

KAUFMAN & CANOLES

— | A Professional Corporation | —
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October 8, 2003

VIA HAND DELIVERY

Pamela J. Lazos, Esq.
Sr. Assistant Regional Counsel
USEPA – Region III
Office of Regional Counsel (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

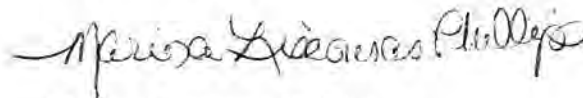
**Re: J. Denbigh Site
Newport News, Virginia
Docket No. III-2000-023-DW-DN
Our Matter No. 57856**

Dear Pam:

As a supplement to the letter hand-delivered to you yesterday, enclosed please find additional information regarding the proposed mitigation plan.

Thank you for your consideration of this matter.

Very truly yours,



Marina Liacouras Phillips

MLP:ku
Enclosure

cc: Jerry L. Bowman, Esq. (w/encl.)
Mr. Thomas L. Stokes, Jr. (w/encl.)
Mr. Greg Culpepper (w/encl.)
Hunter W. Sims, Jr., Esq. (w/encl.)
Beth V. McMahan, Esq. (w/encl.)

#871615 v1

Natural Heritage Resources Fact Sheet

Virginia's Rare Natural Environments

Seasonal Ponds

Description

The use of the word *pond* may be somewhat misleading in the case of seasonal pond communities. More accurately, they are shallow depressions in the ground that contain standing water for all or, usually, part of the year. Some larger ponds are actually forested. The amount and duration of standing water varies among ponds and strongly influences the plant and animal associations that are present. Most ponds are sinkhole depressions which were created by the dissolution of underlying substrate and the subsequent collection of water and sediments in the depression. In the coastal plain, this underlying material is calcareous and consists of ancient shell deposits. In the Shenandoah Valley, the underlying material is limestone. Finally, some ponds are simply lowlands within dune landscapes. Sinkhole ponds in Virginia are referred to as seasonal because the depressions do not hold water for extended periods of time. The hydrology of seasonal ponds varies, but they generally have standing water during early spring, the wettest time of the year, and gradually dry through the summer and fall. The length of time standing water remains in the ponds can change from year to year; ponds will have more water for longer periods during wet years than during drought years. Seasonal ponds range anywhere in size from 50 feet to several hundred feet or more in diameter.



Seasonal Pond Community

Distribution

Seasonal ponds are scattered throughout the coastal plain from the Maritime Provinces to the Gulf Coast of Texas. They are especially prevalent in the Carolinas where the ponds form a regular feature along the fall line. In Virginia, seasonal ponds are not as common. They are found in scattered sites in the southeastern part of the state, and on the Eastern Shore. Two sites of particular note are the Grafton Ponds complex in York County and Newport News, and the small ponds located

within Seashore State Park and Natural Area in Virginia Beach. Seasonal ponds are also found in the Shenandoah Valley in Augusta and Rockingham counties where the geologic features are different.

Flora and Fauna

Fluctuations of water levels vary considerably among ponds depending on their age and location. Water levels also vary from year to year within a single pond. The result is a diverse plant and animal richness within the entire pond complex that

can add up to be more valuable than any individual pond considered on its own. Several rare Virginia plant species such as harper's fimbriatilis and black-fruited spikerush are found along the edges of coastal plain seasonal ponds. The endemic Virginia sneezeweed is found at the margins of Shenandoah Valley seasonal ponds as are several other rare plant species.

Animal species also commonly inhabit seasonal ponds. Because the ponds contain standing water for only part of the year, they are un-

Virginia's Rare Natural Environments

Seasonal Ponds

able to support fish and therefore provide an ideal, predator-free breeding habitat for many amphibian species. Mabee's salamander is a rare amphibian that breeds at some seasonal ponds in Virginia. Another rare amphibian, the barking tree frog, is a northern species with its southern range limit in Virginia. It is only found in the southeastern part of the state and requires a fish-free, freshwater habitat to reproduce. Several rare and unusual dragonflies also inhabit these specialized environments.

Values

Seasonal ponds are especially important for the unique diversity of plants and animals that inhabit them. A network of several ponds is a complex, interwoven system of wetland communities. Often plant species in these ponds are at their southern limit, or are endemic to Virginia. In addition, the importance of these habitats as predator-free breeding grounds for amphibians cannot be overemphasized.

Threats

Considering the varied hydrologic nature of seasonal ponds and the di-

versity of life contained within an entire pond complex, protection of the surrounding habitat, with particular attention to maintaining water regimes, is required to preserve the character of these natural communities. Draining, ditching, and dredging can disrupt the natural water cycles upon which the community is based. In addition, nutrient levels need to be maintained in the ponds; runoff from fertilized agricultural fields can increase sediment and nutrient levels in ponds and alter the plant communities that can survive there. Finally, it is important to remember that few species will use seasonal ponds as their only habitat. Amphibians in particular may be present at ponds only to mate and lay eggs. Surrounding upland natural areas should be protected with the ponds themselves to provide living habitats for species. As well, the ponds will provide an avenue for dispersal of seeds or young to new ponds.

Protection

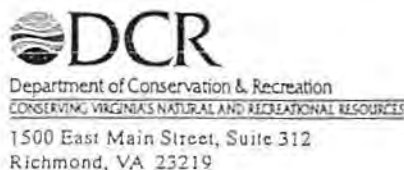
Long-term protection of this rare community type will depend on environmentally sound planning and development around these areas.

Although seasonal ponds may have some protection under wetland regulations of the Federal Clean Water Act, interpretations of these laws often change and should not be solely depended upon for protection. Additionally, regulations often don't provide for the protection of surrounding upland habitats and may allow damaging activities in some cases. Protecting the hydrologic conditions of the ponds and adjacent upland environments is critical to their long-term preservation.

References

- Conservation Planning for the Natural Areas of the Lower Peninsula of Virginia. 1993. Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond. 168 pp.
- Rawinski, T. J. 1991. Virginia's Shenandoah Valley sinkhole ponds: inland outposts of Coastal Plain flora (draft). VA Dept. of Conservation and Recreation, Division of Natural Heritage, Richmond. 4 pp.
- Schafale, M. P. and A. S. Weakley. 1990. Classification of the Natural Communities of North Carolina. North Carolina Natural Heritage Program, Raleigh. 325 pp.

For more information, contact the Department of Conservation and Recreation.



This fact sheet was funded in part by the Department of Environmental Quality's Coastal Resources Management Program through Grant #NA270Z0312-01 of the National Oceanic and Atmospheric Administration Office of Coastal Resource Management Act of 1972 as amended.

WETLAND VEGETATION OF THE GRAFTON PONDS, YORK COUNTY, VIRGINIA:
PLANT COMMUNITY CLASSIFICATION

PINUS TAEDA - QUERCUS PHELLOS / ILEX OPACA / CHASMANTHIUM LAXUM ASSOCIATION

(Loblolly Pine - Willow Oak / American Holly / Slender Spikegrass)

Mixed evergreen-deciduous forests occurring on infrequently flooded oligotrophic sites on the Atlantic Coastal Plain and adjacent Piedmont.

LIQUIDAMBAR STYRACIFLUA - NYSSA BIFLORA / CAREX JOORII ASSOCIATION

(Sweet Gum - Swamp Black Gum / Cypress-swamp Sedge)

Deciduous forests and woodlands occurring on regularly flooded oligotrophic sites of the Coastal Plain and adjacent Piedmont.

