

BOARD OF SUPERVISORS OF THE  
COUNTY OF CUMBERLAND, VIRGINIA

RESOLUTION

APPROVAL OF AND AUTHORITY TO EXECUTE  
A MEMORANDUM OF UNDERSTANDING  
ON THE  
COBBS CREEK RESERVOIR PROJECT

August 4, 2010

At a meeting of the Board of Supervisors of Cumberland County, Virginia, in the Circuit Courtroom at Cumberland Courthouse, Virginia commencing at 7:00 p.m., August 4, 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:

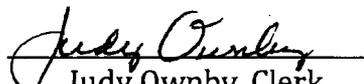
On a motion made by Supervisor Kennell, it was moved that the Board of Supervisors of Cumberland County approve and adopt the following Resolution with regard to the Cobbs Creek Reservoir project;

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	Nay
Elbert R. Womack	Aye

Dated: August 5, 2010

Attested:

  
Judy Ownby, Clerk  
Board of Supervisors  
Cumberland County

P.O. Box 110  
Cumberland, Virginia 23040  
(804) 492-3625 Phone  
(804) 492-9224 Fax  
www.cumberlandcounty.virginia.gov

County Administrator  
Judy Ownby

jownby@cumberlandcounty.virginia.gov

Assistant Administrator  
Jill Matthews

matthews@cumberlandcounty.virginia.gov

Assistant Administrator  
Michael Cooper

mcooper@cumberlandcounty.virginia.gov

Board of Supervisors

William F. "Bill" Osl, Jr.  
District 1

Timothy "Tim" Kennell  
District 2

Van H. Petty  
District 3

Elbert R. Womack  
District 4

Robert J. Oertel  
District 5

**WHEREAS**, , in cooperation with Henrico County and Powhatan County, Cumberland County has received state and federal permits to construct a reservoir in the Cobbs Creek area of the County (the "Project"); and

**WHEREAS**, on July 26, 2010, the Cumberland County Board of Supervisors adopted a resolution setting forth guiding principles for reaching agreement on the Project; and

**WHEREAS**, since adoption of the above-referenced resolution, representatives of the parties have negotiated a Memorandum of Understanding ("MOU") regarding the Project; and

**WHEREAS**, the Cumberland County Board of Supervisors believes that construction of the Project pursuant to the terms of the MOU is in the best interest of the County;

**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 MOU and in furtherance thereof, the Chairman of the Board of Supervisors and the Clerk of the Board are hereby authorized and directed to execute the attached MOU provided that paragraph 16 of the MOU is revised to limit the repayment obligation of Cumberland to Henrico so that it shall expire upon completion of construction of the reservoir.
- c. Further, the Chairman of the Board of Supervisors and County staff are authorized and directed to take all steps necessary to implement the provisions of the MOU.
- d. The July 26, 2010 resolution is superseded to the extent it is inconsistent with this Resolution or the provisions of the MOU.
- e. This Resolution is effective immediately.

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM of UNDERSTANDING is made this 10<sup>th</sup> day of August, 2010, between **CUMBERLAND COUNTY**, a political subdivision of the Commonwealth of Virginia ("Cumberland"), and **HENRICO COUNTY**, a political subdivision of the Commonwealth of Virginia ("Henrico").

### RECITALS:

- A. Cumberland, Henrico and Powhatan County have been cooperating to site a reservoir in Cumberland for storage of river water and 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 is known as the Cobbs Creek Reservoir (the "reservoir").
- B. The reservoir has a projected safe yield of approximately 47 million gallons of water per day.
- C. The reservoir will be located wholly within Cumberland.
- D. Cumberland submitted various permit applications for the reservoir. The Virginia Marine Resources Commission has issued a permit for Cumberland to construct the intake system for the reservoir, the Virginia Department of Environmental Quality has issued a Water Protection Permit for the project, and the Corps of Engineers, Norfolk District has issued the necessary permit to construct the reservoir. All permits for the reservoir are final. However, the need for other environmental permits related to the reservoir, e.g., for relocation of utilities, may be identified as final engineering plans are completed.

- E. Based on their discussions, Cumberland and Henrico have agreed to certain terms concerning the permitting and ultimate construction and operation of the reservoir.
- F. To date, Henrico has expended \$200,000 on the development of the Cobbs Creek Project and Cumberland has expended \$2,104,646.09 for permitting costs and \$550,383.77 for a wetlands mitigation bank.
- G. Cumberland and Henrico agree that Henrico shall construct and own the proposed reservoir and be responsible for its governance.
- H. Cumberland acknowledges that Henrico intends to enter into a water agreement with Powhatan under which Henrico will provide Powhatan an average annual allocation of up to 10.0 mgd of water from the reservoir.

