

# **DRAFT CONDITIONS**

## **Bluff Point; Planned Unit Development**

The Bluff Point Planned Unit Development (the “Bluff Point PUD”) request is located in the Northumberland County, Virginia (the ”County”) near Kilmarnock off Bluff Point Road and Jarvis Point Road, and more particularly set forth in the application made by Bluff Point Holdings, LLC (the “Developer”) dated February 8, 2010 (“Submittal”). The Bluff Point PUD is further described on tax map numbers 54 (1) 56, 54 (1) 56A-Y, 52 (1) 76, 54 (1) 61, 54 (1) 1, 52 (1) 75, 52 (1) 76, 53 (1) 3, and 53 (1) 1. Conditions for the Bluff Point PUD are as follows:

### **I. General Conditions:**

The Bluff Point Development PUD consists of approximately 898 acres and will consist of:

- 530 residential units (consisting of single-family and multi-family units)
- 90 room inn including separate cabin units
- 34,000 square feet of commercial space
- Oyster house
- 98 slip marina and dry stack storage with 130 spaces
- Spa facilities
- Private club facility
- Recreation center
- 7 acre farm
- Sixty Five (65%) percent open space
- Recreational facilities, i.e., swimming pools, tennis courts
- Water and Wastewater Plants

- A. The Bluff Point PUD will be developed as delineated on the preliminary development plan (attached hereto as Exhibit “A through F”). The Bluff Point PUD Preliminary Development Plan incorporates by reference the terms of these PUD Conditions and the Developer’s statements made in the related application and public hearing, which collectively set forth the Developer’s written plan of development for the Bluff Point PUD, and which are intended to clearly demonstrate that the PUD will fulfill the applicable policies of the County.
- B. The Developer shall develop the Bluff Point PUD in five phases. The Developer shall provide the County with a surety bond in a form approved by the County and in an amount for each phase prior to construction of that phase. The bond amount will be based on the actual costs for the infrastructure improvements for that phase and include a fifteen percent (15%) inflation and re-contracting factor. Phasing maps, specifying the projected infrastructure and amenities of each phase are attached as Exhibits “G through Q”. Partial releases of the financial guaranties may occur based upon completion of individual components of the items requiring the financial guaranty. A disclaimer must be included in the declaration of covenants and restrictions that the developer is bonding only that phase of infrastructure and is not guaranteeing completion of the infrastructure beyond that phase.
- C. No more than two (2) years after approval by the Northumberland County Board of Supervisors on the Bluff Point PUD Preliminary Development Plan, the Developer shall submit a Final Development Plan for the Project to the Northumberland County Administrator’s Office for compliance with this

special exceptions permit. Within one (1) year after approvals are obtained by both the Virginia Marine Resources (VMRC) and the Virginia Department of Environmental Quality (VDEQ), phase one construction must begin. Phases one (1) through five (5) of the Bluff Point PUD must all be completed within fifteen (15) years from the date of the VMRC and VDEQ approvals.

- D. The proposed project allows for development of the Bluff Point PUD as a residential/commercial use in a manner that warrants flexibility in the application of land use controls for Northumberland County consistent with the intent of the zoning ordinance. The location and size of all building units, lots, roads, project entrances, recreation/open space and other areas shown on the Bluff Point PUD Preliminary Development Plan is approximate and subject to modification as depicted on the Final Development Plan and the Final Engineering Plans, provided the modifications do not constitute a Major Amendment to the PUD. (A Major Amendment is defined as modifications to the plan that are significant enough to alter the effects of the properties within the development or surrounding properties from what was presented and approved). The reduction of residential units does not constitute a Major Amendment whereas the reduction or enlargement of the commercial submittals would be considered a Major Amendment. Should the regulatory agencies deny the Developer the right to construct the marina or wastewater treatment plant as proposed, the Developer must obtain Board of Supervisors approval for a modified PUD.
- E. The Developer shall place sixty five percent (65%) of the land area into open space in one or more protective easements to preserve such space in perpetuity as open space prior to completion of the Bluff Point PUD. The easement shall be recorded in the land records of the County prior to the time of completion of that phase in which the open space is located. The easement will include all areas governed by the resource protection area and any stated voluntary additions to the resource protection area. The easement shall run with the land and shall be held by a non-profit entity which may be a homeowner association, state entity (i.e., Virginia Outdoors Foundation), the Northern Neck Land Conservancy or a combination of such entities.
- F. The Developer shall provide certain utility services and access considerations to the lot owners of the adjacent subdivision known as Marnock Shores per a letter of agreement attached as Document 1. The Developer will also have additional capacity in their waste water treatment plant to accommodate the Indian Creek Country Clubhouse if they desire to connect to the system upon terms mutually agreed upon.
- G. No county building, zoning or land disturbing permits will be issued until regulatory approval for the marina and the wastewater treatment plant has been approved.

