



Craig S. Gerhart
County Executive

COUNTY OF PRINCE WILLIAM

OFFICE OF EXECUTIVE MANAGEMENT

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January 27, 2005

TO: Board of County Supervisors

FROM: Stephen K. Griffin, AICP
Director of Planning

THRU: Craig S. Gerhart
County Executive

RE: Open Space Agreement (OSA) #PLN2005-00027, Bull Run County Club
(Perrymont Links, LLC) (**Gainesville Magisterial District**)

I. Background is as follows:

- A. Request – This is a request to amend two open space agreements which commit to retain 235 acres in open space through tax year 2010. The applicant seeks to remove 75 acres from the open space designation in order to facilitate construction of up to 26 homes.
- B. Location – The subject open space is contained within the 429-acre golf course complex known as the Bull Run County Club (Perrymont Links, LLC), located at 3600 James Madison Highway, north of Waterfall Road and west of Route 15. The property is identified on County maps as GPIN 7200-74-0853.
- C. Comprehensive Plan – The site is designated AE, Agricultural or Estate, and ER, Environmental Resource.
- D. Existing Zoning and Land Use – This property is zoned A-1, Agricultural. Portions of this property are within the Route 15 Highway Corridor Overlay District (HCOD). A special use permit allowing a 54-hole golf course on the property was approved by the Board of County Supervisors in 1995 (SUP #95-034). In 2004, pursuant to SUP #PLN2003-00355, the BOCS approved a modification of the special use permit for the golf course to allow a reduction of the golf course area from 429 acres (54-hole course) to 169 acres (18-hole course). The applicant's stated purpose behind the special use permit modification was to permit development of by-right houses in a cluster design around the 18-hole golf course, which totals 260 acres (including the 75 acres of open space which is the subject of this application). Relevant materials involving the 2004 special use permit, including approved conditions, general development plan, and conceptual plan showing by-right uses, are shown on pages C-1 through C-10.

- E. Two Open Space Agreements – Virginia law permits an applicant to contract with the County to maintain land in approved open space uses for a minimum period of time in return for reduced tax rates. The applicant contracted with the County in 1999 to maintain 235 acres as open space through tax year 2010. The 235 acres does not represent the entire golf course site; instead, it represents bits and pieces of land near each of the golf course links on the site, as well as connecting walkways. Construction of the residences to be clustered around the golf course is not permitted under the open space agreements, even if otherwise permissible in the underlying zoning district. The agreements were for a minimum term of ten years, because this is the minimum contractual period which the Finance Department will accept. The existence of the two open space agreements was not identified by the applicant in its 2004 special use permit agreement and was not considered as part of this special use permit. The open space agreements and a map of the open space, existing and proposed for removal, are shown on pages D-1 to F-1.

- F. Procedure and Scope of Review – The state law provides that this request for early termination be reviewed in accordance with the procedure for early removal of land from agricultural/forestal districts. The standard for review of such requests is good and reasonable cause. The state law further requires the Planning Commission to receive a recommendation from the Agricultural/Forestal Commission. The Agricultural/Forestal Commission reviewed this request on September 30, 2004, and recommended that there was good and reasonable cause to recommend removal of this land from the open space agreement. The resolution of the Agricultural/Forestal Advisory Committee is attached at page H-1.

II. Current Situation is as follows:

- A. Planning Commission Recommendation – The Planning Commission recommends approval of Open Space Agreement #PLN2005-00027, Bull Run Country Club (Perryont Links, LLC). Planning staff concurs (see Attachment B for staff analysis).

- B. Public Hearing – A public hearing before the Board of County Supervisors has been advertised for February 15, 2005.

III. Issues are as follows:

- A. Policy – What are the broad Board policy and Comprehensive Plan implications if this request is approved?

- B. Fiscal Impact – What is the fiscal impact of this proposal?

- C. Community Input – Have members of the community raised any issues?

- D. Legal – What are the pertinent legal issues associated with this proposal?

- E. Timing – Is there a time limit for the Board of County Supervisors to take action on this proposal?

IV. Alternatives are as follows:

- A. Approve OSA #PLN2005-00027, Bull Run Country Club (Perrymont Links, LLC).

1. Policy:

- a) Policy – Approval of early termination of a portion (75 acres) of the open space would violate the Finance Department’s policy of minimum ten-year terms. A minimum ten-year term is desirable, because long-term retention of open space is desirable, and the longer contractual term reduces the frequency of administrative review.
- b) Comprehensive Plan – Land in open space is more desirable when it is wooded, maintained in its natural state, and contiguous. Contiguous open space enhances the rural atmosphere and provides for wildlife habitat. The property proposed to be terminated from open space use is not wooded or contiguous. Instead, it is broken up as bits and pieces as shown on the map on page F-1.

2. Fiscal Impact – Payment of rollback taxes will not be triggered by BOCS action on this proposal. However, if the applicant seeks to subdivide the land, the Department of Finance advises that the applicant will be required to pay a maximum of approximately \$126,850.34 in rollback taxes at the time the land is subdivided. This figure has been calculated as of January 1, 2005. It does not include rollback taxes that may be assessed due to the removal of land from the farm land component of the applicant’s land use elsewhere on this site.

3. Community Input – Notice of this application has been transmitted to property owners within 200 feet of the site prior to the February 15, 2005, hearing. As of January 27, 2005, the Planning Office has not received any public comments on the proposal.

4. Legal – Legal issues resulting from BOCS action would be addressed by the County Attorney. Per the County Attorney’s office, Section 58.1-3234, VA Code Ann., provides for termination of the two open space agreements, not partial removal of acreage. Pursuant to Section 58.1-3234, whenever acreage in a land use preservation program changes, a new application is required. Furthermore, removal of 75 acres will violate the contractual provisions within the two open space agreements providing that there will be no separation or split off of lots, pieces, or parcels from this property. Consequently, the request for removal affects the entire 235 acres, and if the property owner desires to maintain the balance of the subject property in an open space agreement for special taxation purposes, a new application must be submitted to the County.

5. Timing – The Board of County Supervisors does not have a deadline for acting on these two open space agreements.

B. Deny OSA #PLN2005-00027, Bull Run Country Club (Perrymont Links, LLC).

1. Policy:

- a) Policy – Denial of the request to remove 75 acres from the two open space agreements would retain the land in open space through tax year 2010, in accordance with the intent of the Department of Finance when the two contracts were executed. The applicant would be prohibited from developing any additional uses, even if otherwise allowed by the Zoning Ordinance. The portions of the golf course qualifying as open space would be allowed to continue to operate. The applicant would continue to receive the benefit of a reduced tax rate.

- b) Comprehensive Plan – No impact.

2. Fiscal Impact – Payment of rollback taxes will not be triggered by BOCS action on this proposal.

3. Community Input – Notice of this application has been transmitted to property owners within 200 feet of the site prior to the February 15, 2005, hearing. As of January 27, 2005, the Planning Office has not received any public comments on the proposal.

4. Legal – Legal issues resulting from Board of County Supervisors' action would be addressed by the County Attorney. As the standard for review is good and reasonable cause, it is recommended that the BOCS incorporate factual findings identifying why good and reasonable cause does not exist. The property would continue to be subject to the terms of the two open space agreements through 2010.

5. Timing – The Board of County Supervisors does not have a deadline for acting on these two open space agreements.

- V. Recommendation is that the Board of County Supervisors accept Alternative A and approve the attached ordinance, which will result in the administrative removal of all 235 acres from open space.

Attachments:

- A. Maps
- B. Staff Analysis
- C. Approved SUP Conditions
- D. Open Space Contract – GPIN 7200-75-1947
- E. Open Space Contract – GPIN 7200-73-1922
- F. Open Space Areas Map
- G. Applicant's Submission
- H. Agricultural/Forestal Advisory Committee Resolution
- I. Planning Commission Resolution No. 05-007

MOTION:

**February 15, 2005
Regular Meeting
Ord. No. 05-**

SECOND:

**RE: OPEN SPACE AGREEMENT (OSA)#PLN2005-00027, BULL RUN
COUNTRY CLUB (PERRYMONT LINKS, LLC) – GAINESVILLE
MAGISTERIAL DISTRICT**

ACTION:

WHEREAS, this is a request to amend two open space contracts which commit to retain 235 acres in open space through tax year 2010, in order to remove 75 acres; and

WHEREAS, the site is located at 3600 James Madison Highway, north of Waterfall Road and west of Route 15, and is designated AE, Agricultural or Estate, and ER, Environmental Resource, in the Comprehensive Plan; and

WHEREAS, staff has reviewed the subject application and recommends approval, as stated in the staff report; and

WHEREAS, the Prince William County Planning Commission duly ordered, advertised, and held a public hearing on October 20, 2004; December 15, 2004, and January 19, 2005; and

WHEREAS, general welfare and good zoning practices are served by the approval of the application; and

WHEREAS, it is expressly determined that the applicant has demonstrated good and reasonable cause to permit withdrawal of 75 acres, which will result in the administrative removal of all 235 acres from open space; and

WHEREAS, Section 58.1-3234, Va. Code Ann., provides that whenever acreage in a land use preservation program changes, a new application is required. Therefore, if the property owner desires to maintain the balance of the subject property in an open space agreement for special taxation purposes, a new application must be submitted; and

WHEREAS, the County Attorney has opined that approval of the request to withdraw 75 acres from the two open space agreements requires that the applicant submit a new application for approval to retain the remaining property in the Open Space program;

NOW, THEREFORE, BE IT ORDAINED that the Prince William County Board of County Supervisors does hereby approve aforesaid amendment of OSA PLN#2005-00027, Bull Run Country Club (PerryMont Links, LLC), which will result in the administrative removal of all 235 acres from open space, until a new application is submitted to the Department of Finance and approved by the County; and

BE IT FURTHER ORDAINED that the Board of County Supervisors' approval and adoption does not relieve the applicant and/or subsequent owners from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

