



City of Virginia Beach

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BUILDING NUMBER 1, ROOM 234
2401 COURTHOUSE DRIVE
VIRGINIA BEACH, VA 23456-9001

INTER-OFFICE MEMORANDUM

DATE: April 12, 2013

TO: Mayor William D. Sessoms, Jr. and
Members of City Council

THRU: James K. Spore, City Manager

FROM: David L. Hansen, Deputy City Manager 

SUBJECT: **Lynnhaven River Basin Ecosystem Restoration**

Attached you will find our response to the Norfolk District Commander of the Corps of Engineers attesting to the City's commitment for providing the necessary real estate interests for the project features identified in the Lynnhaven River Basin Ecosystem Restoration Plan. This plan consists of restoring 38 acres of wetlands, 94 acres of sub-aquatic vegetation (SAV), the reintroduction of bay scallops on the SAV and the construction of 31 acres of reef habitat.

The success of this project will require the participation of Federal, State and local authorities as well as the involvement of partners such as Lynnhaven River NOW. Additionally, this project has the potential for integrating our ongoing neighborhood navigation dredging projects to provide a cost effective vehicle for employing environmental dredging to create the infrastructure necessary to construct oyster beds and SAV fields. We have already entered into discussions with the Norfolk Engineer District in order to create a system approach to align the restoration goals with our neighborhood project timelines.

The process of restoring the Lynnhaven River Basin will take many years as will our citizen's efforts to reclaim their navigable waterways. There is a great opportunity to establish synergistic benefits for both programs. Locating restoration effort at the mouths of the neighborhood navigation channels and utilizing contractor assets to remove silt for oyster reefs and SAV fields should accelerate the rate of water quality improvement.

Lynnhaven River Basin Ecosystem Restoration

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These are exciting times whereby transformational approaches and unique cost sharing arrangements have the potential to make great strides in the restoration of the Lynnhaven River Basin Ecosystem. Should you have any questions, please contact me.

DLH/s

Attachment(s)



City of Virginia Beach

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BUILDING 1
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April 10, 2013

Colonel Paul B. Olsen
District Engineer
Norfolk District Corps of Engineers
803 Front Street
Norfolk, Virginia 23510-1096

RE: Lynnhaven River Basin Ecosystem Restoration

Dear Colonel Olsen:

The City of Virginia Beach greatly appreciates the work done by the Corps of Engineers in developing the final feasibility study for the Lynnhaven River Basin Ecosystem Restoration project. We are pleased that the project is nearing readiness for consideration by Congress for authorization.

We understand that concerns exist regarding the City's ability to accomplish the real estate acquisition that may be necessary for the project. Please be assured that we have reviewed the potential real estate requirements identified in the District's letter dated March 12, 2013. We acknowledge that the provision of all real estate interests necessary for the construction, operation, maintenance, repair, rehabilitation, and replacement of the project will be the responsibility of the City of Virginia Beach as the Non-Federal Sponsor for this project. It is understood that the procurement of real estate interests may include acquiring or terminating existing oyster leases, acquiring permanent real estate interests from private and public property owners for wetlands restoration, and securing permanent easements over state-owned river bottoms to support the parts of the project involving submerged aquatic vegetation restoration, bay scallops reintroduction, and reef habitat creation.

Please be assured that the City of Virginia Beach has the legal authority, technical capability, and financial resources to acquire the necessary real estate interests. The City of Virginia Beach supports and fully intends to provide the necessary real estate interests for the project features identified in the recommended plan following the execution of a Project Partnership Agreement (PPA) for construction of the project.

Colonel Paul B. Olsen
Lynnhaven River Basin Ecosystem Restoration
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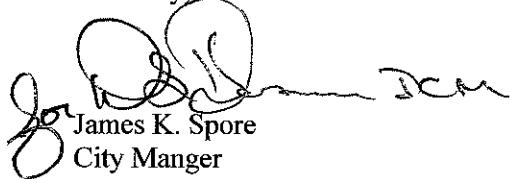
Should the occasion arise, the City of Virginia Beach understands, acknowledges, and accepts the risks associated with acquiring any necessary real estate interests before the execution of the PPA and before the formal notice to proceed with real estate acquisition.