## **II. Specific Conditions:**

- A. Recreational Amenities, Open Space and Common Areas.
  - 1. Recreational amenities, open space and common areas shall be provided for the project. The location of recreational areas is indicated on the Bluff Point Preliminary Development Plan. All common area, open space and recreational facilities for the project shall be included in the Final Development Plan of the Bluff Point PUD.

2. Any active recreational facilities and accessory structures in the Bluff Point PUD shall be subject to site plan approval by the County Zoning Administrator and shall be constructed as noted within the Final Development Plan.
3. The homeowners association, property owners association or non profit corporation (the "Association"), after acquiring title to the common areas and recreational amenities within the Bluff Point PUD, may adopt rules and regulations governing the use of the same by the residents and guests of the Bluff Point PUD. The Developer will have no obligation to maintain or improve the recreational amenities, open space or common areas after conveyance to the Association, subject to fulfillment of the recreation and open space requirements set forth herein. However, the developer shall not convey any common areas, improvements or recreational amenities to any Association until all improvements are constructed and approved by Northumberland County.
4. The recreational amenity areas and related maintenance and use restrictions shall be evidenced by recorded deed restrictions or recorded Declaration(s) of Covenants and Restrictions (collectively, the "Covenants and Restrictions") as recorded in the land records of the County. All privately owned recreation/open space shall continue to conform to its intended use as shown in the Final Development Plan and Final Engineering Plans for the Bluff Point PUD.

B. Administration of Community Space and Facilities:

1. If the Developer elects to administer common open space through an Association, such organization shall conform to the following requirements.
  - a. The Developer shall establish the applicable association or nonprofit corporation prior to any Final Development Plan approval for the Bluff Point PUD.
  - b. Membership in the Association shall be mandatory for all property owners within the Bluff Point PUD governed by such entity.
  - c. The Developer may elect to form separate and/or multiple Association for the Bluff Point PUD. If so, the Developer shall establish a master Association for the Bluff Point PUD that shall be responsible for the maintenance of any roads, master drainage improvements, and such other improvements serving the Bluff Point PUD as a whole, subject to these PUD Conditions. All improvements including roads, master drainage facilities, dredging, storm sewers, and utilities shall be completed and approved by the County before being transferred to any Association.
  - d. The applicable Association shall; (i) manage all common areas, recreational and open space and recreational facilities that are within the lands that are subject to the jurisdiction of such association or nonprofit corporation; (ii) provide for the maintenance, administration and operation of such portions of the Bluff Point PUD and any other lands located within the Bluff Point PUD that is not publicly or privately owned; and, (iii) secure adequate liability insurance governing such areas owned or operated by such association or nonprofit corporation.

C. Stormwater Facilities:

1. The Bluff Point PUD shall be served by a stormwater system, which shall adhere to the low impact development practices and said system shall be conveyed to the Association by deed and/or easement for maintenance and operation by the Association.

2. All County permits for stormwater facilities shall be obtained by the Developer prior to Final Development Plan approval. The Developer shall obtain an operating permit for all such stormwater facilities prior to transferring such facility to any Association.

D. Residential Development Standards:

1. The Bluff Point PUD shall include not more than three hundred sixty two (362) single family residential lots and one hundred sixty eight (168) multi-family units. Below are the site development standards for the residential area:

- (a) Maximum height: Forty-five feet (45')
- (b) Minimum lot size: None (not required in clustering)
- (c) Minimum lot width: None (not required in clustering)

2. Minimum Required Yard Setbacks:

- (a) Front: Twenty-five feet (25') from the edge of the street right of way.
- (b) Side yard: Ten feet (10')
- (c) Rear yard: Twenty feet (20')

- E. Commercial buildings cannot exceed forty-five feet (45') in height and do not have a required minimum setback, side yard, lot size or width except for Chesapeake Bay Preservation Area requirements.

F. Parking:

1. Off-Street Parking & Loading: Residential development within the Bluff Point PUD shall be subject to the applicable off-street parking and loading required for such use, pursuant to Article XV, Section 148-126 of the County Zoning Ordinance.