**February 15, 2005
Regular Meeting
Ord. No. 05-
Page Two**

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

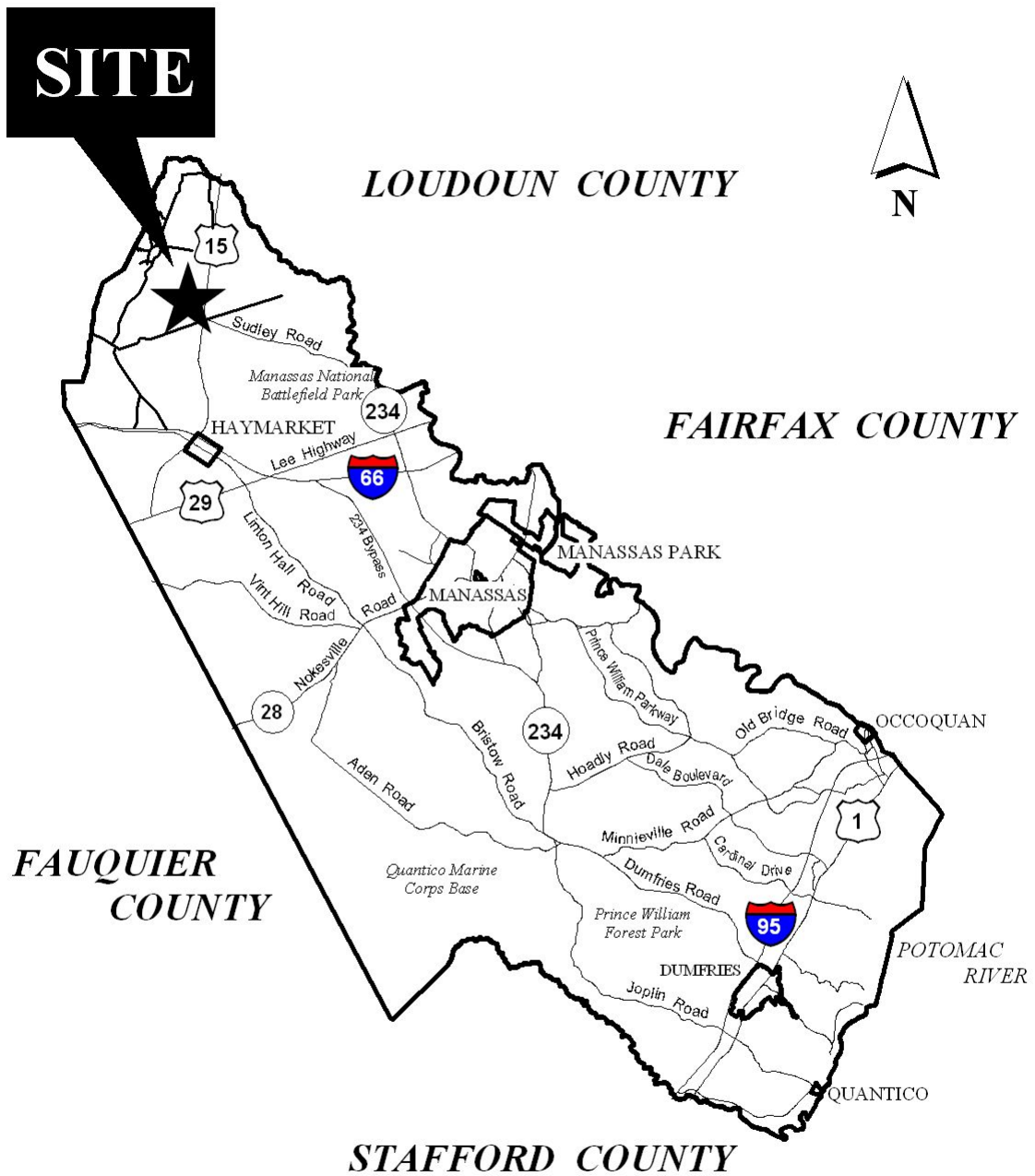
Planning Director
Director of Finance

Geary Rogers, Esq.
Compton & Duling, L.C.
14914 Jefferson Davis Highway
Woodbridge, Virginia 22191

Certified Copy _____

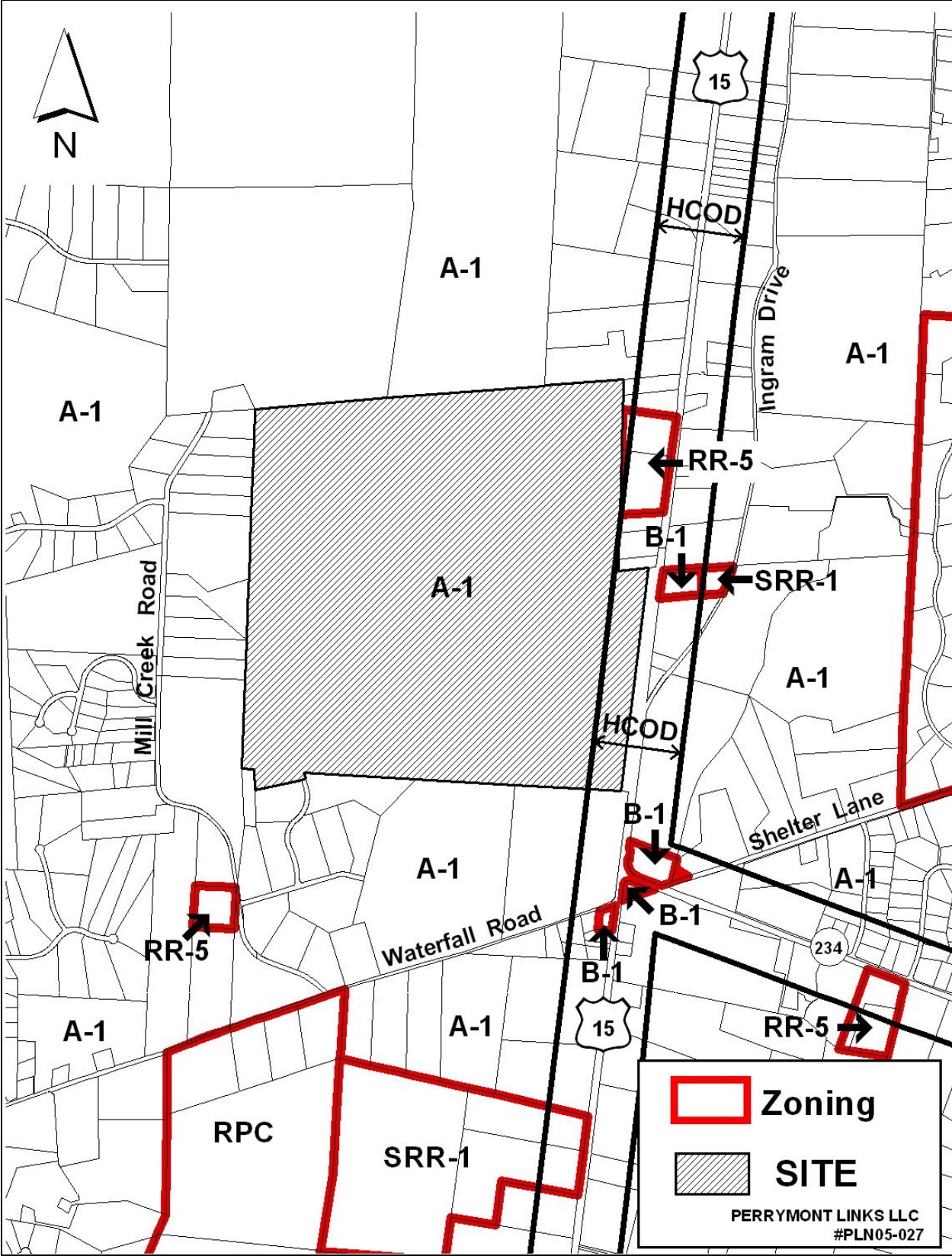
Clerk to the Board

**ATTACHMENT A – MAPS
VICINITY**

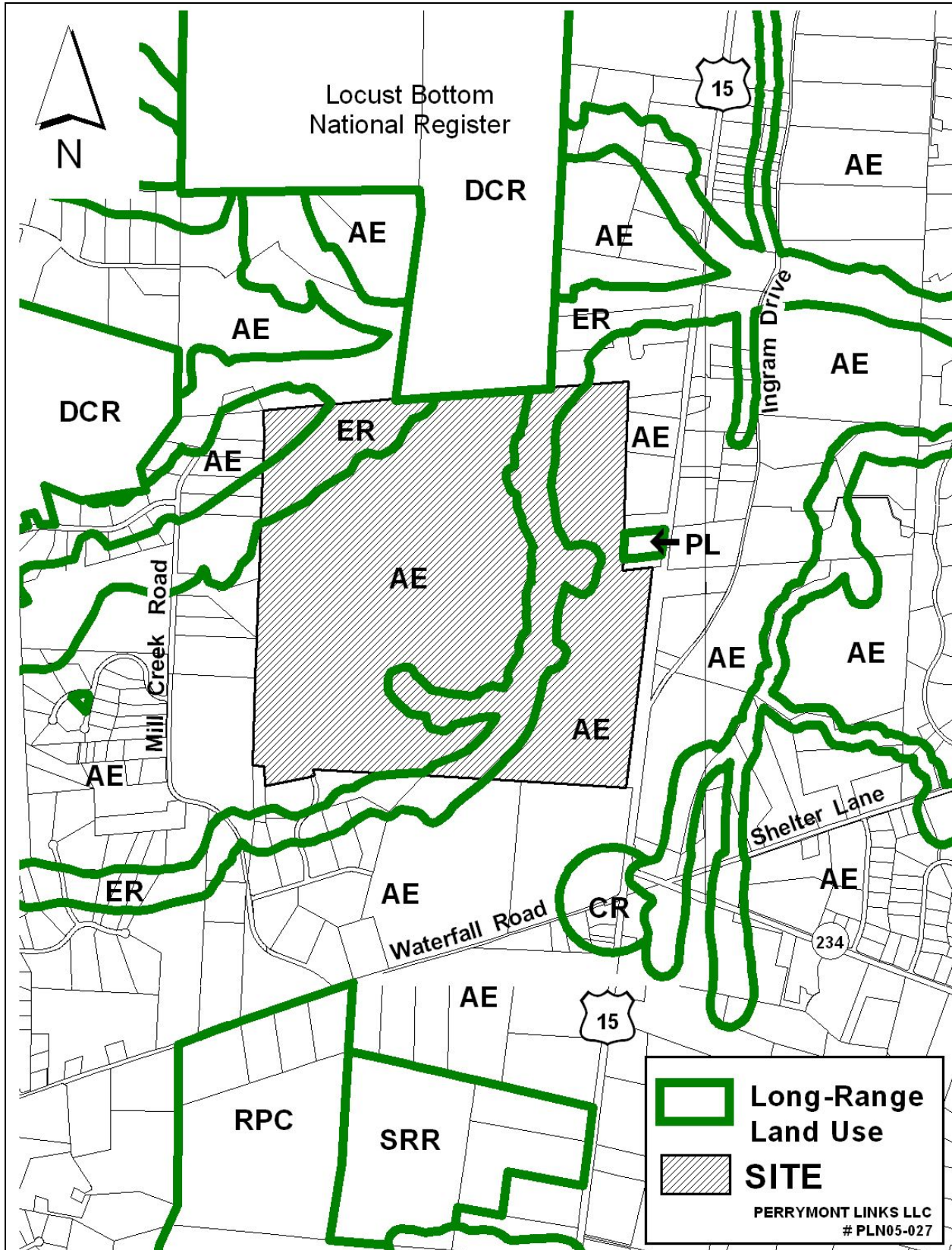


PERRYMONT LINKS LLC #PLN05-027

ATTACHMENT A – MAPS
EXISTING LAND USE AND ZONING



**ATTACHMENT A – MAPS
EXISTING LONG-RANGE LAND USE**



Applicant’s Request

The applicant seeks to remove a portion of the Bull Run Country Club complex committed to remain open space through 2010 from the two open space agreements signed with the Department of Finance. Specifically, the applicant seeks to remove 75 acres from the 235 acres committed to be open space from the site known as the Bull Run Country Club. The 75 acres proposed for removal is not contiguous area. It is bits and pieces of land shaved from the area surrounding the 18 links of the golf course that was approved in 2004 pursuant to SUP #PLN2003-00355. Portions of the 75 acres contain ER (Environmental Resource). One portion contains a stormwater management pond. The applicant is not requesting to remove the remaining 160 acres from the open space program. Portions of it will remain within the “active golf course” area. Portions will serve as vacant areas between the 18-hole golf course.