Please understand that this letter serves as an expression of intent and is not a contractual obligation and that either party may discontinue the effort at any stage before construction begins.

In closing, our relationship with the Corps of Engineers and the Norfolk District extends back through our entire 50-year history as the City of Virginia Beach. We have been the non-federal sponsor on a number of significant and important Civil Works projects. The provision of the required real estate has always been a non-federal responsibility, and I hope and trust a review of our past, and current, partnerships completely supports our capability statements herein.

We again would like to express our gratitude to the entire Corps of Engineers organization for bringing this project toward fruition.

Sincerely,



James K. Spore
City Manager

c: Honorable Mayor William D. Sessoms, Jr.
and Members of City Council
Mark Stiles, City Attorney



REPLY TO
ATTENTION OF

**DEPARTMENT OF THE ARMY
NORFOLK DISTRICT CORPS OF ENGINEERS
FORT NORFOLK 803 FRONT STREET
NORFOLK, VIRGINIA 23510-1096**

Projects Branch

12 March 2013

Mr. Steve McLaughlin
Department of Planning
Environment & Sustainability Office
Municipal Center- Building 2
2405 Courthouse Drive
Virginia Beach, VA 23456-9121

Dear Mr. McLaughlin,

The purpose of this letter is to summarize the real estate requirements needed for the Lynnhaven River Ecosystem Restoration project and identify the necessary actions needed to move forward with the completion of the feasibility phase. The City of Virginia Beach has been identified as the Non-Federal Sponsor for this project. As such the City would be responsible for acquisition of all lands, easements, right of ways, relocations and dredge or excavated material disposal areas (LERRDS) required for the construction and maintenance of the project. It is important that the City understand the intended Project locations are currently encumbered with oyster leases and that the City understands and agrees that it will acquire releases of these leases and that it will acquire all necessary rights to the intended project locations so that the work can be done and that the work will be protected by easements for a minimum of 50 years.

In order to complete the feasibility phase, the Norfolk District must prepare and coordinate a Real Estate Plan that supports the main report with the non-Federal sponsor. As a part of the plan, a thorough assessment of the city's legal and professional capability to acquire the necessary Lands, Easements and Right of Ways (LER) for construction, operation and maintenance of the project, including its condemnation authority and quick-take capability must be completed. Enclosed is the draft Assessment of Non-Federal Sponsor's Real Estate Acquisition Capability. To move forward, we will need input and concurrence from the city on this assessment. To meet the current scheduled Civil Works Review Board date of 23 August, 2013, we will need concurrence from the city by 2 April, 2013.

As you are aware, the team selected the specific project sites identified in the draft report because they were in areas that, at the time, were unleased and environmentally suitable for the restoration measures. Unfortunately, these areas and most areas considered suitable for restoration have since been leased by VMRC. As discussed in our meeting on 22 February 2013, we understand the city prefers to acquire suitable lands first by leasing areas on available bottom, and then through negotiation for areas with existing leaseholders. Since most of the suitable areas are currently leased and the outcome of any negotiations with existing leaseholders is

unknown, condemnation by the city may be necessary to construct all acres of SAV, scallops, and reef habitat identified in the tentatively selected plan.

The tentatively selected plan consists of restoration of approximately 38 acres of wetlands, 94 acres of SAV, reintroduction of the bay scallop on 22 acres of the SAV and construction of 31 acres of reef habitat utilizing reef balls. The real property interests needed for the SAV and reef habitat features involve the use of river bottoms owned and managed by the Commonwealth of Virginia. Per our meeting on 22 February 2013 with VMRC, the following would be necessary:

- (1) Release or termination of VMRC issued oyster/scallop leases of river bottoms to be used for (SAV and reef habitat)
- (2) VMRC permit to do the work in the water (SAV, scallops, reef habitat);
- (3) VMRC easement to construct and protect the work in the water;
- (4) An easement to construct and protect wetlands restoration areas; and
- (5) Laydown area and access for wetlands restoration (not needed for work in the water)

If it is not possible to acquire the acreage in the recommended plan, it is possible to develop a plan of less acreage. However, the recommended plan increases the chance of success of the SAV/scallop components of the project and provides the best means of addressing the Chesapeake Bay Executive Order. Additionally, changes to the recommended plan would require revisions to the draft report that would require additional reviews and funding. These additional reviews would likely delay the project another calendar year thereby putting the funds we currently have for PED at risk for revocation.

