



County of Fairfax, Virginia

APPLICATION FILED: July 7, 2006
PLANNING COMMISSION: March 21, 2007
BOARD OF SUPERVISORS: not scheduled

March 20, 2007

STAFF REPORT ADDENDUM

APPLICATION RZ/FDP 2006-HM-020

HUNTER MILL DISTRICT

APPLICANT: Winchester Homes, Inc.

PRESENT ZONING: R-1

REQUESTED ZONING: PDH-2

PARCEL(S): 35-2 ((1)) 23, 24, 25, 26, 27, 28, & 29

ACREAGE: 19.97 acres

OPEN SPACE: 37 percent

PLAN MAP: Residential (1-2 du/ac)

PROPOSAL: To rezone 19.97 acres from R-1 (Residential, 1 du/ac) to PDH-2 (Planned Development, 2 du/ac) to permit the development of 37 single family detached dwelling units at an overall density of 1.85 dwelling units/acre (du/ac).

WAIVERS: Waiver of the 600 foot maximum length for a private street.

STAFF RECOMMENDATIONS:

Staff recommends denial of RZ/FDP 2006-HM-020. If it is the intention of the Board of Supervisors to approve the application, staff recommends such approval be subject to the execution of proffers consistent with those found in Attachment 1 of this report.

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Department of Planning and Zoning

Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703 324-1290
FAX 703 324-3924
www.fairfaxcounty.gov/dpz/

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendation of staff; it does not reflect the position of the Board of Supervisors.

The approval of this rezoning does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

For information, contact the Zoning Evaluation Division, Department of Planning and Zoning, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035-5505, (703) 324-1290.



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice.
For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

BACKGROUND

SE 2006-HM-020 is a request by Winchester Homes Inc., to rezone 19.97 acres from R-1 (Residential, 1 du/ac) to PDH-2 (Planned Development, 2 du/ac) to permit the development of 37 single family detached dwelling units at an overall density of 1.85 dwelling units/acre (du/ac) on Tax Maps 35-2 ((1)) 23, 24, 25, 26, 27, 28, & 29. The staff report recommending denial of this application was published on March 7, 2007. Since publication of the report, the applicant indicated to staff that the total land area of the site (20.034 acres) listed on Sheets 2, 4 and 5 of the FDP dated June 2, 2006 as revised to February 27, 2007 was incorrect. The land area of the site is 19.97 acres and the applicant has since revised the CDP/FDP to list the correct acreage on these sheets. In addition, the applicant revised the draft proffers to reflect the new CDP/FDP dated June 2, 2007 as revised through March 15, 2007. No other changes were proposed.

The draft proffers reflecting the latest plans and recommendations of staff may be found in Attachment 1.

CONCLUSIONS AND RECOMMENDATIONS

Staff Conclusions

As proposed, staff continues to believe that the PDH-2 development fails to satisfy the P-District General Standards, and does not meet the intent of the Comprehensive Plan Residential Development Criteria, particularly for Site Design and Neighborhood Context. The CDP/FDP depicts the development of a thirty-seven lot residential neighborhood in a layout that is overcrowded, provides minimally sized yards, and lacks sufficient buffers to the existing residential neighborhoods and the future expansion of West Ox Road. The proposed street layout, which includes a private street located parallel and adjacent to West Ox Road, is not consistent with the surrounding neighborhoods. Furthermore, the proposed lot sizes are not compatible with the lot sizes in the adjacent single-family neighborhoods. The applicant has attempted to provide programmed open space within the development and tree save areas along the northern and eastern boundaries of the site, but more emphasis toward the preservation of existing high quality trees and the provision of sufficient buffers from adjacent neighborhoods is needed to justify the use of a P-District.

Staff believes that rezoning this property to the PDH-2 District does not result in a better subdivision than could be accomplished with a conventional district. Staff also believes that the proposed development is not fully justified as a P-District, which was established to encourage innovative and creative design and to facilitate use of the most advantageous construction techniques in the development of land for residential use. The applicant has not provided ample

open space and tree save areas on site and merely uses the P-District to maximize lot yield.