Standards of Review

Legal Standard of Review

The two open space agreements provide that this request of early termination be reviewed in accordance with the procedure for early removal from land from agricultural/forestal districts. The standard for review of such requests is good and reasonable cause. The state law requires the Planning Commission to receive a recommendation from the Agricultural/Forestal Commission. The Agricultural/Forestal Commission reviewed this request on September 30, 2004, and recommended that there was good and reasonable cause to recommend removal of this land from the open space agreements. The resolution of the Agricultural/Forestal Advisory Committee is attached at page H-1. According to the County Attorney, no legislative or judicial opinions have been rendered which provide more interpretation of this standard.

Definition of Open Space Used in the Open Space Agreement

Virginia Code Chapter 58.1-4320 defines open space use as used in the context of the open space agreement. It defines “Real Estate Devoted to Open-Space Use,” in pertinent part, as land used for:

- park or recreational purposes;
- conservation of land or other natural resources;
- floodplains;
- wetlands as defined in Section 58.1-3666;
- riparian buffers as defined in Section 58-1.3666;
- historic or scenic purposes; or
- assisting the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land use plan.

Virginia Law Section 58.1-3233 (3) authorizes open space agreements for terms not less than four years and not more than ten years. However, it is the policy of the Department of Finance to only accept those open space agreements with ten-year terms.

Definition of Open Space Used by Prince William County

The definition of open space is somewhat different in the County’s Comprehensive Plan. There is a differentiation between active and passive open space areas. In this area of the County, the Comprehensive Plan emphasizes preservation of passive open space areas in order to maintain rural character. Preservation of large areas of nondisturbed woodland areas is encouraged to provide for wildlife habitat. However, some of the Comprehensive Plan’s goals on preservation of open space are similar to the State of Virginia’s goals shown above. The Comprehensive Plan encourages preservation of undisturbed open space for historic or scenic purposes, and requires preservation of sensitive environmental areas.

The best definition of open space intended by the Comprehensive Plan can be found in the Zoning Ordinance updated in 2004, which implements the Comprehensive Plan. This definition reads:

“Natural Open Space: Open space with natural resource benefits within the boundaries of a development such as native forests, topographic features, critical habitats for threatened and endangered species and species of special concern, natural creeks, streams and lakes, and natural wetlands that are set aside as an area to remain undisturbed during development and in perpetuity for the preservation of natural resources contained therein and for the passive use and enjoyment of the residents of the development and/or the public at large. This definition is not to be construed to prohibit non-destructive activities, such as reforestation and stream restoration, specifically designed to improve the quality of the activities, such as reforestation and stream restoration, specifically designed to improve the quality of the existing resource contained therein. This definition is intended to exclude areas where activities have destroyed any natural habitat in an attempt to create a man-made habitat (e.g., removal of tree cover to create a wetland). To be considered as natural open space the open space so considered must be conveyed, with appropriate restrictions as to use, to a bona fide homeowners association or other entity that would maintain the natural open space in perpetuity.”

Recommendations of the Agricultural/Forestral Advisory Committee

The Agricultural/Forestral Advisory Committee reviewed this application at its September 30, 2004, meeting. Members of the committee discussed their discomfort with evaluating lands that were not agricultural or part of one of the three agricultural/forestral districts. The committee believed that it was difficult to subjectively evaluate the quality of the land as open space, and noted that the State of Virginia guidelines automatically entitle commercial golf courses to be defined as open space. After deliberation, the committee voted unanimously to recommend removal of the 75 acres from the two open space agreements.

Staff Recommendation: **Approve** – The 75-acre open space area proposed for removal does not sufficiently contribute to the County’s goals for open space. Accordingly, staff believes that there is good and reasonable cause to approve premature termination of the 75 acres from the two open space agreements, which will result in the administrative removal of all 235 acres from open space, until a new application is submitted to the Department of Finance and approved by the County.

ATTACHMENT C- Approved SUP Conditions

PROPOSED CONDITIONS

Special Use Permit (SUP) #PLN 2003 00355, Bull Run Country Club Golf Course

February 17, 2004

GPIN: 7200-74-0853

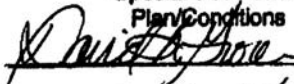
Zoning: A-1, Agricultural

Acreage: 169.75 acres

The following conditions are intended to offset the impacts of the proposed use and to render the application consistent with the applicable chapters of the Comprehensive Plan and the surrounding areas. If the conditions of this special use permit (SUP) or the Special Use Permit Plan are in conflict with the Zoning Ordinance, the Design and Construction Standards Manual, and/or the proffered conditions of Rezoning, the conditions of this Special Use Permit shall apply. If the proposed use has not commenced within three years from the date of special use permit approval, the special use permit shall be void, and the use may not commence thereafter without approval of another special use permit. A new site plan must be approved for the use to have commenced. Said site plan shall be submitted within one year of this SUP approval or else this special use permit shall be void.

1. Special Use Permit Area - The site subject to this special use permit shall encompass the 169.75 acres labeled "active golf course" as depicted on the plan entitled "Special Use Permit Plan Bull Run Country Club Estates," dated November 20, 2003, and prepared by Bowman Consulting.
2. Permitted Uses - The uses permitted under this special use permit shall be limited to a single 18-hole golf course substantially as exists at the time of approval of this SUP along with the ancillary uses customarily associated with a golf course.
 - a. Maintenance Facilities - Maintenance of motorized equipment related to the golf course operation shall be conducted within sound-insulated buildings. Any associated outside storage area shall be fenced with board-on-board, wooden stockade, or polyvinylchloride coated chainlink fencing (black only). Compliance with this condition is demonstrated with the filing of a site plan.
 - b. Ancillary Clubhouse Facilities -
 - (1) Any limited food service facility (vending machines, snack bar, grill, lounge, etc.) that is located on the property shall be considered to be associated with the golf course operation. Full service restaurants, catering, and meeting room facilities intended to serve guests other than those utilizing the golf course are not permitted.

APPROVED
Special Use Permit
Plan/Conditions


2-17-04 Signed

Date

Office of Planning

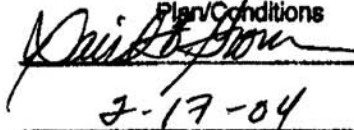
PLC BOCB Ord. # 04-20 on 2/17/04

ATTACHMENT C- Approved SUP Conditions

Proposed Conditions dated 2/17/04
SUP #PLN2003-00355, Bull Run Country Club Golf Course
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- (2) Used grease and other waste from any food operations shall not be disposed into the septic system. Adequate provision for the disposal of all wastes from the clubhouse and maintenance operations is to be demonstrated to the PWC Health District, with a copy to the Planning Office and the Building Development Office, prior to the issuance of occupancy permits, and maintained per Health District guidelines.
 - (3) The pro shop and locker room facilities are considered integral to the golf course. However, the area of the clubhouse, driving range building and all other areas in buildings which are devoted to retail sales (not including limited food service) shall not exceed 25 percent of the total gross floor for all the structures open to the public on the site (not including the maintenance buildings).
3. Site Development in General - This amendment to SUP #95-0034 to reduce the area of the special use permit shall continue to reflect the existing development as shown on the plan entitled "Special Use Permit Plan, Bull Run Country Club Estates" dated July 9, 2003 (the "SUP Plan"). The parking area shall continue to be located at least 300 feet from existing Route 15.
4. Woodland Areas - The applicant shall not remove undergrowth in any forested areas on the golf course, except where necessary up to a depth of 50 feet adjacent to tees, greens, landing areas, and fairways to permit the aesthetic enhancement of the golf course. Sections of forest that remain should be connected (not isolated) and be at least 35 feet in width. Compliance with this condition shall be demonstrated with the filing of a site plan.
5. Toxic Substances -
 - (a) Should toxic wastes be detected on the site, the Applicant shall submit a toxic waste soils analysis to the Soil and Water Conservation District for review and approval of clean-up measure to be undertaken by the Applicant.
 - (b) All golf course pesticide applicators shall be certified by the Virginia Department of Agriculture and Consumer Services, Office of Pesticide management for both restricted and non-restricted use pesticides.

APPROVED
Special Use Permit
Plan/Conditions



2-17-04

Signed

Date

Office of Planning

ATTACHMENT C- Approved SUP Conditions

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- (c) The golf course has an approved Integrated Pest Management Plan (IPMP) in effect from the previous SUP #95-0034. The approved IPMP for pesticides, fungicides, herbicides, and fertilizers must be maintained as approved by the PWC Health District and the Soil and Water Conservation District and forwarded to the Office of Planning, Division of Land Permitting Services. The Applicant shall continue to implement the practices and reporting procedures outlined in the IPMP.
- (d) All pesticides, fungicides, herbicides, and fertilizers shall be stored within a secured building.
- (e) An inventory of regulated chemicals stored on the site shall be established and maintained. The inventory shall be updated and furnished annually to the Zoning Administrator and the Fire Marshal.
- (f) Prominent signs shall be maintained within the maintenance buildings and cooking areas notifying employees that the disposal of any toxic substance described in these conditions into the septic systems is prohibited. All toxic liquid and semi-liquid wastes are to be stored for disposal or recycling in an approved manner. A certification of signage installation shall be provided to the Zoning Administrator every two years from the date of approval of this SUP.
- (g) The golf course has an approved Emergency Preparedness Plan in effect from the previous SUP #95-0034. The Applicant shall continue to implement the practices and reporting procedures outlined in the Emergency Preparedness Plan.
- (h) On-site storage of motor vehicle fuel, or other flammable materials shall be within double-walled storage tanks (500 gallon minimum capacity per location). Propane gas tanks, if utilized, shall be installed as per CABO and NFPA codes, as applicable. Two fuel storage tanks shall be permitted and shall be located near the maintenance buildings and clubhouse facilities. Underground storage tanks, if utilized, shall include automatic leak detection and alarm devices. Compliance with this condition shall be shown on the site plan.
- (i) Equipment repair operations shall be limited to golf carts and maintenance vehicles or equipment used on the site. These activities shall only be performed inside the maintenance or golf cart storage buildings.
- (j) All petroleum products, antifreeze, solvents, and other potential pollutants shall be properly stored and disposed of on a routine basis. The discharge or disposal of said substances on-site or into the ground or surface waters shall be prohibited.

