

**Report on the
Town of Cape Charles - County of Northampton
Annexation Action**



**Commission on Local Government
Commonwealth of Virginia**

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REPORT ON THE
TOWN OF CAPE CHARLES - COUNTY OF NORTHAMPTON
ANNEXATION ACTION

PROCEEDINGS OF THE COMMISSION

On March 26, 1990 the Town of Cape Charles filed notice with the Commission on Local Government, pursuant to the provisions of Section 15.1-945.7(A) of the Code of Virginia, of its intentions to petition the court for the annexation of approximately 3.19 square miles of territory in Northampton County. Consistent with the Commission's Rules of Procedure, the Town's notice was accompanied by data supporting the annexation action.¹ Further, in accordance with statutory requirements, the Town concurrently gave notice of its proposed annexation to Northampton County and to five other localities with which it was contiguous or with which it shared functions, revenues, or tax sources.² The Town's notice also requested the Commission to promote negotiations between Cape Charles and Northampton County in an endeavor to effect a settlement with respect to the proposed annexation.

On May 7, 1990 the Commission met with representatives of the Town of Cape Charles and Northampton County for purposes of making preliminary arrangements for its formal review of the Town's annexation action and for providing mediation assistance. At that meeting the Commission established a schedule which called for the submission of the County's material in response to the proposed annexation by July 6, 1990, for oral presentations and a public hearing on the issue on July 23-24, 1990, and for submission of the Commission's report by October 26, 1990. In addition, the Commission delegated to its Chairman the authority to designate an independent mediator, upon specific request of the parties, to assist in negotiating a settlement of the annexation issue. The Town and the County, however, requested that the Commission

¹The Town's notice is contained in Town of Cape Charles, Notice of Annexation Proceedings to the Commission on Local Government (hereinafter cited as Town Annexation Notice), Mar. 1990.

²Sec. 15.1-945.7 (A), Code of Va.

defer the activation of a mediator to permit initial interlocal discussions to proceed directly among the local officials.

As a result of progress in the negotiations between the Town and County, on July 18, 1990 the parties requested a postponement of the Commission's scheduled review to allow additional time for their discussions.³ Pursuant to that joint request, the Commission agreed to postpone its oral presentations and public hearing on the annexation issue until September 1990.

Subsequent to the parties' unsuccessful effort to negotiate a settlement, and consistent with its revised schedule, the Commission toured relevant areas and facilities in the Town of Cape Charles and Northampton County on September 18, 1990 and received oral testimony from the parties on the annexation issue on September 19-20, 1990. In addition, the Commission solicited comment from other potentially affected political subdivisions and from the public. Each locality receiving notice of Cape Charles' annexation action was invited by the Commission to submit testimony for its consideration. Further, the Commission held a public hearing, which was advertised in accordance with the requirements of Section 15.1-945.7(B) of the Code of Virginia, on the evening of September 19, 1990 at the Cape Charles Elementary School in the Town. The public hearing was attended by approximately 100 persons and produced testimony from 18 individuals. In order to permit receipt of additional public comment, the Commission agreed to keep open its record for written submissions from the public through October 19, 1990.⁴

³R. J. Nutter, II, Special Counsel, Town of Cape Charles, letter to staff of Commission on Local Government, July 18, 1990. In the ensuing negotiations the parties were unable to reach a settlement of the annexation issue.

⁴By joint request of the Town and County, the issuance of the Commission's report on the annexation issue was postponed until February 8, 1991 to permit a resumption of negotiations. (Nutter, letter to staff of Commission on Local Government, Jan. 15, 1991; and Robert C. Oliver, Jr., County Attorney, County of Northampton, letter to staff of

SCOPE OF REVIEW

The Commission on Local Government is directed by statute to review proposed annexations and other local boundary change issues prior to their being presented to the courts for ultimate disposition. Upon receipt of notice of such a proposed action, the Commission is directed to "hold hearings, make investigations, analyze local needs" and to submit a report containing findings of fact and recommendations to the affected local governments.⁵ The Commission's report on each proposed action must be based upon, as required by Section 15.1-945.7(B) of the Code of Virginia, "the criteria and standards established by law" for consideration in such actions.

The criteria and standards prescribed for consideration in annexation issues are set forth in Chapter 25 of Title 15.1 of the Code of Virginia, principally in Section 15.1-1041. That statute directs the annexation court, and thus the Commission, to determine "the necessity for and expediency of annexation." As a guide in determining such "necessity and expediency," Section 15.1-1041 requires the reviewing entity to consider "the best interests of the people of the county and the [annexing municipality], services to be rendered and needs of the people of the area proposed to be annexed, the best interests of the people in the remaining portion of the county, and the best interests of the State in promoting strong and viable units of government." This statute also specifies a number of fiscal concerns, public service functions, community of interest factors, and State policies which are to be evaluated in considering the best interests of the parties and the State. Since municipalities are precluded by law from initiating annexation actions more than once in any ten-year period, the analysis of each proposed annexation must involve not only an appraisal of

Commission on Local Government, Jan. 16, 1991.)

⁵Sec. 15.1-945.7 (A), Code of Va.

current circumstances, but also a reasonable projection of future conditions and relevant concerns.

The analysis and recommendations which follow in this report are based upon the Commission's collective experience in local government administration and operations. It is the intention of the Commission to leave questions of law for appropriate resolution elsewhere. The Commission trusts that this report will be of assistance to the parties, the court, the citizens of the area, and the Commonwealth generally.

GENERAL CHARACTERISTICS OF THE TOWN, THE COUNTY AND THE AREA PROPOSED FOR ANNEXATION

TOWN OF CAPE CHARLES

The Town of Cape Charles, which is located on the site of one of the original seventeenth century English settlements in Virginia, was incorporated by special act of the General Assembly on March 1, 1886.⁶ From its incorporation until the late 1950's the Town served as the major terminus of railroad and steamship passenger and freight operations that connected the Hampton Roads area with the Northeastern United States. In the 1950's, however, the Eastern Shore terminal of the Hampton Roads auto ferry was moved from Cape Charles and passenger train service from the municipality was ended. Those events adversely affected the economy of the Town of Cape Charles and contributed to a dramatic decline in its population. U. S. Bureau of the Census data for 1990 place Cape Charles' population at 1,398 persons and reflect a 42.4% decrease in Town residents since 1950.⁷ Based on its 1990 preliminary

⁶Town of Cape Charles, Comprehensive Plan, Technical Analysis, 1990, p.1.

⁷U. S. Department of Commerce, Bureau of the Census, "Public Law 94-171 Redistricting Data, 1990 Census of Population and Housing for Virginia," unpublished tabulation derived from U. S. Bureau of the Census computer tape; and U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, Number of Inhabitants, Virginia,

population count and an area of 0.88 square miles (564 acres), the Town of Cape Charles has a population density of 1,589 persons per square mile.⁸

In terms of the nature of its population, the evidence suggests that the Town's populace is considerably older and less affluent than the State's populace as a whole. As of 1980 (the most recent year for which such data are available), the median age of Cape Charles residents was 38.3 years, a statistic significantly higher than that of the State's population overall (29.8 years).⁹ Further, the percentage of the Town's 1980 population age 65 years or over was 20.7%, or more than double the comparable figure for the State generally (9.5%).¹⁰ In terms of personal earnings, data reveal that, as of 1979 (the latest year for which such data are available), the median family income in Cape Charles was \$11,386, or only 56.9% of the statistic for the Commonwealth as a whole (\$20,018).¹¹ While these statistics will be altered somewhat by the 1990 Decennial Census results, there is no evidence to suggest that the disparities between the Town and the State overall with respect to age and income will have significantly changed during the decade of the 1980's.

In regard to the Town's present physical development, 1990 land use data reveal that 16.8% (94.9 acres) of Cape Charles' total area is

Table 4. Cape Charles had a population of 2,427 persons as of the 1950 Decennial Census.

⁸Town Annexation Notice, p. II-2.

⁹U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, General Population Characteristics, Virginia, Table 14.

¹⁰Ibid.

¹¹U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, General Social and Economic Characteristics, Virginia, Tables 61, 161. While there are data available regarding the income level of residents of Virginia's cities and counties since 1980, such data are not available for residents of Virginia's towns.

devoted to residential development, 5.2% (29.5 acres) is engaged in commercial enterprise, 7.4% (41.8 acres) is committed to industrial activity, 17.7% (99.7 acres) is utilized for public or semi-public purposes, while 28.9% (162.9 acres) remains vacant.¹² The Town has submitted evidence, however, which indicates that 73.9 acres of this vacant land are restricted in their development potential by virtue of their location in the 100-year floodplain.¹³ Thus, only 89 acres, or less than 15.8% of the Town's total acreage, are vacant and generally suited for development.

COUNTY OF NORTHAMPTON

Northampton County, which can trace its origin to virtually the earliest English settlement in America, was founded as one of Virginia's original shires in 1634.¹⁴ Its economic and demographic experience has, not surprisingly, paralleled that of the Town of Cape Charles. Between 1950 and 1990 the County's population decreased from 17,300 to 13,061 persons, or by 24.5%.¹⁵ Based on the 1990 Census count and a land area of 357 square miles, Northampton County has an overall population

¹²Stephen J. Davis, Special Counsel, Town of Cape Charles, letter to staff of Commission on Local Government, July 6, 1990. Approximately 12.5% (70.6 acres) of the land within the Town is used for road or highway right-of way, and approximately 11.5% (64.6 acres) is covered by tidal waters.

¹³Ibid. The Commission notes that a substantial portion of the developed property in Cape Charles is also susceptible to flooding, with approximately one-half of the Town being located within the 100-year floodplain. Comprehensive Plan, Technical Analysis, p. 11.

¹⁴J. Devereux Weeks, Dates of Origin of Virginia Counties and Municipalities (Charlottesville: Institute of Government, University of Virginia, 1967).

¹⁵"Public Law 94-171 Redistricting Data, 1990 Census of Population and Housing for Virginia"; and 1980 Census of Population, Number of Inhabitants, Virginia, Table 4. In addition to Cape Charles, there are four other incorporated towns and a portion of a fifth (Belle Haven) in Northampton County. The 1990 population of persons residing in the six incorporated areas of the County was 3,777 persons.

density of 37 persons per square mile.¹⁶

With respect to the nature of the County's population, various statistical indices disclose that its populace, as in the case of Cape Charles, is older and less affluent than that of the Commonwealth overall. Data indicate that, as of 1980 (the most recent year for which such data are available), the median age of residents of Northampton County was 33.7 years, a statistic notably in excess of that of the State's populace as a whole (29.8 years).¹⁷ Further, statistics reveal that, as of 1980, approximately 16.3% of the County's population was age 65 or over, reflecting an elderly component substantially greater than that of the State generally (9.5%).¹⁸ In terms of earnings, the median family income for County residents in 1979 (the latest year for which such data are available) was \$12,131, or only 60.6% of the comparable figure for the Commonwealth overall (\$20,018).¹⁹ While more recent statistics will be available following the publication of the results of the 1990 Decennial Census, the Commission has no evidence to suggest that the disparities between Northampton County and the Commonwealth generally with respect to age and income will have changed markedly during the decade of the 1980's. Indeed, supporting this view is the fact that the median adjusted gross income (based on State tax returns) for Northampton County residents in 1988 was only 62.4% of the

¹⁶Virginia Dept. of Highways and Transportation, Area in Square Miles of Virginia's Counties and Incorporated Towns. Exclusive of the land area of the six incorporated communities and the population residing therein, the County's 1990 population density was only 26 persons per square mile.

¹⁷1980 Census of Population, General Population Characteristics, Virginia, Table 14. Unless otherwise noted, all data cited for Northampton County include that derived from persons residing in the Town of Cape Charles, the four other incorporated towns, and that portion of the Town of Belle Haven located within the County.

¹⁸Ibid.

¹⁹1980 Census of Population, General Social and Economic Characteristics, Virginia, Tables 61, 161.

comparable figure for residents of the State generally.²⁰

With respect to its economy, the data indicate that Northampton County has experienced little change in commercial and industrial activity during the preceding ten-year period. Statistics reveal that between March 1980 and March 1990 the number of nonagricultural wage and salary positions in the County actually decreased from 4,323 to 4,216, or by 2.5%.²¹ Since the County's total civilian labor force in March 1990 contained 5,493 persons, the employment data indicate that more than 20% of the County's labor force either continued to be engaged in agricultural activity, was required to seek employment outside the County, or was unemployed.²² With respect to agricultural and forestal activities, the evidence suggests that those industries remain significant components of the County's economic base. Data indicate that, as of 1987, there existed 180 farms in Northampton County

²⁰Gerald W. Ward and Robert W. Cox, 1988 Virginia AGI (Charlottesville: Center for Public Service, University of Virginia, 1990), Table A2. The statistics cited represent adjusted gross income (AGI) on all State tax returns. Derived from the administrative records of the State Department of Taxation, the adjusted gross income for a locality, while encompassing most dimensions of income, exclude Social Security benefits and various other transfer payments, contributions made by employers to private pension and health plans, non-cash imputed income, payments in-kind, 60% of long-term capital gains, and the income received by non-resident military personnel stationed in Virginia. It should be noted, too, that jurisdictional AGI figures do not reflect the income of residents who are exempt from the filing of State tax returns.

²¹Virginia Employment Commission, Population and Labor Force Data, 1980; and Covered Employment and Wages in Virginia for Quarter Ending March 31, 1990 - Northampton County.

²²Virginia Employment Commission, Labor Market Review, Mar. 1990. As of March 1990, 4.8% of the County's civilian labor force was unemployed. (Ibid.) By September 1990 (the most recent date for which such data are available) unemployment in the County had increased to 4.9%, while the comparable statistic for the Commonwealth generally was 4.3%. (Ibid., Sep. 1990.)

embracing a total of 50,530 acres (approximately 79 square miles).²³ In terms of forestal property, 1985 data disclosed that 144,602 acres in Northampton County, or nearly 226 square miles of territory, were considered "forest" land.²⁴

AREA PROPOSED FOR ANNEXATION

The area proposed for annexation by the Town of Cape Charles embraces approximately 3.19 square miles of territory containing, as of 1989, \$4.5 million in assessed real property values subject to local taxation.²⁵ Based on those figures, the area encompasses 0.9% of the County's area and 1.6% of its 1989 assessed real property values.

The area proposed for annexation extends generally from the southern boundaries of the Town to Old Plantation Creek, with approximately 12% (244 acres) of that territory being covered by tidal waters. Of the remaining portion of the area proposed for annexation (approximately 1,792 acres), 58.4% is currently zoned for industrial usage and 41.6% for agriculture activity.²⁶ In terms of current

²³U. S. Department of Commerce, 1987 Census of Agriculture, Virginia, Table 1, p. 148. As of 1987 the market value of agricultural products sold by farms in Northampton County totaled approximately \$19.8 million.

²⁴U. S. Department of Agriculture, Forest Service, Forest Statistics for the Coastal Plains of Virginia, 1985. The Forest Service defines "forest" land as property being at least 16.7% stocked by forest trees of any size or formerly having had such tree cover and not currently developed for nonforest use. Such property may also be included in the Census Bureau's definition of farm land.

²⁵Davis, letter to staff of Commission on Local Government, July 6, 1990; and Town of Cape Charles, Response to Commission's Letter of May 15, 1990 (hereinafter cited as Town Supplemental Submission), June 15, 1990. See Appendix A for a statistical profile of the Town, County, and the area proposed for annexation. See Appendix B for a map of the area proposed for annexation.

²⁶Davis, letters to staff of Commission on Local Government, July 6, 1990 and Jan. 11, 1991. The only commercial structure on the property contains the local offices of Brown & Root. Approximately 64

development, the area contains right-of-way belonging to the Eastern Shore Railroad, a dredge spoils area owned by the Virginia Port Authority, two water wells serving the Town of Cape Charles, one small commercial office, and one single-family residential structure with four inhabitants. Thus, despite the zoning classifications, the area is essentially undeveloped and uninhabited.