G. Signage:

1. The Bluff Point PUD may have project identification signage at each external entrance. External entrance project identification signs shall not exceed one hundred (100) square feet on each face. All project signs shall be designed as monument style signs or integrated into or mounted on landscape features such as a wall or fence. All lighting of signs may be sign mounted or ground mounted units projecting onto the sign. The signs at the project entrance may be single faced or double faced.
2. The location of signage shall be delineated on a site plan submitted to the County Zoning Administrator for approval.
3. Traffic and street name signage must be reflective. However, any applicable VDOT/Northumberland County standards for sign face, elevations, etc. shall be maintained, by the Developer and/or Association as appropriate, for such traffic and street name signage consistent with the provisions set forth in this paragraph. Individual 911 house number plates must meet Northumberland County standards.

H. Construction Standards:

1. Except as specifically provided herein, all development in the Bluff Point PUD shall be in accordance with all applicable County, State and Federal laws, rules and regulations, including, without limitation, the County's Land Development Standards (i.e., erosion & sediment control, wetlands, etc.).
2. Except for any existing overhead utility lines all utilities within Bluff Point PUD shall be located underground.
3. An Environmental Compliance Official will be employed by the County during the entire period of construction of the Bluff Point PUD and the Developer will reimburse the County for the salary.
4. The marina facility will participate in the Virginia Clean Marina Program. Maintenance of boats at the marina will only be minor maintenance on site (i.e., fluid changes, engine tune ups, and similar activity). Bottom painting, structural repairs or renovations and major engine work will not be permitted at the marina.
5. Private docks along the tidal and non-tidal waters are prohibited.
6. All buildings must conform to the Northumberland County Floodplain requirements and an evacuation plan submitted to and approved by the County Emergency Services Director.

I. Wetlands:

1. All nontidal wetlands within the Bluff Point PUD which are not included in the Resource Protection Area designation shall be protected with undisturbed buffers of native vegetation. Such buffer shall: (i) be located between any developed area and such wetlands; (ii) have an average width of fifty (50) feet and a minimum width of twenty-five (25) feet; and, (iii) allow pedestrian access ways of no more than twenty (20) feet wide through the wetland buffer.
2. The exact boundaries of wetlands and wetland buffers indicated on the Bluff Point PUD Preliminary Development Plan will be subject to a final determination on the Final Engineering Plans for the Bluff Point PUD consistent with the above requirement. If the buffer requirements are revised to be less restrictive prior to final approval of the Final Development Plan, the Developer may provide the newly defined wetland buffer by administrative amendment so long as the buffer conforms to all federal, state and local laws, rules and regulations.
3. A 200 foot Resource Protection Area shall be provided along the shoreline of Chesapeake Bay for the Hotel Inn, Inn Cottages and Bay Cottage Neighborhood. All other RPA areas shall have a 100 foot buffer as designated in the Chesapeake Bay Preservation Area Ordinance.
4. Homeowner guidelines governing restrictions on individual lawns and yards and the use of fertilizers will be provided and enforced by the Association.
5. Any dredging and beach sand nourishment must comply with all federal, state and local laws, rules and regulations. The initial dredging of Barnes Creek shall be completed by the Developer and after the initial dredging any future maintenance dredging shall be the responsibility of the Association.

J. Temporary Uses:

1. Temporary sales offices, including modular units, not to exceed two (2) units at any one time, for the sale of lots, shall be permitted within the Bluff Point PUD until all residential lots are sold. The Developer shall indicate with a note on any site plan submitted to the County Zoning Administrator for approval the location of said units.

2. The Developer, or its designated successor, assign or designee, will be required to maintain a copy of the approved Final Development Plan and PUD Conditions in any sales office located within the Bluff Point PUD and available for review by landowners and prospective buyers.
3. The siting of temporary construction trailers shall be allowed on the Bluff Point PUD during construction. The temporary construction trailers must be removed within thirty (30) days after completion of the improvements for which the construction trailer is used.

K. Alterations:

1. Changes in the location of the road(s), project entrances, stormwater system improvements, and to the boundaries, size and configuration of lots and Recreation/Open Space areas, as depicted on the Bluff Point PUD Preliminary Development Plan to accommodate environmental, permitting and design factors, conditions and requirements of the Developer shall be permitted, so long as (1) the change does not constitute a Major Amendment to the PUD, and (2) the integrity of the original application is maintained for the applicable phase of development.

