henrico will not use any current or future power of eminent domain to enlarge the Project or to acquire additional land or easements whether directly or indirectly related to the Project. Henrico will not purchase or acquire additional land or easements after the final site plan is approved within Cumberland’s jurisdiction without Cumberland’s consent.

4. Henrico shall own all of the real property, equipment, and infrastructure necessary to construct, operate and maintain the water intake, reservoir, and other components necessary to accomplish the purposes of this Project and to comply with all permit requirements.
5. Henrico shall own the water collected and stored in the reservoir and will bear full responsibility for operations and maintenance of the Project consistent with all applicable permits, rules, regulations and ordinances.
6. Henrico will indemnify, holding harmless or otherwise take full responsibility for claims by third parties, governmental bodies, etc. against Cumberland for Henrico's construction, operation and maintenance of the Project. Cumberland should not bear any liability or share of liability for any environmental damage, claims or penalties associated with the Project or its operation. Similarly, Henrico will be responsible for damages during construction to Cumberland streets and roads that serve as public right-of-way.
7. Cumberland will be entitled to a direct withdrawal of an annual allocation of up to 7 million gallons per day of raw water from the reservoir. At the time of Cumberland's exercise of direct access, Henrico will enter into a water agreement with Cumberland with no further approval required by Henrico. Henrico's charges for water shall be based on a cost of service methodology used by Henrico matching the lowest cost of service with any other locality and the rates imposed shall further account for Cumberland's direct access without piping requirements.
8. Cumberland will take all steps necessary in support of the Project including adoption of a watershed protection plan, a buffer management plan, proposed changes and approvals with regard to its zoning provisions and its comprehensive plan. Cumberland will consult with Henrico on such matters, will serve as the final arbiter of such items and will adopt such measures so that each measure will have the least negative impact to Cumberland citizens, landowners and their interests. Henrico will work with Cumberland to maintain or reduce the buffer to the least amount as necessary to maintain water quality.
9. Cumberland will have full control of recreational use of the reservoir and shoreline, provided it is in accordance with applicable state and federal regulations. Cumberland shall exclusively manage all recreational uses of the reservoir provided such uses do not impair water quality as determined by state regulators.
10. Cumberland will determine what, if any, development occurs around the reservoir. Landowners adjacent to the reservoir shoreline or surrounding buffers shall be provided an access easement to the surface area of water provided such access does not negatively impact "no trespass" areas or zones designated by Henrico after consultation with Cumberland and an affirmative determination that such areas or zones are the least stringent on surface water use and access. Cumberland will have an easement at all shoreline and buffer areas.
11. A minimum of three public access areas will be designated with each providing, at a minimum, parking for 30 vehicles and trailers; public restroom, changing and concession facilities; access to the surface water, shoreline boat ramps and piers extending at least 25 feet. Henrico will agree to coordinate further recreational opportunities through the Cumberland recreational access plan.
12. Upon, or concurrently with, (i) reimbursement of all amounts previously paid by Cumberland for the benefit of the Project (such amounts totaling \$1,545,220.00 as of the date of this Resolution) and (ii) execution of such documents necessary to set forth and complete the transactions contemplated in the MOU, Cumberland shall promptly execute all documents and perform all steps necessary to transfer all permits and wetland mitigation bank contracts for the Project to Henrico.

13. Cumberland will likewise be reimbursed all future costs associated with planning, permitting, use of its eminent domain powers, and other initial costs incurred exclusively to Cumberland as the host county, including the allocation of its administrative overhead of its staff and consultants necessary to perform such work. As an example, such matters include costs associated with drafting the watershed protection plan.
14. For a period of 50 years, Henrico shall make an annual contractual payment to Cumberland to pay Cumberland for, among other things, permitting the Project, hosting the Project, providing county services at the Project site, and exercising its eminent domain powers. Costs incurred by Cumberland as set forth in other paragraphs in this Resolution are not included under the contractual payment amounts. Such contract payments shall be \$1,850,525.00 for the first two years and \$1,131,900.00 for the remaining forty-eight years. Cumberland shall have a security interest in the land owned by Henrico to ensure payment of the contractual payment. As a condition of receipt of such payments, Cumberland is willing to agree not to impose any service charge on the reservoir property or any other tax, charge or assessment that uniquely applies to the Project land, equipment, assets or operations. Any non-unique charge, assessment or tax, that applies uniformly across all similarly situated land-owners or operators, will not impact or reduce the payment amount to Cumberland.
15. Should the Project continue operations after an initial 50-year period, Henrico will agree to pay a payment-in-lieu-of-taxes under the methodology set forth in the Virginia Code for calculating such payments.
16. Upon acquisition of property for site (including through eminent domain), remnant lands surrounding site and not used for facility shall be returned to original property owner; properties not returned to or rejected for ownership by the original property owner shall be owned by Cumberland.
17. Henrico agrees that it will not transfer ownership of the Project without Cumberland's consent.
18. If Henrico ceases operations of the reservoir, it will return the land to its original condition or provide protection to the public health and environment in an alternative method of operation or closure. Henrico will provide a bond to ensure such protections are met.

d. This Resolution is effective immediately.