Approximately 96% (1,725 acres) of that property in the area proposed for annexation which is not covered by tidal waters is owned by Brown & Root I, Inc., a major construction firm whose corporate headquarters is located in Houston, Texas.²⁷ That property is planned for development by Brown & Root in conjunction with other parcels owned by the corporation within the current boundaries of the Town. The planned development, which has been the subject of negotiations between Brown & Root and the Town of Cape Charles, contemplates the construction over the next two decades of a retirement/resort community bearing the name of "Accawmacke Plantation." Current plans call for the Accawmacke Plantation to contain, when the 20-year development is completed, approximately 3,000 dwelling units and retail establishments, a hotel, a marina, a 36-hole golf course, and associated facilities. The major portion of the development is planned for the area proposed for annexation, with that area scheduled to be the site of a marina, golf facilities, a hotel, retail establishments, and approximately 2,550

acres of land in that area are currently devoted to industrial uses. The Town's two water supply wells in the area proposed for annexation are located on property owned by Cape Charles.

²⁷Other property owners in the area proposed for annexation include the Virginia Port Authority (44.05 acres), the Eastern Shore Railroad (23.32 acres), and the Town of Cape Charles (.09 acres). (Davis, letter to staff of Commission on Local Government, Jan. 11, 1991.) The Virginia Port Authority has officially indicated that it has no objection to the proposed annexation of its property by the Town of Cape Charles. (J. Robert Bray, Executive Director, Virginia Port Authority, letter to Alex Parry, Mayor, Town of Cape Charles, Mar. 28, 1990.)

single-family and multi-family dwelling units.²⁸ Brown & Root has predicated its development plans on the incorporation of all its property into the Town of Cape Charles and on the expansion and utilization of the Town's utility systems. To this end, Brown & Root has entered into an agreement with the Town by which it has committed itself to supporting the proposed annexation and to investing its resources into an expansion and enhancement of municipal facilities.²⁹

STANDARDS AND FACTORS FOR ANNEXATION

As noted previously, the Code of Virginia directs this Commission, and ultimately the court, to consider in each annexation issue the best interest of the municipality, the area proposed for annexation, the remaining portion of the county, and, in addition, the best interests of the Commonwealth. Further, the annexation statutes prescribe a series of factors for consideration in the evaluation of the best interests of each of the parties. The following sections of this report constitute the Commission's analysis of these various considerations:

NEED OF THE TOWN TO EXPAND TAX RESOURCES

While the evidence indicates that the Town of Cape Charles remains an economically viable municipality, there are data to suggest that the Town does have a need to strengthen its fiscal base. Data reveal that in recent years the growth in the true value of real estate and public

²⁸The portion of Accawmacke Plantation located in the area proposed for annexation, identified by the parties as the Southern Tract, is scheduled to be developed simultaneously with property within the current Town. Although Brown & Root contemplates developing Accawmacke Plantation over the next 20 years, the firm acknowledges that the sequence and pace of development is dependent on national economic conditions. (Town Supplemental Submission, pp. 28-40, Exhs. 12-15.)

²⁹The Agreement between the Town of Cape Charles and Brown & Root (hereinafter cited as Agreement) was approved by the parties in March 1990. A copy of that document was filed with the Commission as part of the Town's notice and is included with this report as Appendix C.

service corporation property in the Town has been half that in the County generally. Based upon State Department of Taxation analyses of assessment practices in Northampton County, the true value of real estate and public service corporation property values in Cape Charles increased from \$17.8 million in FY1979-80 to \$22.9 million in FY1987-88, or by 28.9%.³⁰ During the same period, such values in the County as a whole increased from \$220.5 million to \$397.5 million, or by 80.3%.³¹

With respect to relative local fiscal burdens, statistics disclose that Town of Cape Charles residents are required to bear a significantly greater local tax effort than are residents of the unincorporated portions of Northampton County. During FY1988-89 residents of the Town paid \$181.32 per capita in taxes to their municipality, while at the same time contributing substantially to the County's local tax collections (\$302.20 per capita).³² Thus, considered collectively, on a per capita basis Cape Charles residents bore a local tax burden in FY1988-89 more than 50% greater than that of residents in unincorporated portions of Northampton County.

An examination of local real estate tax rates also provides some evidence of the relative fiscal burden borne by Cape Charles residents.

³⁰Town of Cape Charles, Comprehensive Annual Financial Report (hereinafter cited as Town Financial Report), June 30, 1989, Schedule 5; and Virginia Department of Taxation, Virginia Assessment/Sales Ratio Study, 1980, Mar. 1982 and 1988 Virginia Assessment/Sales Ratio Study, Mar. 1990.

³¹County of Northampton, Comprehensive Annual Financial Report (hereinafter cited as County Financial Report), June 30, 1989, Schedule 5; and Virginia Assessment/Sales Ratio Study, 1980, Mar. 1982 and 1988 Virginia Assessment/Sales Ratio Study, Mar. 1990.

³²Town Financial Report; and County Financial Report. Receipts from the local option 1% sales tax were excluded from the per capita calculations because these revenues are not distributed to Cape Charles and Northampton County based upon the site of the sale. The Town revenues included in this calculation were receipts from all property, motor vehicles licenses, consumer utility, business license, tobacco, admissions, and amusement taxes. The per capita tax burden was calculated using 1988 population estimates.

Based upon the ratio between assessed property values and sales in various jurisdictions as calculated by the Virginia Department of Taxation, the true real property tax rate in 1988 (the latest year for which such calculations have been made) in Cape Charles was \$0.28 per \$100, an amount more than 50% higher than the average of such tax rates in the 47 towns in Virginia with populations of similar size (1,000-2,000 residents).³³ Further, if the County's 1988 true real property tax rate (\$0.67) is added to the Town's (\$0.28), the 1988 aggregate true real property tax rate in Cape Charles would be \$0.95, an amount more than 40% greater than the average of such combined tax rates of the 47 towns in the referenced population category.³⁴ Further, the combined true real property tax rate in Cape Charles in 1988 was higher than similar tax rates in 22 of the State's 41 cities.³⁵

In sum, the data reveals that the Town of Cape Charles has experienced extremely modest growth in its real estate and public service corporation tax base in recent years and that residents of the Town bear a comparatively high local tax burden. The evidence indicates, in our judgement, that the Town of Cape Charles does have a need to expand its tax resources.

³³1988 Virginia Assessment/Sales Ratio Study; and Virginia Department of Taxation, Local Tax Rates, Tax Year - 1988. The set of towns for this analysis was selected on the basis of their 1988 population. In order to calculate a true tax rate for the jurisdictions under study, the nominal real property tax rate of each town was multiplied by the median assessment ratio of the respective county. The average true real estate tax rate for these 47 towns in 1988 was \$0.17 per \$100 of assessed value, and the range was between a low of \$0.05 and a high of \$0.46.

³⁴Ibid. The average combined real property tax rate for the 47 towns was \$0.66, and the range was between \$0.43 and \$1.04.

³⁵1988 Virginia Assessment/Ratio Study.

NEED OF THE TOWN FOR LAND FOR DEVELOPMENT

As indicated previously, the Town of Cape Charles currently has within its boundaries approximately 163 acres of undeveloped land, with that acreage constituting 28.9% of the Town's total land area.³⁶ Of that vacant land, however, approximately 74 acres are located in floodplains.³⁷ Exclusive of such property restricted in its development potential by that environmental factor, Cape Charles contains 89 acres, or 15.8% of its total land area, vacant and amenable to development. While this Commission recognizes that vulnerability to flooding is not an absolute barrier to development in the coastal areas of the State, it is an impediment which renders vacant property within the Town less attractive to potential developers.³⁸

With respect to the Town's prospects for future industrial growth, the data reveal that the Cape Charles Industrial Park contains 25 acres of vacant property zoned for industrial purposes.³⁹ In addition, the Town owns a two-acre parcel on the north side of the Cape Charles harbor that is also vacant and zoned for industrial uses.⁴⁰ It should be noted, however, that while both industrial sites are served by public water and sewerage and have access to road, rail, and water transportation facilities, those properties have remained vacant and

³⁶Davis, letter to staff of Commission on Local Government, July 6, 1990.

³⁷Ibid.

³⁸The Commission notes, however, that approximately one-half of the Town is presently located within the 100-year floodplain. (Comprehensive Plan, Technical Analysis, p. 11.)

³⁹Ibid., p.15 The industrial park, which contains approximately 15 lots, has access to the Town's public water and sewer lines and the rail facilities of the Eastern Shore Railroad. A portion of the Town's industrial park is contiguous to the Cape Charles harbor.

⁴⁰Richard K. Barton, Town Manager, Town of Cape Charles, communication with staff of Commission on Local Government, Nov. 6, 1990.

undeveloped for more than 15 years.⁴¹

In terms of commercial development, the Commission notes that there are no undeveloped parcels zoned for commercial uses located within the present boundaries of the Town. However, the Commission's physical survey of Cape Charles revealed a number of vacant commercial structures located along Randolph Avenue (State Route 184) and in the Town's central business district. While those properties may be less attractive to potential developers due to costs associated with renovation or redevelopment, they do provide the Town with some inventory of vacant property to attract new commercial development.⁴² The development planned for the area proposed for annexation can be expected, however, to stimulate commercial activity in the Cape Charles area, with a major component of that activity likely to be sited outside the present corporate limits of the municipality. This outlying new business activity will, doubtless, have a significant, and largely negative, impact on the commercial enterprise and properties located within the current boundaries of the Town.

Finally, with respect to the general issue of Cape Charles' need for land for future development, the Commission observes that the largest tract of undeveloped property within the current Town boundaries is owned by Brown & Root.⁴³ This property, which is scheduled to be developed as part of the Accawmacke Plantation, embraces approximately 171 acres and contains the Kings Creek marina, the Northampton County

⁴¹Ibid.

⁴²Currently the commercial activity in Cape Charles serves tourists as well as residents of the general area, and the commercial fishing fleets operating from the Town's harbor.

⁴³The Brown & Root property is located in the northern and eastern portion of the Town between the Chesapeake Bay and Kings Creek. According to Town's recently adopted comprehensive plan, approximately 50% of the Brown & Root tract is located within the 100-year floodplain. (Comprehensive Plan, Technical Analysis, Map. 5.)

Club, and land devoted to agricultural usage.⁴⁴ While the use of that property has remained relatively unchanged since it was purchased by Brown & Root in 1974, the company's future plans call for that property (identified in these proceedings as the Northern Tract) to be developed to include the construction of approximately 450 single-family and multi-family dwelling units for permanent and seasonal residents, a retail center, and major improvements to the Kings Creek marina.⁴⁵ Company officials have stated, however, that in order to be economically feasible the development scheduled for the Northern Tract must be coordinated with that planned for Brown & Root's property in the area proposed for annexation.⁴⁶ Thus, while Brown & Root's Northern Tract offers significant development opportunity, its current utility and future potential are inextricably related to the disposition of the Brown & Root property in the area proposed for annexation.

While the evidence suggests that the Town of Cape Charles has a significant amount of vacant land, there are environmental and other considerations which affect its utility and availability. It is evident to this Commission that the development potential of the Town will be

⁴⁴W. M. Clifton, Project Manager, Brown & Root, communication with staff of Commission on Local Government, Oct. 25, 1990. The portion of the Brown & Root property located west of Fig Street has been zoned by the Town for residential use, while that portion located east of Fig Street and including the marina and golf course is zoned for open space and recreational uses. (Comprehensive Plan, Technical Analysis, Map 7.) The Kings Creek marina is primarily used by local fisheries operations. The Northampton County Club is a private 9-hole golf course that is leased from Brown & Root.

⁴⁵The Northern Tract of the proposed Accawmacke Plantation development is scheduled to be developed, depending on market demand and general economic conditions, over a period of approximately ten years following the effective date of the annexation. (Town Response, Exhs. 12-14.) Land within the Northern Tract also will be reserved for a church site and buffers for environmental protection. (Ibid., pp. 31-32 and Exh. 12-14.) The Commission notes that Brown & Root's Northern Tract includes approximately 16 acres of land located within in the area proposed for annexation.

⁴⁶Town Supplemental Submission, pp. 26-27.

largely determined by the outcome of the development which is currently planned for the area proposed for annexation.⁴⁷ The Accawmacke Plantation will establish a residential concentration which is likely to promote and facilitate sizeable commercial developments which the present Town cannot accommodate.

IMPACT ON THE COUNTY

The annexation proposed by the Town of Cape Charles, if granted by the court in its entirety, would have minimal adverse impact on Northampton County's current local revenue receipts. Subsequent to the development of Accawmacke Plantation, however, the proposed annexation would have the effect of reducing County receipts from some of its minor revenue sources, but all properties annexed by the Town would remain subject to taxation by Northampton County.⁴⁸ Moreover, upon annexation Cape Charles will assume responsibility for providing certain municipal services to the annexed area, and that assumption of responsibility should lessen the fiscal burden which would otherwise confront the County as that area is developed.

The development planned for the area proposed for annexation will result in increased responsibility on the part of the County for certain

⁴⁷Representatives of Brown & Root have indicated that the Northern Tract will only be developed in concert with the Southern Tract and that company officials now view the entire Accawmacke Plantation proposal to be contingent upon annexation of the Southern Tract by the Town of Cape Charles. [Testimony of Clifton, Transcript of Proceedings, Town of Cape Charles - Northampton County Annexation Action (hereinafter cited as Transcript), Vol. II, p. 128.]

⁴⁸County revenues affected by town annexations include those from sales, consumer utility, bank franchise and wine taxes, as well as those from motor vehicle and business licenses, and ABC profit distributions. (Town Annexation Notice, IV-1.) According to calculations by the Town, the proposed annexation would result initially in a constriction of County tax revenues of \$300. This relatively minor revenue loss is due to the fact that the area proposed for annexation is currently comprised mainly of farmland or wooded areas, with one single-family dwelling unit and a commercial office.

human resource services. The proposed Accawmacke Plantation will result in the construction of approximately 3,000 single-family and multi-family dwelling units.⁴⁹ That planned community, when completed, is expected to provide housing to approximately 2,800 full-time and 4,200 seasonal residents who will be eligible for educational, health, and social services from the County.⁵⁰ However, given the anticipated nature of the residents who will be principally attracted to the planned residential community, the cost to the County for the provision of such services should be fully offset by its receipt of increased property tax revenue.⁵¹

There is, however, one other functional area in which the prospective impact of the proposed annexation on the County merits comment. While the proposed annexation would result in the entire Accawmacke Plantation being brought within the corporate boundaries of the Town and subject to the zoning and other regulatory authority of that municipality, the physical impact of that development will affect the County. In particular, certain public thoroughfares in the Cape Charles area (including State Routes 641 and 642), will require substantial improvement to serve the vehicular needs of an additional 7,000 persons.

Unless offset by developer contributions, improvements to public thoroughfares throughout Northampton County (including those within the

⁴⁹Of the 3,000 dwelling units planned for construction in the Accawmacke Plantation, approximately 2,500 will be built in the area proposed for annexation. (Davis, letter to staff of Commission on Local Government, Oct. 16, 1990.)

⁵⁰Ibid. Brown & Root projects that only approximately 40% of the property owners in the Accawmacke Plantation development will be permanent residents.

⁵¹Ibid. Brown & Root estimates that, based on studies of similar resort/second home developments, only 80-160 students will reside within the proposed Accawmacke Plantation development when completed. Those additional students would represent approximately 3 to 6% of the 1989 average daily membership of the County's school system.

Town of Cape Charles) are funded from an allocation of State funds dedicated for such use in Northampton County.⁵² As a consequence, any expenditure of State funds for road improvements to serve the Accawmacke Plantation will have the effect of reducing the amount of State aid available to address other significant road problems in the County.⁵³ Moreover, it should be noted that the present condition of the State's economy and the Commonwealth's budgetary concerns may even result in a reduction in the amount of State road construction money projected to be available for use in Northampton County during the current planning period.⁵⁴ In these circumstances, the prospective impact of the proposed annexation on the County's ability to address its road concerns requires recognition.

URBAN SERVICE CONSIDERATIONS

The annexation statutes require that consideration be given to the urban service needs of the area proposed for annexation, the level of services currently provided by the municipality proposing annexation and

⁵²When a municipality reaches a population of 3,500 persons, it assumes responsibility for the construction and maintenance of its public thoroughfares and, at that time, begins receiving State assistance for such purposes. (See Secs. 33.1-23.3 and 33.1-41.1, Code of Va.)