L. Ownership and Maintenance:

1. The Bluff Point PUD and related uses and facilities associated therewith, will be owned, maintained and or operated as follows:
  - a. Any areas associated within the development (including but not limited to, amenities, recreation/open space areas, signage, landscape, stormwater systems, etc.) will be managed through an Association.
  - b. To ensure that all of the recreation and open space areas, described in these PUD Conditions and depicted in the approved Bluff Point PUD Preliminary Development Plan for any phase of the Bluff Point PUD, will be used as intended, the Covenants and Restrictions described above will contain provisions consistent with the terms of these PUD Conditions and any deed from the Developer to any purchaser in the Bluff Point PUD will incorporate such Covenants and Restrictions by reference to the Covenants and Restrictions in each deed.
  - c. Such deed restrictions created by the Covenants and Restrictions shall run with the land in order to protect both present and future property owners within the Bluff Point PUD. The deed restrictions created by the Covenants and Restrictions shall prohibit the partition of any open space areas.

M. Access:

1. Access to and from the Bluff Point PUD will be provided as shown on the Bluff Point PUD Preliminary Development Plan.
2. The location of all project entrances, accesses and roadways may change based on environmental, permitting and design factors, conditions and requirements of the Developer, so long as the proposed changes do not constitute a Major Amendment to the PUD pursuant to the provisions set forth in these requirements. The Developer will finalize the location of all external project entrances, accesses and roadways during the Final Engineering Plan approval for the applicable phase of development.
3. Each dwelling unit or other permitted use shall be provided access, either directly or indirectly, by a public right-of-way, private vehicular or pedestrian way or commonly owned easement.

4. County employees shall be permitted access on, over and across privately owned roads, easements and common open spaces in order to perform basic County services such as fire and police protection, emergency service needs of PUD residents, and site inspection by Code Enforcement departments to monitor adherence to County regulations and the conditions contained herein. If any road is gated, the gate shall automatically open in response to a “yelp” electronic siren for emergency personnel.
5. The extension of Jarvis Point Road into the commercial development area shall be constructed to Virginia Department of Transportation standards and required to be brought into the secondary system of highways from the end of Jarvis Point Road to the Hotel Inn and Spa. Also, the main roadway off of Bluff Point Road into the central area of residences that connects to the Jarvis Point Road shall be constructed to Virginia Department of Transportation standards and brought into the secondary system of highways. All internal roads into the residential areas may remain private, but must meet the Virginia Department of Transportation standards for the secondary system of highways including but not limited to, alignment, sight distance and drainage.
6. All internal roadways shall be stabilized and hard surfaced. All roadways shall be maintained by the developer until the two main roads are brought into the secondary system of highways and all other roads are completed and transferred to an established Association. The developer or an established Association shall maintain these private roads at the level stipulated in Paragraph 7 below. The Covenants and Restrictions shall specify these maintenance obligations to the Association. Maintenance of the roadways shall ensure the utilization of said roads by Northumberland County Emergency Vehicles in conjunction with the Emergency Services Director. Said determination shall be binding upon the Developer and the Association, and they shall undertake any and all corrective maintenance actions to address the Emergency Services Director’s determination. If the Developer or the established Association does not agree with the determination, they may appeal that determination to the Board of Supervisors. The Board of Supervisors shall set a hearing within thirty (30) days and receive testimony and render a decision, which shall be binding.
7. Roadway improvements for the Bluff Point PUD shall be subject to the following:
  - a. Interior roads shall be hard surfaced and the developer agrees to provide an approved drainage system and stabilize the roadway ditches as required by the Northumberland County Erosion and Sediment Control Ordinance. These improvements shall be completed in conjunction with the phasing schedule indicated on the Preliminary Development Plan. Additionally, no Certificates of Occupancy shall be issued on home sites which front on unimproved road segments. These improvements are subject to review and approval by the Northumberland County Building and Zoning Department during Final Development Plan review.
  - b. All roads shall have sufficient access for fire and rescue vehicles as determined by the Emergency Services Director.

N. Notification:

1. The Developer shall incorporate into the Covenants and Restrictions notification to all property owners that they are living in a Planned Unit Development (PUD) and shall state that the County does not: (i) maintain the internal road system; and, (ii) operate the wastewater treatment or the water systems.