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6. Hours of Operation and Use Restrictions in General -
- (a) Except as otherwise provisioned below, all facility hours of operation shall be from 6:00 a.m. to 12:00 midnight, seven days a week, provided that this shall not preclude indoor maintenance operations at other times. Grounds maintenance involving mowers or earth moving equipment shall be prohibited between 10:00 p.m. and 6:00 a.m.
 - (b) The driving range shall operate no later than 10:00 p.m.
 - (c) The driving range shall be developed in conjunction with and as an integral part of the use of the golf course. It shall not be a separate operation from the golf course.
7. Security Plan - A security plan approved by the Chief of Police shall be maintained as approved with the previous site plan submission.
8. Parking Lot and Security Lighting -
- (a) Parking lot and security lighting shall be no higher than 20 feet.
 - (b) All exterior lights shall employ lights with either prismatic lens or boxed light fixture, either of which direct light downward at a maximum angle of 70 degrees from vertical.
 - (c) Security and parking lot lighting shall be turned off one half hour after the closing of the clubhouse to the public, but may be turned on again one-half hour before dawn or the start of the business day. The driving range shall not be lighted.
 - (d) All lighting shall be directed away from neighboring properties, including Locust Bottom National Historic Site and the Bull Run Mountain Astronomical Observatory, to protect adjoining and nearby areas from light glare. Representatives from the Observatory, Locust Bottom, and the Police Department shall be contacted during the design of the exterior lighting systems and the Applicant shall verify at the time of site plan review that such input has been incorporated into the lighting design. Lighting system designs shall be approved by the Planning Office prior to approval of the final site plan for each phase of development.

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9. Buffers - Compliance with the following condition shall be demonstrated with the site plan.
- (a) Perimeter Buffer. A 100 foot wide undisturbed perimeter buffer shall be provided around the perimeter of the golf course between the golf course and the existing residential lots which border the original +/-430 acre golf course parcel for which SUP #95-0034 was issued. Said buffer shall either be provided within the golf course area or outside of the golf course area, but in all cases it must be located between the golf course and the residential lots which border the original +/-430 acre parcel. Existing woodland vegetation within said buffer area shall remain undisturbed. Where woodland vegetation does not exist within the buffer area, the Applicant shall plant such area in accordance with double the requirement for Buffer Type C (50 foot buffer) pursuant to the DCSM.
 - (b) A 25 foot wide buffer area shall be established and maintained in accordance with Buffer Type B along the property line between the maintenance buildings and the neighboring properties owned by Evergreen Volunteer Fire Department and utilized for a fire station (GPIN 7200-95-3004) and a telecommunications facility (GPIN 7200-94-2881).
 - (c) A 100 foot wide undisturbed perimeter shall be provided along the Route 15 frontage either on-site where the golf course adjoins Route 15 or between the golf course and Route 15 where the golf course does not abut Route 15, provided that undergrowth may be removed up to a depth of 50 feet adjacent to the tees, greens, landing areas and fairways to permit the aesthetic enhancement of the golf course. Where woodland vegetation does not exist within said buffer area, it shall be planted in accordance with Buffer Type B. An entry feature or features and an ornamental fence or wall may be placed within said buffer area and shall be landscaped in accordance with Buffer Type B, in lieu of retaining the existing woodland vegetation in this area.
 - (d) Encroachments into the perimeter buffer areas by tees, fairways, "roughs" greens, cart paths or the driving range shall not be permitted.

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Special Use Permit
Plan/Conditions

2-17-04
Signed
Date
Office of Planning

ATTACHMENT C- Approved SUP Conditions

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10. Right of Entry -

- (a) The Applicant shall provide right of entry to authorized personnel of Prince William County and the Commonwealth of Virginia to monitor and/or inspect water quality monitoring stations, implementation of the Integrated Pest Management Plan, and to inspect for compliance with all conditions of this special use permit.
- (b) Prior to the design and construction of the greenway trail, the Applicant shall provide access to Park Authority representatives for site review and information gathering.

11. Water Supply Quality -

- (a) The Applicant has an approved IPMP provided with the previously approved special use permit. The Applicant shall maintain the existing on-site water quality monitoring program to monitor water quality impacts of the golf course. Said program shall monitor the pre-development surface and ground water conditions, including quantity, and it shall serve as a tool in measuring the effectiveness of on-site pollution management techniques. Monitoring information shall be provided to the Planning Office and the Health District on a periodic basis as established in the approved monitoring program.
- (b) As part of the IPMP, the Applicant shall continue to take corrective action which may be determined necessary to eliminate, at the Applicant's expense, any adverse effect to Chestnut Lick Creek, its tributaries, or to local ground water supplies, caused by the operation of the golf course.
- (c) If additional wells are proposed to be constructed, the Applicant shall prepare a Phase II hydrological report and the results of this report shall be submitted to the Health District for review and approval prior to the issuance of construction permits. Prior to site plan approval, adequate or safe groundwater supply must be demonstrated by the Applicant, and the anticipated impacts on surround properties shall also be addressed.
- (d) Irrigation systems and expansions of the systems using a ground water supply shall not be installed until an updated Phase II hydrological study of the impact to surrounding properties is provided to the Planning Office and the Health District, for review and approval, and included in a revised IPMP.

APPROVED
Special Use Permit
Plan/Conditions


3-17-04

Signed

Date

Office of Planning

ATTACHMENT C- Approved SUP Conditions

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- (e) The Applicant shall continue to offer the Department of Fire and Rescue suitable access to a pond which can be used by the Department as a rural water supply. The design and location of this access shall, if suitable to the Department, be established on the site plan. If, in the opinion of the Department, the use of a pond on this site as a rural water supply is not technically feasible or desirable, the Applicant shall not be required to provide the rural water supply access. The applicant shall allow Fire and Rescue Services to place a dry hydrant, at a convenient point at the referenced pond, for the purposes of enhancing firefighting capabilities utilizing a rural water supply. Access to the pond and hydrant shall be by way of an all weather surface, capable of supporting a 35 ton vehicle. Additionally, the applicant will consult with Fire and Rescue Services to determine if more sophisticated means of supplying firefighting water supplies are feasible. In any case, access to the water supply shall be available 24 hours a day, 7 days a week.
- (f) Cessation of watering during drought conditions shall be in order of the following:
 - i. Stop watering the fairways; only water the greens, landing areas, and tees;
 - ii. Stop watering the landing areas;
 - iii. Stop watering the trees; and then
 - iv. Stop watering the greens.
- (g) The applicant shall not drill or operate any well for irrigation purposes within 500 feet of any off-site well existing at the time the original special use permit, SUP#95-0034, was approved.
- (h) In the event that the owner of any well existing at the time this special use permit is approved, whose well is located within 1500 feet of any on-site irrigation well and all adjacent properties, asserts that his or her well has gone dry, or that it no longer produces water in quality and quantity existing before the construction of wells to service the golf course, and asserts further that the construction or operation of those irrigation wells is the cause of failure or insufficiency, the County may retain, at the Applicant's expense, an independent engineer to evaluate such assertion. However, the Applicant shall not be obligated to pay more than \$1000.00 per evaluation (amount to be adjusted over time based upon inflation as defined by the Consumer Price Index) in accordance with this condition.

APPROVED
Special Use Permit
Plan/Conditions

David A. [Signature]
2-17-04 Signed
Date
Office of Planning

ATTACHMENT C- Approved SUP Conditions

Proposed Conditions dated 2/17/04
SUP #PLN2003-00355, Bull Run Country Club Golf Course
Page 8

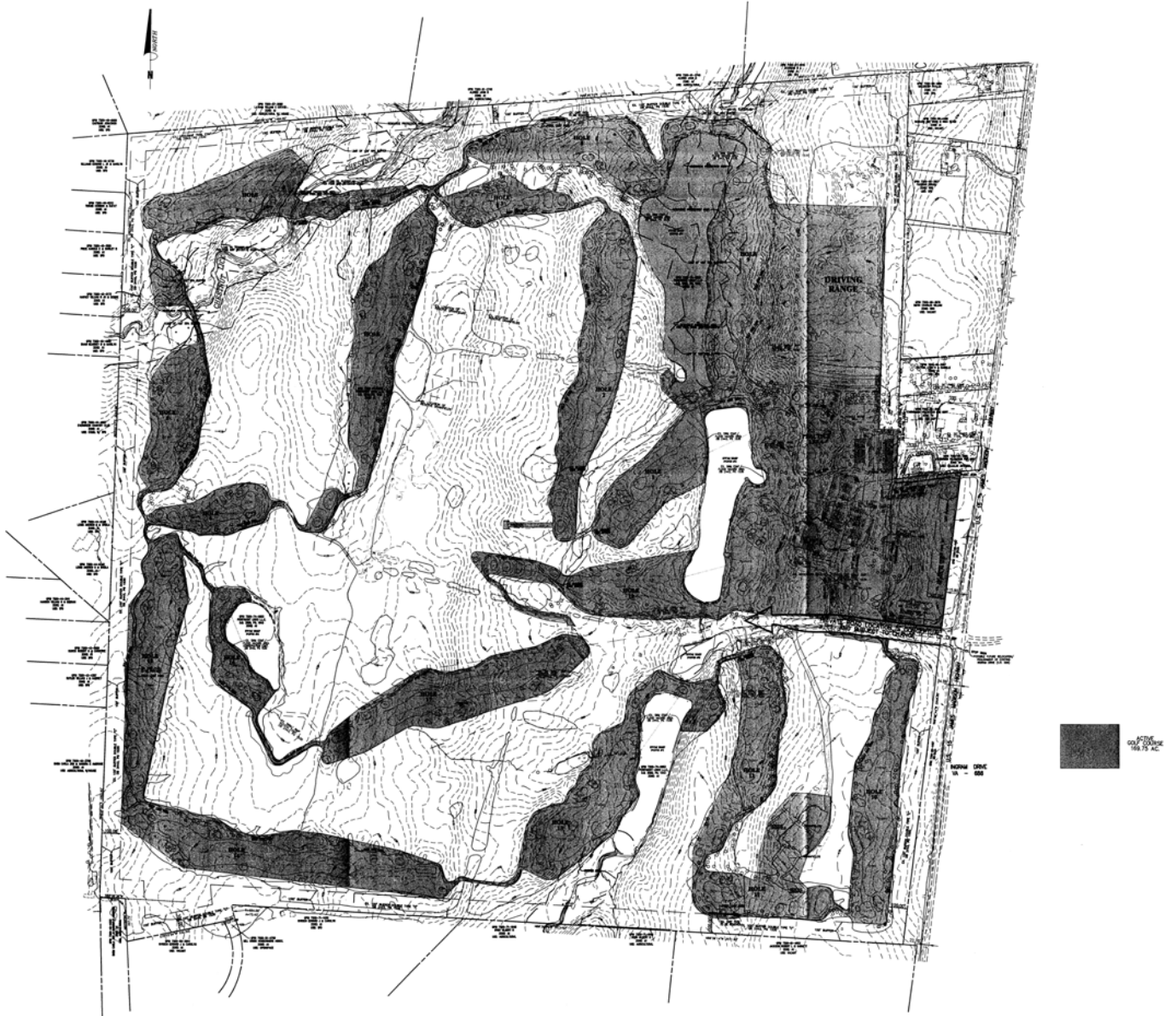
- (i) Such engineering evaluation as described in Condition (h) above, shall be conducted under the supervision of the Health District, copies of the completed analysis shall be provided to the landowner, the Applicant, the Health District, and the Department of Public Works. If the Health District and Public Works determine that the pumping of the irrigation wells on the subject property caused or causes an adverse effect on the off-site well, the Applicant shall pay the cost of correcting such condition, or take other steps as may be required, in order to restore the flow of water to that level of quality and quantity which existed prior to the pumping of the irrigation wells on the subject property.
12. Transportation -
- (a) The Applicant shall maintain a single entrance to the site, as generally depicted on the SUP Plan, constructed according to County standards.
13. Signage -
- (a) The existing entry feature shall remain as shown on the SUP Plan, which is a freestanding monument-type design, not exceeding 10 feet in height and 50 square feet per each of the 2 sign faces allowed.
- (b) As an alternative to the foregoing, the site entrance sign may, if integrated as part of a wall, be 2 signs, each constructed at either side of the entrance to the golf course; maximum size per sign face shall be 50 square feet. If walls are utilized, they shall be constructed such that the predominant exterior material is stone. The signs, if lighted, shall only be lighted externally, and may integrate wood or ornamental metal fencing elements (excluding chain link within 200 feet of the sign). All proposed sign designs and locations are subject to a sign permit.
14. Septic Field Locations - All septic fields and reserve fields serving the commercial recreation use shall be located within the boundaries of the special use permit area.
15. Fire and Rescue Contribution - The applicant has agreed and will contribute \$25,000 to the Evergreen Volunteer Fire Department to be used for the purchase of fire and/or rescue equipment. Said contribution will be made within 90 days of the approval of any final subdivision or site plan by the County.