QUERCUS LYRATA / LEAF LITTER SUBASSOCIATION

(Overcup Oak / Leaf Litter)

A species-poor forest or woodland subassociation characterized by Overcup Oak and thick leaf litter, which precludes the growth of most herbaceous plants during draw-down conditions.

DIOSPYROS VIRGINIANA / SACCHARUM BALDWINII - PANICUM VERRUCOSUM SUBASSOCIATION

(Persimmon / Plumegrass - Warty Panicgrass)

A woodland subassociation supporting light-demanding plant species occurring in wetland zones above and below that occupied by the typical expression of the Association.

RHYNCHOSPORA CORNICULATA VARIANT

(Short-bristle Hornedrush)

A variant of the above-mentioned Subassociation resulting from logging or hydrologic disturbance.

DULICHIMUM ARUNDINACEUM - SCIRPUS CYPERINUS - JUNCUS REPENS ASSOCIATION

(Three-way Sedge - Woolgrass Bulrush - Creeping Rush)

Herbaceous or shrubland vegetation of semipermanently flooded oligotrophic sites, occurring above the zone occupied by the Buttonbush / Pale Mannagrass - Swamp Loosestrife Association.

SACCHARUM GIGANTEUM - PANICUM RIGIDULUM - ELEOCHARIS TUBERCULOSA SUBASSOCIATION

(Giant Plumegrass - Long-leaved Panic Grass - Long-tuberclad Spikerush)

A subassociation resulting from logging, mowing, or hydrologic disturbance.

CEPHALANTHUS OCCIDENTALIS / TORREYCHLOA PALLIDA - DECODON VERTICILLATUS ASSOCIATION

(Common Buttonbush / Pale Mannagrass - Swamp Loosestrife)

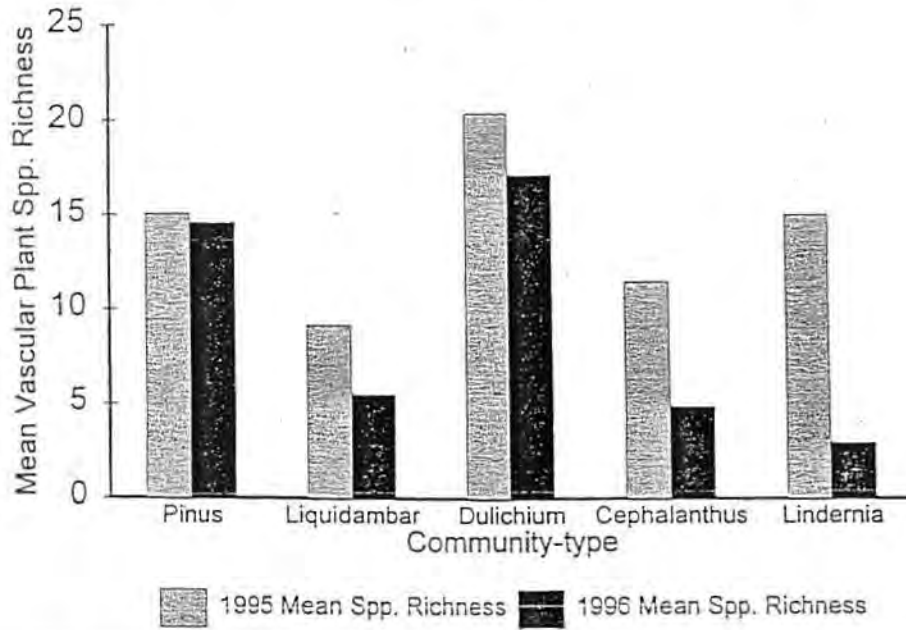
Scrub or predominantly herbaceous vegetation of semipermanently flooded oligotrophic peaty sites.

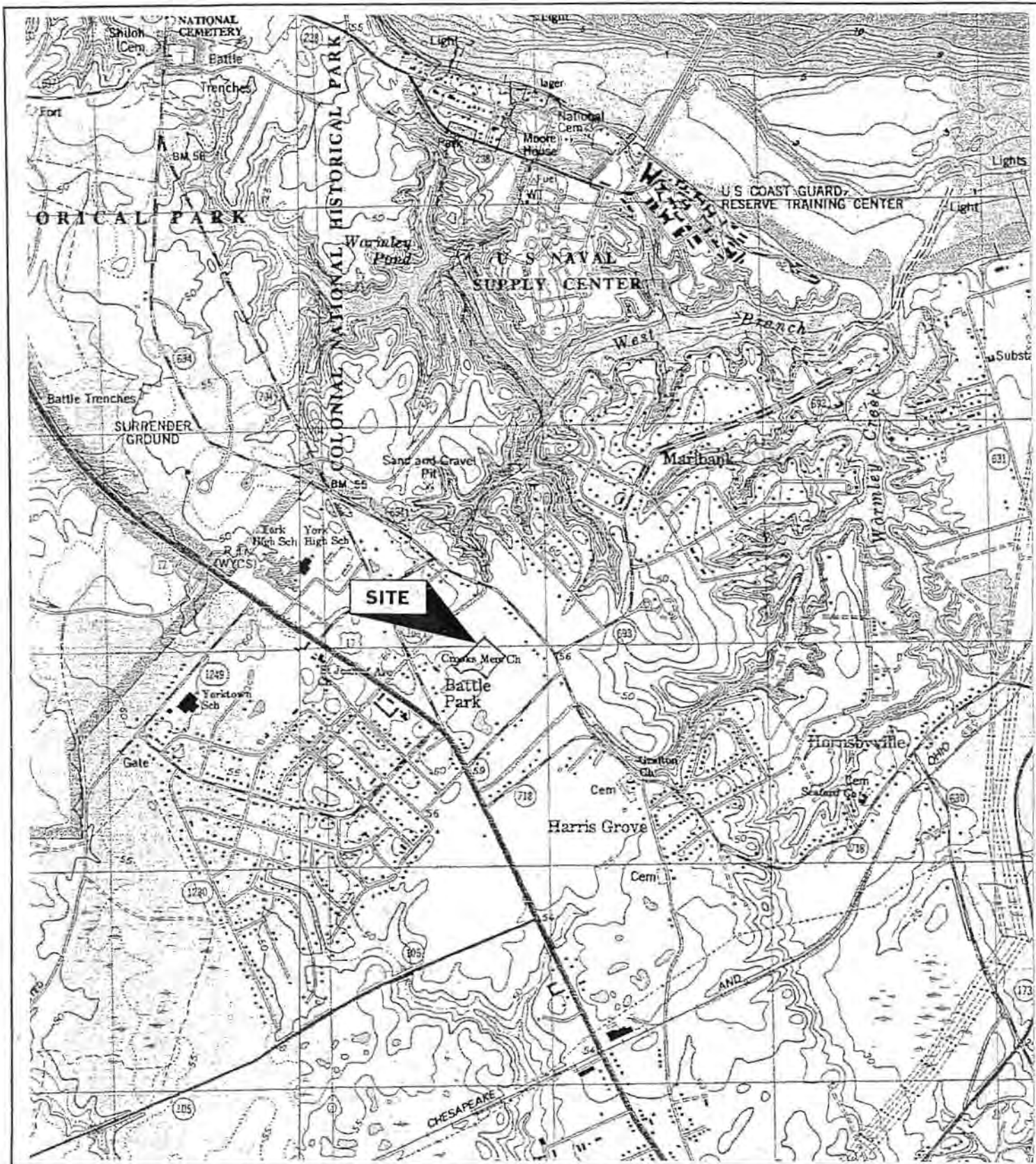
LINDERNIA DUBIA - ERAGROSTIS HYPNOIDES - PANICUM DICHOTOMIFLORUM ASSOCIATION

(False Pimpernel - Creeping Lovegrass - Fall Witch Grass)

Herbaceous vegetation comprised mainly of annuals occurring on semipermanently flooded oligotrophic peaty sites below the zone occupied by the Buttonbush / Pale Mannagrass - Swamp Loosestrife Association.