O. Traffic:

1. The Developer will provide the following as per agreement with Virginia Department of Transportation:
  - a. Prior to any building permits being issued for residences in phases 4 and 5 or, regardless of the phase, when an aggregate of 390 residences have been built, the Developer shall conduct a signal/turn lane warrant study for the intersection of Routes 608 and 200. Should such study indicate that either a traffic signal or turn lanes are warranted for the intersection, the Developer shall post a financial guaranty for the estimated cost, including the 15% inflation/re-contract factor, to complete the intersection improvements. In the event a traffic signal or turn lanes are not warranted at that time for the intersection, a financial guaranty in a form approved by the County, shall be posted by the Developer and remain in place for a period of ten (10) years or the completion of such improvements. During the ten (10) years that the financial guaranty is in effect, the County will monitor the intersection, with assistance of the Virginia Department of Transportation, and require any necessary improvements, as stated above, if warranted.
  - b. A turn lane on Rt. 669 (Bluff Point Road) will be installed for the main Bluff Point entrance. The construction of this turn lane will take place no later than phase two after site plan approval.
  - c. A turn lane on Rt. 608 (Jarvis Point Road) will be installed at the time of construction on the Jarvis Creek Area of the Bluff Point PUD no later than phase four.

P. Water and Wastewater:

1. The Developer shall demonstrate to the County that the hydrogeologic conditions will provide an adequate water supply for the Bluff Point PUD by performing aquifer testing (transmissivity and storage coefficient) pursuant to the Virginia Department of Environmental Quality guidelines for wells located within a Groundwater Management Area. In the event the testing determines that the aquifer, due to the proposed water withdrawal, will experience: (1) impacts to existing wells with in an Area of Impact defined by at least a one foot water level decline or greater in the aquifer and/or (2) a drawdown of existing water levels greater than 80% of the pre-pumping aquifer level, the County Board of Supervisors will hold a public meeting to reconsider the water withdrawal and any mitigation proposed. The Virginia Department of Environmental Quality will conduct an impact and risk analysis on the results of the aquifer test that will aid the County Board of Supervisors in deciding whether the aquifer can sustain the proposed use by the Bluff Point PUD.
2. The Developer will have the proposed waste water treatment plant approved through the applicable State Regulatory Bodies, including, without limitation, the Virginia Department of Environmental Quality, as applicable, and submit copies of the following to the County with respect to the waste water treatment plant: preliminary engineering report, full set of plans, full set of specifications, copy of a treatment plant operations and maintenance manual, copy of a pump station operations and maintenance manual and set of engineer's design calculations (including pump curves, if applicable). The wastewater plant shall have a zero discharge into the Chesapeake Bay or its tributaries.

### III. SUCCESSOR AND/OR ASSIGNS

- A. These PUD Conditions set forth herein shall be binding on any successors or assigns of the Developer and shall run with the land. The Developer shall notify the County Administrator of any sale,

conveyance, agreement, and/or assignment of any kind whereby the Developer relinquishes control of the PUD or transfers stock in the corporate entity or changes the limited liability company. Further, it shall be the obligation of the Developer to provide to the County Administrator a signed acknowledgment of the Bluff Point PUD conditions by any successors or assigns or transferees of the acknowledgement of these PUD Conditions, and the acknowledgment that they are bound by these PUD Conditions. The acknowledgement does not pertain to individual lot sales within the Bluff Point PUD. It shall be the Developer's obligation to inform each and every purchaser of individual lots of these PUD Conditions.

#### **IV. ANNUAL MONITORING**

- A. The Developer or its successors or assigns shall provide an annual monitoring report to the Zoning Administrator in a form required by the County until the Bluff Point PUD is complete. Such report shall be due no later than March 1 of each year.

#### **V. TERMINATION**

- A. Upon noting that one of these PUD Conditions has been violated, the County Zoning Administrator shall issue a written notice of violation to the Developer. The notice shall inform the Developer (i) which condition or conditions have been violated, (ii) the nature of the violation, and (iii) that the County Board of Supervisors shall hold a public hearing at which it shall review the violation and these PUD Conditions, if the Developer does not abate the violation within such time period as may be set by the County Zoning Administrator, which shall be no less than thirty (30) days from the date of the notice. Upon holding such a public hearing, the Board of Supervisors may terminate all or a portion of this Bluff Point PUD as to all or a portion of the Property. No action taken pursuant to the provisions of this section shall in any way limit the County's right to pursue any other remedy at law or in equity against the Developer.