M:\SUP\Centex Bull Run Country Club\Proposed Conditions.4.112003.doc

APPROVED
Special Use Permit
Plan/Conditions

Signed
2-17-04
Date
Office of Planning

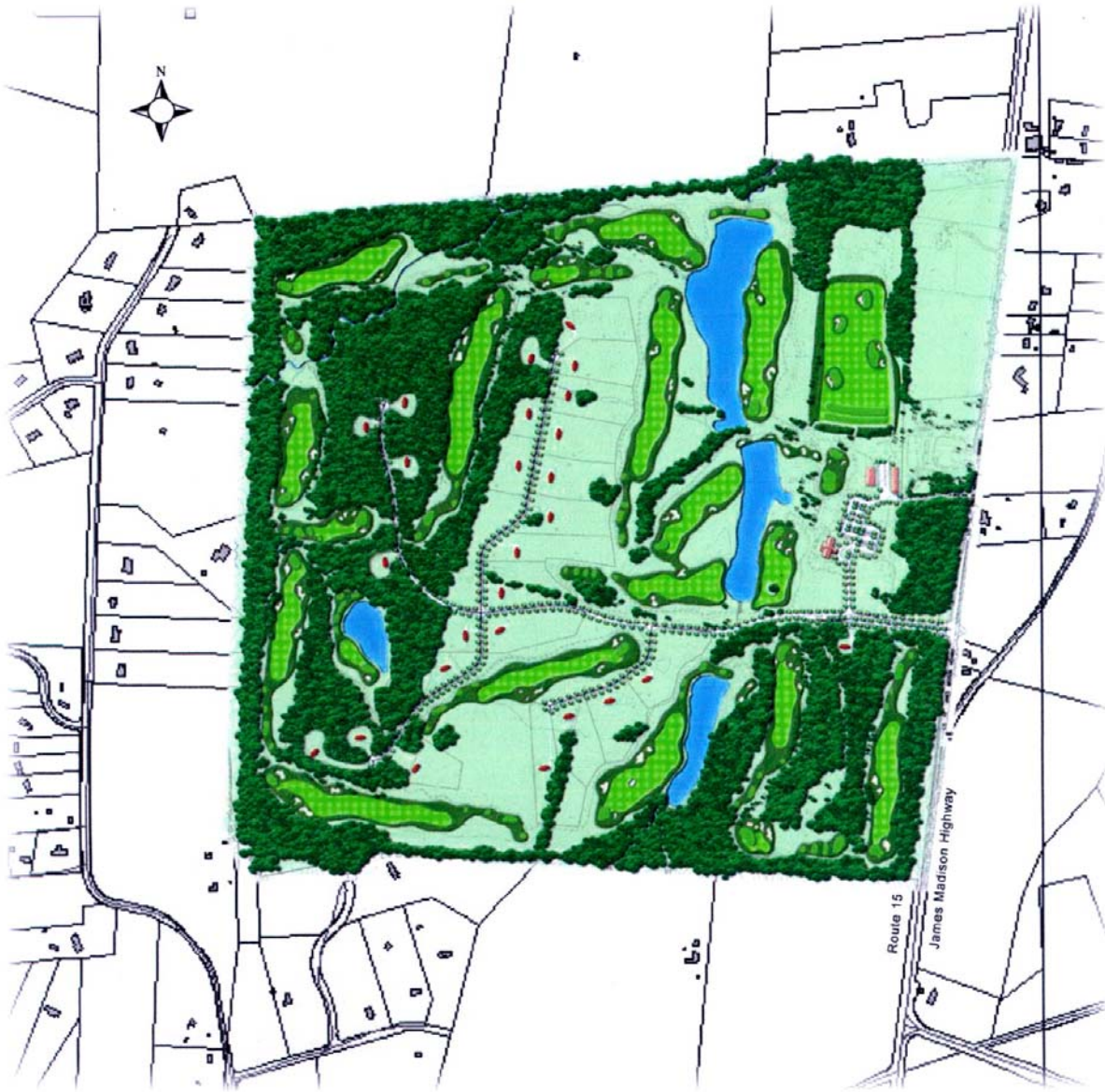
**ATTACHMENT C– Special Use Permit Plan
Approved February 17, 2004**



ATTACHMENT C- Conceptual Design Incorporating By Right Uses

Bull Run Country Club

Prince William County, Virginia



Vicinity Map

Dec. 12, 2003

Prepared by Bowman Consulting Group

ATTACHMENT D – Open Space Agreement
GPIN 7200-75-1947

GPIN

7200-75-1947

OPEN-SPACE USE AGREEMENT

This Agreement, made this 19th date of March, 1999, between Perrymont Links, L.L.C., hereinafter called the Owner, and the County of Prince William, a political subdivision of the Commonwealth of Virginia, hereinafter called the County, recites and provides as follows:

RECITALS

1. The Owner is the owner of certain real estate, described below, hereinafter called the Property; and
2. The County is the local governing body having real estate tax jurisdiction over the Property; and
3. The County has determined:
 - A. That it is in the public interest that the Property should be provided or preserved for open space; and
 - B. That the Property meets the applicable criteria for real estate devoted to open-space use as prescribed in Article 4 (Section 58.1-3229 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia, and the standards for classifying such real estate prescribed by the Director of the Virginia Department of Conservation and Historic Resources; and
 - C. That the provisions of this agreement meet the requirements and standards prescribed under Section 58.1-3233 of the Code of Virginia for recorded commitments by landowners not to change an open-space use to a non-qualifying use; and
4. The Owner is willing to make a written recorded commitment to preserve and protect the open-space uses of the Property during the term of this agreement in order for the Property to be taxed on the basis of a use assessment and the Owner has submitted an application for such taxation to the assessing officer of the County pursuant to Section 58.1-3234 of the Code of Virginia and Article II, Section 26-17 of the Code of the County of Prince William, Virginia; and
5. The County is willing to extend the tax for the Property on the basis of a use assessment commencing with the next succeeding tax year and continuing for the term of this agreement, in consideration of the Owner's commitment to preserve and protect the open-space uses of the property, and on the condition that the Owner's application is satisfactory and that all other requirements of Article 4, Chapter 32, Title 58.1 of the Code of Virginia and Article II, Sections 26-17 and 26-18 of the Code of the County of Prince William, Virginia, are complied with.

1

ATTACHMENT D – Open Space Agreement
GPIN 7200-75-1947

NOW THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained the parties hereby covenant and agree as follows:

1. This agreement shall apply to all of the following described real estate:

163.30 ACRES G.P.N # 7200-75-1947

Bob.

2. The Owner agrees that during the term of this agreement:

- A. There shall be no change in the use or uses of the Property that exist as of the date of this agreement to any use that would not qualify as an open-space use.
- B. There shall be no display of billboards, signs, or other advertisements on the property, except to (i) state solely the name of the Owner and the address of the Property; (ii) advertise the sale or lease of the Property; (iii) advertise the sale of goods or services produced pursuant to the permitted use of the Property; or (iv) provide warnings. No sign shall exceed four feet by four feet.
- C. There shall be no construction, placement or maintenance of any structure on the Property unless such structure is either:
 1. on the Property as of the date of this agreement; or
 2. related to and compatible with the open-space uses of the Property which this agreement is intended to protect or provide for.
- D. There shall be no accumulations of trash, garbage, ashes, waste, junk, abandoned property or other unsightly or offensive material on the Property.
- E. There shall be no filling, excavating, mining, drilling, removal of topsoil, sand, gravel, rock, minerals or other materials which alters the topography of the Property, except as required in the construction of permissible building, structures and features under this agreement.
- F. There shall be no construction or placement of fences, screens, hedges, walls or other similar barriers which materially obstruct the public's view of scenic areas of the Property.
- G. There shall be no removal or destruction of trees, shrubs, plants and other vegetation, except that the Owner may:
 1. engage in agricultural, horticultural or silvicultural activities, provided that there shall be no cutting of trees, other than selective cutting and salvage of dead or dying trees, within 100 feet of a scenic river, a scenic highway, a Virginia Byway or public property listed in the approved State Comprehensive Outdoor Recreation Plan (Virginia Outdoors Plan); and
 2. remove vegetation which constitutes a safety, a health or an ecological hazard.
- H. There shall be no alteration or manipulation of natural water courses, shores, marshes, swamps, wetlands or other water bodies, nor any activities or uses which adversely affect water quality, level or flow.