Species Richness Change by Community
1995 to 1996

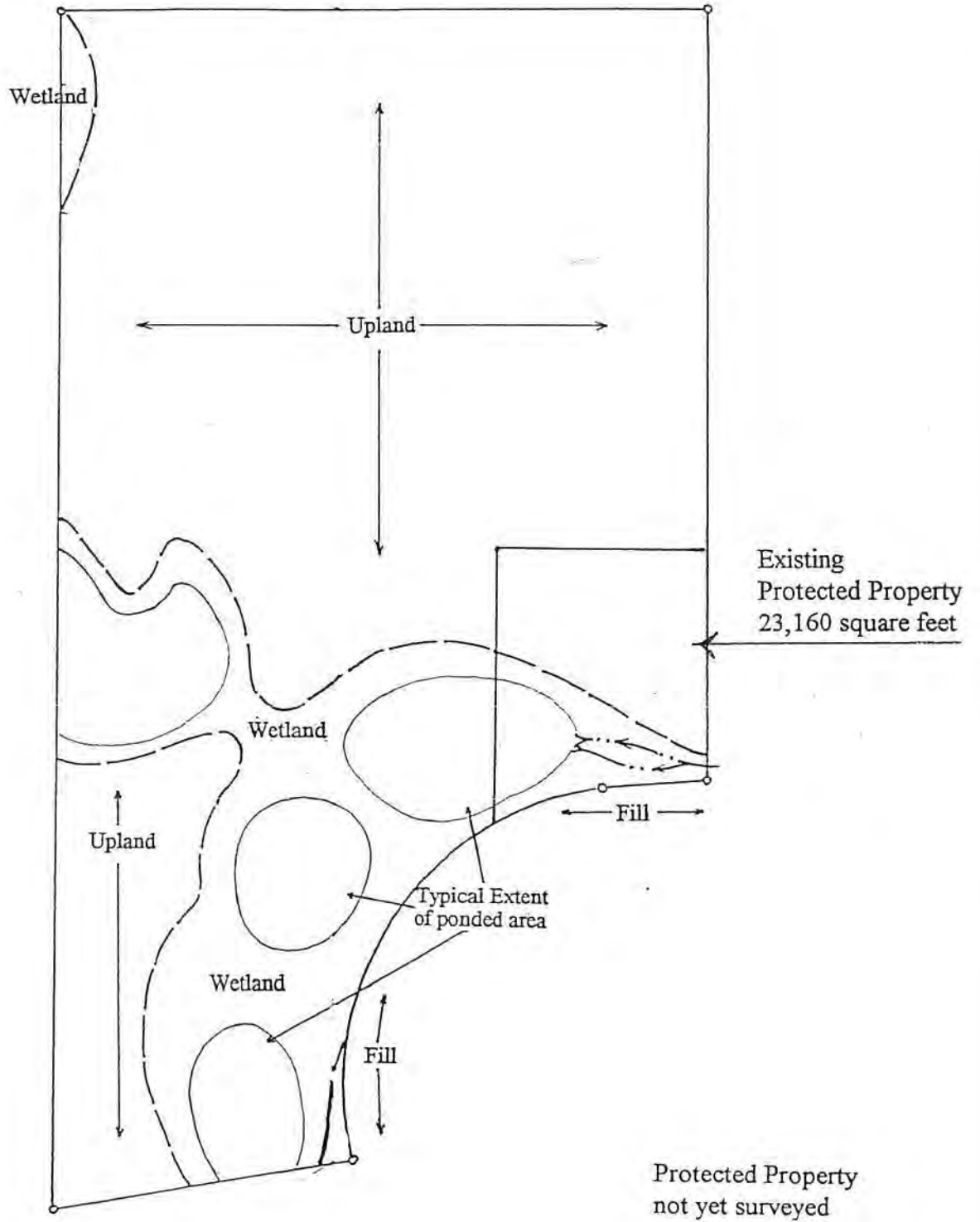




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TOPOGRAPHIC MAP

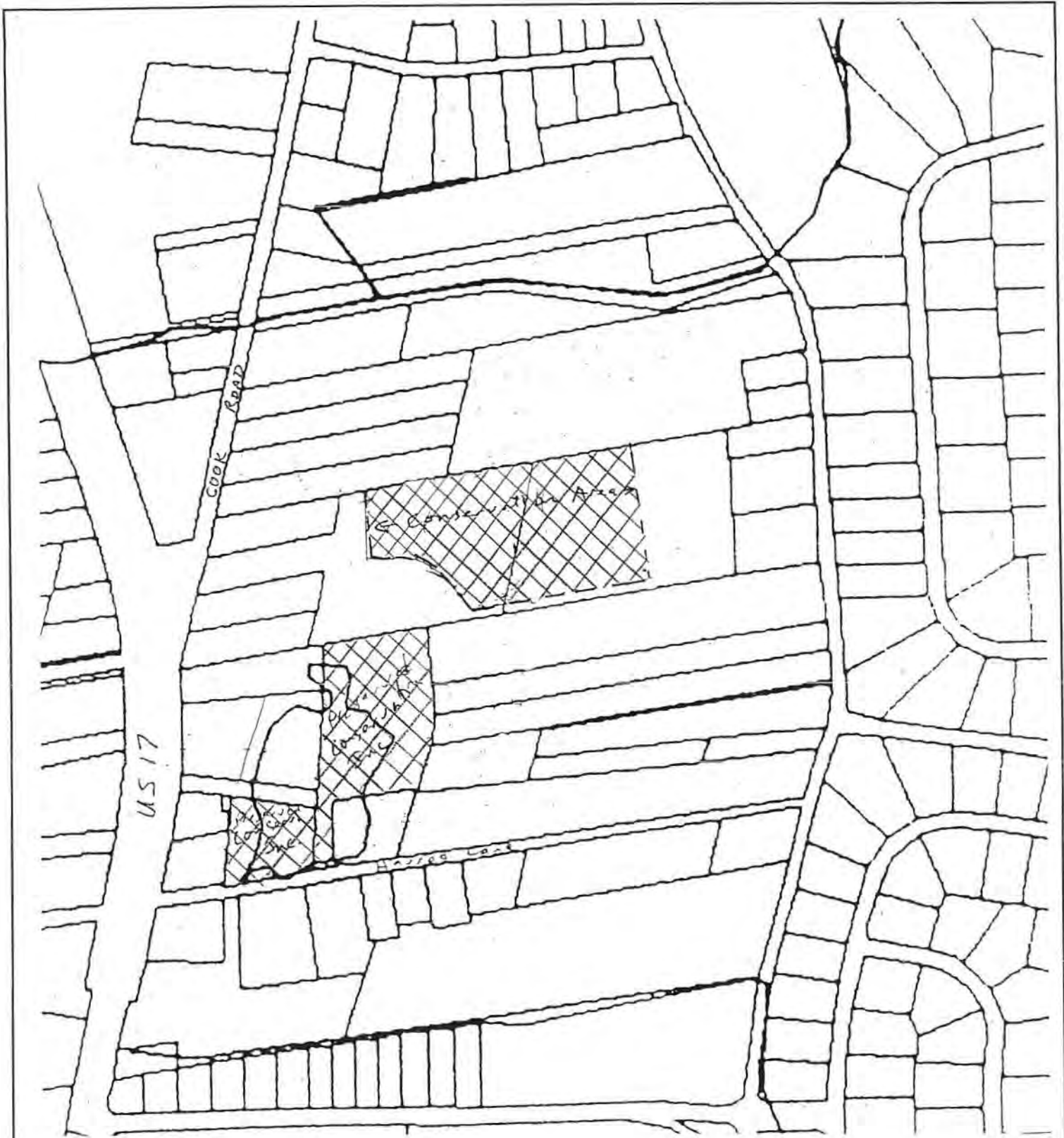
LOCALITY: Cook Road - Ballfield Mitigation Site
 York County, Virginia
 DATE: 1983, revised/inspected 1986
 SCALE: 1" = 2,000'
 SOURCE: Yorktown Quadrangle, Virginia 7.5 Minute Series