⁵³It is significant to note that the officially adopted plan for improvements to secondary roads in Northampton County during the period from July 1, 1990 through June 30, 1996 does not include any projects affecting those segments of State Routes 641 and 642 which will be immediately impacted by the Accawmacke Plantation. (See Northampton County Secondary Road System Six-Year Plan, adopted by Northampton County Board of Supervisors on February 12, 1990.)

⁵⁴Six-year plans for improvements to the Secondary Road System are developed on revenue "estimates" which are subject to revision. (Sec. 33.1-70.01, Code of Va.) If the Accawmacke Plantation were developed outside the corporate boundaries of the Town of Cape Charles, the developer would be subject to the conditional zoning authority of Northampton County. In such a case, the conditional zoning authority of Northampton County, which is substantially broader than that of the Town, would enable the County to accept proffers to cover the cost of necessary road improvements. [Sec. 15.1-491(a), Code of Va.]

by the affected county, and the relative ability of the two jurisdictions to serve the area in question. In this instance, the Town of Cape Charles is seeking to annex an area consisting of 3.19 square miles of territory which is predominantly vacant or used for agricultural purposes. With respect to future conditions, however, the current Northampton County land use plan, which was based upon a comprehensive analysis of the County's needs and anticipated growth, calls for development to occur in the areas immediately adjacent to Cape Charles and within the territory sought for annexation by the Town.⁵⁵ Consistent with the County's land use plan, Brown & Root, which owns the predominant portion of the area proposed for annexation, plans to develop its property over the next two decades into a residential community which will, at completion, house approximately 7,000 permanent and seasonal residents. The nature and scope of the development planned by Brown & Root must be considered in evaluating the urban service needs of the area proposed for annexation.

Sewerage

The Town of Cape Charles operates the only public sewage collection and treatment system in Northampton County. The Town's sewage treatment facility is a package plant that has a rated capacity of 0.25 million gallons per day (MGD). The municipal plant currently treats an average daily flow of 0.18 MGD, or approximately 72% of its treatment capacity.⁵⁶ In terms of sewage collection, the Town's present system consists of 8.1 miles of lines and four pump stations, with those facilities providing service to 899 connections within the corporate

⁵⁵County of Northampton, Comprehensive Plan, Part II (hereinafter cited as County Comprehensive Plan- II), Oct. 9, 1990, pp. 48-50.

⁵⁶Town Annexation Notice, p. II-12. State regulations require that when the average monthly flow of effluent into a sewage treatment plant for three consecutive months reaches 95% of the capacity authorized by its operating permit, the entity responsible for the plant must submit a plan to the State Water Control Board for the expansion of that facility. (See State Water Control Board, Permit Regulations, VR 680-14-01, Sec. 4.1.)

boundaries of Cape Charles.⁵⁷

The Town's sewerage system currently manifests a number of problems which must be addressed if the system is to serve properly the area sought for annexation. First, the Town's collection system is confronted with significant infiltration of groundwater and inflow of stormwater resulting, in part, from the age of the collection lines.⁵⁸ Town officials have stated, however, that studies were completed four years ago which have identified the problem areas and have permitted the Town to initiate a program to alleviate the problem.⁵⁹ Second, major deficiencies in the operation and maintenance of the Town's treatment facility were revealed by a June 1990 inspection by officials of the State Water Control Board and the Virginia Department of Health.⁶⁰ As a

⁵⁷Town Supplemental Submission, pp. 3-4. All residences within the current boundaries of Cape Charles are connected to Town sewerage. The Town serves no connections within the area proposed for annexation nor any others beyond its corporate limits.

⁵⁸A consultant for Cape Charles estimates that between 33% and 41% of the flow received by the Town's sewage treatment plant is stormwater or groundwater. (Testimony of David Rigby, Consultant, Town of Cape Charles, Transcript, Vol. I, p. 304.)

⁵⁹Testimony of Barton, Transcript, Vol. II, pp. 95, 102; and Town Supplemental Submission, pp. 4-6. In order to reduce the amount of groundwater and stormwater entering its sewage collections lines, the Town is in the process of terminating residential and commercial roof drain connections to those lines.

⁶⁰State Water Control Board, Notice of Violation, Cape Charles Sewage Treatment Plant, June 5, 1990; and Virginia Department of Health/State Water Control Board, Wastewater Facility Inspection Report, Cape Charles Sewage Treatment Plant, June 5, 1990. The State inspection found (1) mechanical or biological components of the treatment process at the Town's plant inoperable or shut down, (2) poor maintenance practices on plant machinery, and (3) missing maintenance and test records. Town officials also have acknowledged that analytical tests conducted by a Town employee to verify the plant's compliance with the effluent discharge limits imposed by its State operating permit may have been falsified. (Testimony of Barton, Transcript, Vol. II, pp. 99-100.) While previous State inspections of the Town's sewage treatment plant in June and November 1989 and March 1990 revealed no major deficiencies in the operation of the plant, those inspections did find a number of recurring operational and maintenance problems. Further, an October

result of that inspection, the Town was cited for violation of its State operating permit, fined \$5,000, and required to correct the identified defects. Cape Charles officials have advised, however, that since June 1990 the Town has made the necessary repairs to the sewage treatment plant to improve its overall operation and has taken other steps to ensure compliance with the requirements of the plant's operating permit.⁶¹

The development planned by Brown & Root on its property in Cape Charles and in the area proposed for annexation is predicated on the availability of utility services provided by the Town of Cape Charles. That development will require the Town's sewage collection and treatment facilities to be expanded in phases to accommodate, as noted earlier, an ultimate resident and seasonal population of approximately 7,000 persons. Under the terms of the agreement between the Town and Brown & Root, the firm will pay all costs associated with the "physical expansion" of the Town's sewage treatment plant ". . . to accommodate the additional treatment demands of the Brown & Root property beyond the limits of the Town's current permitted capacities."⁶² Further, Brown & Root has agreed to coordinate the connection of residential units constructed on its property with the expansion of the capacity of the

1989 inspection of the sewage treatment plant by a consultant for the Town revealed some of the same major operational and mechanical problems that were cited by State officials in June 1990. (Testimony of Rigby, Transcript, Vol. I, pp. 296-97.)

⁶¹Testimony of Barton, Transcript, Vol. II, pp. 77, 84. Since July 1990 the Town has replaced the personnel responsible for operating and maintaining the sewage treatment plant and has expended approximately \$26,000 to repair that facility.

⁶²See Agreement, Sec. 10. Under the terms of the agreement, the Town of Cape Charles will reserve sufficient capacity in its sewage treatment facility to serve the planned Accawmacke Plantation development. Further, to accommodate the initial phases of the proposed development, Brown & Root also has agreed to prepare within 90 days following the effective date of the annexation an application on behalf of the Town to increase the capacity of the sewage treatment plant to 0.50 MGD. (Nutter, letter to staff of Commission on Local Government, Nov. 3, 1990.)

sewage treatment plant.⁶³ In addition, all sewage collection lines required to serve the proposed Accawmacke Plantation development will be installed by Brown & Root and dedicated to the Town for maintenance purposes.⁶⁴ This commitment by Brown & Root to upgrade the Town's sewage treatment plant and to install the necessary collection lines is binding upon that company, its successors, or assigns.⁶⁵

In sum, while the area proposed for annexation does not have an existing need for central sewage collection and treatment facilities, the development planned for that area will require such facilities in the future. Since the only central sewage collection and treatment facility available to serve the area proposed for annexation is operated by Cape Charles, the Town is, in our judgment, the appropriate entity to meet the sewerage needs of that area. Further, the agreement between Brown & Root and the Town contains, as noted above, major commitments by both parties which should ensure that Cape Charles can properly serve the areas annexed.

⁶³Nutter, letter to staff of Commission on Local Government, Nov. 3, 1990. Consultants for Cape Charles have projected that the Town will require sewage treatment facilities capable of treating approximately 1.32 MGD when the proposed Accawmacke Plantation development is completed. That capacity would be established to accommodate a flow of 0.21 MGD from within the boundaries of the current Town, and 1.11 MGD from the area proposed for annexation. (Town Supplemental Submission, p. 8.) Further, those consultants have indicated that as the demand for sewage treatment increases in the future, the Town's current package treatment plant will have to be replaced by a more conventional facility. Moreover, because Cape Charles' sewage treatment plant discharges effluent into the Chesapeake Bay, an expansion of that facility's capacity beyond 1.0 MGD will require the plant to have tertiary treatment capability. (Testimony of Rigby, Transcript, Vol. I, pp. 288, 310.)

⁶⁴See Agreement, Sec. 10.

⁶⁵See Agreement, Sec. 15.

Water Supply and Distribution

The Town of Cape Charles also operates the only public water system in southern Northampton County. The Town obtains all of its water from two wells located in the area proposed for annexation and is permitted to pump 0.261 MGD collectively from those sources.⁶⁶ While the Town's treatment facility has the capacity to treat 0.325 MGD, water availability through the municipal system is restricted by the withdrawal limitation.⁶⁷ Since Cape Charles' present water distribution system requires approximately 0.150 MGD, the municipal system currently retains an unused reserve of 0.111 MGD.⁶⁸

In terms of water distribution and storage, the Town owns and operates approximately eight miles of lines and maintains two storage tanks, which collectively hold 200,000 gallons of treated water.⁶⁹ These facilities serve 899 connections within the Town's current

⁶⁶Town Annexation Notice, p. II-15. Raw water from the Town's wells is chlorinated and treated to remove manganese and iron. In 1986 State regulations were amended to require towns in Virginia to obtain water withdrawal permits from the State Water Control Board. In order to set a grandfathered limit for those towns under the revised regulations, municipalities were requested to document the amount of groundwater withdrawn during the 1984 - 1985 period. The State Water Control Board issued withdrawal permits to the affected municipalities, such as Cape Charles, based on the maximum amount of groundwater withdrawn on any one day during that two-year period. (Virginia P. Newton, Geologist, Water Resources Development, State Water Control Board, communication with staff of Commission on Local Government, Dec. 18, 1990.)

⁶⁷Town Annexation Notice, p. II-15. The permitted treatment capacity of the Town's water plant (0.325 MGD) is based upon a percentage of that facility's pumping capabilities (0.403 MGD). (Town Supplemental Submission, p. 11, Exh. 6.)

⁶⁸Testimony of Barton, Transcript, Vol. II, p. 76.

⁶⁹Town Supplemental Submission, p.13.

borders.⁷⁰ The Town offers the only public source of potable water available to meet the prospective needs of the area proposed for annexation.⁷¹

As in the case of sewerage, the Brown & Root development is predicated upon the availability of potable water provided by the Town's treatment system. In order to serve the area proposed for annexation, however, improvements will have to be made in the Town's water system. Town officials have indicated that due to the age of the municipal system approximately 40% of the water pumped from the municipal wells is lost through leaks in the distribution lines and storage facilities.⁷² These concerns should be obviated by the installation of a totally new water system which is due for completion by December 1991.⁷³

Notwithstanding these pending improvements, Cape Charles will be required to expand its water supply and distribution facilities in order to serve the Accawmacke Plantation development. The agreement between the Town and Brown & Root, however, commits that firm, as in the case of sewerage, to bear the cost of the "physical" expansion of Cape Charles' water treatment and distribution system required "to accommodate the

⁷⁰Ibid., p. 14. There are no Town water lines connections located in the area proposed for annexation or elsewhere beyond the limits of the municipality.

⁷¹The only other public water systems in the County are operated by the Towns of Eastville and Exmore. (Town Annexation Notice, p. II-15.) Residents located in the unincorporated portion of the County and in the County's three other towns rely on individual wells.

⁷²Testimony of Barton, Transcript, Vol. II, p. 27.

⁷³The Town has received a \$700,000 Community Development Block Grant and a \$807,500 grant and a \$1.7 million loan from the Farmers Home Administration for the replacement of its water system. (Testimony of Barton, Transcript, Vol. II, pp. 42,71-72; and Town Annexation Notice, pp. II-15 -- 16.) The new water system will include the construction of a 0.10 MGD raw water storage tank, a 0.30 MGD elevated storage tank for potable water, a 400 gallon per minute water treatment facility, and the installation of new water distribution lines throughout the entire Town. (Town Annexation Notice, Exh. 4.)

additional treatment demands of the Brown & Root property beyond the limits of the Town's current permitted capacities."⁷⁴ In terms of water supply, Brown & Root has drilled five wells on its property to provide the Town with the additional water needed to serve Accawmacke Plantation development.⁷⁵ The company has been granted a permit by the State Water Control Board to withdraw approximately 1.1 MGD of groundwater from those wells.⁷⁶ In order to assure that the needs of the annexed area do

⁷⁴See Agreement, Sec. 10. The agreement requires the Town of Cape Charles to reserve sufficient capacity in its water supply and distribution system to serve the proposed Accawmacke Plantation development.

⁷⁵While Brown & Root will retain title to the wells drilled on its property, the water pumped from those wells will be made available to the Town for treatment and sale to water customers located within the Accawmacke Plantation development. Special counsel for the Town has advised the Commission that Brown & Root proposes to negotiate an agreement with Cape Charles which would permit the company to credit the cost of the water furnished by Brown & Root against the water system connection fees to be levied by the Town within the Accawmacke Plantation development. (Nutter, communication with staff of Commission on Local Government, Nov. 14, 1990.)

⁷⁶Proceedings of State Water Control Board, Minute No. 27, Jan. 7, 1991. Brown & Root's permit to withdraw 1.1 MGD of groundwater to serve the Accawmacke Plantation development contained conditions requiring the company to submit to the State Water Control Board a groundwater model incorporating historical data which confirms that the water level decline caused by the withdrawal will be confined within the Accawmacke Plantation property. Further, Brown & Root will be required to monitor the operation of its well system to insure that there will be no intrusion of saltwater into the underground aquifer. The Commission notes that Brown & Root previously had submitted an application to the Virginia Water Control Board for a permit to withdraw 1.6 MGD to serve the entire Accawmacke Plantation development, but resubmitted the request for the smaller amount to prevent depletion of the underground water table, to reduce the intrusion of saltwater into the aquifer, and to insure that the wells drilled within the proposed development did not affect similar facilities located beyond the boundaries of the company's property. (Testimony of Tollison, Transcript, Vol. I, pp. 264, 274.) In their submittals to the Virginia Water Control Board, consultants for Brown & Root projected that the Accawmacke Plantation development would require 1.1 MGD of groundwater when completed and that two additional wells may be needed to meet future demands. (F&ME Consultants, Ground Water Resources of the Accawmacke Plantation, Draft, Aug. 1990, pp. 4, 23-24.)

not exceed the capacity of the Town's water system, Brown & Root has agreed to coordinate the construction of residential units on its property with the expansion of the Town's water treatment plant.⁷⁷ With respect to water distribution; the water lines which will serve the properties owned by Brown & Root will be installed by that company and dedicated to Cape Charles for subsequent maintenance.⁷⁸ These commitments by Brown & Root are binding upon any successors or assigns which may assume responsibility for the Accawmacke Plantation.⁷⁹

Although the area proposed for annexation has no immediate need for central water service, the demand for such service will increase as that area develops. The planned improvements to Cape Charles' water system and the utility obligations contained in the agreement between the Town and Brown & Root should ensure that Cape Charles will have the capacity to meet the future potable water needs of that area.

Solid Waste Collection and Disposal

The Town of Cape Charles provides its residents with twice-weekly curbside solid waste collection service and extends to its business establishments a schedule of collections dependent upon their individual needs.⁸⁰ The cost for residential collection service is \$8.35 per month.⁸¹ Cape Charles disposes of its solid waste at the County's landfill, which is located near the community of Oyster approximately

⁷⁷Nutter, letter to staff of Commission on Local Government, Nov. 3, 1990.

⁷⁸See Agreement, Sec. 10.

⁷⁹See Agreement, Sec. 15.

⁸⁰Town Annexation Notice, p. II-17. The Town currently provides refuse collection to 758 residences and 52 commercial establishments.

⁸¹Ibid. The cost of solid waste collection services to business concerns varies according to the frequency and type of collection.

five miles northeast of the Town.⁸²

Northampton County does not provide any solid waste collection service to individual residences, but County residents can dispose of their household wastes at one of several County-operated solid waste collection sites located throughout the County.⁸³ Some County residents and businesses, as a result of their location, also have the option of contracting directly with private firms for collection services, with the cost of such service determined by the frequency of collection.