ATTACHMENT D – Open Space Agreement
GPIN 7200-75-1947

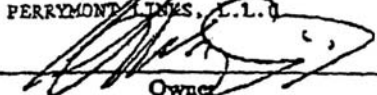
- I. On areas of the Property that are being provided or preserved for conservation of land, floodways or other natural resources, or that are to be left in a relatively natural or undeveloped state, there shall no operation of dune buggies, all-terrain vehicles, motorcycles, motorbikes, snowmobiles or other motor vehicles, except to the extent necessary to inspect, protect or preserve the area.
 - J. There shall be no industrial or commercial activities conducted on the Property, except for the continuation of agricultural, horticultural or silvicultural activities; or activities that are conducted in a residence or an associated outbuilding such as a garage, smokehouse, small shop or similar structure which is permitted on the property.
 - K. There shall be no separation or split-off of lots, pieces or parcels from the Property. The Property may be sold or transferred during the term of this agreement only as the same entire parcel that is the subject of this agreement; provided, however, that the Owner may grant to a public body or bodies open-space, conservation or historic preservation easements which apply to all or part of the Property.
3. This agreement shall be effective upon acceptance by the County, provided, however, that the real estate tax for the Property shall not be extended on the basis of its use value until the next succeeding tax year following timely application by the Owner for use assessment and taxation in accordance with Article II, Section 26-17 of the Code of the County of Prince William, Virginia. Thereafter, this agreement shall remain in effect for a term of ten consecutive years.
 4. Nothing contained herein shall be construed as giving to the public a right to enter upon or to use the Property or any portion thereof, except as the Owner may otherwise allow, consistent with the provisions of this agreement.
 5. The County shall have the right at all reasonable times to enter the Property to determine whether the Owner is complying with the provisions of this agreement.
 6. Nothing in this agreement shall be construed to create in the public or any member thereof a right to maintain a suit for any damages against the Owner for any violation of this agreement.
 7. Nothing in the agreement shall be construed to permit the Owner to conduct any activity or to build or maintain any improvement which is otherwise prohibited by law.
 8. If any provision of this agreement is determined to be invalid by a court of competent jurisdiction, the remainder of the agreement shall not be affected thereby.
 9. The provisions of this agreement shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs.
 10. Words of one gender used herein shall include the other gender, and words in the singular shall include words in the plural, whenever the sense requires.

ATTACHMENT D – Open Space Agreement
GPIN 7200-75-1947

11. This agreement may be terminated in the manner provided in Section 15.1-1513 of the Code of Virginia for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.
12. Upon termination of this agreement, the Property shall thereafter be assessed and taxed at its fair market value, regardless of its actual use, unless the County determines otherwise in accordance with applicable law.
13. Upon execution of this agreement, it shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Prince William County, Virginia; at the Owner's expense.
14. NOTICE: WHEN THE OPEN-SPACE USE OR USES BY WHICH THE PROPERTY QUALIFIED FOR ASSESSMENT AND TAXATION ON THE BASIS OF USE CHANGES TO A NONQUALIFYING USE OR USES, OR WHEN THE ZONING FOR THE PROPERTY CHANGES TO A MORE INTENSIVE USE AT THE REQUEST OF THE OWNER, THE PROPERTY, OR SUCH PORTION OF THE PROPERTY WHICH NO LONGER QUALIFIES, SHALL BE SUBJECT TO ROLL-BACK TAXES IN ACCORDANCE WITH SECTION 58.1-3237 OF THE CODE OF VIRGINIA. THE OWNER SHALL BE SUBJECT TO ALL OF THE OBLIGATIONS AND LIABILITIES OF SAID CODE SECTION.

PERRYMONT LINKS, L.L.C.

By:

 (SEAL)
Owner
C. Lewis Waltrip II

Owner (SEAL)

ACKNOWLEDGEMENTS

COMMONWEALTH OF VIRGINIA
County of Prince William, to wit:


I, the undersigned Notary Public of and for the jurisdiction aforesaid, do hereby certify that C. Lewis Waltrip II, Manager of Perrymont Links, LLC whose names are signed to the foregoing Agreement, has this date appeared before me and acknowledged the same.

Given under my hand and seal this 6 day of Sept 1999.


NOTARY PUBLIC

My Commission Expires: 1-31-2002

approved disapproved


Christopher Martino, Director of Finance

ATTACHMENT E – Open Space Agreement
GPIN 7200-73-1922

GPIN

7200-73-1922

OPEN-SPACE USE AGREEMENT

This Agreement, made this 19th date of March, 1999, between Perrymont Links, L.L.C., hereinafter called the Owner, and the County of Prince William, a political subdivision of the Commonwealth of Virginia, hereinafter called the County, recites and provides as follows:

RECITALS

1. The Owner is the owner of certain real estate, described below, hereinafter called the Property; and
2. The County is the local governing body having real estate tax jurisdiction over the Property; and
3. The County has determined:
 - A. That it is in the public interest that the Property should be provided or preserved for open space; and
 - B. That the Property meets the applicable criteria for real estate devoted to open-space use as prescribed in Article 4 (Section 58.1-3229 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia, and the standards for classifying such real estate prescribed by the Director of the Virginia Department of Conservation and Historic Resources; and
 - C. That the provisions of this agreement meet the requirements and standards prescribed under Section 58.1-3233 of the Code of Virginia for recorded commitments by landowners not to change an open-space use to a non-qualifying use; and
4. The Owner is willing to make a written recorded commitment to preserve and protect the open-space uses of the Property during the term of this agreement in order for the Property to be taxed on the basis of a use assessment and the Owner has submitted an application for such taxation to the assessing officer of the County pursuant to Section 58.1-3234 of the Code of Virginia and Article II, Section 26-17 of the Code of the County of Prince William, Virginia; and
5. The County is willing to extend the tax for the Property on the basis of a use assessment commencing with the next succeeding tax year and continuing for the term of this agreement, in consideration of the Owner's commitment to preserve and protect the open-space uses of the property, and on the condition that the Owner's application is satisfactory and that all other requirements of Article 4, Chapter 32, Title 58.1 of the Code of Virginia and Article II, Sections 26-17 and 26-18 of the Code of the County of Prince William, Virginia, are complied with.

#2

ATTACHMENT E – Open Space Agreement
GPIN 7200-73-1922

NOW THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained the parties hereby covenant and agree as follows:

1. This agreement shall apply to all of the following described real estate:
87.37 ACRES G-PIN # 7200-73-1922
2. The Owner agrees that during the term of this agreement:
 - A. There shall be no change in the use or uses of the Property that exist as of the date of this agreement to any use that would not qualify as an open-space use.
 - B. There shall be no display of billboards, signs, or other advertisements on the property, except to (i) state solely the name of the Owner and the address of the Property; (ii) advertise the sale or lease of the Property; (iii) advertise the sale of goods or services produced pursuant to the permitted use of the Property; or (iv) provide warnings. No sign shall exceed four feet by four feet.
 - C. There shall be no construction, placement or maintenance of any structure on the Property unless such structure is either:
 1. on the Property as of the date of this agreement; or
 2. related to and compatible with the open-space uses of the Property which this agreement is intended to protect or provide for.
 - D. There shall be no accumulations of trash, garbage, ashes, waste, junk, abandoned property or other unsightly or offensive material on the Property.
 - E. There shall be no filling, excavating, mining, drilling, removal of topsoil, sand, gravel, rock, minerals or other materials which alters the topography of the Property, except as required in the construction of permissible building, structures and features under this agreement.
 - F. There shall be no construction or placement of fences, screens, hedges, walls or other similar barriers which materially obstruct the public's view of scenic areas of the Property.
 - G. There shall be no removal or destruction of trees, shrubs, plants and other vegetation, except that the Owner may:
 1. engage in agricultural, horticultural or silvicultural activities, provided that there shall be no cutting of trees, other than selective cutting and salvage of dead or dying trees, within 100 feet of a scenic river, a scenic highway, a Virginia Byway or public property listed in the approved State Comprehensive Outdoor Recreation Plan (Virginia Outdoors Plan); and
 2. remove vegetation which constitutes a safety, a health or an ecological hazard.
 - H. There shall be no alteration or manipulation of natural water courses, shores, marshes, swamps, wetlands or other water bodies, nor any activities or uses which adversely affect water quality, level or flow.

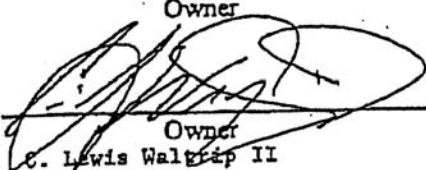
ATTACHMENT E – Open Space Agreement
GPIN 7200-73-1922

- I. On areas of the Property that are being provided or preserved for conservation of land, floodways or other natural resources, or that are to be left in a relatively natural or undeveloped state, there shall no operation of dune buggies, all-terrain vehicles, motorcycles, motorbikes, snowmobiles or other motor vehicles, except to the extent necessary to inspect, protect or preserve the area.
 - J. There shall be no industrial or commercial activities conducted on the Property, except for the continuation of agricultural, horticultural or silvicultural activities; or activities that are conducted in a residence or an associated outbuilding such as a garage, smokehouse, small shop or similar structure which is permitted on the property.
 - K. There shall be no separation or split-off of lots, pieces or parcels from the Property. The Property may be sold or transferred during the term of this agreement only as the same entire parcel that is the subject of this agreement; provided, however, that the Owner may grant to a public body or bodies open-space, conservation or historic preservation easements which apply to all or part of the Property.
3. This agreement shall be effective upon acceptance by the County, provided, however, that the real estate tax for the Property shall not be extended on the basis of its use value until the next succeeding tax year following timely application by the Owner for use assessment and taxation in accordance with Article II, Section 26-17 of the Code of the County of Prince William, Virginia. Thereafter, this agreement shall remain in effect for a term of ten consecutive years.
 4. Nothing contained herein shall be construed as giving to the public a right to enter upon or to use the Property or any portion thereof, except as the Owner may otherwise allow, consistent with the provisions of this agreement.
 5. The County shall have the right at all reasonable times to enter the Property to determine whether the Owner is complying with the provisions of this agreement.
 6. Nothing in this agreement shall be construed to create in the public or any member thereof a right to maintain a suit for any damages against the Owner for any violation of this agreement.
 7. Nothing in the agreement shall be construed to permit the Owner to conduct any activity or to build or maintain any improvement which is otherwise prohibited by law.
 8. If any provision of this agreement is determined to be invalid by a court of competent jurisdiction, the remainder of the agreement shall not be affected thereby.
 9. The provisions of this agreement shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs.
 10. Words of one gender used herein shall include the other gender, and words in the singular shall include words in the plural, whenever the sense requires.

ATTACHMENT E – Open Space Agreement
GPIN 7200-73-1922

11. This agreement may be terminated in the manner provided in Section 15.1-1513 of the Code of Virginia for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.
12. Upon termination of this agreement, the Property shall thereafter be assessed and taxed at its fair market value, regardless of its actual use, unless the County determines otherwise in accordance with applicable law.
13. Upon execution of this agreement, it shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Prince William County, Virginia, at the Owner's expense.
14. NOTICE: WHEN THE OPEN-SPACE USE OR USES BY WHICH THE PROPERTY QUALIFIED FOR ASSESSMENT AND TAXATION ON THE BASIS OF USE CHANGES TO A NONQUALIFYING USE OR USES, OR WHEN THE ZONING FOR THE PROPERTY CHANGES TO A MORE INTENSIVE USE AT THE REQUEST OF THE OWNER, THE PROPERTY, OR SUCH PORTION OF THE PROPERTY WHICH NO LONGER QUALIFIES, SHALL BE SUBJECT TO ROLL-BACK TAXES IN ACCORDANCE WITH SECTION 58.1-3237 OF THE CODE OF VIRGINIA. THE OWNER SHALL BE SUBJECT TO ALL OF THE OBLIGATIONS AND LIABILITIES OF SAID CODE SECTION.

