



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of February 12, 2011

DATE: January 26, 2011

SUBJECT: Adoption of a Resolution by the County Board of Arlington County, Virginia Approving a Deed of Confirmation between the County Board and the United States of America Concerning Portions of Parcels 12, 14, 15, and 17 Potomac Yard North, Long Bridge Park, Arlington County, Virginia, RPC Nos. 34024345, 34024346, 34024347 and 34024349.

C. M. RECOMMENDATION:

1. Adopt the attached Resolution approving a Deed of Confirmation between the County Board and the United States of America concerning Portions of Parcels 12, 14, 15, and 17 Potomac Yard North, Long Bridge Park, Arlington County, Virginia, RPC Nos. 34024345, 34024346, 34024347 and 34024349, and authorizing the acceptance and execution of the Deed.
2. Authorize the Real Estate Bureau Chief, or his designee, to execute the Deed of Confirmation and all related documents, on behalf of the County Board, subject to approval as to form of the Deed and all documents by the County Attorney.

ISSUES: Adoption of the Resolution by the County Board is necessary to authorize the acceptance of a conveyance of property interests from the United States of America. There are no outstanding issues.

SUMMARY: Adoption of the attached Resolution (Exhibit A), and acceptance, execution and recordation of the attached Deed of Confirmation (Exhibit B) between the County and the United States of America will confirm the joint understandings of the County and the United States regarding two restrictions contained in a previously recorded Indenture benefiting the United States, as the restrictions apply to the County's planned Long Bridge Park improvements and the County's planned uses of portions of the County's Long Bridge Park property.

BACKGROUND: The County is the owner of real estate known as Parcels 12, 14, 15, and 17 Potomac Yard North, which parcels are part of the County's Long Bridge Park property. The

County Manager:

County Attorney:

24.

Staff: Tim O'Hora, DES – Real Estate Bureau

parcels were acquired by the County for the development of Long Bridge Park. Parcels 12 and 15 were acquired by the County as a portion of the property conveyed to the County by Crescent Potomac Yard Development, LLC, by deed dated October 31, 2002, and recorded in Deed Book 3400, at page 734 among the Arlington County land records. Parcel 14 was acquired by the County from Commonwealth Atlantic Properties Inc., by deed dated March 4, 2010, and recorded in Deed Book 4348, at page 1740, among the Arlington County land records. Parcel 17 was acquired by the County from Crescent Potomac Yard Development, LLC, by deed dated October 23, 2009, and recorded in Deed Book 4318, at page 1754, among the Arlington County land records.

Portions of Parcels 12, 14, 15, and 17 Potomac Yard North are subject to an Indenture, dated February 12, 1938, among the Richmond, Fredericksburg and Potomac Railroad Company, the United States of America, and others. The Indenture is recorded in Deed Book 443, at page 83, among the Arlington County land records. The Indenture contains certain provisions, covenants and restrictions, running with the land, which affect or restrict the use of various parcels of real estate, including portions of Parcels 12, 14, 15 and 17. The Indenture restricts use of the property within what is known as "Indenture Area 2" to certain railroad-related uses described in the Indenture. The Indenture also limits the height of any building or structure erected or constructed within what is known as "Indenture Area 5". A narrow strip of Parcel 15 (varying from approximately 10 to 40 feet in width), and a portion of Parcel 17, which both run along and abut the CSX rail right of way, are within, and subject to the above referenced use restrictions. Portions of Parcel 12, 14, 15 and 17 are also within the area subject to the above-described height restriction.

DISCUSSION: As a result of negotiations between National Park Service staff and County staff, the parties have agreed to execute the attached Deed of Confirmation. The Deed addresses the application of the two restrictions to the County's planned development and use portions of the property in Long Bridge Park. The Deed confirms the joint understanding of the County and the United States regarding the Area 5 height limitation and Area 2 use restrictions set forth in the Indenture, as the restrictions apply to the County's planned Long Bridge Park improvements and the County's planned uses of the affected portions of the County's Long Bridge Park property.

Under the Deed of Confirmation, the County and the United States confirm, grant, and convey certain rights and interests to each other. The United States and the County jointly confirm and acknowledge two matters. The first matter is that, in Section II, Area 5, subsection (1), at Page 28 of the Indenture, the language: "...the level of the pavement on the Virginia approach to the Highway Bridge over the Potomac at the point where the Rosslyn connecting Railway crosses the said highway of said approach,..." describes an elevation at a point that is fourteen (14) feet above mean sea level, calculated using 1988 North American Vertical Datum. The second matter is that the use by the County of those portions of the County property located within Area 2 (as such area is defined in the Indenture), for protective berms, esplanades, trails, fences, barriers, supporting infrastructure, other safety features, active recreation, or passive recreation, are consistent with, and does not violate, the restrictions of Section II, Area 2 (Pages 20 to 22) of the Indenture. The parties agree that the County will have the right to use those areas of the County

property for such purposes, and that such uses are not grounds for any portion of Area 2 to revert to the United States under the terms of the Indenture.