Recommendations

Staff recommends denial of RZ/FDP 2006-HM-020. If it is the intention of the Board of Supervisors to approve the application, staff recommends such approval be subject to the execution of proffers consistent with those found in Attachment 1 of this report.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

The approval of this rezoning does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Supervisors.

ATTACHMENTS

1. Draft Proffers

WINCHESTER HOMES INC.
2006-HM-020
PROFFERS

March 15, 2007

Pursuant to Section 15.2-2303(a) of the Code of Virginia, 1950, as amended, the property owners and Applicant in this rezoning proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Maps as Tax Map Reference – 35-2 ((1)) 23, 24, 25, 26, 27, 28 and 29 (hereinafter referred to as the “Property”) will be in accordance with the following conditions if, and only if, said rezoning request for the PDH-2 District is granted by the Board of Supervisors of Fairfax County, Virginia (the "Board"). In the event said application request is denied or the Board’s approval is overturned by a court of competent jurisdiction, these proffers shall be null and void. The Owners and the Applicant (“Applicant”), for themselves, their successors and assigns, agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board, in accordance with applicable County and State statutory procedures. The proffered conditions are:

I. GENERAL

1. Substantial Conformance. Subject to the proffers and the provisions of Article 16 of the Zoning Ordinance, under which minor modifications to an approved final development plan are permitted, the development shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP), containing nine (9) sheets prepared by Urban Ltd. dated June 2, 2006 and revised through March 15, 2007.

2. Minor Modifications. Minor modifications from what is shown on the CDP/FDP and these Proffers, which may become occasioned as a part of final architectural and engineering design, may be permitted as determined by the Zoning Administrator in accordance with the provisions set forth in Section 16-403 of the Zoning Ordinance.

3. Lot Yield. The development shall consist of a maximum of Thirty-Seven (37) single-family detached units.

4. Establishment of HOA. Prior to record plat approval, the Applicant shall establish a Homeowners Association (HOA) in accordance with Sect. 2-700 of the Zoning Ordinance for the purpose of establishing the necessary residential covenants governing the design and operation of the approved development and to provide a mechanism for ensuring the ability to complete certain maintenance obligations and other provisions noted in these proffer conditions.

5. Escalation. All monetary contributions required by these proffers shall be adjusted upward or downward based on changes to the Consumer Price Index (CPI) occurring subsequent to the date of rezoning approval and up to the date of payment.

6. Length of Driveways. All driveways serving the approved residential units shall be a minimum of eighteen feet (18') in length as measured outward from the face of the garage door.

7. Architectural Compliance. The architectural design of all units and open space improvements shall be of the same quality, general appearance, style and proportion of materials as depicted on the illustrative perspective and elevations shown on the CDP/FDP.

8. Garage Conversion. Any conversion of garages that will preclude the parking of vehicles within the garage is prohibited. A covenant setting forth this restriction shall be disclosed in the HOA documents and recorded among the land records of Fairfax County (the "Land Records") in a form approved by the County Attorney prior to the sale of any lots. Prospective purchasers shall be advised of this use restriction, in writing, prior to entering into a contract of sale.

9. Encroachment of Decks and Similar Appurtenances. Decks, bay windows, patios, chimneys, areaways, mechanical equipment and other similar appurtenances may encroach into minimum yards as established on the "lot typical" generally described on the CDP/FDP, as permitted by Section 2-412 and/or Article 10 of the Zoning Ordinance.

10. Retaining Walls. No retaining walls greater than four feet (4') in height shall be permitted on the Property unless shown and specified to a greater height on the CDP/FDP. The Applicant further reserves the right to not construct retaining walls shown on the CDP/FDP if not warranted based on final engineering.

11. Right-of-Way Dedication and Associated Frontage Improvements along West Ox Road. At the time of subdivision plat recordation, or upon demand by VDOT or Fairfax County, whichever occurs first, the Applicant shall dedicate, at no cost to Fairfax County and in fee simple to the Board, the right-of-way along the site frontage to West Ox Road, as generally shown on the CDP/FDP. Prior to issuance of the first RUP for the approved units, the Applicant shall improve the property entrance to West Ox Road as shown on the CDP/FDP. Such improvements shall include a right turn lane from westbound West Ox Road and a left turn lane from eastbound West Ox Road. The final configuration of these improvements shall be determined at subdivision plan review, subject to review and approval by VDOT, FCDOT and DPWES.