PERRYMONT LINKS, L.L.C.

by: _____ (SEAL)
Owner

_____ (SEAL)
Owner
C. Lewis Waltrip II

ACKNOWLEDGEMENTS

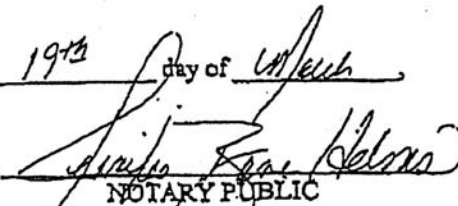
COMMONWEALTH OF VIRGINIA
County of Prince William, to wit:

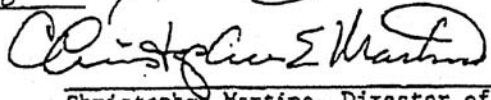
I, the undersigned Notary Public of and for the jurisdiction aforesaid, do hereby certify that Perrymont Links LLC, by its owner C. Lewis Waltrip II, whose names are signed to the foregoing Agreement, has this date appeared before me and acknowledged the same.

Given under my hand and seal this 19th day of March, 1999.

My Commission Expires: 1/31/2000

approved / disapproved


NOTARY PUBLIC


Christopher Martino, Director of Finance

ATTACHMENT F – Open Space Areas Map



ATTACHMENT G – Applicant’s Submission

**WRITTEN NARRATIVE
PERRYMONT LINKS, LLC,
GAINESVILLE MAGISTERIAL DISTRICT
GPIN NO. 7200-74-0853
DATE: September 8, 2004**

A. INTRODUCTION

This application seeks a partial termination of two (2) Open Space Use Agreements (collectively, the “Agreement”) dated March 19, 1999. The property is commonly known as GPIN 7200-74-0853 (the “Property”), located at 3600 James Madison Highway, Prince William County, Virginia. The Property is zoned A-1, Agricultural and subject to Special Use Permit #PLN2003-00355 (the “SUP”) approved by the Board of County Supervisors of Prince William County, Virginia on February 17, 2004.

The SUP amended Special Use Permit #95-34 (the “Original SUP”), adjusting that existing use by reducing the approved use of the Property from three (3) 18-hole golf courses to one (1) 18-hole golf course. This reduced the area subject to the Original SUP from ± 429 acres of land to ± 169.75 acres of land. The residue of ± 260.05 acres of land (the “Residue”) will be used for the development of up to twenty-six (26) homes. However, unless terminated in accordance with the statutory provisions, the Agreement prohibits subdividing the Property and prohibits transferring the Property except in its entirety. Thus, the Agreement prohibits the development of the Residue in accordance with the intent of the amended SUP. In order to avoid frustrating the purpose of the SUP, the Residue currently bound by the Agreement must be released from the restrictions of the Agreement. This application seeks the removal of a total of 75.377 acres from the Agreement.

This application is unique in that it appears to be the first request in Prince William County for early withdrawal of a portion of property designated as open-space use in a written commitment that has yet to expire. While the statutory provisions guiding land use allow for modifications of agricultural and/or forestal districts, there appears to be no guidance on modifying written land use commitments.

B. THE POLICY AND MECHANICS OF STATUTORY AGRICULTURAL AND FORESTAL DISTRICTS

Virginia Code §15.2-4301 sets forth the policy for providing open space designation as in part “to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, water shed protection, wild life habitat, as well as for aesthetic purposes”. Additionally it describes the open space designation as a mutual undertaking between landowners and localities in order to protect and enhance agricultural and forestal areas as valuable economic and environmental resources.

ATTACHMENT G – Applicant’s Submission

The Code authorizes localities to enact ordinances providing for the designation of these agricultural and/or forestal districts in §15.2-4303. The localities must consider, among other things, the location, acreage of the district and conditions proposed on the intensity of the use of the property.

The localities are assisted in designating the districts by a statutorily required Agricultural and Forestal District Advisory Committee (the “Committee”). The Committee consists of four (4) landowners engaged in agricultural or forestal production, *i.e.* the commercial production of crops, livestock or livestock products; four (4) other landowners in the locality; either the commissioner of revenue or the local government’s chief property assessment officer and a member of the local governing body. The Committee advises the planning commission and the local governing body, as well as assists in creating, reviewing, modifying, continuing or terminating districts. Specifically, Code §15.2-4304 states that the Committee shall render expert advice as to the nature of farming, forestry and agricultural and forestal resources with the district and their relation to the entire locality.

The landowner submits the application for the agricultural and/or forestal district to the local governing body which in turn refers the application to the planning commission pursuant to the procedures of § 15.2-4307. The planning commission provides formal notice of the application by publication and refers the application and any proposed modifications to the Committee. The Committee reviews the application based on the criteria of §15.2-4306, which includes: 1) the agricultural and forestal significance of the land; 2) the presence of any significant agricultural or forestal lands in the district or adjacent thereto that are not now in active production; 3) the nature and extent of land uses other than active farming or forestry; 4) local developmental patterns and needs; 5) the comprehensive plan and zoning regulations; 6) the environmental benefits of retaining the land as open space and 7) any other matter which may be relevant. The Committee then drafts a report of its recommendations and modifications for use by the planning commission. The planning commission reports its recommendations to the governing body, holds a public hearing and provides any further public notice for proposed modifications and recommendations by both the planning commission and the Committee.

Section 15.2-4308 then requires the local governing body to hold a public hearing after receiving the reports of the planning commission and the Committee. The governing body then adopts, rejects or modifies the application as it deems necessary and if approved, the parcels are designated in the land records, on the tax map, zoning map, and comprehensive plan.

The real estate may be withdrawn from a district or a district may be terminated as set forth in § 15.2-4314. This follows similar procedural requirements as the creation of a district, beginning with a written request submitted to the local governing body to withdraw the land for good and reasonable cause. The governing body refers the request to the local planning commission and the Committee for recommendation and holds a public hearing. The land may also be reevaluated through LESA (hereafter defined).

ATTACHMENT G – Applicant’s Submission

Once the land is withdrawn or the district terminated, that real estate will be subject to all roll-back taxes provided in § 58.1-3237.

C. POLICY AND MECHANICS OF STATUTORY SPECIAL ASSESSMENTS FOR OPEN SPACE

The County and landowner entered into the Agreement pursuant to Virginia Code Chapter 32, Title 58.1, Article 4, which permits localities to adopt a program of special tax assessments for agricultural, forestal and open space lands. This program arose to encourage the preservation of real estate as a source of agricultural, horticultural and forestal products and of open spaces near concentrations of populations. It also seeks to conserve natural resources, preserve scenic natural beauty, promote proper land use planning and relieve some of the pressure associated with converting real estate to a more intensive use, which tends to increase property values, forcing less intensive and less productive uses, *i.e.* agriculture, to become nonexistent.

As such, § 58.1-3230 includes in its definition of real estate devoted to open space use the requirements, among others, that the real estate be used as or preserved for “park or recreational purposes”, “assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land-use plan”. The Code goes on to require the local assessing officer to determine if the real estate meets the criteria set forth in § 58.1-3230 and to further determine that such real estate is 1) within an agricultural and/or forestal district as set forth in § 15.2-1506 *et seq.*, 2) subject to a recorded perpetual open-space easement or 3) subject to a recorded commitment by the landowner and locality not to change the use to a non-qualifying use for a time period of not less than four years nor more than ten years, which in this case is the Agreement.

Real estate designated for a qualifying use under Title 58.1 may be removed from such uses and shall be subject to additional, or roll-back, taxes for the following reasons: 1) failure of the landowner to pay taxes (§58.1-3235); 2) a change in the real estate’s use by which it qualified to a nonqualifying use (§58.1-3237) or 3) a change in the zoning to a more intensive use (§58.1-3237).

Additionally § 58.1-3241 allows for the separation of part of the real estate assessed either by conveyance or other action. This separation results in the separated parcel being subject to roll-back taxes, but does not impair the right of the remaining real estate to continue in the special use assessment without liability for roll-back taxes, as long as all minimum acreage requirements and other conditions of the use are met.

1. Standards for Classification of Real Estate as Devoted to Open-Space Use Under the Virginia Land Use Assessment Law

Pursuant to §58.1-3229 *et seq.* the Director of the Department of Conservation and Recreation adopts both general and specific standards for use in determining when real estate qualifies for open-space uses through the Land Evaluation and Site

ATTACHMENT G – Applicant’s Submission

Assessment System (“LESA”). First, the real estate must qualify under the general standards of 1) consistency with the land use plan; 2) minimum acreage and 3) other requirements. The open-space use must be consistent with the land use plan of the locality such that the uses are consistent with areas depicted on the land use plan, directly support or are consistent with stated land uses and promote objectives, goals or standards for resource conservation and historic preservation. In addition, the property is determined to be consistent if it is subject to either a recorded perpetual conservation/open-space easement or is part of an agricultural and/or forestal district.

Next the real estate is subject to minimum acreage requirements based on the use. For open-space, the minimum is five (5) acres, but can be less if the locality prescribes it so by ordinance. Other requirements include open-space within an agricultural and/or forestal district as established by Chapter 43, Title 15.2, or that the property be subject to a recorded perpetual easement promoting the open-space use as defined in § 58.1-3230.

The specific standards for open-space use under LESA include 1) park or recreation use; 2) conservation of land or other natural resources; 3) floodways; 4) historic or scenic areas or 5) assisting in the shaping of the character, direction and timing of community development or for the public interest. In this case, the specific standard relating to park or recreation use applies, as the standard includes “golf courses operated for profit as a public service and having the park-like characteristics normally associated with a country club.” Additionally, this standard requires that buildings shall not cover more than ten percent (10%) of the site.

2. Written Commitment by Landowner to Preserve Open Space Land Use

The standards for written commitments by landowners to preserve open-space land use are set forth by the Director of the Department of Conservation and Recreation. The form of the commitment tracks the policies and requirements mentioned above in § 58.1-3229 *et seq.* and those promoted by LESA. However, it should be noted that the commitment requires that there shall be no separation or split-off of lots, pieces or parcels from the property, and that the commitment can be terminated only as provided in § 15.2-4314. These two provisions of the commitment are at odds with § 58.1-3241 and §§ 58.1-3235 and -3237.

As noted above, § 58.1-3241 expressly allows for part of the real estate to be separated from the remainder and to retain the open space use designation so long as the remaining property still comports with the minimum acreage requirements and other conditions of the use.

Moreover, §§ 58.1-3235 and -3237 specifically provide that real estate will no longer be considered qualified for open space use if the landowner fails to pay taxes; changes the real estate’s use or changes the zoning to a more intensive use. At no point are any of these procedures subject to review by the Committee, the local planning commission or public hearing.