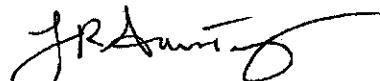
We also must put the city on notice of the risk associated with acquisition prior to execution of a Project Cooperation Agreement (PCA). The city as a non-Federal sponsor assumes full and sole responsibility for any and all costs, responsibility, or liability associated with such acquisition effort. Generally, these risks include, but may not be limited to, the following:

- (1) Congress may not appropriate funds to construct the proposed project;
- (2) the proposed project may otherwise not be funded or approved for construction;
- (3) a PCA mutually agreeable to the non-Federal sponsor and the Government may not be executed and implemented;
- (4) the non-Federal sponsor may incur liability and expense by virtue of its ownership of contaminated lands, or interests therein, whether such liability should arise out of local, state, or Federal laws or regulations including liability arising out of CERCLA, as amended;

- (5) the non-Federal sponsor may acquire interests or estates that are later determined by the Government to be inappropriate, insufficient, or otherwise not required for the project;
- (6) the non-Federal sponsor may initially acquire insufficient or excessive real property acreage which may result in additional negotiations and/or benefit payments under P.L. 91-646 as well as the payment of additional fair market value to affected landowners which could have been avoided by delaying acquisition until after PCA execution and the Government's notice to commence acquisition and performance of LERRD; and
- (7) the non-Federal sponsor may incur costs or expenses in connection with its decision to acquire or perform LERRD in advance of the executed PCA and the Government's notice to proceed which may not be creditable under the provisions of Public Law 99-662 or the PCA.

Thank you for partnering with the Corps in this endeavor. Please do not hesitate to contact me if you have any questions, I can be reached at 757-201-7704.

Sincerely,



Jennifer R. Armstrong
Project Manager
Norfolk District
USACE

ASSESSMENT OF NON-FEDERAL SPONSOR'S REAL ESTATE ACQUISITION CAPABILITY

I. Legal Authority:

- a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes? YES
- b. Does the sponsor have the power of eminent domain for this project? YES
- c. Does the sponsor have "quick-take" authority for this project?
- d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? NO
- e. Are any of the lands/interest in land required for the project owned by an entity whose property the sponsor cannot condemn? YES (State Owned River Bottom)

II. Human Resource Requirements:

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended? NO
- b. If the answer to II.a. is "yes" has a reasonable plan been developed to provide such training? N/A
- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? YES
- d. Is the sponsor's projected in-house staffing level sufficient considering its other work load, if any, and the project schedule? YES
- e. Can the sponsor obtain contractor support, if required, in a timely manner? YES
- f. Will the sponsor likely request USACE assistance in acquiring real estate? NO
(If "yes," provide description).

III. Other Project Variables:

- a. Will the sponsor's staff be located within reasonable proximity to the project site? YES
- b. Has the sponsor approved the project/real estate schedule/milestone? NO

IV. Overall Assessment:

- a. Has the sponsor performed satisfactorily on other USACE project? YES
- b. With regards to this project, the sponsor is anticipated to be: highly capable/fully capable/moderately capable/marginally capable/insufficiently capable. (If the sponsor is believed to be "insufficiently capable" provide explanation).

V. Coordination:

- a. Has this assessment been coordinated with the sponsor? YES
- b. Does the sponsor concur with this assessment? (If "no", provide an explanation).
YES

Prepared By:

David B. Parson
Realty Specialist
Real Estate Office

Reviewed and Approved By:

Lanny M. Pricer
Realty Specialist
Real Estate Office