12. Escrow for Frontage Improvements. At the time of subdivision plan approval the Applicant shall escrow funds in the amount of \$450,000 for future improvement to West Ox Road along the site frontage.

II. ENVIRONMENTAL

13. Stormwater Management Facilities and Best Management Practices. The Applicant shall implement stormwater management techniques to control the quantity and quality of stormwater runoff from the Property as determined by DPWES. Stormwater management facilities/Best Management Practices (“BMPs”) shall be provided as generally depicted on the CDP/FDP. The on-site detention facility shall be landscaped to the maximum extent possible in accordance with the planting policies of the Board of Supervisors, or the County PFM. Adequate outfall shall be demonstrated to the satisfaction of DPWES.

14. Off-Site Easements. No Subdivision plan shall be approved unless and until the Applicant demonstrates to the satisfaction of the County, that it has obtained the necessary rights and permission to install the off-site drainage infrastructure shown on the subdivision plan. If the applicant cannot demonstrate these rights, and any alternative solution is not in substantial conformance with the CDP/FDP, a PCA will be required which may result in loss of density.

15. Conveyance of Certain Off-Site Runoff. At the time of Subdivision Plan review and subject to approval by DPWES, the Applicant shall design the on-site storm sewer system to attempt to collect existing runoff that may impact off-site properties in the adjacent Glenbrooke Woods subdivision and transmit this runoff through the on-site storm sewer system.

16. Landscaping. Landscaping shall be provided in substantial conformance with the landscaping concepts shown on the CDP/FDP. If, during the process of subdivision plan review, any new landscaping shown on the CDP/FDP cannot be installed in order to locate utility lines, trails, etc., then an area of additional landscaping consisting of trees and/or plant material of a type and size generally consistent with that displaced shall be substituted at an alternate location on the Property, subject to approval by the Urban Forest Management ("UFM"). If it is necessary to install utilities within the limits of clearing shown on the CDP/FDP, they shall be located in the least disruptive manner necessary, as determined by the UFM. The landscape plan and specifications shall incorporate techniques designed to reduce maintenance requirements; and contribute to a cleaner and healthier environment with improved air quality, stormwater management, and energy conservation capabilities that can be provided by trees and other desirable vegetation. Such techniques may include, but are not limited to:

- Mulched planting beds incorporating groups of trees and other plants to provide a root zone environment more favorable to trees and shrubs
- Trees planted in areas shown on the CDP/FDP to contribute to energy conservation

17. Energy Conservation. All homes on the Property shall meet the thermal guidelines of the CABO Model Energy Program for energy-efficient homes, or its equivalent as determined by DPWES, for either gas or electric energy systems as may be applicable.

III. TREE PRESERVATION

18. Tree Preservation Plan. The Applicant shall submit a Tree Preservation plan in connection with the first submission and all subsequent submissions of the

subdivision plan review process. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and shall be subject to the review and approval of UFM, DPWES. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees ten inches (10") in diameter and greater, and twenty-five feet (25') to either side of the limits of clearing and grading around the tree preservation area depicted on the CDP/FDP, provided that such tree survey shall be limited to trees located on the subject Property. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation and those additional areas in which trees can be preserved as a result of final engineering. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the *Guide for Plant Appraisal* published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of any tree located on the Property identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

19. Tree Preservation Measures for White Oak Tree Located Near Lot 37. The Applicant shall implement during site development the following preservation measures intended to maximize the survivability of the existing White Oak Tree located near Lot 37 and identified on the CDP/FDP:

- Install tree protection fencing in a closed circuit around the tree's root zone, in the general location shown on the CDP/FDP;
- Root prune along the tree protection fencing with a trencher to a depth of 18 to 24 inches and immediately backfill;

- Mulch the entire protected root zone, with mulch to be approximately 4 inches deep, spread evenly by hand and not touching the base of the tree;
- Prune all dead, dying and diseased limbs larger than 3 inches in diameter;
- Apply Cambistat (growth regulator) via soil injection;
- Install lightning protection system;
- Test soil for nutrient levels and fertilize accordingly.