The provisions of Deed of Confirmation provide the County with confirmation from the United States that the planned park features to be constructed by the County in Indenture Areas 2 and 5, including planned light poles of a height of no greater height than the Area 5 limitation; a planned protective berm, esplanade, trail, fence, barriers, supporting infrastructure, and other safety features; as well as the active and passive recreational uses planned for the Indenture Areas, are consistent with, and will not violate, the subject restrictions of the Indenture.

FISCAL IMPACT: None.

CONCLUSION: It is recommended that the County Board adopt the Resolution attached as Exhibit A, approving the attached Deed of Confirmation and acceptance thereof; and authorizing the Real Estate Bureau Chief, or his designee, to execute the Deed of Confirmation and all related documents, on behalf of the County Board, subject to approval as to form of Deed and documents by the County Attorney.

EXHIBIT A

RESOLUTION OF THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

EXHIBIT B
DEED OF CONFIRMATION
[ATTACH]

EXHIBIT A

**A RESOLUTION APPROVING A DEED OF CONFIRMATION BETWEEN
THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA AND
THE UNITED STATES OF AMERICA CONCERNING PORTIONS OF
PARCELS 12, 14, 15 AND 17, POTOMAC YARD NORTH, LONG BRIDGE
PARK, ARLINGTON COUNTY, VIRGINIA AND AUTHORIZATION
OF ACCEPTANCE AND EXECUTION THEREOF**

WHEREAS, the County Board of Arlington County, Virginia is the owner of certain parcels real estate known as Parcels 12, 14, 15 and 17, Potomac Yard North, RPC Nos. 34024345, 34024346, 34024347 and 34024349 (collectively, "Parcels"), which Parcels are part of the County's Long Bridge Park property; and

WHEREAS, portions of the Parcels are subject to an Indenture, dated February 12, 1938, among the Richmond, Fredericksburg and Potomac Railroad Company, the United States of America, and others, which, among other things, contains certain provisions, covenants and restrictions, running with the land to the benefit of the United States of America, which affect or restrict the use of portions of the Parcels in areas known as "Indenture Area 2" and "Indenture Area 5"; and

WHEREAS, by the Deed of Confirmation attached to this Resolution, the County Board and the United States of America desire to confirm and agree to certain matters concerning the Indenture and the use of Indenture Area 2 and Indenture Area 5; and

WHEREAS, by the Deed of Confirmation, the County and the United States confirm, grant, and convey certain rights and interests to each other; and

WHEREAS, Va. Code Section 15.2-952 authorizes political subdivisions of the Commonwealth of Virginia, including the County, to authorize by ordinance or resolution the acquisition of real property interests and rights from the United States of America.

NOW, THEREFORE, BE IT RESOLVED that the County Board of Arlington County, Virginia hereby approves the attached Deed of Confirmation ("Deed") between the County Board of Arlington County, Virginia and the United States of America concerning Portions of Parcels 12, 14, 15 and 17, Potomac Yard North, Long Bridge Park, Arlington County, Virginia; and

BE IT FURTHER RESOLVED that the County Board authorizes the Real Estate Bureau Chief, or his designee, to accept and execute the Deed of Confirmation and all related documents, on behalf of the County Board, subject to approval as to form of the Deed and all documents by the County Attorney.

**AFTER RECORDATION
PLEASE RETURN TO:**
Real Estate Bureau Chief, Arlington County
2100 Clarendon Blvd, Suite 800
Arlington, Virginia 22201

GRANTEE/GRANTOR ADDRESS:
c/o ACG Real Estate Bureau
2100 Clarendon Blvd, Suite 800
Arlington, Virginia 22201

RPC Nos.: 34024345, 34024346, 34024347 & 34024349
Consideration: \$0.00

This instrument is exempt from recordation tax and grantor's tax pursuant to §58.1-811 A.3 and §58.1-811 C.4, respectively of the Code of Virginia.