#### TERMS AND CONDITIONS

1. Henrico shall pay the full costs of permitting, engineering, acquiring property for, constructing, maintaining and operating the reservoir.
2. Within 15 days of execution of this Memorandum, Cumberland shall execute all documents and perform all steps necessary to transfer all reservoir permit approvals to Henrico. These steps include submission of the following documents to the Virginia Department of Environmental Quality: (a) a written request for a transfer of reservoir permit ownership, (b) a copy of this Memorandum, and (c) a copy of the official resolution of the Cumberland County Board of Supervisors approving transfer of the reservoir permits to Henrico. Cumberland also agrees to comply with all deadlines imposed by the reservoir permits for Cumberland's action related to the reservoir, such as

submission of the buffer vegetation management plan required by the Virginia Department of Environmental Quality permit.

3. Henrico shall seek to purchase all property and easements necessary for the reservoir. Cumberland agrees that it will provide information and other assistance to Henrico in making these purchases and shall promptly exercise its power of eminent domain to obtain all property and easements Henrico deems necessary for the reservoir but is unable to purchase through good faith negotiations with owners. Henrico shall reimburse Cumberland for all reasonable costs, including reasonable attorney's fees, Cumberland incurs in acquiring property and easements for Henrico by eminent domain. Henrico shall not purchase or seek to acquire any properties or easements by condemnation in excess of those needed for the project described in the permits granted by the regulatory authorities without the written consent of the Cumberland County Board of Supervisors.
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 Memorandum and to comply with all permit requirements.
5. Henrico shall own the water collected and stored in the reservoir.
6. Upon execution of this Memorandum, Cumberland shall take all steps necessary to amend its comprehensive plan and to enable Henrico to receive approval of the location, character and extent of the reservoir as being substantially in accord with Cumberland's comprehensive plan as required by Va. Code § 15.2-2232. Cumberland shall have the sole right to regulate development around the reservoir consistent with the Watershed Protection Plan.

7. Cumberland shall, in consultation with Henrico, adopt a Watershed Protection Plan and Ordinance in substantial conformity with Exhibit B. The Watershed Protection Plan shall ensure no degradation of water quality within the reservoir.
8. Cumberland agrees to take all lawful steps necessary to enforce all provisions of the Watershed Protection Plan and Ordinance to allow Henrico to operate the reservoir safely and efficiently. Cumberland also agrees to enforce "no trespassing" areas on the reservoir established by Henrico. Such areas shall be limited to the areas identified by Henrico as necessary for operation and maintenance of the reservoir and its associated infrastructure and facilities. Henrico shall identify such areas on the initial site plan and by subsequent written notice to Cumberland. Henrico will allow all recreational uses of the reservoir outside of the "no trespassing" zones unless prohibited by state or federal regulatory agencies or by Cumberland's Watershed Protection Plan and Ordinance.
9. At Cumberland's request, Henrico shall enter into a water agreement with Cumberland under which Henrico will provide Cumberland an average annual allocation of up to 7.0 million gallons per day ("mgd") of raw water. Henrico's charges for water shall be based on the cost of service methodology determined by Henrico and shall match the methodology used for Goochland and Hanover. Cumberland shall be entitled to a direct withdrawal of its water allocation from the reservoir.
10. Henrico will have an average annual allocation of up to 30.0 million gallons per day ("mgd") of raw water.
11. The parties agree that transfer of responsibility, coverage and liability for a reservoir permit shall pass from Cumberland to Henrico on the date each reservoir permit transfer from Cumberland to Henrico is approved by a regulatory agency.

12. Within 30 days of execution of this Memorandum, Cumberland shall provide the consent of its Board of Supervisors for the reservoir as required by Va. Code § 15.2-5122. Cumberland agrees that it will not revoke its consent for any period during which Henrico wishes to operate or use the reservoir for its water supply needs.
13. The following shall be conditions subsequent to this Memorandum:
  - A. Henrico's acquisition of the property and easements necessary to construct, operate and maintain the reservoir and its associated infrastructure and facilities; and,
  - B. Henrico's final legal authority to construct and operate the reservoir as designed and without regulatory or permit conditions Henrico deems to be unreasonable; and,
  - C. Cumberland's amendment of its comprehensive plan and approval of the reservoir as being substantially in accord with the comprehensive plan; and,
  - D. Cumberland's adoption of a Watershed Protection Plan and Ordinance containing the premises attached in Exhibit B that ensures no degradation of water quality within the reservoir; and,
  - E. Cumberland's consent to reservoir as required by Va. Code § 15.2-5122; and,
  - F. Cumberland's issuance of all permits it requires for the reservoir.
14. For 50 years from the date of this Memorandum, if Cumberland's consent remains in effect and Cumberland does not impose a service charge on the reservoir property as authorized by Va. Code § 58.2-3400 or any other tax, charge or assessment, Henrico shall make an annual contractual payment to Cumberland in the amount and schedule as

provided in Exhibit A. Beginning 50 years from the date of this Memorandum, Henrico shall make a payment-in-lieu-of-taxes under the methodology set forth in the Code of Virginia for calculating payments in lieu of property taxes for projects owned by an authority for as long as the reservoir remains in operation.