20. Protection of Existing Understory Vegetation and Soil Conditions in Tree Preservation Areas. All tree preservation-related work occurring in or adjacent to tree preservation areas shall be accomplished in a manner that minimizes damage to vegetation to be preserved, including any woody, herbaceous or vine plant species that occurs in the lower canopy environment, and to the existing top soil and leaf litter layers that provide nourishment and protection to that vegetation. Removal of any vegetation, if any, or soil disturbance in tree preservation areas, including the removal of plant species that may be perceived as noxious or invasive, may be permitted by the Applicant with approval of the Urban Forest Management Division, DPWES.

The use of equipment in tree preservation areas will be limited to hand-operated equipment such as chainsaw, wheel barrows, rake and shovels. Any work that requires the use of motorized equipment, such as tree transplanting spades, skid loaders, tractors, trucks, stump-grinders, etc., or any accessory or attachment connected to this type of equipment shall not occur unless pre-approved by UFM, DPWES.

21. Tree Preservation Walk-Through. The Applicant shall retain the services of a certified arborist or landscape architect, and shall have the limits of clearing and

grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFM, DPWES, representative to determine whether adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading. Any such adjustments shall be implemented, provided they do not result in the loss of any residential lot or substantial changes to the engineering/grading of the lot. Trees that are identified specifically by UFM in writing as dead or dying within the tree preservation area located on the Property may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation.

22. Limits of Clearing and Grading. The Applicant shall conform substantially to the limits of clearing and grading as shown on the CDP/FDP, subject to allowances specified in Proffer 21 above to save trees identified by the UFM, and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the CDP/FDP, they shall be located in the least disruptive manner necessary as determined by UFM, DPWES. A replanting plan shall be developed and implemented, subject to approval by UFM, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.

23. Tree Protection Fencing. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in

the form of four foot (4') high, fourteen (14) gauge welded wire attached to six foot (6') steel posts driven eighteen inches (18") into the ground and placed no further than ten feet (10') apart or, super silt fence, to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees, shall be erected at the limits of clearing and grading as shown on the demolition and phase I & II erosion and sediment control sheets, as may be modified by the Proffer pertaining to "Root Pruning" below. All tree protection fencing around the aforementioned tree preservation area shall be installed after the tree preservation walk-through meeting but prior to any demolition and clearing and grading activities. In connection with demolition activities, only that fencing proximate to the demolition activity shall be required. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist and UFM, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Two (2) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFM, DPWES shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no demolition, grading or construction activities shall occur until the fencing is installed correctly, as determined by UFM, DPWES.

24. Root Pruning. The Applicant shall root prune, as needed to comply with the tree preservation requirements of these proffers. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and

approved by UFM, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of eighteen inches (18").
- Root pruning shall take place prior to any clearing and grading.
- Root pruning shall be conducted with the supervision of a certified arborist.
- An UFM, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

25. Site Monitoring. During any clearing or tree/vegetation/structure removal on the Property, an agent or representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by UFM. The Applicant shall retain the services of a certified arborist or landscape architect to monitor all tree preservation efforts in order to ensure conformance with all tree preservation proffers, and UFM approvals. The Hunter Mill District Supervisor shall be notified of the name and contact information of the Applicant's representative responsible for site monitoring at the tree preservation walk-through meeting.

26. Tree Value Determination. The Applicant shall retain a professional arborist with experience in plant appraisal, to determine the replacement value of all trees ten inches (10") in diameter or greater located within twenty-five feet (25') of the outer edge of the limits of clearing and grading around the tree preservation area depicted on the CDP/FDP and shall include trees located on adjoining properties. These trees and their value shall be identified on the Tree Preservation Plan. The replacement value shall take into consideration the age, size and condition of these trees and shall be determined

by the so-called “Trunk Formula Method” contained in the latest edition of the *Guide for Plan Appraisal* published by the International Society of Arboriculture, subject to review and approval by UFM, DPWES.