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WETLAND MAP

PROJECT NAME: COOK ROAD MITIGATION SITE
 DATE: July 1999
 SCALE: 1"=100'
 SOURCE: DAB



Cross hatched areas have been, or are available for preservation

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PRESERVATION AREAS SITE MAP

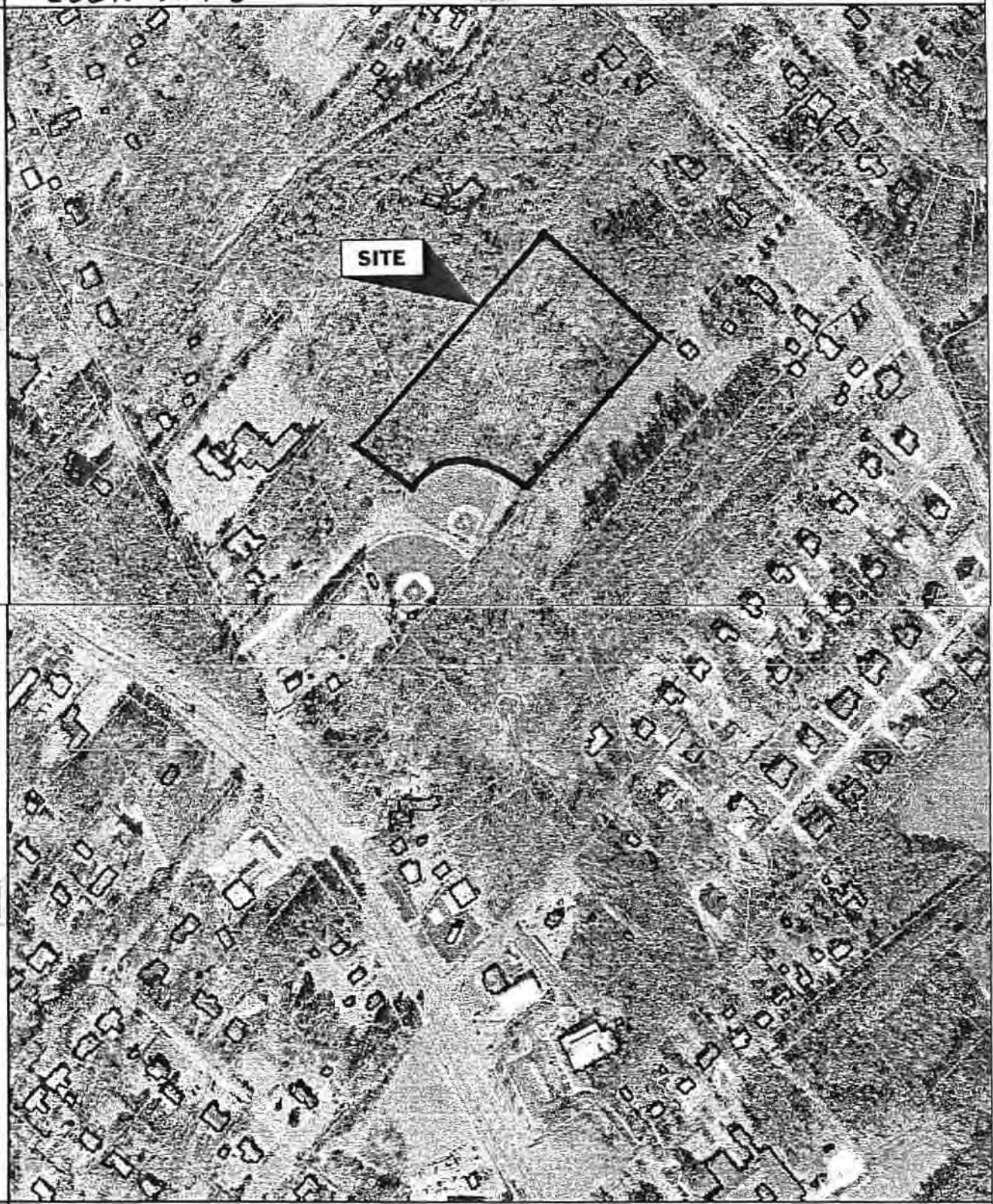
Grafton Pond Complex

SCALE: 1" = 400' approximate
SOURCE: York County Grafton Pond Study Map

Clicking the map will: **Select Parcel**