15. Henrico shall reimburse Cumberland \$2,104,646.09 for Cumberland's costs for permitting the reservoir project within 30 days of execution of this Memorandum. Within 30 days of Cumberland's execution of an assignment of its rights related to its payment of \$550,383.77 for a wetlands mitigation bank for the reservoir to Henrico in a form approved by the Henrico County Attorney, Henrico will pay Cumberland \$550,383.77 for Cumberland's payments for the wetlands mitigation bank.
16. If Cumberland fails to perform any of its obligations under this Memorandum and such failure prevents Henrico from operating the reservoir as contemplated by the regulatory permits, Cumberland shall repay to Henrico all amounts paid by Henrico under paragraph 15 above. This obligation shall expire upon completion of construction of the reservoir and its appurtenant facilities.
17. Cumberland agrees that any increased costs imposed on Henrico's construction, operation or maintenance of the reservoir to comply with any ordinance adopted by Cumberland after the date of this Memorandum shall be credited against the contractual payments to be made by Henrico to Cumberland under paragraph 14 of this Memorandum, unless the adoption of such ordinance is mandated by the Commonwealth of Virginia or the federal government and its application to the reservoir is mandatory.
18. Henrico shall have the right to use without charge the streets, roads, lanes, alleys and other rights-of-way controlled by Cumberland to construct, operate and maintain the

reservoir. Henrico may acquire and retain such easements and rights-of-way as may be necessary for the construction, operation, maintenance, repair of the reservoir and any water facilities for the service of Henrico's customers. If any remnants are created by Henrico acquiring land, easements and rights-of-way, such remnants shall be offered to Cumberland for purchase at fair market value after being offered to any other person or entity as required by law.

19. Cumberland and Henrico acknowledge that the water to be supplied by Henrico may be limited as to quantity and quality from time to time by drought, by current or future regulatory restrictions, or by other conditions over which Henrico has no control. If Henrico is unable to meet the water requirements of this Memorandum, it shall notify Cumberland in writing. In addition, it shall promptly use good faith efforts to cure the circumstances that require such restrictions. If Henrico is unable to supply water because of restrictions or conditions over which it has no control, Cumberland hereby waives any action at law or in equity to require water or to recover damages from Henrico. Any and all such water allocation reductions to Cumberland and Henrico shall be in proportion to the reservoir safe yield allocations for each party.
20. Cumberland shall issue the necessary permits, including building permits, plumbing permits, electrical permits, and other administrative permits when Henrico applies for them for the reservoir to meet all applicable local, state and federal codes.
21. If Henrico no longer needs the reservoir, Henrico shall offer to sell part or all of its property to Cumberland at fair market value.

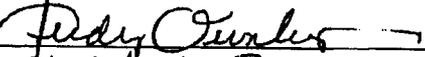
22. The parties agree that Cumberland shall manage access to the reservoir for recreational uses in accordance with its Watershed Protection Plan, including access across reservoir property other than the "no trespassing" zones identifies pursuant to paragraph 8.
23. The parties agree that execution of this Memorandum shall waive all claims by Cumberland or Henrico related to the reservoir against each other and Powhatan County prior to the date of execution.

WHEREFORE, the parties have executed this Memorandum by signature of their authorized representatives below.

**COUNTY OF CUMBERLAND**

By: 

Its: Chairman

By: 

Its: Clerk to the Board

**COUNTY OF HENRICO**

By: 

Its: Chairman

Exhibit A

<b>Fiscal Year Ending</b>	<b>Amount</b>
2011	\$1,131,900
2012	\$1,131,900
2013	\$1,131,900
2014	\$1,131,900
2015	\$1,131,900
2016	\$1,131,900
2017	\$1,131,900
2018	\$1,131,900
2019	\$1,131,900
2020	\$1,131,900
2021	\$1,131,900
2022	\$1,131,900
2023	\$1,131,900
2024	\$1,131,900
2025	\$1,131,900
2026	\$1,131,900
2027	\$1,131,900
2028	\$1,131,900
2029	\$1,131,900
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2032	\$1,131,900
2033	\$1,131,900
2034	\$1,131,900
2035	\$1,131,900
2036	\$1,131,900
2037	\$1,131,900
2038	\$1,131,900
2039	\$1,131,900
2040	\$1,131,900
2041	\$1,131,900
2042	\$1,131,900
2043	\$1,131,900
2044	\$1,131,900