At the present time, the area proposed for annexation has a minimal need for the solid waste collection and disposal services provided by the Town. As that area develops in accordance with the plans put forth by Brown & Root, however, solid waste services should grow in significance. The Town of Cape Charles is capable of meeting the refuse collection needs of the area.⁸⁴

⁸²Ibid. The Town pays the County a monthly fee for disposal at the landfill which is based on the pro rata share of the operation and maintenance cost of that facility. In 1989 the Town was charged \$2,308 a month by the County for use of the landfill. (Town Supplemental Submission, p. 16.) The County's landfill was constructed in 1987 and currently has a useful life of 20 years. [County of Northampton, Comprehensive Plan, Part I (hereinafter cited as County Comprehensive Plan - I), Dec. 15, 1989, p. 98.] Development in the area proposed for annexation will, however, reduce its useful life.

⁸³Ibid. There are 17 solid waste collection sites located throughout Northampton County, but none of those sites are within two road-miles of the current Town limits. (Town Supplemental Submission, p. 16.)

⁸⁴In order to serve the initial phases of the development, the Town projects that it will be required to hire two additional sanitation employees and purchase an additional collection vehicle within five years following the effective date of the annexation. (Davis, letter to staff of Commission on Local Government, Oct. 16, 1990.) The Commission notes that as the area proposed for annexation develops, the landfill usage fee paid by the Town to the County also will increase.

Public Planning, Zoning, and Subdivision Regulation

The Town of Cape Charles established its first planning commission in 1969 and has subsequently adopted a number of planning and development control instruments to guide its growth.⁸⁵ With respect to the Town's current comprehensive plan, which was adopted in June 1990, we note that the instrument includes a detailed implementation section with specific recommendations for the utilization of its zoning, subdivision, and other development control ordinances.⁸⁶ In addition, the Cape Charles plan contains a number of supplemental planning components, which have been adopted by the Town, covering areas such as housing, transportation, public services, and historic preservation. The Commission observes, however, that Cape Charles does not have a specific program which coordinates the Town's five-year capital improvements program with its comprehensive planning process.⁸⁷ Further, the Town has no staff assigned full-time to the administration and application of its planning and development control instruments.⁸⁸

⁸⁵Town Annexation Notice, p. II-18; and Town of Cape Charles, Proposed Findings of Fact and Terms of Annexation (hereinafter cited as Town Proposed Findings), Nov. 9, 1990, p. 12.

⁸⁶Town of Cape Charles, Comprehensive Plan, June 12, 1990. Although Section 15.1-454 of the Code of Virginia requires comprehensive plans to be reviewed at least once every five years by the local planning commission, Cape Charles did not commence the update and revision of its 1980 comprehensive plan until 1989.

⁸⁷The Town's annual budget does contain a capital expenditures component, but there is no indication that the fiscal instrument is coordinated with the comprehensive plan. Despite this limitation, the Town's comprehensive plan appears to be in general compliance with the requirements of Sections 15.1-466.1 and 15.1-447 of the Code of Virginia.

⁸⁸The Cape Charles Town Manager acts as the Town's planner and land development control administrator. The Town also utilizes planning services provided by the Accomack-Northampton Planning District Commission and by private consultants. As part of the Town's proposal to serve the area proposed for annexation, Cape Charles plans to hire a full-time planning director following the effective date of the annexation. (Davis, letter to staff of Commission on Local Government, Oct. 16, 1990.)

With respect to zoning, Cape Charles' current ordinance, which was adopted in 1987, establishes four discrete districts - one each for residential, business, industrial, and open space and recreational usages.⁸⁹ Further, the Town's ordinance contains provisions authorizing the use of conditional zoning to assist in the control of development.⁹⁰ The Commission observes, however, that the effectiveness of Cape Charles' management of the development planned for the area proposed for annexation would be limited by several deficiencies in the Town's zoning regulations. Although the Cape Charles zoning ordinance contains provisions for planned unit developments (PUD) within the Town's residential zoning district, only those uses allowed by right or with a conditional use permit in the R-1 Residential and O-1 Open Space and Recreational zoning districts would be permitted within a PUD. Thus,

⁸⁹The Town's zoning ordinance is non-pyramidal and does not permit any lesser intensive use in areas zoned for more intensive development. The Commission notes, however, that the Town's ordinance does permit multi-family dwellings and mobile home parks as conditional uses with the residential district. This aspect of the ordinance can cause land use conflicts unless properly administered. Cape Charles officials have advised the Commission that the Town has recently revised its Sedimentation and Erosion Control and Flood Plain Ordinances and adopted the necessary maps and performance criteria as specified by the Chesapeake Bay Preservation Act. (Town Proposed Findings, p. 12.)

⁹⁰Town of Cape Charles, Zoning Ordinance (hereinafter cited as Town Zoning Ordinance), Article 13. Conditional zoning is a procedure that allows local governments to accept conditions voluntarily proffered by an applicant for a rezoning, and if the conditions are accepted by the locality, they become part of the rezoning and are binding on the property. (Virginia Department of Housing and Community Development, "Conditional Zoning in Virginia, Some Questions and Answers," Planning Assistance Bulletin, No. 2-89, Sep. 1989.) The Code of Virginia authorizes three types of conditional zoning for specified classes of local governments, with the primary difference between them being the restrictions placed on the conditions (e. g., proffers) localities are permitted to accept. The Town of Cape Charles exercises the most restrictive type of conditional zoning which is found in Section 15.1-491.2 of the Code of Virginia. That section stipulates that proffered conditions must relate to the physical development or the physical operation of the property and may not include cash contributions to the locality, the mandatory dedication of property for certain types of public facilities, nor the provision of off-site improvements.

the application of the current provisions of the Town's PUD district to the proposed Accawmacke Plantation development would not permit retail nor other commercial uses within that development.⁹¹ Further, the presence of only four districts in the Town's ordinance render it inadequate to control effectively the changes in land use which may occur within the present Town boundaries as a result of the development of Accawmacke Plantation. Moreover, the Commission is obliged to observe that the application of the Town's regulations with respect to signs can lead to unnecessary visual pollution throughout the enlarged municipality.⁹²

In terms of subdivision regulations, Cape Charles' current ordinance, which was adopted in 1977, applies to any division of property.⁹³ The Town's subdivision regulations include a prohibition of private streets, mandatory connection to Town utilities, installation of fire hydrants, curbs, gutters and sidewalks, and street construction standards.⁹⁴

⁹¹Town Zoning Ordinance, Sec. 14-1-1. In addition, the marina which is planned for the Accawmacke Plantation development would be permitted only in the Town's B-1 Business zoning district. (Ibid., Sec. 5-1-38.) Moreover, a planning consultant for Cape Charles has acknowledged that the Town's zoning ordinance does not contain the provisions necessary to manage effectively a development of the scale proposed for the area sought for annexation and may require modification. (Testimony of Earle V. Britton, Consultant, Town of Cape Charles, Transcript, Vol. I, pp. 111, 147.)

⁹²The Town's sign regulations do not specifically regulate setback or height for any signs permitted within the Town. In addition, Cape Charles' sign regulations do not regulate the dimensions of general advertising signs, which are allowed in the business and industrial zoning districts, nor locational signs, which are permitted in the Town's industrial zoning district. (Town Zoning Ordinance, Secs. 2-64-3 and 2-64-4.)

⁹³Town of Cape Charles, Subdivision Ordinance (hereinafter cited as Town Subdivision Ordinance), Sec. 2-30.

⁹⁴Ibid., Secs. 5-4-1-6, 5-4-1-8, 5-4-3, 5-4-4, and 5-4-7. The subdivision administrator can also require a developer to install streetlights within a new subdivision if such is deemed appropriate. (Sec. 5-4-6.)

The Commission notes that preliminary plans for the Accawmacke Plantation development contain proposals that conflict with the Town's subdivision regulations. Specifically, a Town planning consultant has testified that some single-family residential areas within Accawmacke Plantation would be served by private streets.⁹⁵ Moreover, the evidence indicates that Brown & Root does not propose to install curbs, gutters, and sidewalks throughout that development.⁹⁶ Thus, a number of provisions in the Town's subdivision regulations will require reconciliation with facets of the proposed Accawmacke Plantation.

Northampton County established its first planning commission in 1964, and in 1978, in concert with four of its incorporated towns, formed the Northampton County Joint Local Planning Commission.⁹⁷ The latter body serves as the planning commission for the five participating jurisdictions and coordinates planning and land development control

⁹⁵Testimony of Britton, Transcript, Vol. I, pp. 64-66; 102-103. Preliminary plans for the large lot single-family residential areas in the Southern Tract of the Accawmacke Plantation development call for those residences to be served by private roads in order to restrict access for security reasons.

⁹⁶Ibid., pp. 113-114; and Testimony of Barton, Transcript, Vol. II, pp. 40-41. Although curbs and gutters may be installed along some thoroughfares within the proposed Accawmacke Plantation development to assist in street maintenance, Brown & Root plans to utilize the stormwater runoff from the areas within the development not served by such facilities to replenish the groundwater aquifer. Further, preliminary plans for Accawmacke Plantation call for the installation of an interior system of paved pathways in lieu of sidewalks.

⁹⁷County of Northampton, Response of the County of Northampton to the Notice of the Town of Cape Charles Petition for Annexation of Territory in Northampton County (hereinafter cited as County Response), p. III-14. Section 15.1-443 of the Code of Virginia permits adjoining jurisdictions to form joint local planning commissions. The Northampton County Joint Local Planning Commission is one of seven joint county-town planning bodies in the Commonwealth, but it is the only one comprised of more than two jurisdictions. (Virginia Department of Housing and Community Development, Directory of Local Planning in Virginia, 1990, Feb. 1990.) Neither the Town of Belle Haven, which is located predominantly in Accomack County, nor Cape Charles is a member of the joint planning commission.

activities for the member jurisdictions. To that end, the joint planning commission is responsible for the preparation and revision of the comprehensive plans and for the review of zoning and subdivision requests affecting member localities.⁹⁸

The County's current comprehensive plan, which was adopted in October 1990, is founded on recent data and contains specific goals and implementation measures for various sub-areas of Northampton County.⁹⁹ Further, the County's comprehensive plan contains a number of supplemental elements with respect to community facilities, economic development, health services, housing, and transportation. In terms of implementation, Northampton County has established two full-time and one part-time staff positions to assist in the administration and management of its planning and land development control instruments.¹⁰⁰ The Commission notes, however, that the County has not adopted a five-year capital improvements plan to coordinate its fiscal planning and land

⁹⁸The recommendations of the joint local planning commission are forwarded to the governing body of the affected jurisdiction for final approval.

⁹⁹County Comprehensive Plan-I; and County Comprehensive Plan-II. The current comprehensive plan was developed with the assistance of the four incorporated towns that are members of the joint planning commission. (John L. Humphrey, Director, Department of Planning and Zoning, County of Northampton, communication with staff of Commission on Local Government, Nov. 26, 1990.) The plan contains goals, objectives, and policies for the County collectively and for the four sub-areas of the County. Although Section 15.1-454 of the Code of Virginia requires comprehensive plans to be reviewed at least once every five years by the local planning commission, there is no evidence that the Northampton County Joint Local Planning Commission reviewed its 1979 comprehensive plan for updating until 1989. The current Northampton County comprehensive plan, however, appears, in our judgment, to meet the requirements of Secs. 15.1-466.1 and 15.1-447 of the Code of Virginia.

¹⁰⁰Humphrey, communication with staff of Commission on Local Government, Nov. 26, 1990. The part-time planning staff member also enforces the County's building codes. The County's planning department handles zoning and planning matters for the Towns of Nassawadox and Cheriton and responds to requests for assistance from the other towns in Northampton County as well. (County Response, p. III-14.)

development control processes.¹⁰¹

The County's current zoning ordinance, which was adopted in 1983 and last revised in 1990, establishes 11 districts - 4 residential, 3 business, 3 industrial, and 1 agricultural/residential.¹⁰² The Commission notes that ordinance reflects experience in the management of large scale development. In this regard, the planned unit development, site plan review, and other provisions of the County's ordinance appear to be more appropriate than those of the Town's ordinance for the development contemplated in the area proposed for annexation.¹⁰³ However, while certain provisions of Northampton County's zoning ordinance regulating signage are more restrictive than those found in the Town's ordinance, the application of the County's sign regulations in its business and industrial zoning districts can and has led to

¹⁰¹Humphrey, communication with staff of Commission on Local Government, Nov. 26, 1990.

¹⁰²County of Northampton, Zoning Ordinance (hereinafter cited as County Zoning Ordinance), Sec. 1-9. In addition, the ordinance includes overlay districts for historic preservation, flood hazard, airport protection, planned unit development (PUD) and Chesapeake Bay/Atlantic Ocean preservation areas. The County's zoning ordinance is non-pyramidal.

¹⁰³The County's PUD overlay zoning district offers potential developers flexibility with respect to permitted uses and densities, while at the same time protecting the environment and adjacent land uses. The Commission observes, however, that the County requires all PUD's to be served by central sanitary sewer disposal facilities and an approved central water supply. (County Zoning Ordinance, Sec. 21-1.) Thus, if the proposed Accawmacke Plantation development was to proceed under County land development control regulations, Brown & Root would be required to construct such facilities or to receive permission from Cape Charles to connect to the Town's public utility system. (Testimony of Britton, Transcript, Vol. I, pp. 76-77, 109-110.) The County's zoning ordinance also contains detailed provisions regarding the submission and review of preliminary and final site plans. Moreover, Northampton County has adopted conditional zoning to assist in its land development control efforts and exercises the least restricted form of conditional zoning. [Section 15.1-491(a), Code of Virginia.] That statute permits the County to accept cash contributions, mandatory dedication of property, and the construction of off-site public improvements from rezoning applicants.

unnecessary visual pollution.¹⁰⁴

The County's current subdivision ordinance, which was adopted in 1977, applies, with certain exceptions, to all divisions of property. Subdivisions resulting in lots of five acres or more which do not involve the establishment of a new street are exempt from the ordinance.¹⁰⁵ Also, the ordinance does not apply to subdivisions of property between adjoining landowners which do not create additional building sites, those made for bona fide agricultural or natural resource conservation purposes, and those for the creation of lots for family members.¹⁰⁶ The Commission notes that the County's ordinance also contains special provisions regulating "major" subdivisions of 26 or more lots.¹⁰⁷ Further, while the County's subdivision regulations allow the construction of private roads in certain developments, such thoroughfares are permitted only within subdivisions consisting of five lots or less.¹⁰⁸

¹⁰⁴County Zoning Ordinance, Art. 23. Permitted uses within the County's business and industrial zoning districts are allowed to erect as many as 7 or 8 signs with a collective surface of between 300 and 570 square feet.

¹⁰⁵County of Northampton, Land Subdivision and Development Ordinance, Sec. 15.01. If the subdivision of land results in the creation of a new street, the ordinance applies regardless of lot size.

¹⁰⁶Ibid. If the division of land for the creation of lots for family members results in parcels of less than five acres, such lots are required to be served by a right-of-way to a dedicated secondary road.

¹⁰⁷Ibid., Sec. 15.02. Subdivisions of 26 or more lots are known as "major" subdivisions and require approval by the County planning commission, whereas the approval authority for "minor" subdivisions (less than 26 lots) rests with the County planning director.

¹⁰⁸Ibid., Sec. 18.05. The County's standards for right-of-way and pavement width for private roads are equivalent to those of the Virginia Department of Transportation for public secondary roads. (Ibid., Appendix A; and Virginia Department of Transportation, Subdivision Street Standards, 1989.) Further, the minimum lot size for parcels served by private roads is one acre or more. The Commission observes that if the proposed Accawmacke Plantation development is to proceed as currently planned in Northampton County, the provisions in the County's

In sum, both the Town and County have adopted an appropriate array of planning and development control measures to regulate growth within their respective jurisdictions. In our view, however, Northampton County's planning and land development control efforts, especially with respect to the regulations of large-scale development and the employment of a full-time planning staff, give that jurisdiction a greater public planning capacity than is currently available to the Town. Proper and effective management by Cape Charles of the area proposed for annexation requires a strengthening of the Town's development control instruments and their administration.