D. ASSESSMENT OF LAND DEVOTED TO OPEN SPACE USE UNDER THE PRINCE WILLIAM COUNTY CODE

Pursuant to Virginia Code Chapter 32 of Title 58.1, Article 4, Prince William County (the “County”) adopted its own standards for special tax assessment of real estate devoted to open space use. Prince William County Code Chapter 26, Article IV specifies that the property must be examined via the standards prescribed by the director of the department of conservation and recreation, must meet minimum acreage requirements and shall be consistent with the County’s land use plan. The real estate is determined to be consistent with the land use plan if it is 1) within an agricultural and/or forestal district pursuant to Code §15.2-4300 *et seq.*; 2) subject to a recorded perpetual easement held by a public body and promoting the open space use or 3) subject to a recorded commitment meeting the standards prescribed by the director of the Virginia Department of Conservation and Recreation and entered into by the landowner and the County.

Additionally, County Code § 26-21 imposes roll-back taxes on previously qualified real estate in the following situations: 1) when the use which the property qualified changes to a non-qualifying use (Virginia Code § 58.1-3237); 2) when the real estate is rezoned to a more intensive use (Virginia Code § 58.1-3237) or 3) when one or more parcels, lots or pieces of land are separated or split off from the real estate

E. PROCEDURE FOR TERMINATION OF THE AGREEMENT

In order to remove real estate from a qualifying land use and a subsequent recorded commitment, Title 58.1 and Title 15.2 appear to be incongruent. Title 58.1 allows for land to qualify as open space by meeting the statutory definition, the minimum acreage requirements and either that the land is within an agricultural and/or forestal district or subject to either a recorded perpetual open-space easement or a recorded commitment by the landowner to the locality.

As described in Paragraph B above, Title 15.2’s creation of agricultural and/or forestal districts is much more procedurally involved, and as a result termination of land designated as such districts requires equal procedures. These procedures consist of formal application of termination to the governing body, referral to the planning commission and the Committee for recommendation, formal public notice and a public hearing. It follows that the procedures should be this strict, thorough and intricate as any land lying within said district automatically qualifies for an agricultural or forestal use-value assessment under Title 58.1.

LESA and Section 58.1-3237 address how real estate can be removed from the use-value assessment and subject to roll-back taxes for failure to pay taxes and changes in use or zoning, but does not address how to terminate a written commitment. Section 58.1-3233 states that the commitment “may be terminated in the manner provided in § 15.2-4314”. Pause must be given as to why such strict procedures exist for terminating such a commitment when entering the agreement seems relatively straightforward and requires few procedural safeguards.

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Finally, the form of the written commitment established by LESA notes in bold, conspicuous type that the property shall be subject to roll-back taxes in accordance with § 58.1-3237 if the events described therein occur, but fails to address whether the commitment terminates as a result. The requirement that such commitment can only be terminated via the procedures set forth for the termination of an agricultural and/or forestal district, despite the property no longer qualifying for the special assessment and being subject to roll-back taxes, does not seem to represent the intentions of Title 58.1 which are to enable parcels of land that do not otherwise qualify as an agricultural and/or forestal district to enjoy the benefits of the open space use assessment for a pre-determined period of time.

F. REMOVAL OF THE RESIDUE FROM THE AGREEMENT

Considering the applicable sections of the Virginia Code and County Code, along with the requirements set forth in the Agreement and LESA, 1) the Residue no longer qualifies as open-space, 2) the policy behind open space use is better met by removal of the Residue from the open space use and 3) the County will not suffer adverse tax consequences from the termination of the Agreement.

1. Due to the County’s Actions, the Residue No Longer Qualifies as Open Space

The Property qualified for open space use tax assessment under § 58.1-3233, by meeting the definition of “real estate devoted to open-space use,” by being consistent with the standards set forth by LESA, meeting the minimum acreage requirements and pursuant to a recorded commitment between the landowner and the locality.

Real estate devoted to open-space use is defined in part as real estate used as or preserved for “park or recreational purposes”. LESA further defined this to include for-profit golf courses with similar characteristics as a country club. In this case, the Residue was to be used as part of a golf club. However, upon the approval of the SUP on February 17, 2004, the County prohibited the use of the Residue as a golf course. As a result, the Residue can no longer be part of a park or recreational use and no longer qualifies as open space under § 58.1-3230.

2. Even if the Residue Is Released, the Policy Behind the Open Space Designation Is Still Upheld

Releasing the Residue from the Agreement upholds the policy of the open space designation as set forth in the applicable sections of the Virginia Code because the use of the land for residential purposes reduces the intensity of the use previously allowed by both the Original SUP and the open space designation.

This reduction in intensity can be seen in the number of vehicles per day entering and exiting the Property. According to a traffic analysis prepared in support of the SUP,

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changing the use from a 54-hole golf complex to an 18-hole golf course with 26 residential homes would reduce the number of vehicles per day by over 1000 vehicles. As a result, the land formerly reserved for open space use as 36 holes of golf actually supports the policy behind open space use more effectively if released from the Agreement and used for the construction of twenty-six homes.

Additionally, while the SUP provides that the Residue is no longer subject to recreational use, the essential environmental protections and community design requirements imposed on the 18-hole golf course by the Original SUP remain in place. These requirements include appropriate buffers and retention of the landscape features. Likewise, by not constructing the additional 36 holes of golf on the Property, the potential for clearing of additional land is greatly reduced, from approximately 76% to approximately 44% land disturbance of the total site area.

Further, the Residue does not need to be specifically qualified as open space to accomplish the effects such qualifications provide. The Property is classified as Agricultural and Estate (AE) and Environmental Resource (ER) in the Comprehensive Plan. The recommended density for AE is 1 dwelling per 10 acres, which is compatible with the intent to develop the Property pursuant to the A-1 cluster provisions of the Zoning Ordinance. Additionally, the 26 proposed homes are a by-right use of the A-1 zoning, whereas the Original SUP for the 54-hole golf complex required additional conditions to mitigate the possible negative impact of the more intensive use.

Moreover, the reduction in the intensity of the use of the Residue along with the requirements of the A-1 zoning that rural cluster subdivisions must contain 50% open space, 70% of which must be undeveloped and undisturbed, serve the policy behind the preservation of open space much more effectively than the previously planned use for the additionally 36 holes of golf. The Board of County Supervisors of Prince William County, Virginia (the “Board”) surely considered all of the above factors and the impact upon the public interest when it approved the SUP on February 17, 2004.

3. Removal from Open Space Poses No Adverse Tax Consequences for County

Lastly removing the Residue from the Agreement and terminating the special assessment will create no adverse tax consequences for the County as the property will be subject to five (5) years of roll-back taxes, which is the full extent of the taxes due on the Residue while in land use. As five (5) years is the maximum amount of time roll back taxes may be assessed, the County would recoup all deferred taxes with interest from the time the Residue entered land use, March 19, 1999, to the year 2004.

G. CONCLUSION

The Residue should be released from the open space designation as the use authorized by the SUP no longer meets the criteria set forth in the Virginia Code or the standards established by LESA. Additionally, releasing a portion of the Residue would

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better serve the open space designation policy because of the protections set forth in the A-1 zoning, the A-E long-range land use and the Original SUP conditions remaining upon the Property. Finally, such release would not result in a loss of fully assessed, collectible taxes and interest on the Residue.

AGRICULTURAL AND FORESTAL DISTRICT COMMITTEE RESOLUTION

MOTION: COVINGTON **September 30, 2004**
SECOND: HOUSE **Res. No. 04-01**
RE: PLN2005-00027, BULL RUN COUNTRY CLUB (PERRYMONT LINKS LLC)
ACTION: RECOMMEND APPROVAL

WHEREAS, this is a request to remove 75.377 acres from a total area of 235.67 acres preserved as open space for a term of ten years beginning in tax year 2000 in two open-space use agreements dated March 19, 1999; and

WHEREAS, the open space contracts specifically provide that these agreements may be terminated in the manner provided in the Code of Virginia for withdrawal of land from an agricultural, a forestal, or an agricultural and forestal district; and

WHEREAS, Section 15.2-4314 of the Code of Virginia defines the process for early withdrawal of land and defines the standard of review as good and reasonable cause; and

WHEREAS, the site is located at 3600 James Madison Highway, is identified as a portion of GPIN 7200-74-0853, is zoned A-1, Agricultural, and is designated as Agricultural or Estate (AE) and Environmental Resource (ER) in the Comprehensive Plan; and

WHEREAS, the Prince William County Agricultural and Forestal District Committee held a public meeting on September 30, 2004, at which time public testimony was received and the merits of the above-referenced request were considered; and

WHEREAS, the Prince William County Agricultural and Forestal District Committee found good and reasonable cause for the approval of this request;

NOW, THEREFORE, BE IT RESOLVED, that the Prince William County Agricultural and Forestal District Committee does hereby recommend approval of the request for removal of 75.377 acres from the land preserved as open space in 1999 on the grounds of the Bull Run Country Club.

Votes:

Ayes: Bellinger, Carter, Covington, George, House, Martino, Thomas

Nays: None

Absent from Vote: None

Absent from Meeting: Mauck, Miller, Van Hook

MOTION CARRIED

CERTIFIED COPY Bruce Woodhams

PLANNING COMMISSION RESOLUTION

MOTION: BURGESS **January 19, 2005**
SECOND: BRYANT **Regular Meeting**
Res. No. 05-007
RE: OPEN SPACE AGREEMENT (OSA) #PLN2005-00027, BULL RUN
COUNTRY CLUB (PERRYMONT LINKS, LLC)
GAINESVILLE MAGISTERIAL DISTRICT
ACTION: RECOMMEND APPROVAL

WHEREAS, this is a request to amend two open space contracts which commit to retain 235 acres in open space through tax year 2010, in order to remove 75 acres; and

WHEREAS, the site is located at 3600 James Madison Highway, north of Waterfall Road and west of Route 15; and

WHEREAS, the site is designated Agricultural or Estate and Environmental Resource in the Comprehensive Plan; and

WHEREAS, the Prince William County Planning Commission duly ordered, advertised, and held a public hearing on October 20, 2004, at which time action was deferred to date certain, December 15, 2004; and

WHEREAS, the Prince William County Planning Commission met on December 15, 2004 and deferred action until January 19, 2005, in order to permit written notice to be given to owners of property located within 200 feet of the subject site and the upcoming Planning Commission meeting; and

WHEREAS, the Prince William County Planning Commission duly ordered, advertised, and reopened the public hearing on January 19, 2005; and

WHEREAS, it was determined that written notice had been given to property owners located within 200 feet of the subject site; and

WHEREAS, general welfare and good zoning practices are served by the approval of the application; and

WHEREAS, it is expressly determined that the applicant has demonstrated good and reasonable cause for the approval of this request;

NOW, THEREFORE, BE IT RESOLVED, that the Prince William County Planning Commission does hereby recommend approval of the request for removal of 75.377 acres from the land preserved as open space in 1999 on the grounds of the Bull Run Country Club.

Votes:

Ayes: Bryant, Burgess, Gonzales, Holley, May, Fry

Nays: Hosen

Absent from Vote: None

Absent from Meeting: Hendley

MOTION CARRIED

CERTIFIED COPY

M. C. Thompson

Secretary to the Commission