<b>Fiscal Year Ending</b>	<b>Amount</b>
2045	\$1,131,900
2046	\$1,131,900
2047	\$1,131,900
2048	\$1,131,900
2049	\$1,131,900
2050	\$1,131,900
2051	\$1,131,900
2052	\$1,131,900
2053	\$1,131,900
2054	\$1,131,900
2055	\$1,131,900
2056	\$1,131,900
2057	\$1,131,900
2058	\$1,131,900
2059	\$1,131,900
2060	\$1,131,900

Exhibit B  
To be replaced with model language

ARTICLE I            GENERAL PROVISIONS

- SEC. 1-100    TITLE AND AUTHORITY
- SEC. 1-102    JURISDICTION
- SEC. 1-104    PURPOSE
- SEC. 1-106    EFFECTIVE DATE
- SEC. 1-108    APPLICATION OF REGULATIONS
- SEC. 1-110    ESTABLISHMENT OF RESERVOIR PROTECTION OVERLAY DISTRICT ZONES
  - Sec. 1-110.1   Reservoir Protection Areas*
  - Sec. 1-110.3   Reservoir Management Areas*
- SEC. 1-112    INTERPRETATION OF DISTRICT BOUNDARIES

ARTICLE II           DISTRICT REGULATIONS

- SEC. 2-100    RESERVOIR PROTECTION AREAS
  - Sec. 2-100.1   Statement of Intent*
  - Sec. 2-100.3   Permitted Uses*
  - Sec. 2-100.5   Regulated Uses*
  - Sec. 2-100.7   Prohibited Uses*
- SEC. 2-200    RESERVOIR MANAGEMENT AREAS
  - Sec. 2-200.1   Statement of Intent*
  - Sec. 2-200.3   Permitted Uses*
  - Sec. 2-200.5   Regulated Uses*
  - Sec. 2-200.7   Prohibited Uses*

ARTICLE III          USE AND DESIGN STANDARDS

- SEC. 3-100    DEVELOPMENT STANDARDS
  - Sec. 3-100.1   Statement of Purpose and Intent*
  - Sec. 3-100.3   General Performance Standards for Development*
  - Sec. 3-100.5   Golf Courses*
- SEC. 3-200    AGRICULTURE
- SEC. 3-300    SILVICULTURE

ARTICLE IV          SITE DEVELOPMENT PLANS

- SEC. 4-100    APPLICABILITY
- SEC. 4-102    COMPREHENSIVE RPOD SITE DEVELOPMENT PLAN REQUIREMENTS
  - Sec. 4-102.1   Content*
  - Sec. 4-102.3   Preparer Qualifications*
  - Sec. 4-102.5   Proof of Permits*
  - Sec. 4-104    Condensed Site Plan Requirements*

SEC. 4-106 ADMINISTRATIVE PROCEDURES AND REQUIREMENTS  
SEC. 4-108 MINIMUM STANDARDS AND IMPROVEMENTS REQUIRED

ARTICLE V ADMINISTRATION

SEC. 5-100 PLANNING COMMISSION AND ZONING ADMINISTRATOR  
SEC. 5-102 BOARD OF ZONING APPEALS  
SEC. 5-104 PERMITS  
Sec. 5-104.1 Stormwater Control Permits  
SEC. 5-106 REVIEW PROCESS  
Sec. 5-106.1 Denial of Plan, Appeal of Conditions or Modifications  
SEC. 5-108 FEES  
SEC. 5-110 ENFORCEMENT  
SEC. 5-112 PENALTIES  
Sec. 5-112.1 Civil Penalties  
Sec. 5-112.3 Appeals  
Sec. 5-112.5 Criminal Penalties  
Sec. 5-112.7 Liability For Expenses Caused By Violation  
SEC. 5-114 AMENDMENTS FOR RPOD ORDINANCE  
SEC. 5-200 EXEMPTIONS  
Sec. 5-200.1 Nonconforming Uses and Structures  
Sec. 5-200.3 Conditional Zoning  
Sec. 5-200.5 Special Use Permits  
Sec. 5-200.7 Variances

ARTICLE VI DEFINITIONS

SEC. 6-100 DEFINITIONS