Select View: **Default View**

COOK ROAD



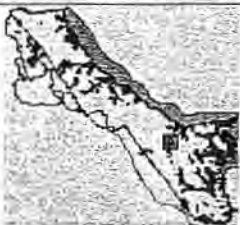
Click Arrows On Map Edge To Pan Map

Zoom In

Zoom Out

Default View

Full Extent



Search By Address

Search By PIN

Search By Owner

Find Intersection

Clear Selection

Print Preview

Setup Options

Help

Layer Setup **Apply**

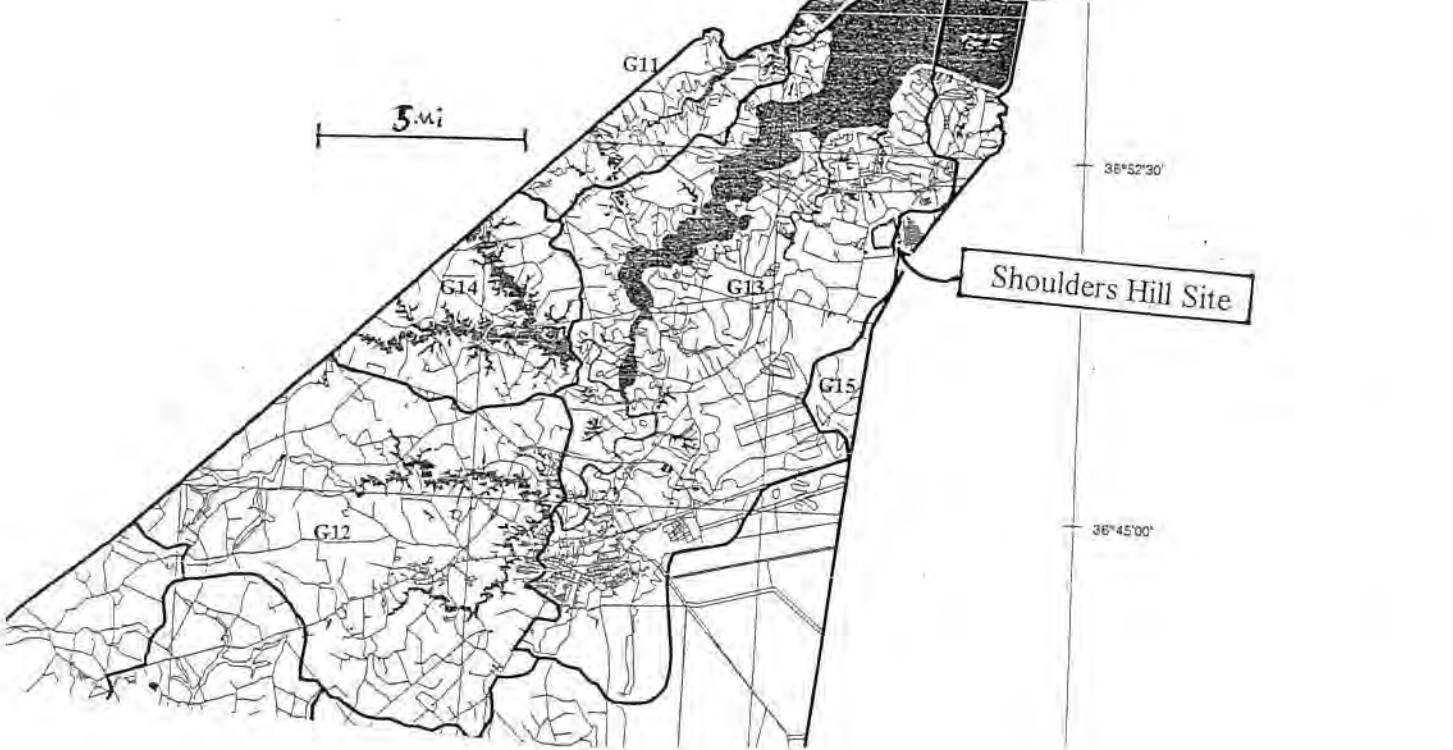
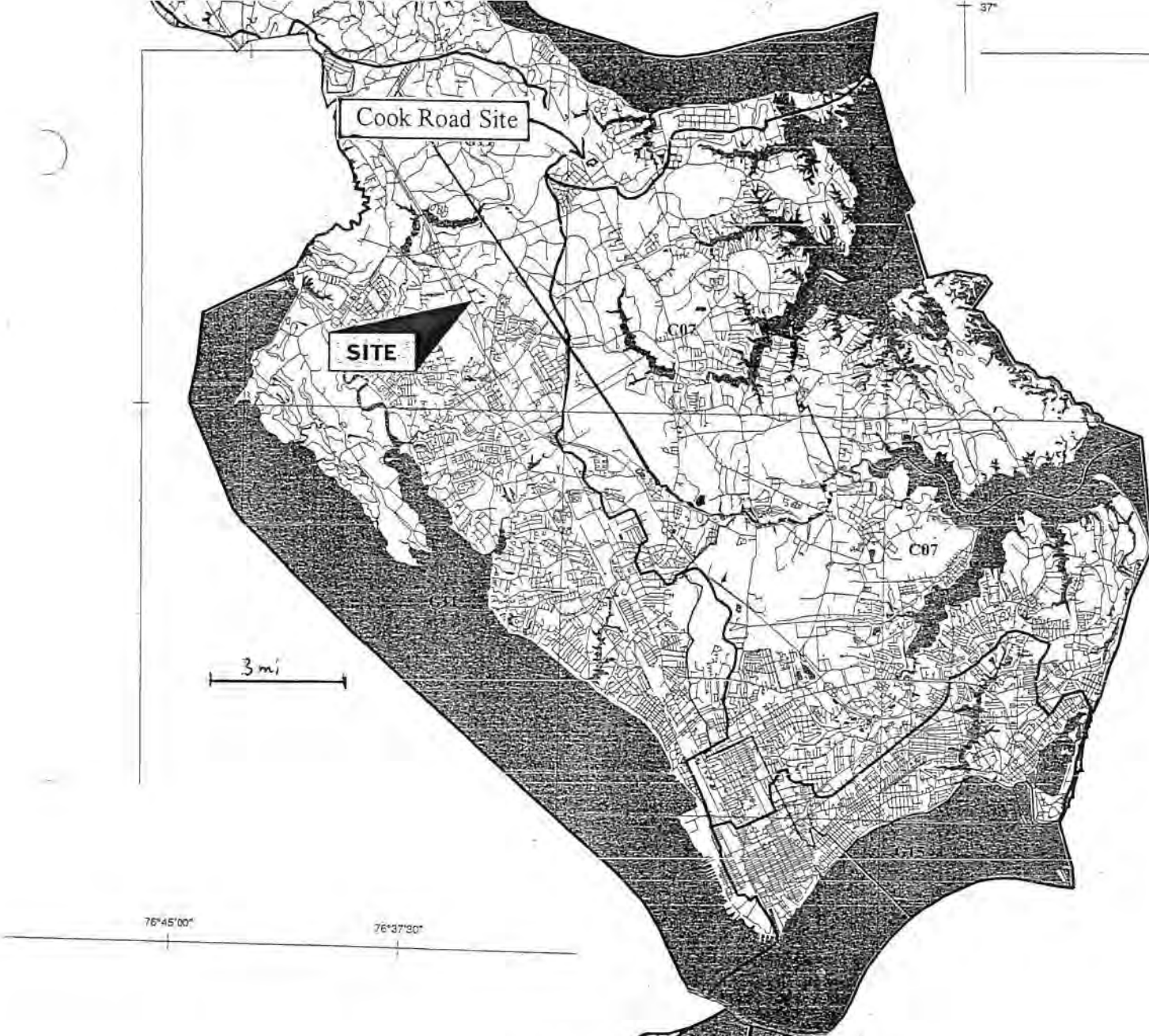
Check boxes are only available at visible scales