27. Tree Bonds. At the time of subdivision plan approval, the Applicant shall both post a cash bond and a letter of credit payable to the County of Fairfax to ensure preservation and/or replacement of the trees for which a tree value has been determined pursuant to Proffer 26 that die or are dying due to unauthorized construction activities. The letter of credit shall be equal to 50% of the replacement value of the bonded trees. The cash bond shall consist of 33% of the amount of the letter of credit.

At any time prior to final bond release, should any bonded trees die, be removed, or are determined to be dying by UFM due to unauthorized construction activities, the Applicant shall replace such trees at its expense. The replacement trees shall yield an equivalent size, species and/or canopy cover, as approved by UFM. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any bonded tree that is dead or dying or improperly removed due to unauthorized activity. This payment shall be determined based on the Trunk Formula Method and paid to a fund established by the County for furtherance of tree preservation objectives. At the time of approval of the final RUP, the Applicant shall be entitled to request a release of any monies remaining in the cash bond and a reduction in the letter of credit to an amount equal to 20% of the total amounts originally committed. Any funds remaining in the letter of credit or cash bond will be released two (2) years from the date of release of the Applicant’s property’s conservation escrow, or sooner, if approved by UFM, DPWES.

IV. RECREATION

28. Parks and Recreation. Pursuant to Section 6-409 of the Zoning Ordinance

regarding developed recreational facilities, the Applicant shall provide the recreational facilities to serve the Application Property. Per Section 6-409, recreational facilities such as tot lots, fitness courses, gazebos or other similar structures, playgrounds, recreational trails, walking paths, excluding any trails required by the Comprehensive Plan, and similar features may be used to fulfill this requirement. At the time of subdivision plan review, the Applicant shall demonstrate that the value of any proposed recreational amenities is equivalent to a minimum of \$955.00 per unit as required by Article 6 of the Zoning Ordinance. In the event it is demonstrated that the proposed facilities do not have sufficient value, the Applicant shall contribute funds in the amount needed to achieve the overall proffered amount of \$955.00 per unit to the Fairfax County Park Authority ("FCPA") for off-site recreational facilities intended to serve the future residents, as determined by FCPA in consultation with the Supervisor for the Hunter Mill District.

29. Park Authority Contributions: In addition to Proffer 28, the Applicant shall contribute \$31,800 to the Fairfax County Park Authority, prior to the issuance of the first RUP on the Property, for use at off-site recreational facilities intended to serve the future residents, as determined by FCPA in consultation with the Supervisor for the Hunter Mill District.

V. HERITAGE RESOURCES

30. Heritage Resource Documentation. For the purpose of recording and documenting relevant historic information prior to demolition, the Applicant shall cause the house at 3015 West Ox Road to be photographed and documented, prior to its demolition, by a consultant listed either in the Virginia Department of Historic Resources (VDHR) or the Maryland Historical Trust Preservation Consultant Directory or by a certified professional architectural historian. Photographic recordation and written

documentation and description of the house, its construction, its occupants and significant events that occurred on the Property shall be accomplished to a standard as required for a VDHR "Intensive Level Survey" using VDHR Preliminary Information Form, and shall be completed prior to demolition of the existing house. Said documentation shall include a sketch plan drawing, as indicated in the Historic American Building Survey (HABS) Documentation Level III. All photographs (including negatives), written documentation and sketches shall be submitted to the Virginia Room of the Fairfax County Public Library and to the Fairfax County Department of Planning and Zoning (DPZ). A minimum of thirty (30) days prior to demolition of the house at 3015 West Ox Road, the Applicant shall provide DPZ with written notice and shall permit representatives of DPZ, the History Commission and the Fairfax County Park Authority access to the house during said 30-day period. Said representatives shall be required to sign waivers of liability for their presence on the Property, as may be requested by the Applicant. Nothing in this proffer shall be construed as requiring preservation of the existing dwelling at 3015 West Ox Road.

VI. OTHER

31. Temporary Signage. No temporary signs (including "popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on or off-site by the Applicant or at the Applicant's direction to assist in the initial marketing and sale of homes on the subject Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and/or sale of residential units on the subject Property to adhere to this proffer.