DEED OF CONFIRMATION

THIS DEED OF CONFIRMATION ("Deed") is made as of this ____ day of _____, 2010, by and between and the UNITED STATES OF AMERICA, acting by and through the NATIONAL CAPITAL REGION OF THE NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR (hereinafter referred to as the "National Park Service" or the "United States"), Grantor and Grantee, and THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate ("County"), Grantor and Grantee.

WITNESSETH:

- R-1 The County is owner, in fee simple, of certain parcels of real estate conveyed to the County by Deed, dated October 31, 2002, recorded in Deed Book 3400, at Page 734 among the Land Records of the Circuit Court of Arlington County, Virginia ("Land Records"), and by Deed, dated October 23, 2009, recorded in Deed Book 4318, at Page 1754, among the Land Records (collectively "County Property");
- R-2 An Indenture among the Richmond, Fredericksburg and Potomac Railroad Company, the United States of America, and others, dated February 12, 1938, is recorded in Deed Book 443, at Page 83, among the Land Records ("Indenture");
- R-3 The Indenture contains certain provisions, covenants and restrictions, running with the land, which affect or restrict the use of various parcel of real estate,

including certain portions of the County Property that are situated within Area 2 and Area 5 described in the Indenture;

- R-4 The Indenture was authorized by statute, as recited therein;
- R-5 By this Deed, the United States and the County confirm and agree regarding certain matters concerning the Indenture and the use of Areas 2 and 5 of the Indenture;
- R-6 The legal descriptions set forth in the Indenture concerning the matters confirmed and acknowledged in this Deed are incorporated herein by reference;
- R-7 The Department of the Interior, National Park Service, administers the Federal property interests that are the subject of this Deed and is authorized to bind the United States.

NOW, THEREFORE, in consideration of the promises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the United States hereby confirm, grant, and convey the property rights and interests set forth herein, and agree as follows:

1. The United States and the County jointly confirm and acknowledge that, in Section II, Area 5, subsection (1), at Page 28 of the Indenture, the language providing that "...the level of the pavement on the Virginia approach to the Highway Bridge over the Potomac at the point where the Rosslyn connecting Railway crosses the said highway of said approach,..." describes an elevation at a point that is fourteen (14) feet above mean sea level, calculated using 1988 North American Vertical Datum.
2. The United States and the County further jointly confirm and acknowledge that the uses by the County of property located in Area 2, as such area is defined in the Indenture, for protective berms, esplanades, trails, fences, barriers, supporting

infrastructure, other safety features, active recreation, or passive recreation, are consistent with, and do not violate, the restrictions of Section II, Area 2 (Pages 20 to 22) of the Indenture. Such uses are not grounds for any portion of Area 2 to revert to the United States.

3. The Recitals are incorporated herein by reference.

WITNESS the following signatures and seals, by persons authorized to bind the United States and the County, respectively:

[Signatures appear on the following pages]

In Testimony Whereof, the United States of America, by and through the Secretary of the Interior, has executed on its behalf as of the date first hereinabove written as its free act and deed for the uses and purposes herein contained, and intending to be legally bound, as of the day and year first above written, caused these presents to be executed by Margaret G. O'Dell, Regional Director, National Capital Region, National Park Service, United States Department of the Interior, and does hereby constitute and appoint Margaret G. O'Dell, Regional Director, National Capital Region, National Park Service, United States Department of the Interior, as its true and lawful attorney-in-fact to acknowledge and deliver this Deed as its free act and deed for the uses and purposes herein contained.

GRANTOR AND GRANTEE:
UNITED STATES OF AMERICA

By: _____
Regional Director
National Capital Region, National Park Service,
United States Department of the Interior
Pursuant to authority of the Secretary of the
Interior

STATE OF _____
COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me by _____,
Regional Director of National Capital Region, National Park Service, Department of the
Interior, on behalf of the UNITED STATES OF AMERICA, this _____ day of
_____, 2010.

Notary Public

My Commission Expires: _____

GRANTOR AND GRANTEE:

THE COUNTY BOARD OF ARLINGTON COUNTY,
VIRGINIA:

By: _____

Name: _____

Title: Real Estate Bureau Chief,
Engineering and Capital Projects Division
Department of Environmental Services

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON, to-wit:

The foregoing instrument was acknowledged before me by _____,
Real Estate Bureau Chief, engineering and Capital Projects Division, Department of
Environmental Services on behalf of THE COUNTY BOARD OF ARLINGTON COUNTY,
VIRGINIA, this ____ day of _____ 2011.

Notary Public

My Commission Expires: _____

Approved as to form:

County Attorney

Vicinity Map
Potomac Yard North - Deed of Confirmation
RPC # 34024345, 34024346, 34024347, & 34024349