Crime Prevention and Protection

Law enforcement services within the Town of Cape Charles are provided through the Town's police department. This department has a total of four full-time sworn law enforcement personnel, all of whom are assigned patrol responsibility.¹⁰⁹ The duty shifts of those officers are structured so that the Town is regularly patrolled 24 hours per day.¹¹⁰ The staffing level of the Town's police department provides one police officer for each 351 Town residents. In terms of crime prevention activities, the Town is engaged in a limited number of programs, although no officer is assigned such responsibility on a full-time basis.¹¹¹

subdivision ordinance regarding private roads would have to be modified to accommodate that development.

¹⁰⁹Town Annexation Notice, p. II-20. Town police officers have available two vehicles to assist in their law enforcement duties. (Barton, communication with staff of Commission on Local Government, Dec. 3, 1990.)

¹¹⁰Town Annexation Notice, p. II-21. Upon request, Town police officers will assist County law enforcement deputies in responding to calls for service beyond Cape Charles' corporate boundaries.

¹¹¹Town Supplemental Submission, p. 18. The Town police department provides nightly escort service to local merchants making bank deposits.

The Northampton County Sheriff's Department, which maintains its headquarters in the Town of Eastville, assists Cape Charles in meeting its law enforcement needs. Sheriff deputies respond to calls for service within Cape Charles during periods when such assistance is needed.¹¹² Further, the County provides dispatch services and jail facilities to assist Cape Charles in its law enforcement activities.

Although the area proposed for annexation does not have an immediate need for increased law enforcement services, the nature and character of the development proposed for that area is such that it will, in time, benefit from the more proximate and intensified law enforcement services which can be provided by the Town. In order to extend these services to the area proposed for annexation, Cape Charles anticipates the need to employ six additional police officers to serve properly the Accawmacke Plantation during its initial phases of development.¹¹³

¹¹²Town Annexation Notice, p. II-20; and Barton, communication with staff of Commission on Local Government, Dec. 3, 1990. The absence of Town officers due to sickness, training assignments, or other reasons, creates conditions necessitating County assistance. The Northampton County Sheriff's Department has a complement of eight law enforcement deputies and provides law enforcement services directly to the Towns of Cheriton, Nassawadox, and Eastville which do not have their own police departments. Thus, the staffing level of the Sheriff's Department provides one patrol deputy for each 1,319 residents, exclusive of the populations residing in the Towns of Cape Charles and Exmore. In addition, the department also employs ten full-time correctional deputies and four full-time dispatchers.

¹¹³Davis, letter to staff of Commission on Local Government, Oct. 16, 1990. The need for additional Town law enforcement personnel to serve the area proposed for annexation will depend on the rate of development of Accawmacke Plantation. The Town currently plans to employ one additional police officer for each 100 housing units constructed within that community. (Town Supplemental Submission, p. 19.) Brown & Root has indicated to the Commission that the large lot single-family residential areas within the Southern Tract of that development may be patrolled by a private security force.

Street Maintenance

Currently all of the public roads in the Town of Cape Charles, the area proposed for annexation, and the County generally are maintained by the Virginia Department of Transportation (VDOT) in accordance with State-prescribed policies. The Town, however, has invested local funds to assist the State in addressing the road maintenance concerns within the municipality. The data reveal that between FY1985-86 and FY1988-89 the Town contributed approximately \$46,000 in local funds to improve and maintain approximately 20 lane-miles of roadway within its corporate boundaries.¹¹⁴

The proposed annexation will not alter responsibility for the maintenance of public thoroughfare in the area. Responsibility for the maintenance of the approximately four lane-miles of public roadway in the area proposed for annexation will remain with VDOT. When the population of the enlarged Town, however, reaches 3,500 persons, Cape Charles will become responsible for both the construction and maintenance of all public thoroughfares throughout its jurisdiction.¹¹⁵

While the proposed annexation will, in time, place responsibility for both the construction and maintenance of public thoroughfares upon the Town, there are conditions which will mitigate the impact. First, Brown & Root will be expected to bear the cost of constructing the public roadway on its property which will be required to serve

¹¹⁴Town Financial Report; and Taylor F. Turner, Jr., Consultant, Town of Cape Charles, letter to Nutter, Dec. 3, 1990. All of the streets in Cape Charles are maintained by VDOT. (Town Supplemental Submission, pp. 24-25.)

¹¹⁵Sec. 33.1-41.1, Code of Va. Data submitted by Cape Charles indicate that based on its 1990 population and current development plans for Accawmacke Plantation, the permanent population of the enlarged Town is projected to reach the 3,500 person threshold in 2001. (Town Supplemental Submission, Exh. 15.)

Accawmacke Plantation.¹¹⁶ Second, State financial assistance will substantially offset the Town's road maintenance costs.¹¹⁷ Given the nature of the proposed development and financial support from the State, the Town of Cape Charles should, in our judgment, have the capacity to manage the public thoroughfares within its jurisdiction when that responsibility is placed upon it.

Public Recreational Facilities

The Town of Cape Charles owns two sites, containing approximately 17 acres of property, committed to serving the recreational needs of its residents. One of these sites embraces the only public beach on the Eastern Shore fronting the Chesapeake Bay.¹¹⁸ In addition to the

¹¹⁶Brown & Root has agreed that all public roadway which it constructs to serve the Accawmacke Plantation will be built to State standards and, accordingly, will qualify for State assistance when the Town reaches a population of 3,500. (Agreement, Sec. 11.) Brown & Root has also agreed to "participate" in the extension of Fig Street to the southern section of the Accawmacke Plantation such that the Town of Cape Charles "shall not be responsible for any cost for either the acquisition or construction" of that road segment. (Agreement, Sec. 12.)

¹¹⁷Consultants for the Town estimate that five years following the effective date of the annexation, Cape Charles' assumption of the responsibility for the maintenance of the public roads in the enlarged Town will require an initial expenditure of \$80,000 for the purchase of equipment and the allocation of \$238,000 annually for personnel and operating expenses. (Davis, letter to staff of Commission on Local Government, Oct. 16, 1990; and Turner, letter to Nutter, Dec. 3, 1990.) Concurrent with the assumption of this responsibility, however, the Town will also become eligible to receive categorical aid for the maintenance of streets which qualify for such payments. (See Sec. 33.1-41.1, Code of Virginia.) The Town estimates that, if it were eligible for State road maintenance payments in 1997, it would receive approximately \$168,000 from the Commonwealth. (Turner, letter to Nutter, Dec. 3, 1990.)

¹¹⁸Town Supplemental Submission, p. 20. The site consists of approximately 12.5 acres of property with a gazebo and walkway along the bulkhead protecting the one-half mile long beach. The site was donated to the Town by Brown & Root. (Testimony of Barton, Transcript, Vol. II, p. 24.) The Town also operates a small marina in the Cape Charles Harbor of Refuge with 13 boat slips available for rent by the public.

municipally-owned facilities, however, the Town leases a 3.5 acre site containing a baseball field for use by organized athletic leagues.¹¹⁹ In terms of organized recreational programs, the Town relies principally on the activities offered by civic groups.¹²⁰

The recreational opportunities in the Cape Charles environs made available through municipal effort are augmented by other facilities in the area. The Northampton County Club, which is located on property owned by Brown & Root in the Town, provides residents of the area a nine-hole golf course.¹²¹ While the golf course is managed by a private membership corporation, non-members are permitted to use the facility as guests on a daily fee basis.¹²² Thus, although the Northampton County Club golf course is a private facility that is operated primarily for the benefit of its members, it is an important recreational resource available to the residents of the Town and County.¹²³

(Comprehensive Plan, Technical Analysis, p. 25.)

¹¹⁹Town Annexation Notice, p. II-25. The baseball field is located in the area proposed for annexation on property owned by the Eastern Shore Railroad.

¹²⁰Town Supplemental Submission, pp. 21-22. The Town contributes funds to sponsor various festivals and special events.

¹²¹The golf course, which is the only facility of its type in Northampton County, is located within the Northern Tract of the property owned by Brown & Root. The company leases the golf course to the Northampton Country Club for \$750 a year. (Testimony of Clifton, Transcript, Vol. II, p. 119.)

¹²²The Northampton Country Club has 160 members, 25 of whom are residents of Cape Charles. (Barton, communication with staff of Commission on Local Government, Dec. 3, 1990.) Non-members, if sponsored by a member, may use the golf course by paying an \$8.00 fee on weekdays and \$12.00 on weekends.

¹²³The Commission observes that Brown & Root's plans for the Northern Tract of Accawmacke Plantation call for the construction of single-family and multi-family residential units on the site of the Northampton Country Club golf course during the initial phases of that project. Brown & Root plans to develop a 36-hole golf courses in the Southern Tract of Accawmacke Plantation, with 18 holes being constructed during the initial phases of development. While those facilities will

Northampton County also provides recreational opportunities to residents of the Cape Charles area under the direction of its Parks and Recreation Department. While the department owns and operates only one park site, containing approximately 52 acres, it utilizes a number of school properties.¹²⁴ While the County's Parks and Recreation Department does not utilize the Cape Charles Elementary School as part of its regular recreational operations, that facility can be made available for recreational purposes upon request.¹²⁵ With respect to recreational programs, the County employs a staff of 1 full-time, 2 part-time, and approximately 30 seasonal personnel to administer and oversee such activities.¹²⁶ With the assistance of that staff, the Department of Parks and Recreation promotes the operation of organized athletic leagues, instructional classes, special events, and activities for the elderly and handicapped at various sites throughout the County.¹²⁷

be controlled by a private organization comprised of Accawmacke Plantation residents, officials of Brown & Root have indicated that non-members may be permitted to use the golf courses for a fee until the facilities are financially self-supporting. (Testimony of Clifton, Transcript, Vol. II, p. 119-22.)

¹²⁴County Response, p. III-22. Indiantown Park, which is located approximately eight miles northeast of the Town, contains a softball field, a playground, a swimming pool, nature trails, and a recreation center. (County Comprehensive Plan, Part I, p. 101.) The swimming pool at Indiantown Park was donated to the County by Brown & Root. (Testimony of Barton, Transcript, Vol. II, p. 24.)

¹²⁵ Authorization for use of the recreational facilities after school hours must be obtained from the Northampton County School Board. (Comprehensive Plan, Technical Analysis, pp. 24-25.) Recreational facilities at the Cape Charles Elementary School include an athletic field, playground equipment, outdoor basketball courts, and a gymnasium. The school was owned and controlled by the Town until 1987 when ownership was transferred to the County.

¹²⁶Ibid.; and Betty Cersley, Secretary, Northampton County Department of Parks and Recreation, communication with staff of Commission on Local Government, Dec. 3, 1990.

¹²⁷County Response, pp. III-22-23. The County's recreational programs are open to all residents of Northampton County, including those of the incorporated towns, on an equal basis.

In terms of addressing the prospective recreational needs of the enlarged municipality, Cape Charles proposes to create a recreation department and employ a staff of both full-time and seasonal personnel to assist in the operation and management of recreational facilities and programs.¹²⁸ Further, under the terms of the agreement between the Town and Brown & Root, the company will fund a portion of the planning costs for the development of new recreational areas and will construct additional recreational facilities subsequent to the proposed annexation.¹²⁹ Moreover, the plans for the proposed Accawmacke Plantation development call for Brown & Root to construct various on-site recreational facilities designed to serve specifically the residents of that development.¹³⁰

Although there is no immediate need for additional public recreational facilities and programs to serve the area proposed for annexation, the development of that area will be accompanied by an increased interest and demand for recreational opportunities. While the

¹²⁸Davis, letter to staff of Commission on Local Government, Oct. 16, 1990. If the annexation is granted in its entirety, the Town estimates that it will expend approximately \$107,000 in 1997 for the operation of its proposed recreation department.

¹²⁹Agreement, Sec. 19. Brown & Root will be responsible for the Town's matching portion of any grants received for the engineering design of a breakwater for the Town's beach and for planning the redevelopment of the Cape Charles Elementary School site, if that facility is abandoned by the County School Board. Further, under the terms of the agreement, Brown & Root will construct two tennis courts and four shuffleboard courts within the Town. The agreement also requires Brown & Root to provide a portion of Cape Charles' cost to develop a passive recreational facility on a Town-owned parcel located in its vacant industrial park adjacent to the area proposed for annexation. The proposed park, which will be comprised primarily of wetlands, will be use by Brown & Root as a drainage retention facility for the proposed Accawmacke Plantation development. (Agreement, Sec. 13.)

¹³⁰Town Supplemental Submission, pp. 30-31. Recreational facilities to be constructed by the developer of Accawmacke Plantation include a 36-hole golf course, a 750 slip marina, an equestrian center, nature trails, and passive recreation areas.

plans for Accawmacke Plantation call for the construction of certain on-site facilities which will provide recreational services to the residents of that resort community, those facilities will not supplant the need for a higher level of public recreational facilities to serve Town residents generally. The Town of Cape Charles has anticipated that need and appears prepared to address it.

Library Facilities and Services

Residents of Cape Charles, and those of the County generally, are provided library services through the Eastern Shore Public Library, a regional system operated jointly by Northampton and Accomack Counties.¹³¹ That system's central facility, which is located in the Town of Accomac, has a floor area of approximately 12,000 square feet and, as of June 30, 1989, maintained 64,600 books.¹³² This library, which is staffed by five full-time and six part-time personnel, is open to the public 52 hours per week.¹³³ Additional library services within Northampton County are provided by means of the Eastern Shore Public

¹³¹In FY1988-89 the County contributed approximately \$45,000 to the operation of the regional library. (County Financial Report.) In addition to support from Northampton and Accomack Counties, the Eastern Shore Library also receives funds from the Virginia State Library and the federal government. (County Response, p. III-26.)

¹³²County Comprehensive Plan, I, p. 116; and Virginia State Library and Archives, 1988-89 Statistics of Virginia Public Libraries and Institutional Libraries, June 1990, pp. 29, 46. The central facility is located approximately 40 miles northeast of the Town of Cape Charles. The Eastern Shore Public Library had a circulation of approximately 173,000 volumes during the year ending June 30, 1989. (1988-89 Statistics of Virginia Public Libraries and Institutional Libraries, p. 46.)

¹³³County Response, p. III-26; and Brooks M. Barnes, Librarian, Eastern Shore Public Library, communication with staff of Commission on Local Government, Dec. 4, 1990. Two of the regional library's full-time staff are certified librarians. (1988-89 Statistics of Virginia Public Libraries and Institutional Libraries, p. 13.)

Library's bookmobile.¹³⁴ The bookmobile makes biweekly stops at ten different sites throughout the County, including the Town of Cape Charles.¹³⁵

The Town of Cape Charles is engaged directly in the provision of library services to its residents through the Northampton Memorial Library, which has been operated and principally funded by the Town since 1981.¹³⁶ That library, which operates from a facility owned by the Town, is only open to the public 12 hours per week and is staffed solely by one part-time librarian.¹³⁷ The Northampton Memorial Library has a small collection of books (5,182) and a modest total circulation (6,516 volumes in 1989).¹³⁸ Although primarily supported by the Town, the Northampton Memorial Library also receives financial assistance from

¹³⁴The bookmobile is equipped to carry approximately 3,500 volumes. Almost 22% of the circulation of the regional library is through its bookmobile. (County Comprehensive Plan, Part I, p. 116.) In addition, the regional library has available a toll-free telephone number for use by residents of the Town and Northampton County to request that particular books be delivered either by the bookmobile or mail. (County Response, p. III-26.)

¹³⁵Ibid., p. III-27. The length of the stop is determined by the historical circulation rate for the particular location. The average time spent by the bookmobile in Cape Charles during its biweekly visit is approximately one hour. (Town Annexation Notice, II-26.)

¹³⁶Comprehensive Plan, Technical Analysis, pp. 23-24. The Northampton Memorial Library, which has been located in the Town since 1917, was an independent library until the formation of the Accomack and Northampton County regional library system in 1957. At that time the Town's library became a branch of the regional system, but in 1981 it resumed operations as an independent facility. The Northampton Memorial Library is governed by a library board appointed by the Town council.

¹³⁷Ibid., p. 24. The part-time staff member is not a certified librarian.