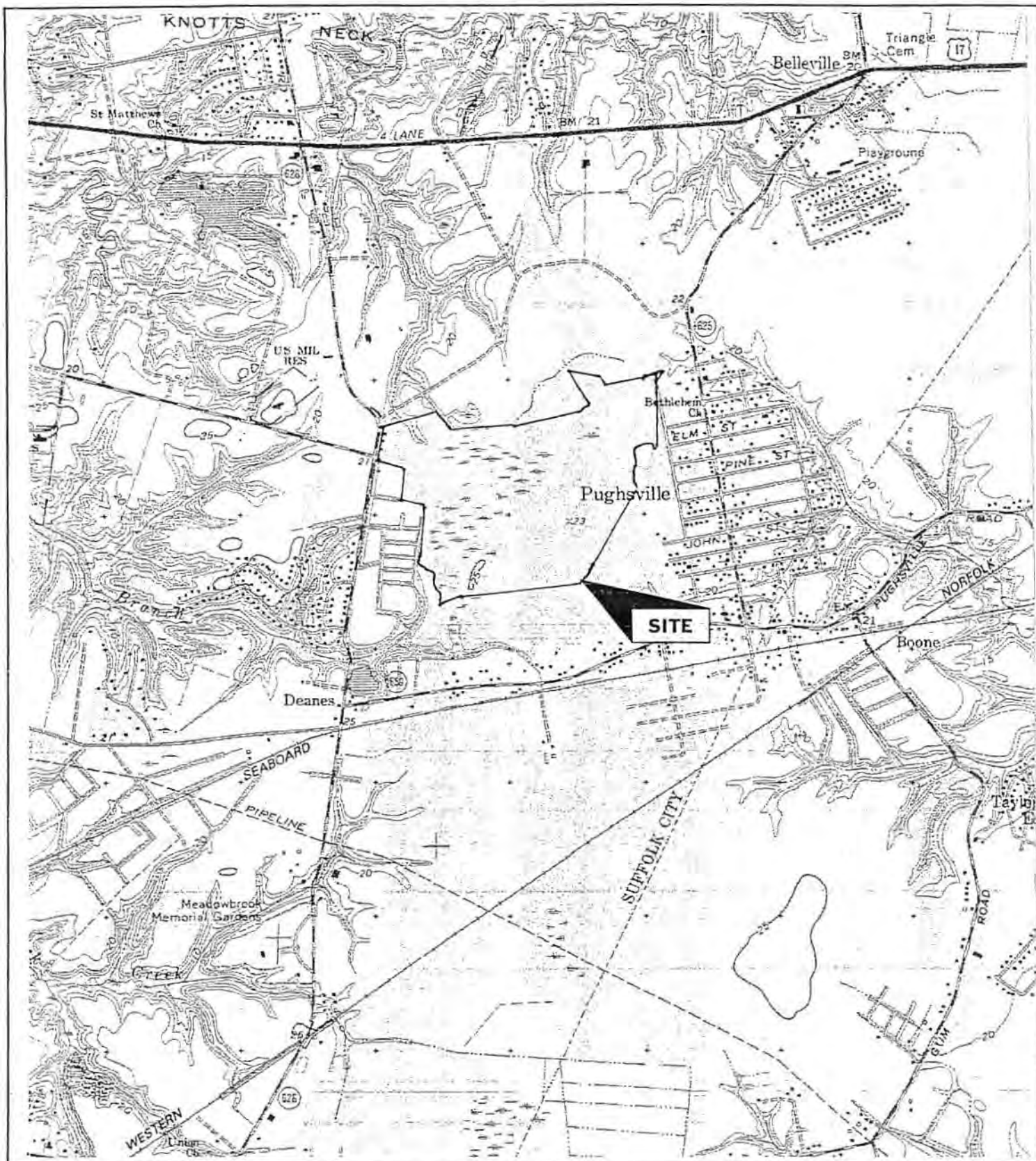
Dimensions

AE

Street Names

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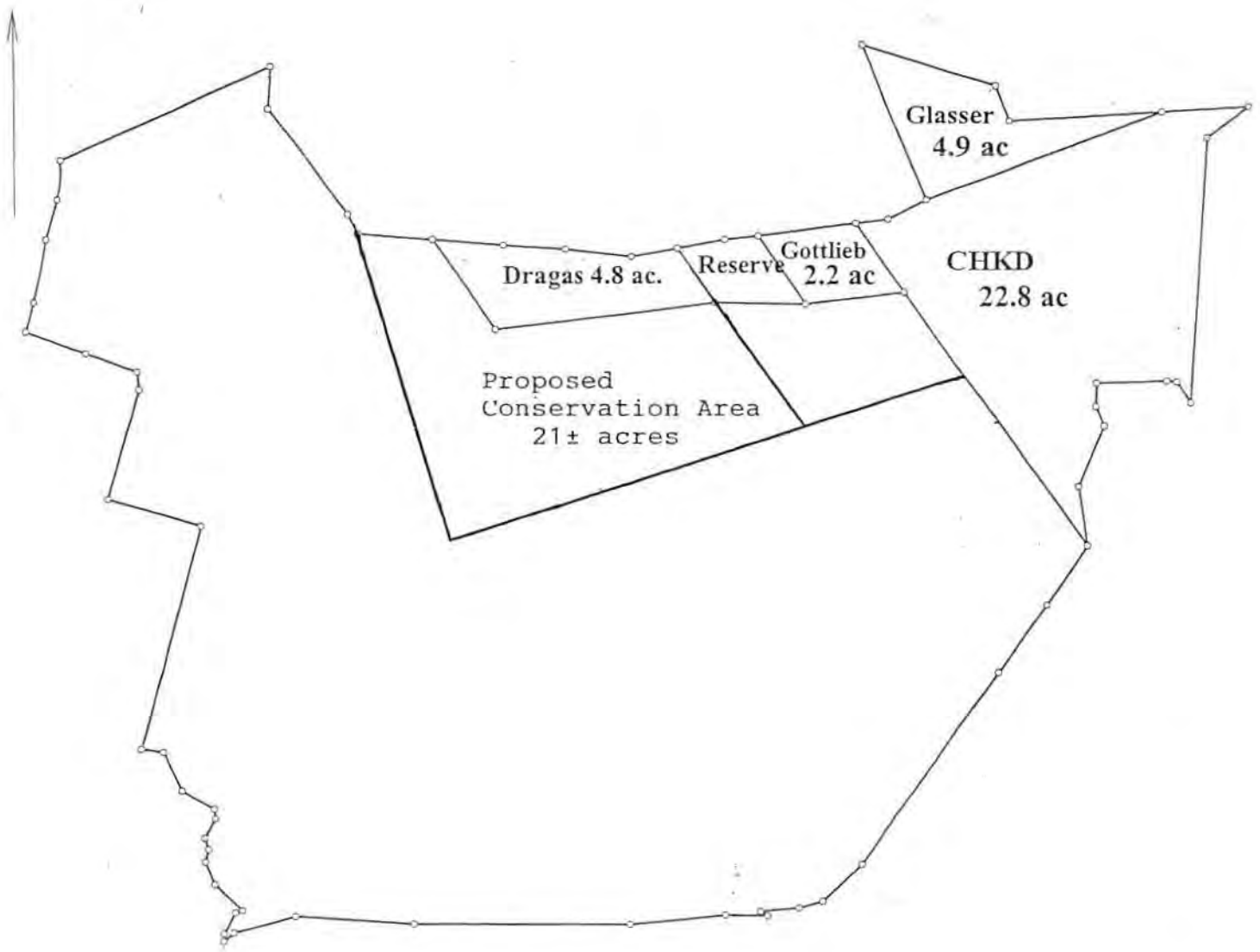




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TOPOGRAPHIC MAP

Shoulders Hill Mitigation Site
 LOCALITY: Suffolk, Virginia
 DATE: 1965, revised/inspected 1986
 SCALE: 1" = 2,000'
 SOURCE: Bowers Hill Quadrangle, Virginia 7.5 Minute Series



Title: Shoulders Hill Preservation Site		Date: 05-16-2000
Scale: 1 inch = 600 feet	File: Shoulders All Sites.des	

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT, made this ___ day of _____ 2003 by James River LLC hereinafter called the "Grantor", and CONSERVATION, INC. hereinafter the "Grantee".