32. School Contribution. A contribution of \$2,829.00 per unit shall be made to the Board designated for capital equipment for schools that the residents of the proposed development will attend. The required contribution shall be made at the time of, or prior to, issuance of the first Building Permit for the approved units.

33. Affordable Dwelling Units. Prior to the issuance of the first building permit, the Applicant shall contribute to the Fairfax County Housing Trust Fund the sum equal to one half of one percent (1/2 %) of the value of all the units approved on the property. The one half of one percent (1/2 %) contribution shall be based on the aggregate sales price of all of the units subject to the contribution, as if those units were sold at the time of the issuance of the first building permit. The projected sales price shall be determined by the Applicant through an evaluation of the sales prices of comparable units in the area, in consultation with the Fairfax County Department of Housing and Community Development (HCD) and DPWES.

34. Phase 1 Archaeological. Prior to any land disturbing activities on the Property, Applicant shall conduct a Phase I archaeological study on the Property and provide the results of such study to Heritage Resources. The study shall be conducted by a qualified archaeological professional. If the Phase I study concludes that an additional Phase II study of the Property is warranted, the Applicant shall complete said study and provide the results to Heritage Resources; however, submission of the Phase II study to Heritage Resources shall not be a pre-condition of Subdivision Plan approval. If the Phase II study concludes that additional Phase III evaluation and/or recovery is warranted, the Applicant shall also complete said work in consultation and coordination with Heritage Resources; however, any such Phase III work shall not be a pre-condition of Subdivision Plan approval.

35. West Ox Road Trail in Proposed Right-of-Way. Prior to the issuance of the first RUP, the Applicant shall construct an asphalt trail across the frontage of the Property in the proposed right-of-way, extending from the east side of the site entrance to the easternmost property line and connecting to the existing six-foot (6') wide asphalt trail located east of the Property, as generally shown on the CDP/FDP. During the subdivision plan review process, the Applicant shall request approval of said trail at a width of six feet (6') in order to match the existing trail east of the Property and to minimize the disturbance of existing trees located on the Property and/or in the proposed right-of-way. The exact location of said trail shall be determined at subdivision plan review, subject to review and approval by VDOT and DPWES. The Applicant's obligation to construct said trail shall be contingent on the Applicant receiving any and all rights-of-way, easements and/or written consent necessary for the construction of said trail from any property owner, utility companies, and/or any governmental agencies (collectively, the "Approving Parties"), which approval(s) shall be granted at no cost to the Applicant, except for typical administrative fees and costs associated with preparation, approval and recordation of deeds, plans and plats and any other nominal fees. During subdivision plan review, the Applicant shall diligently pursue and make good faith efforts to secure any such necessary approvals from the Approving Parties. In the event the Applicant is unable to secure necessary approvals from the Approving Parties prior to the time of receiving subdivision plan approval, the Applicant shall provide written documentation of such efforts to DPWES and escrow funds for the future construction of the trail and be relieved of any further obligation pursuant to this Proffer. Such funds may be used for future trail construction by others along West Ox Road or in the vicinity of the Property, as determined by the Hunter Mill District Supervisor.

36. Private Streets. The on-site private street shall be constructed in conformance with the Public Facilities Manual ("PFM") and shall be constructed of materials and depth of pavement consistent with Sect. 7-0502 of the PFM, subject to any design modifications as to pavement and easement width and use of curb, that are approved by the Director of DPWES. All prospective purchasers shall be advised of this maintenance obligation prior to entering into a contract of sale and said obligation will be disclosed in the HOA documents. The Applicant shall further establish a maintenance account that will be available for utilization by the HOA for street maintenance after the Applicant turns over control of the HOA to the homeowners.

37. Successors and Assigns. Each reference to "Applicant" in this Proffer Statement shall include within its meaning, and shall be binding upon, Applicant's successor(s) in interest, assigns, and/or developer(s) of the Property or any portion of the Property.

These proffers may be executed in counterparts and the counterparts shall constitute one and the same proffer statement.

WINCHESTER HOMES INC.

(Contract Purchaser of Tax Map Nos. 29-1-((1))-33, 33A, 34, 34A, 35, 36, 37, 37A, 38, 39, 40B, 41)

By: _____
Name: _____
Title: _____