¹³⁸Town Annexation Notice, p. II-26. Although the Town has advised that its library participates in the State's inter-library loan system, the Virginia State Library has no record of receiving an inter-library loan request from the Northampton Memorial Library. (Ibid.; and Lacy C. Polk, Head, Inter-Library Loan Section, Virginia State Library and Archives, communication with staff of Commission on Local Government, Dec. 17, 1990.)

Northampton County.¹³⁹ While this municipal library clearly lacks the resources to qualify as a major public facility, its existence manifests the willingness of the Town of Cape Charles to invest funds in public library services.

Although the area proposed for annexation has no immediate need for library services, the significance of such services will increase with the development of that area. Since the principal vehicle for the provision of library services to residents of the Cape Charles area is, and will remain, the regional system, the proposed annexation should have no significant effect on the level or quality of services in the annexed area. It should be recognized, however, that the anticipated influx of 7,000 persons to the Cape Charles area should be accompanied by expanded library services through enhanced regional or Town facilities, or a combination thereof.

Other Service Considerations

Other urban service needs in the area proposed for annexation will be met principally by the developers of Accawmacke Plantation or through intergovernmental service arrangements. The Commission observes that Brown & Root will be responsible for the installation of curbs, gutters, sidewalks, stormdrains, and streetlighting.¹⁴⁰ After construction, however, such facilities will be dedicated to the State or Town for

¹³⁹In FY1988-89 the Town expended a total of \$6,463 for library services. (Town Financial Report.) In addition, the library received a \$1,000 grant from the County in 1989. (Town Annexation Notice, p. II-26.)

¹⁴⁰Cape Charles' subdivision ordinance requires the installation of curbs, gutters, sidewalks, stormdrains, and streetlights by developers. (See Town Subdivision Ordinance, Secs. 5-4-1-6, 5-4-5, and 5-4-6.) A Town consultant has advised this Commission that Brown & Root does not propose to install curbs, gutters and sidewalks throughout Accawmacke Plantation.

maintenance purposes.¹⁴¹

With respect to fire prevention and protection services, Cape Charles and Northampton County jointly support the Cape Charles Volunteer Fire Department (VFD), which serves the Town and approximately one-fourth of the County, including the area proposed for annexation.¹⁴² The fire suppression capabilities of the Cape Charles VFD and the Town's water distribution system are such that properties within the municipality are classified "7" by the Insurance Services Office (ISO) of Virginia in terms of their exposure to fire loss, and similar properties within five miles of the Town's current boundaries have been assigned a classification of "9."¹⁴³ Properties in the County outside that five-mile radius are classified as "10." Current plans to improve

¹⁴¹Until Cape Charles reaches a population of 3,500 persons, however, the Virginia Department of Transportation will be responsible for maintaining the publicly dedicated curbs, gutters, and sidewalks within the Accawmacke Plantation development. Once the Town reaches that population threshold, Cape Charles will assume responsibility for maintaining those facilities.

¹⁴²Town Annexation Notice, p. II-23. The Cape Charles VFD is served by 25 volunteers, who have available three pumpers, one aerial ladder, one tank truck, and one utility truck. In FY1988-89 the Town contributed \$5,525 to the VFD, or 18.4% of its operating expenses during that fiscal year. During that same period, Northampton County contributed \$5,000 to the Cape Charles VFD, or 16.7% of its operating budget. (*Ibid.*, p. II-22.) In calendar year 1989, approximately 80% of the fire calls answered by the Cape Charles VFD came from outside the Town's current boundaries. (*Ibid.*, p. II-23.)

¹⁴³Town Supplemental Submission, p.14, Exh. 9. The ISO classification is based on a scale of "1" to "10" for comparison with other municipal fire protection systems and represents an indication of a system's ability to defend against the major fire which may be expected in any given community. Where protection class "10" is assigned, there is no or minimal protection. Protection class "1" represents a fire protection system of extreme capability. The principal features used by ISO in grading a community's fire system are water supply, fire department, fire communications and fire safety control [John L. Bryan and Raymond C. Picard, Managing Fire Services (Washington, DC: International City Management Association, 1979), p. 102.] The Town's ISO classification was revised from "8" to "7" in February 1990.

the Town's water storage and distribution system and commitments by Brown & Root to install water lines and fire hydrants within the proposed Accawmacke Plantation development should result in the ISO classification for properties in the area proposed for annexation being reduced to that presently assigned to similar properties in Cape Charles.¹⁴⁴

The development of the area proposed for annexation into a resort community over the next 20 years will require an expansion of the fire suppression capabilities of the Cape Charles VFD. To accommodate the initial development phases of Accawmacke Plantation, the Town plans to purchase additional equipment for the VFD.¹⁴⁵ Thus, while the proposed annexation will have no immediate impact on the level of fire services available to the area sought for annexation by Cape Charles, the extension of the Town's water system into the annexed area and the municipality's planned acquisition of additional fire suppression equipment for the VFD will enhance the public safety of that area as it develops.

Summary of Service Considerations

In the preceding sections of this report the Commission has endeavored to analyze the existing and prospective urban service needs of the area proposed for annexation and the relative ability of the Town and Northampton County to meet those needs. In this instance, due to its predominantly undeveloped nature, the Commission finds no evidence

¹⁴⁴Improvements to the water system include construction of a 0.10 raw water storage tank, a 0.30 elevated storage tank for potable water, and a 400 gallon per minute water treatment facility and the installation of new water distribution lines throughout the entire Town. (Town Supplemental Submission, Exh. 4.)

¹⁴⁵The Town proposes to expend approximately \$165,000 within the first seven years following the effective date of the annexation to purchase a new fire truck and stationary pumping equipment to serve the proposed Accawmacke Plantation development. (Davis, letter to staff of Commission on Local Government, Oct. 16, 1990.)

of any current unmet service needs in the area proposed for annexation. We note, however, that a major portion of the area proposed for annexation will experience significant development over the next two decades and increasingly will require the provision of urban services. The magnitude and impending nature of the proposed development are suggested by investments made by Brown & Root in preparation for the Accawmacke Plantation.¹⁴⁶ The Commission acknowledges that the still uncertain scope and nature of the development planned for the area proposed for annexation render it impossible to determine with certainty the timing for intensification of services to the area. The evidence indicates, however, that subject to major improvement of its planning processes and land development regulations, the Town of Cape Charles, aided by commitments from Brown & Root, can appropriately meet the public service needs of that area.

COMPLIANCE WITH APPLICABLE STATE POLICIES

Another factor prescribed for consideration in annexation issues is the extent to which the affected jurisdictions have made efforts to comply with applicable State policies promulgated by the General Assembly. In our judgment, there are three State policies which merit consideration in this report. The following sections review efforts by the Town of Cape Charles and Northampton County to comply with those State policies.

Chesapeake Bay Preservation

The Chesapeake Bay has long been recognized as a unique natural resource of major importance not only to the Commonwealth but to the nation as well. In recognition of this fact, Virginia entered into interstate agreements in 1983, and again in 1987, with the States of

¹⁴⁶An estimated \$2.5 million has been expended to date by Brown & Root in the initial development of plans for the Accawmacke Plantation project. (Testimony of Clifton, Transcript, Vol. II, p. 127.)

Maryland and Pennsylvania, the District of Columbia, and the U. S. Environmental Protection Agency to protect the Chesapeake Bay.¹⁴⁷

Pursuant to the commitments contained in those agreements, in 1988 the Virginia General Assembly enacted the Chesapeake Bay Preservation Act. That act established as a policy of the Commonwealth the protection of the water quality of the Chesapeake Bay and its tributaries.¹⁴⁸

Consistent with this policy and the new statutory requirements, Cape Charles and Northampton County have designated portions of their respective localities as Chesapeake Bay Preservation Areas and have adopted performance standards designed to reduce pollution resulting from new development, redevelopment, and agricultural operations within their jurisdictions.¹⁴⁹ The adoption of regulations by the Town and County to protect the Chesapeake Bay are initial efforts by both

¹⁴⁷Virginia Council on the Environment, Virginia's Chesapeake Bay Program, Progress and Direction, Dec. 1989. The 1987 agreement contained specific goals and deadlines for coordinated, multi-state actions to protect the Chesapeake Bay watershed. One of the goals called for each participating state to initiate new policies for managing population growth and development to prevent further environmental degradation of the Bay.

¹⁴⁸Sec. 10.1-2100, Code of Va.

¹⁴⁹Chesapeake Bay Local Assistance Department, A Quarterly Report on the Implementation of the Chesapeake Bay Preservation Act, Dec. 1990. Statutes require localities within the Chesapeake Bay watershed to develop comprehensive local programs designed to protect the Bay. Affected jurisdictions must designate preservation areas and adopt performance criteria for reducing pollution by September 20, 1990. Following the completion of this initial phase, those jurisdictions are required to amend local comprehensive plans and development control ordinances to incorporate measures to protect the Chesapeake Bay Preservation Areas and to assure compliance with the performance criteria adopted by the locality. This second phase must be completed by November 15, 1991. (See Sec. 10.1-2109, Code of Va.; and Chesapeake Bay Preservation Area Designation and Management Regulations, Part II.) The Town adopted the initial phase of its local Chesapeake Bay protection program on September 11, 1990. The Commission notes that of the 89 jurisdictions subject to the requirements of the Chesapeake Bay Preservation Act, Cape Charles was one of only 18 localities that met the deadline for completion of the initial phase of the Bay protection program. Northampton County completed the first phase of its local Chesapeake Bay program on October 9, 1990.

jurisdictions to comply with the State's concerns for the preservation of that national resource.¹⁵⁰ Ultimate judgment, however, on the efforts of the two jurisdictions to comply with the Chesapeake Bay Preservation Act must await an evaluation of their implementation activities.

Public Planning

The Code of Virginia requires localities to establish a planning commission and to adopt a comprehensive plan and subdivision regulations to guide their development.¹⁵¹ Consistent with these statutory requirements, the Town of Cape Charles and Northampton County have established planning commissions and have adopted such development control instruments. In addition, each jurisdiction has adopted a zoning ordinance which enhances its ability to regulate its future development. Since a previous section of this report has dealt extensively with each locality's public planning efforts, additional extended comment here is not required.¹⁵² In brief, while the County's public planning efforts are more extensive and, in our judgment, provide better control of development, we find that both jurisdictions have taken the required steps to comply with the State's concern for public planning.¹⁵³

¹⁵⁰The programs adopted by Cape Charles and Northampton County are currently being reviewed by the Chesapeake Bay Local Assistance Board for compliance with State statutes.

¹⁵¹Secs. 15.1-427.1, 15.1-446.1, and 15.1-465.1, Code of Va.

¹⁵²The Commission notes that the provision of the Chesapeake Bay Preservation Act requiring affected local governments to amend their planning programs to incorporate measures to protect the Chesapeake Bay by November 15, 1991 also will afford Cape Charles and Northampton County an opportunity to correct any identified deficiencies in their development control ordinances.

¹⁵³The Code of Virginia directs local planning commissions to review a jurisdiction's comprehensive plan once every five years to determine whether revisions are required. (Sec. 15.1-454, Code of Va.) The Town's previous comprehensive plan, which was adopted in 1980, was

Public Housing

By various statutory provisions the General Assembly has recognized that proper housing for the State's residents is a matter of "grave concern to the Commonwealth."¹⁵⁴ The Commission notes that, consistent with this fundamental State concern, both Northampton County and the Town of Cape Charles have made notable efforts to attend to this basic need of their residents. The record discloses that the County has played an active role in addressing the housing concerns of its low and moderate income citizens directly, and in conjunction with the Town of Exmore and the Accomack-Northampton Housing and Redevelopment Corporation (ANHRC), a non-profit regional housing entity co-sponsored by Northampton County.¹⁵⁵ The ANHRC administers the housing rehabilitation portion of the County's Community Development Block Grant, as well as the County's Rental Rehabilitation Assistance grant program, which is funded by the Virginia Housing Development Authority.¹⁵⁶ The ANHRC also operates directly other housing programs within Northampton County for the benefit of low and moderate income

not revised until 1990. Similarly, Northampton County did not revise its 1979 comprehensive plan until 1990.

¹⁵⁴Sec. 36-2, Code of Va. See also Sec. 36-120, Code of Va.

¹⁵⁵County Response, p. III-35. The corporation, which was one of the first multi-jurisdictional housing agencies in the Commonwealth, was established in 1980 through the efforts of Accomack and Northampton Counties and the Accomack-Northampton Planning District Commission. Northampton County appoints four of the 28 members of the board of directors of that housing corporation. (Paul F. Berge, Executive Director, Accomack-Northampton Housing and Redevelopment Corporation, letter to staff of Commission on Local Government, Dec. 21, 1990.)

¹⁵⁶County Response, Exh A. In 1989 the County received \$784,400 in funds from the Community Development Block Grant program and from the Virginia Water Project to rehabilitate 31 substandard housing units in the unincorporated Treherneville community. In 1989 the County also received a \$200,000 Rental Rehabilitation Program grant and a \$100,000 Virginia Housing Partnership Fund grant to rehabilitate 31 substandard rental units in Treherneville and in the Town of Exmore.

residents.¹⁵⁷ In addition, Northampton County has supported efforts undertaken by the Town of Exmore to improve housing conditions within its boundaries.¹⁵⁸ These various programs and initiatives reflect an effort by Northampton County to address the housing needs of its low and moderate income residents.

The evidence also suggests that the Town of Cape Charles is cognizant of the housing needs of its residents and has been responsive to those needs. In 1981 Cape Charles received a Community Development Block Grant from the U. S. Department of Housing and Urban Development to make physical improvements to a low-income neighborhood in the Town and to rehabilitate 23 substandard homes within that same area.¹⁵⁹ Further, as part of the planned improvements to the Town's water system,

¹⁵⁷The ANHRC operates a low interest loan/grant housing rehabilitation program within Northampton County which is funded by the Virginia Housing Partnership Fund. Further, the regional housing authority also administers a Section 8 Rental Assistance program, funded by the Virginia Housing Development Authority, which assists 141 low and moderate income County residents. (County Response, Exh. A.) Moreover, ANHRC operates two housing rehabilitation programs within the Town of Exmore. The Commission notes that the County established its Section 8 Rental Assistance program in 1977 and transferred responsibility for the program to ANHRC in 1980. (Berge, letter to staff of Commission on Local Government, Dec. 21, 1990.)

¹⁵⁸Since 1986, the Town of Exmore has received three Community Development Block Grants for housing rehabilitation and neighborhood improvement programs and for upgrading its public water system. In support of one of Exmore's housing rehabilitation efforts, Northampton County granted a special use permit to allow the installation of a neighborhood drainfield system and agreed to waive all building permit fees for the construction of indoor plumbing for 40 housing units. (Ibid.; and County Response, Exh. A.) Northampton County, the Town of Exmore, and ANHRC received a Certificate of Merit from the U. S. Department of Housing and Urban Development for this project. In other housing initiatives, the County provided \$8,000 in local funds to the Town of Exmore for the extension of a water line to serve a community in the unincorporated portion of the County and contributed \$5,000 to Exmore to meet cost overruns on another project which provided water service to a low income neighborhood. (Berge, letter to staff of Commission on Local Government, Dec. 21, 1990.)

¹⁵⁹Berge, letter to staff of Commission on Local Government, Dec. 21, 1990.

Cape Charles will use a portion of the monies received for that project to install indoor plumbing in eight substandard housing units.¹⁶⁰

Moreover, Cape Charles has supported assisted housing programs administered by the ANHRC and other non-profit corporations within its jurisdiction. These efforts on the part of the Town to address the housing needs of its low and moderate income residents are clearly consistent with State housing policies.¹⁶¹

COMMUNITY OF INTEREST

Another of the factors statutorily prescribed for consideration in annexation issues is the strength of the community of interest which joins the area proposed for annexation to the municipality in relation to that which unites that area to the remaining portion of the county. While the undeveloped nature of the area proposed for annexation in this instance removes from consideration many issues generally relevant in an analysis of the community of interest factor, there are facets of interdependence which merit comment in this case.

With respect to the community of interest between Cape Charles and the area proposed for annexation, several considerations should be noted. First, the Town and the area proposed for annexation comprise a major portion of a peninsula which is bounded on three sides by water features. This geographic configuration establishes a degree of

¹⁶⁰Ibid.