WITNESSETH:

WHEREAS, the Grantor is the owner in fee simple of certain real property, hereinafter called the "Protected Property", consisting of approximately 20.50± acres of land located in the City of Suffolk, Virginia, as more particularly described on Exhibit A attached hereto and by this reference made a part hereof;

WHEREAS, CONSERVATION, INC., is a non-profit corporation incorporated under the laws of the State of Virginia whose purpose is to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, the Grantor desires to preserve the Protected Property by the conveyance of a conservation easement;

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and as an absolute and unconditional gift, does hereby give, grant, bargain, sell and convey unto the Grantee, its successors and assigns forever a Conservation Easement in perpetuity over the Protected Property, consisting of the following:

1. The right of the Grantee, in a reasonable manner at reasonable times, to enforce by proceedings at law or in equity the covenants hereinafter set forth. The Grantee, or its successors or assigns, does not waive or forfeit the right to take action as may be necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, floods, storm or the unauthorized wrongful acts of third persons. In the event that the Grantee becomes aware of any event or circumstance of non-compliance with the terms and conditions herein set forth, the Grantee shall give notice to the Grantor, his successors or assigns, at his last known post office address, of such event or circumstance of non-compliance via certified mail, return receipt requested, and request corrective action sufficient to abate such event or circumstance of noncompliance and restore the Protected Property to its previous condition. Failure by the Grantor to cause discontinuance, abatement or such other corrective action as may be requested by Grantee within thirty (30) days after receipt of notice shall entitle Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this agreement; to require the restoration of the property to its prior condition; to enjoin such non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction to enforce the terms of this agreement. If such court determines that the Grantor has failed to comply with this agreement,

Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration or court costs and reasonable attorneys fees, in addition to any other payments ordered by such court. Grantor hereby waives any defense of laches with respect to any delay by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement.

2. The right to enter the Protected Property at all reasonable times and, if necessary, across other lands retained by the Grantor, for the purposes of (a) inspecting the Protected Property to determine if the Grantor, or his successors or assigns, is complying with the covenants and purposes of this grant; (b) enforcing the terms of this Conservation Easement; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof; and (d) performing inspections, research, tours, or other on-site activities consistent with the Grantee's purposes of conserving and preserving natural areas for aesthetic, scientific, charitable and educational purposes.

And in furtherance of the foregoing affirmative rights, the Grantor makes the following covenants, on behalf of himself, his successors and assigns, which covenants shall run with and bind the Protected Property in perpetuity:

GENERAL COVENANTS

1. There shall be no construction or maintenance of buildings, roads, camping accommodations, mobile homes, fences, signs, billboards or other advertising material, or other structures.

2. There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in the topography of the land in any manner excepting the construction or maintenance of foot trails.

3. There shall be no removal, destruction or cutting of trees or plants (except as is necessary to construct and maintain foot trails), use of fertilizers, spraying with biocides, or disturbance or change in the natural habitat in any manner.

4. There shall be no dumping of ashes, trash, garbage, or other unsightly or offensive materials, and no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Protected Property or on adjacent property which could cause erosion or siltation on the Protected Property.

5. Prior to undertaking any changes in the use of the property the Grantor shall consult with the Grantee regarding the proposed changes to determine the effect of such changes on the natural values being protected on the property. Grantee shall have the right to approve such changes in use, such approval not to be unreasonably withheld.

NEVERTHELESS, and notwithstanding any of the foregoing provisions to the contrary and as expressly limited herein, the Grantor reserves for himself, his heirs, successors and assigns the following reserved rights, which may be exercised after providing written notice to the Grantee:

1. The right to use the Protected Property for all purposes not inconsistent with this Grant.
2. The right to sell, give or otherwise convey the Protected Property or any portion or portions of the Protected Property, provided such conveyance is subject to the terms of this easement.
3. The right to take such action and perform such work as may be reasonable or necessary to convert the Protected Property to or, create, restore, or enhance thereon wetlands, endangered species habitat, or other significant environmental values.

Nothing contained in this Deed shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Deed.

The Grantor, for himself and on behalf of his successors and assigns, agrees to pay any real estate taxes or other assessments levied by competent authorities on the Protected Property and to relieve the Grantee from any duty or responsibility to maintain the Protected Property. If the Grantor or his successors and assigns, becomes delinquent in payment of said taxes or assessments, such that a lien against the land is created, the Grantee, at its option, shall have the right to purchase and acquire the Grantor's, or his successor's or assign's, interest in said Protected Property by paying funds to discharge said lien or delinquent taxes or assessments, or to take other actions as may be necessary to protect the Grantee's interest in the Protected Property and to assure the continued enforceability of this Conservation Easement.

The Grantor agrees that the terms, conditions, restrictions and purposes of this grant will be inserted by him in any subsequent deed or other legal instrument by which the Grantor divests himself of either the fee simple title to or his possessory interest in the Protected Property.

Any notices required in this Conservation Easement shall be sent by registered or certified mail to the following address or such address as may be hereafter specified by notice in writing:

Grantor: James River LLC
603 Town Point Center
150 Boush Street
Norfolk, Virginia 23510

Grantee: Conservation, Inc.
4101 Granby Street, Suite 404
Norfolk, Virginia 23504

If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed with this grant shall not only be binding upon the Grantor but also his agents, personal representatives, successors and assigns, and all other successors to him in interest and shall continue as an easement, covenant and servitude running in perpetuity with the Protected Property.

The parties hereto recognize and agree that the easement conveyed by the Grantor herein is transferable; provided that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance.

The Grantee hereby covenants and agrees that in the event that the Protected Property suffers an unexpected change which makes impossible or impractical any continued use of the property for conservation purposes, and the restrictions are extinguished by judicial proceeding, upon the subsequent sale, exchange or condemnation of the Protected Property, the Grantee will apply any proceeds received from such sale, exchange or taking in a manner consistent with the conservation purposes of the original in a contribution or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h) (4) (A) ii, as amended and in regulations promulgated thereunder.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has executed and seals this document the day and year first above written.

Grantor

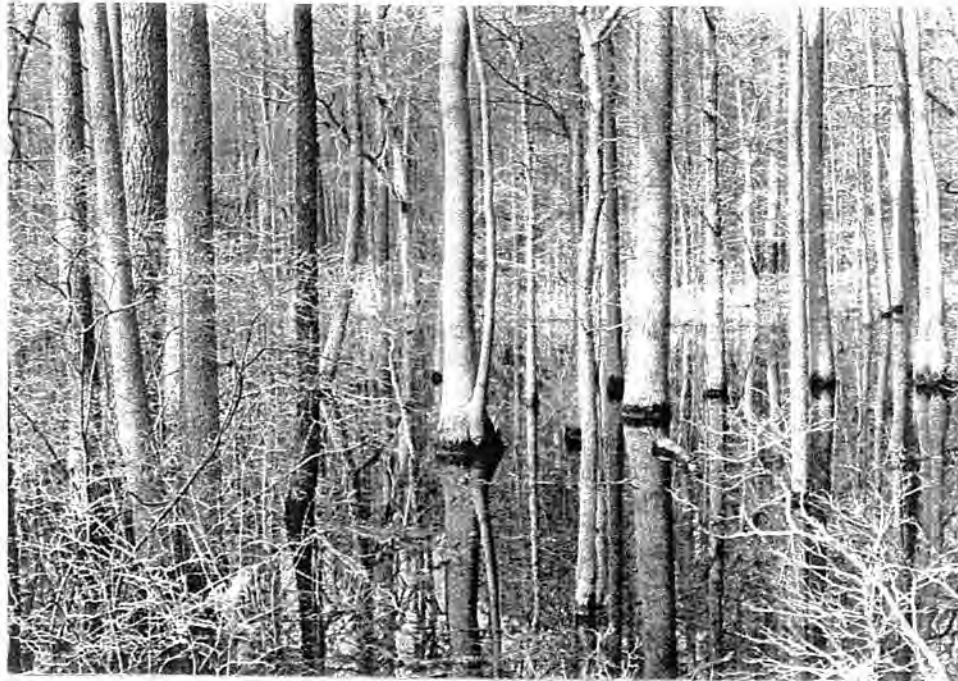
(seal)

STATE OF VIRGINIA, CITY OF NORFOLK

The foregoing Conservation Easement was acknowledged before me the ____ day of ____ 2003 by _____.