¹⁶¹The ANHRC administers approximately 41 units under the Section 8 Existing Rental Assistance program within Cape Charles. In addition, since 1990 the Town has appointed a member of the Town Council to the ANHRC Board of Directors. The Commission also notes that the Town assisted, by rezonings and letter of grant endorsement, private developers in the construction of a 28-unit apartment complex for low and moderate income residents and a 101 unit multi-family project for the elderly and handicapped. (Berge, letter to staff of Commission on Local Government, Dec. 21, 1990.)

physical interdependence which contribute to a community of interest.¹⁶² This physical relationship is underscored by the fact that the Town's two water supply wells are located in the area proposed for annexation. The development which is planned in the area proposed for annexation will clearly have an impact on the Town of Cape Charles surpassing that on other areas of Northampton County due to its geographical contiguity and environmental interdependence.

Second, the ownership of property in the area proposed for annexation promotes a community of interest between that area and the Town. The major property owner in that area (Brown & Root) not only has substantial holding in Cape Charles, but has otherwise contributed to the corporate life of that municipality. Similarly, the Eastern Shore Railroad has property both within the Town and the area proposed for annexation and, thereby, promotes a degree of interdependence between the municipality and the area it seeks to annex.

Third, the Commission also observes that the proposed Accawmacke Plantation, if developed as planned, will broaden and intensify the community of interest between the Town and the area proposed for annexation. The Accawmacke Plantation will entail the concurrent and interrelated development of property within the Town and the area proposed for annexation which will foster public service interdependence.¹⁶³ Cape Charles would be the logical source of urban-type services needed in the area proposed for annexation as it develops.

¹⁶²The peninsula, which is bounded by the Chesapeake Bay, Kings Creek, and Old Plantation Creek, was the site of some of the earliest English settlements and recorded land grants in Virginia. The Commission acknowledges that similar landforms exist along the Chesapeake Bay coastline of Northampton County, but the peninsula encompassing the Town and the area proposed for annexation is the only one in the County containing an incorporated community.

¹⁶³Brown & Root purchased the property in the Town and the area proposed for annexation in 1974. Since that date, Brown & Root has donated to Cape Charles the property used by the Town for its water supply wells and for its public beach. (Town Annexation Notice, p. III-2.)

The Town operates the only public water and sewage utility systems in southern Northampton County, and in recognition of their availability Brown & Root has entered into an agreement with the Town to ensure that the capacity in those systems will be sufficient to serve the planned development. In addition, the volunteer fire department and rescue squad which would serve the Accawmacke Plantation development are located in Cape Charles and are financially supported, in part, by that municipality.

Fourth, the development of Accawmacke Plantation also will create additional economic and social ties between Cape Charles and the area it seeks to annex. The Town is a major focal point in the economic life of southern Northampton County, and businesses located within the Town provide retail services to the general area.¹⁶⁴ Further, Cape Charles is the location of certain public facilities (e. g., elementary school, library, beach) which will be utilized to some degree by residents of the area proposed for annexation. Furthermore, there are approximately ten churches and numerous civic and fraternal organizations located in the Town which will serve residents of Accawmacke Plantation.¹⁶⁵ It is reasonable to conclude that as the area proposed for annexation develops over the next two decades, the residents of that community will utilize the commercial, public, religious, and social facilities within Cape

¹⁶⁴Located within the Town are approximately 52 commercial establishments, including two grocery stores, two pharmacies, a bank, and the offices of the Delmarva Power Company. (Comprehensive Plan, Technical Analysis, p. 15.) The Commission notes that the agreement between Cape Charles and Brown & Root contains a provision whereby the company will coordinate the location of the commercial uses planned for Accawmacke Plantation with the Town so as not to jeopardize the fiscal health of the retail establishments located within Cape Charles' central business district. (See Agreement, Sec. 9.) A consultant for the Town has indicated that the commercial uses proposed for the Southern Tract of Accawmacke Plantation include a retail village adjacent to the marina and hotel which would be oriented toward tourists and an office or warehouse center, but the development would not include neighborhood commercial uses such as grocery stores, banks, or pharmacies. (Testimony of Britton, Transcript, Vol. I, pp. 62-63, 148.)

¹⁶⁵Comprehensive Plan, Technical Analysis, p. 15.

Charles.¹⁶⁶ In brief, geographic considerations, municipal facilities, and growing economic and social ties can be expected to establish a significant community of interest between the Town and the area proposed for annexation.

Northampton County has contended that for several reasons the area proposed for annexation has a stronger community of interest with the outlying portion of the County than with the Town of Cape Charles. First, the County asserts that the rail facilities of the Eastern Shore Railroad, the dredge spoils site owned by the Virginia Port Authority (VPA), other man-made features in the area proposed for annexation, and wetlands collectively constitute a barrier which diminishes the community of interest between Cape Charles and the area proposed for annexation.¹⁶⁷ Second, the County maintains that the active agricultural operations in the area proposed for annexation give that area stronger economic ties with the agricultural community in the unincorporated portion of Northampton County than with the Town.¹⁶⁸ Third, the County contends that the development planned by Brown & Root in the area proposed for annexation would constitute a largely self-sufficient community which would have only modest social, economic, and political relations with the Town of Cape Charles.¹⁶⁹

¹⁶⁶The Commission observes that the retail and recreational facilities planned for the area proposed for annexation, such as the restaurant, marina and golf course, would be available for use by the residents of the current Town and thus, would strengthen the community of interest between the two areas.

¹⁶⁷Other physical features cited by the County include a radio antenna and the Bayshore Concrete facility. The latter property, which is located in the unincorporated portion of the County, is not included in the area proposed for annexation by Cape Charles. (Testimony of Britton, Transcript, Vol. I, p. 61; and County Response, p. III-41.)

¹⁶⁸County Response, p. III-40.

¹⁶⁹Ibid., pp. III-40, III-42--44. The County has noted that the non-resident and seasonal property owners of Accawmacke Plantation will not participate in the political life of Cape Charles and Northampton County and that the social activities of the residents of Accawmacke Plantation will be centered around the recreational amenities located

The Commission has considered carefully the issues raised by the County but is unable to conclude that they substantially reduce the community of interest which exists and which will increase between the Town of Cape Charles and the area proposed for annexation. First, the Commission observes that physical features such as railroads and wetlands do not always establish impervious boundaries restricting commerce, public service relationships, and social interaction. In that regard, facilities of the Eastern Shore Railroad and the VPA dredge spoils site have clearly not been a bar to the extension of utilities and other public services to the southern portion of the Town adjacent to the area proposed for annexation.¹⁷⁰ Further, Cape Charles presently is a major commercial center in southern Northampton County, and the natural and man-made features located between the Town and areas to the south of its current boundaries would not be significant obstacles to the patronage of those retail and service establishments by the residents of the proposed Accawmacke Plantation development.¹⁷¹

Second, with respect to the rural nature of the area proposed for annexation, the evidence indicates that the agricultural operations in the area are conducted on property which is leased from Brown & Root. That firm's plans for the proposed Accawmacke Plantation will result in the termination of farming activities on its property and will give the area an urban character dissimilar to that of Northampton County generally. While the Commission acknowledges that the present

within that development.

¹⁷⁰The Town's sewage treatment plant, which will serve the proposed Accawmacke Plantation development, is located adjacent to the area proposed for annexation. Further, the volunteer fire department and rescue squad located in the Town will be responsible for serving Accawmacke Plantation regardless which jurisdiction is responsible for its development. Moreover, one of the two main entrances to Accawmacke Plantation will be directly connected to the Town's street network.

¹⁷¹Examples of retail and service establishments located within the current Town boundaries which would be utilized by the residents of the proposed Accawmacke Plantation development are restaurants, grocery stores, a bank, and physician offices.

agricultural operations in the area proposed for annexation establish a similarity of interests with the agricultural community in the unincorporated portion of Northampton County, the planned development of that area will alter that relationship.

Third, with respect to the presumed self-sufficient nature of the Accawmacke Plantation, we recognize that residents of that development will differ in various respects from the long-term inhabitants of Cape Charles, notwithstanding such initial distinctions, however, it is our view that residents of the Accawmacke Plantation will develop significant social, economic, and political ties with the Town of Cape Charles. As noted previously, the Town's role as a major center of social and economic activity in the area will not be supplanted by the development of a resort community on its periphery. Indeed, Brown & Root's plans for Accawmacke Plantation development call for a significant physical, social, and economic integration of that community with the present Town. Indeed, the Northern Tract of Accawmacke Plantation will be developed within the current borders of Cape Charles. Further, both permanent and seasonal residents of Accawmacke Plantation will patronize retail outlets, professional facilities, and government offices in the Town and may be expected to participate in social and religious affairs within the current Town. Moreover, year-round residents of that community also can be expected to assume an active role in the political life of Cape Charles. In brief, while the nature of the resort development planned for the area proposed for annexation may result in an influx of persons to Accawmacke Plantation whose vocational experiences and life styles vary from those of current residents of Cape Charles, the new residents can be expected to develop a strong community of interest with the Town of Cape Charles.

In summary, considering both the present and future character of the area proposed for annexation, and recognizing the importance of Cape Charles as a center of retail and social activity and as a source of public services in southern Northampton County, the Commission has no difficulty concluding that there exist significant bonds between the

Town and the area it seeks to annex and that such bonds will increase with the development of that area.

ARBITRARY REFUSAL TO COOPERATE

A further factor prescribed for consideration in annexation issues is whether either of the affected localities has arbitrarily refused to cooperate in the provision of ". . . joint activities which would have benefited citizens of both political subdivisions; . . ." ¹⁷² The intent of the General Assembly in directing consideration of this issue is to promote interlocal cooperation where such can be of mutual benefit to local governments and their residents. With respect to the annexation issue presently under review, this Commission is aware of no instance in which either jurisdiction has arbitrarily refused to cooperate in the provision of public services. Indeed, the Commission has noted significant areas of cooperation between the Town of Cape Charles and Northampton County in the provision of services to their residents. The evidence reveals that the Town and County cooperate in the provision of fire and rescue squad services, law enforcement, and solid waste disposal. Such collaborative efforts among local governments are vital to the State and should not be jeopardized by boundary change proceedings.

INTEREST OF THE STATE

Another of the factors prescribed by the Code of Virginia for consideration in annexation issues is the prospective impact of the proposed action on the "interest of the State in promoting strong and viable units of government." ¹⁷³ As previous sections of this report have indicated, the territory sought for annexation by the Town will be the site of a mixed use, resort community over the next two decades

¹⁷²Sec. 15.1-1041(b)(1)(v), Code of Va.

¹⁷³Sec. 15.1-1041(b), Code of Va.

which will ultimately provide the Town with significant local tax resources. Further, the proposed annexation should not have any major adverse effect upon the revenue receipts of Northampton County. The County will experience only a negligible reduction in some revenue categories as a consequence of the proposed annexation, and all future development occurring in the enlarged Town will generate revenues which will benefit both the Town and the County as a whole. In sum, the Commission finds that the proposed annexation by the Town of Cape Charles is consistent with the interest of the State in promoting strong and viable units of government.

FINDINGS AND RECOMMENDATIONS

AREA RECOMMENDED FOR ANNEXATION

The Town of Cape Charles has initiated these proceedings for the purpose of annexing an essentially uninhabited area of approximately 3.19 square miles. Based upon our consideration of the criteria prescribed for review in annexation issues and upon our analysis of the general ramifications of the proposed development in the Cape Charles area, we recommend that the court approve the proposed annexation subject to the modifications and conditions identified below.

While the following recommendations rest upon the totality of the data and evidence reviewed previously in this report, several salient facts merit recitation here. First, although the area proposed for annexation is essentially vacant and without need for any municipal services at the present time, that area is the site of a proposed major development which will, when completed, contain approximately 3,000 dwelling units and 7,000 persons. This prospective development lying immediately adjacent to the Town of Cape Charles will, doubtless, have a major influence on the future viability of that jurisdiction. It is evident to this Commission, that the proximity of the proposed development to the Town of Cape Charles, the dependence of both the municipality and the proposed Accawmacke Plantation on the limited and

fragile natural resources of the area, the availability of Town facilities to serve the general area, and the economic and social interdependence which will mark the relationship between residents of the proposed development and those of the municipality denote conditions which support the proposed annexation. The proposed Accawmacke Plantation, if annexed by the Town of Cape Charles, will serve to invigorate the municipality through the infusion of new residents and public resources. Alternatively, should the proposed development be brought to fruition outside the corporate boundaries of the Town of Cape Charles, such an occurrence is likely to affect adversely the future viability of the Town. In the event of the latter situation, both the proposed Accawmacke Plantation and the ancillary commercial activity which can be expected to appear along thoroughfares adjacent to that planned community will, in our judgment, have a centrifugal influence on the Town and add to the fiscal problems confronting the municipality.

To be sure, this proposed annexation differs from most others reviewed by this Commission during the preceding decade in that the area is virtually devoid of development and without current need for urban services. In this regard, however, it should be noted that the laws of the Commonwealth generally preclude municipalities from initiating annexations more than once in any ten-year period. Accordingly, once an annexation action is initiated, it is necessary for this Commission and the reviewing court to take cognizance not only of current conditions and concerns but to give reasonable consideration to prospective events for the succeeding decade. In this instance, the evidence indicates the intention of Brown & Root to commence in the immediate future the construction of a residential community, accompanied by supporting commercial activity, which will substantially urbanize the area proposed for annexation.¹⁷⁴ In these circumstances, the annexation of the area

¹⁷⁴Brown & Root representatives have reported that, as of September 1990, the firm had already expended approximately \$2.5 million on planning the Accawmacke Plantation and on regulatory procedural matters associated with the proposed development. (Clifton, Transcript, Vol. II, p. 128.)

proposed by the Town of Cape Charles is, in our view, appropriate, and we recommend the court's approval.

In addition to the area specified in the Town's petition, the Commission recommends that the property occupied by the Bayshore Concrete Company be included in the area awarded to the Town of Cape Charles. That property, which is currently accessible by public thoroughfare only through the Town of Cape Charles, will be entirely encompassed by the municipality if the proposed annexation is ultimately approved by the court. Further, while the Bayshore Concrete Company is currently self-sufficient in terms of water and sewerage, its proximity to the Town and its utilization of harbor facilities in Cape Charles suggest, in our view, that the company should become a corporate citizen of that jurisdiction. Furthermore, the inclusion of the Bayshore Concrete Company within the area annexed to the Town would provide the municipality with a moderate but immediate infusion of resources to assist it in preparing for the forthcoming residential development.

TERMS AND CONDITIONS OF ANNEXATION

Development Controls

The area proposed for annexation by the Town of Cape Charles, and that recommended by this Commission, would more than triple the area of the municipality and, if developed according to current plans, increase its population by more than 400%. The proposed development of the area to be annexed would, therefore, dramatically increase the geographic and demographic size of the municipality and radically alter the nature of the general area. This situation, coupled with the environmental fragility of the Chesapeake Bay area, render essential the need for the Town of Cape Charles to strengthen substantially its various public planning and development control instruments. To that end, the Commission recommends that, as a prerequisite of annexation, the Town of Cape Charles employ a full-time professional planner who shall be immediately committed to reviewing the Town's zoning and subdivision

ordinances in preparation for the pending development. Revisions to the Town's development control instruments should include the incorporation of provisions which require that all private roads, as well as public thoroughfares, built for vehicular use in the annexed area be constructed to meet standards established by the VDOT. In sum, if the annexation proposed by the Town is approved by the court, and if development in the annexed area proceeds as presently contemplated, the municipality will confront the need for significantly strengthened development control instruments to contend not only with traditional concerns, but also with the growing complexity of critical environmental issues.

Utilities

As noted previously in this report, Brown & Root has entered into an agreement with the Town of Cape Charles whereby the firm has agreed "to pay the cost of the physical expansion of the Town's sewer and water treatment systems . . . to accommodate the additional treatment demands of the Brown & Root Property beyond the limits of the Town's current permitted capabilities."¹⁷⁵ This contractual commitment has been augmented by a "Proposal for Water and Wastewater Treatment Plant Improvements," developed by Brown & Root, which endeavors to amplify the scope and timing of the corporation's commitment with respect to the enlargement of the Town's utility systems.¹⁷⁶ With respect to those instruments and prospective improvements to the Town's utility operations, however, several concerns should be noted. First, we recommend, as has been proposed by Counsel for the Town and Brown & Root, that the "Proposal for Water and Wastewater Treatment Plant Improvements" be formally adopted by the parties and made legally a part

¹⁷⁵Agreement, Sec. 10.