Notary Public

My Commission Expires:



Photograph 1: Cook Road/Harrold Lane/ Ballfield Grafton Pond System -- Ballfield mitigation site. 11 February 1998.

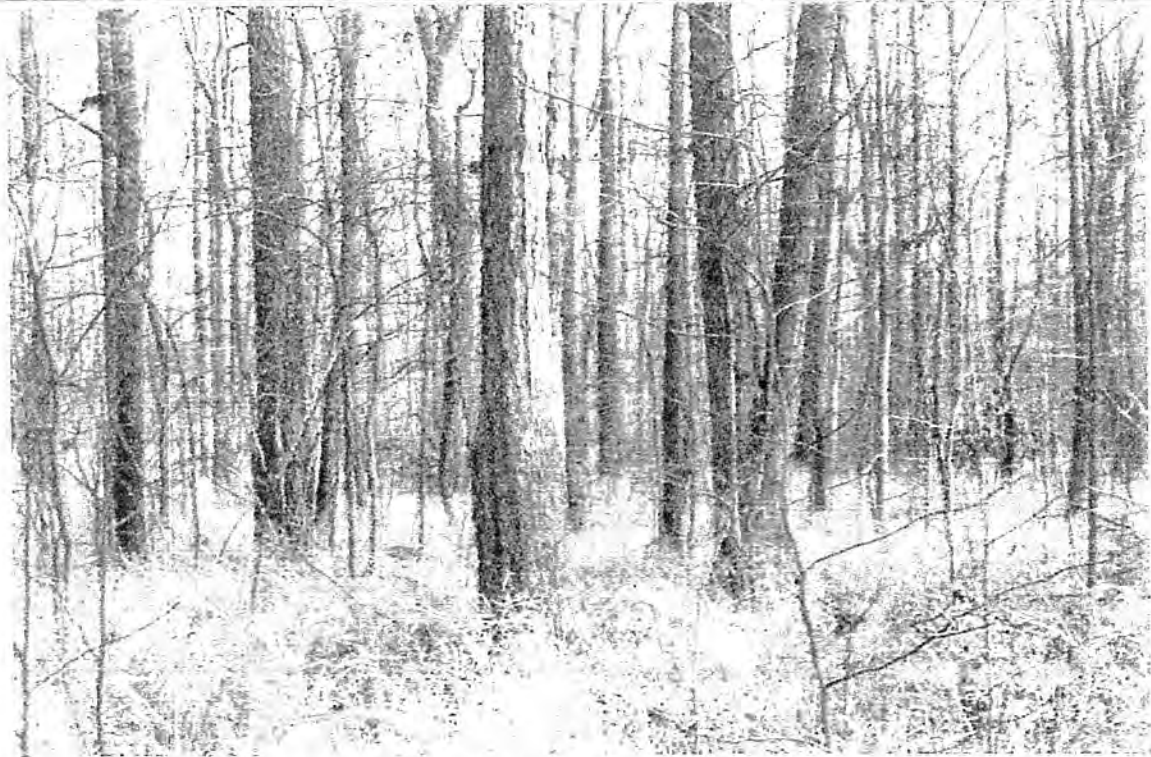


Photograph 2: Cook Road/Harrold Lane/ Ballfield Grafton Pond System -- Harrold Lane mitigation site. 5 April 2000.

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ENVIRONMENTAL
ASSOCIATES, LTD**

SITE PHOTOGRAPHS

PROJECT NAME: Cook Road/Harrold Lane/ Ballfield Grafton
Pond System
PHOTOGRAPHER: George H. Bangs



Photograph 1: Typical forested areas at Shoulders Hill Site, Suffolk, Virginia



Photograph 2: Typical forested areas at Shoulders Hill Site, Suffolk, Virginia

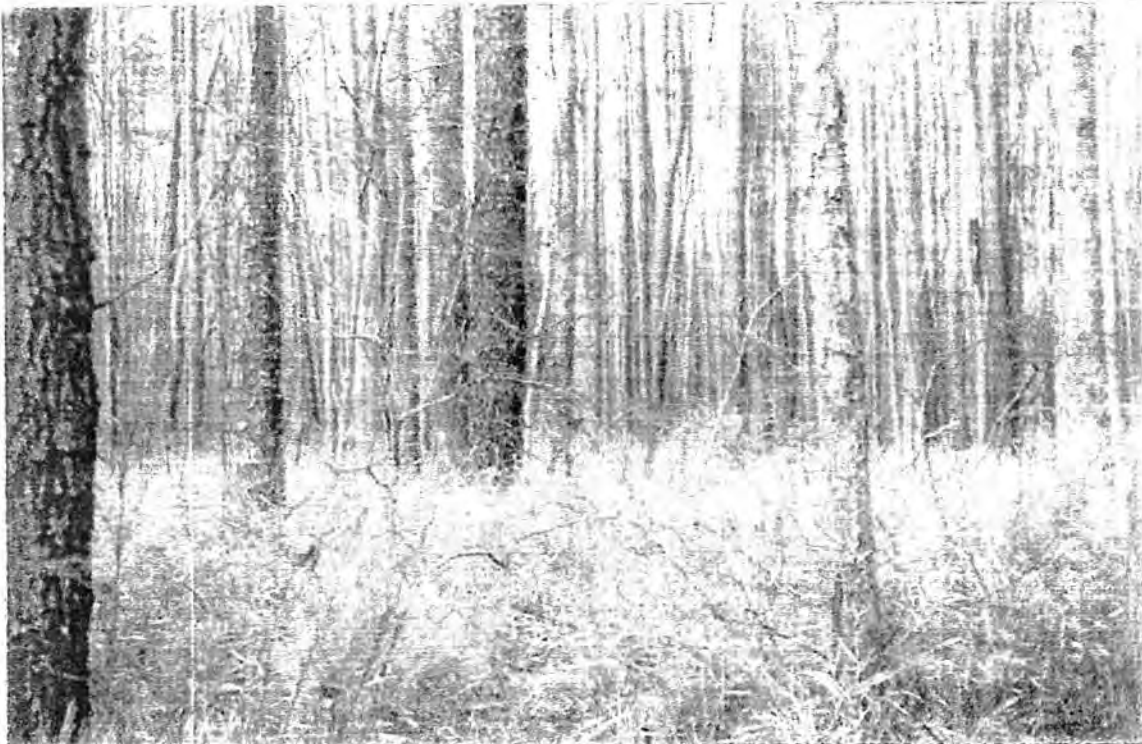
SITE PHOTOGRAPHS

STOKES ENVIRONMENTAL
ASSOCIATES, LTD.

Project Name: Shoulders Hill Site
Project Location: Suffolk, Virginia
Date: 14 March 2001



Photograph 3: Typical forested areas at Shoulders Hill Site, Suffolk, Virginia



Photograph 4: Typical forested areas at Shoulders Hill Site, Suffolk, Virginia

SITE PHOTOGRAPHS

STOKES ENVIRONMENTAL
ASSOCIATES, LTD.

Project Name: Shoulders Hill Site
Project Location: Suffolk, Virginia
Date: 14 March 2001