¹⁷⁶This proposal was presented as an attachment to correspondence to staff of Commission on Local Government from Nutter, Nov. 3, 1990.

of the agreement between the municipality and Brown & Root.¹⁷⁷ Second, both the Town of Cape Charles and Brown & Root should take cognizance of the fact that the State Water Control Board can be expected to increase the effluent treatment standards in the future for all plants discharging into the Chesapeake Bay. Therefore, we recommend that the agreement between Brown & Root and the Town of Cape Charles be amended to reflect the fact that the firm's commitment to the municipality for funding improvements to the Town's sewage treatment system for the purpose of serving the Accawmacke Plantation extends to all costs, up to and including tertiary treatment.¹⁷⁸ Third, since the Town's sewage treatment plant is designed to treat only domestic effluent, we recommend that Cape Charles and Brown & Root reach an explicit understanding that no industrial wastes shall be accepted into the municipal wastewater system from the Accawmacke Plantation without pretreatment or plant modification completed at the expense of the developer. Finally, the agreement between the Town of Cape Charles and Brown & Root commits the Town "to reserve" for the use of that firm "water and sewer treatment capabilities in sufficient capacities to serve the completed development on the Brown & Root property" as depicted in the preliminary plan of development.¹⁷⁹ While this "reservation" of capacity in the Town's treatment plant appears to be conditioned implicitly upon Brown & Root's investment of funds to create the capacity in the municipal facilities sufficient to meet the needs of the proposed Accawmacke Plantation, such is not explicitly stated. Accordingly, the Commission recommends that the agreement be modified to state explicitly that any reservation of treatment capacity for the use of the Accawmacke Plantation be derived from capacity created by

¹⁷⁷Town Proposed Findings, p. 30:

¹⁷⁸Section 10 of the agreement between the Town and Brown & Root states that the firm will pay the cost of the "physical expansion" of the Town's utility systems. While that statement is amplified by subsequent phraseology indicating that the firm's commitment extends to "treatment" considerations, the precise breadth of Brown & Root's commitment on this issue should be established.

¹⁷⁹Agreement, Sec. 10.

investments in the municipal systems made by Brown & Root.

Road Improvements

The Commission has been advised that Brown & Root has agreed "to cooperate with the Virginia Department of Transportation (VDOT) on improvements to State Route 642 and on a new road from State Route 642 to State Route 184" and, further, that representatives of the firm have reached an understanding with officials of VDOT by which the cost of those road improvements in the Cape Charles area which are necessitated by the proposed development would be shared by Brown & Root and the Commonwealth.¹⁸⁰ While the status of negotiations between Brown & Root and VDOT regarding the funding of road improvements necessitated by the Accawmacke Plantation is unclear to this Commission, we recommend that the developer be required to assume the full construction cost of all off-site road improvements required to serve the proposed development. Specifically, we recommend that the developer bear all construction costs for improving State Route 642 between the area proposed for annexation and U. S. Route 13 and for improving State Route 641 (or for constructing an alternative thoroughfare) between State Routes 642 and 184. The use of State funds in effecting the road improvements necessitated by the pending development will result in a reduction in the amount of State road assistance available to make other road improvements in Northampton County. Since current economic conditions threaten existing State assistance to local governments, it is increasingly essential, in our view, that developers be expected to bear appropriately the cost of public facilities required to support their projects.¹⁸¹ The interest of Northampton County in these annexation

¹⁸⁰Town Proposed Findings, p. 30.

¹⁸¹It is significant to note that at its October 1990 meeting the Commonwealth Transportation Board announced reductions in the allocation of funds for the State's secondary road system. Allocations to Northampton County for secondary road improvements were reduced from \$589,960 to \$525,343, or by 12.3%. (David L. Camper, Assistant Secondary Road Engineer, Virginia Department of Transportation,

proceedings requires, in our judgment, that Brown & Root bear, as a condition of annexation, the full construction cost for all off-site road improvements necessitated by its proposed development.¹⁸²

Recreational Facilities

The Commission notes that the Northampton Country Club is situated on property owned by Brown & Root within the current boundaries of the Town. This property, which has been leased to the Northampton Country Club for a nominal fee (\$75 per year), is proposed for development as part of the Accawmacke Plantation. As a consequence, the annexation and the pending development will have the effect of terminating a significant, but inexpensive, public recreational opportunity for residents of the area. In recognition of this fact, Brown & Root has stated its intention to make available to the public for a period of time following the annexation one or both of the 18-hole golf courses planned for construction as part of Accawmacke Plantation. However, we are advised that this option will expire when the membership of the club, which will control those golf courses, reaches a point where the members can financially support those facilities. Thus, the availability of these new facilities to the public would be of only limited and uncertain duration. More importantly, the greens fees for those golf courses would, doubtless, be substantially higher than those currently charged by the Northampton County Club.

communication with staff of Commission on Local Government, Feb. 1, 1991.)

¹⁸²Since the Town of Cape Charles has a population of less than 3,500 persons, its public thoroughfares are constructed and maintained by the State with funds allocated for use in Northampton County generally. Thus, zoning and land use decisions made by the Town can have an immediate and significant impact on the County's overall road improvement program. Further, it should be noted that the Town does not have the breadth of conditional zoning authority for the acceptance of proffers from developers as is available to Northampton County.

While this Commission is fully cognizant of the commitments made by Brown & Root in its agreement with the Town which would increase other recreational opportunities for the general public, we recommend that the developer give consideration to permitting, for a term certain, those inhabitants of southern Northampton County who are not residents of the proposed Accawmacke Plantation an opportunity to utilize the new golf courses for greens fees comparable to those currently charged by the Northampton Country Club. Otherwise, the proposed annexation will have the effect of actually reducing the recreational opportunities available to the public in the Cape Charles area.

Management of External Development

The magnitude of development in the area proposed for annexation will have a major and pervasive effect on the Cape Charles environs. In particular, the State Route 184 corridor and properties adjacent to the intersection of that thoroughfare with U. S. Highway 13 will confront significant development pressures. This Commission notes that Brown & Root and the Town have proposed a special zoning district extending from the Cape Charles corporate limits along State Route 184 to its intersection with U. S. Highway 13 and extending in either direction along the latter route for a minimum of one mile. This proposed special zoning district would be designed to establish "reasonable restrictions on commercial development, sign restrictions, increased setbacks, landscaping requirements and other measures to encourage quality development within the area."¹⁸³ We consider that proposal eminently sound and foresightful. The type and nature of development which occurs in the proposed district should support or complement the aesthetic quality and economic viability of the Town of Cape Charles, and not detract from them. Accordingly, this Commission vigorously encourages Northampton County and the Town of Cape Charles to collaborate in the establishment of the proposed special district or to take other appropriate development control measures to protect and promote the

¹⁸³Agreement, Sec. 14.

integrity and viability of the Cape Charles area. Further, in recognition of the considerable influence which the land use and development decisions of one jurisdiction will have on the other, we recommend that the Town of Cape Charles join the Northampton County Joint Local Planning Board.

Displacement of Leaseholders

The nature and magnitude of the proposed Accawmacke Plantation may well have, in our view, a destabilizing influence on leaseholders in the Cape Charles environs. That development can be expected to spawn ancillary activity which will result in an increased pressure on residential property in the general area and, consequently, stimulate an upward impetus in the cost of rental property. This phenomenon can have an immediate and significant impact within the current boundaries of the Town of Cape Charles, where, the data suggest, more than 35% of all residential units are titled to absentee owners.¹⁸⁴ The potential upward pressure on rental rates may, we fear, result in the displacement of current residents of the municipality.

Adding to this concern, moreover, are data regarding the general income level of the resident population. Based on 1979 U. S. Bureau of the Census data, the latest available, Northampton County had the highest poverty rate of any locality in Virginia, with 26.7% of its residential population being classified as "poor."¹⁸⁵ Furthermore, more recent data reveal no improvement in the relative income level of the County's residents. The median adjusted gross income (based on all State tax returns) in Northampton County in 1988 was only \$12,891, a statistic lower than that in any other political subdivision in

¹⁸⁴Davis, letter to staff of Commission on Local Government, Oct. 16, 1990.

¹⁸⁵1980 Census of Population, General Social and Economic Characteristics, Virginia, Table 18.1. The data cited includes those persons in Northampton County having incomes below the 1979 poverty level.

Virginia, and only 62.42% of that for the Commonwealth overall (\$20,661).¹⁸⁶ These income statistics indicate a resident population poorly equipped to adjust to rapidly rising rental costs. In view of this situation, the Commission strongly recommends that the Town of Cape Charles, in concert with Northampton County, enlist the support of Brown & Root in addressing the potential problem of the displacement of current residents as a consequence of the new development. In this regard, the Commission notes that the proffers of Dicanio Residential Communities, Inc. to the County in December 1989 offer a prototype for consideration in this instance.¹⁸⁷

Employment Opportunities

The development of the proposed Accawmacke Plantation would appear to provide significant employment opportunities. To the extent that such employment opportunities can be made available to the resident population, the economy of the area would be enhanced and pressures on residential properties would be diminished as a result of decreased need for the importation of nonresident workers. This Commission notes that at its public hearing numerous residents of the Cape Charles area expressed support for the proposed annexation based on the judgment that the anticipated development would provide increased employment opportunities. From our perspective, the Town and County should vigorously seek the collaboration of Brown & Root in furtherance of that goal. In this regard, it is relevant to recall that in previous proffers to Northampton County relative to its property in the Cape

¹⁸⁶1988 Virginia AGI, Table A2. See note 20, p. 8.

¹⁸⁷The proffers proposed by Dicanio Residential Communities, Inc. and accepted by the County commit that company to the construction, at cost, of a low and moderate housing project selected by Northampton County. Alternatively, if a project is not constructed by the firm, the developer has agreed to pay the County \$150 for each residential unit sold within the Dicanio subdivision, with the funds to be used by the Board of Supervisors to provide affordable housing for Northampton County residents. (See Proffers, Sec. 13, Dicanio Residential Communities, Inc., Zoning Map Petition 89-02.)

Charles area, Brown & Root agreed to:

exercise maximum reasonable efforts to hire residents of the Eastern Shore of Virginia and, in conjunction therewith, to establish training programs in concert with the local schools and/or community college or alone, if necessary, to develop its work force from the maximum number of local residents trainable and available.¹⁸⁸

A reaffirmation of this commitment by Brown & Root would be desirable and appropriate.

OBSERVATIONS REGARDING TOWN OF CAPE CHARLES - BROWN & ROOT AGREEMENT

An integral component of this annexation issue is the agreement negotiated by the Town of Cape Charles and Brown & Root and signed by representatives of the parties in March 1990. Various provisions in that agreement purport to commit the Town to certain future actions affecting the Brown & Root development.¹⁸⁹ Such provisions were the subject of considerable discussion regarding their enforceability during our proceedings. As a consequence of those discussions, there appears to exist unanimity of view that those various provisions conflicted with well established restrictions on the authority of local governing bodies to bind the hands of their subsequently elected successors and were, therefore, unenforceable upon the Town.

In addition, the Commission notes that some provisions in the agreement between the Town and Brown & Root appear to express the

¹⁸⁸Proffers, Sec. 4, Brown & Root, Inc., Zoning Map Petition 76-02, accepted by Northampton County Board of Supervisors on January 17, 1977. In its December 1989 proffers to Northampton County, Dicanio Residential Communities, Inc. agreed to "use its best efforts" to employ individuals and businesses from Accomack and Northampton Counties in the construction of the proposed development. Further, if qualified persons proved to be unavailable, the Dicanio company agreed to help establish apprenticeship and other training programs in cooperation with the Accomack and Northampton County school systems and the Eastern Shore Community College. (Proffers, Sec. 12, Dicanio Residential Communities, Inc.)

¹⁸⁹See, for example, Agreement, Secs. 5, 6, 13, and 19.

intention of the Town Council to take certain specified actions during the current term of office. In some instances, however, the contemplated actions can only be undertaken pursuant to statutorily prescribed public hearings or other procedural requirements. Where such prerequisites to council action exist, the Town of Cape Charles and Brown & Root must recognize, it appears to us, that decisions by a local governing body are expected to be informed and conditioned by the public testimony and evidence generated by the statutorily prescribed procedures and not concluded prior to such events. Otherwise, the procedural requirements established for council action by the Code of Virginia would be rendered null and void. Acknowledging the limitations affecting the Town's commitments, however, counsel for the municipality has asserted that "[n]otwithstanding these risks Brown & Root has committed that it will, be bound by the terms of the agreement, regardless of its contractual ability to hold the Town to its commitments."¹⁹⁰

CONCLUDING COMMENT

In the previous sections of this report the Commission has reviewed, based upon the statutorily prescribed criteria, an annexation proposed by the Town of Cape Charles. As a consequence of that review, we have recommended that, subject to the modification and conditions specified, the Town be awarded the area requested and charged with the responsibility of overseeing the development of the proposed Accawmacke Plantation. The Commission's recommendations with respect to this annexation issue were predicated upon the judgment that the proposed Accawmacke Plantation should be fully incorporated into the Town of Cape Charles in order to promote the viability of both the municipality and Northampton County.

The Commission has approached its responsibility in this case with considerable concern and caution. The proposed annexation will

¹⁹⁰Town Proposed Findings, p. 26.

facilitate a development which is projected to increase the County's population by approximately 7,000 persons, or by 50%, and which will alter forever the water resources, wetlands, and land mass of the Eastern Shore. The proposed development occurs at a time when the elected leadership of this State has manifested its concern for the protection of the Chesapeake Bay through the enactment of major legislation designed to restrict development which threatens the health of that vital estuary. In recognition of our responsibility to consider to the fullest extent possible the prospective environmental impact of the proposed Accawmacke Plantation, this agency has discussed the proposed development with every State and federal agency whose expertise, in our judgment, is of relevance. While this Commission fully expects that Brown & Root will act as a responsible steward of its property for the benefit of future generations and that considerable diligence will be shown by all local, State, and federal agencies which will be responsible for issuing permits or for reviewing components of the proposed Accawmacke Plantation, we recognize that the preeminent responsibility for the continuing oversight of the development and its environmental impact will rest with the locally elected leadership in the Town of Cape Charles. It is the commitment, wisdom, and foresight of those individuals which will ultimately determine whether the development of the Accawmacke Plantation is a salutary or negative event in the history of Northampton County. The future of the Eastern Shore, the Commonwealth of Virginia, and our species requires, in our view, increased attention to the fragility of our environment and recognition that economic and other concerns, regardless of their significance, are subsidiary.

Respectfully submitted,

William S. Hubbard
William S. Hubbard, Chairman

Mary Sherwood Holt
Mary Sherwood Holt, Vice Chairman

Harold S. Atkinson
Harold S. Atkinson

Layton R. Fairchild, Jr.
Layton R. Fairchild, Jr.

Frank Raflo
Frank Raflo

Appendix A

Statistical Profile of the Town of Cape Charles, County of Northampton and the Area Proposed for Annexation

	<u>Town of Cape Charles</u>	<u>County of Northampton¹</u>	<u>Area Proposed for Annexation</u>
Population (1990)	1,398	13,061	4
Land Area (Sq. Mi.)	0.88	357.00	3.19
Total Assessed Values (1989)	\$19,574,311	\$333,745,652	\$4,465,800 ²
Real Estate Values	\$16,231,500	\$274,953,991	N/A
Personal Property Values	\$2,441,720	\$33,251,745	N/A
Machinery and Tools Values	N/A	\$2,903,200	N/A
Merchants Capital Values	N/A	\$780,200	N/A
Public Service Corporation Values	\$901,091	\$21,856,516	N/A
Land Use (Acres) ³			
Residential	94.9	3,800.0	1.0
Commercial	29.5	123.0	0.0
Industrial	41.8	102.0	64.0
Public and Semi-Public	99.7	177.0	0.0
Streets or Rights-of-Way	70.6	2,505.0	4.5
Tidal Waters	64.6	131,000.0	244.0
Vacant, Wooded or Agricultural	162.9	95,525.0	1,725.5

Notes:

N/A = Not Available

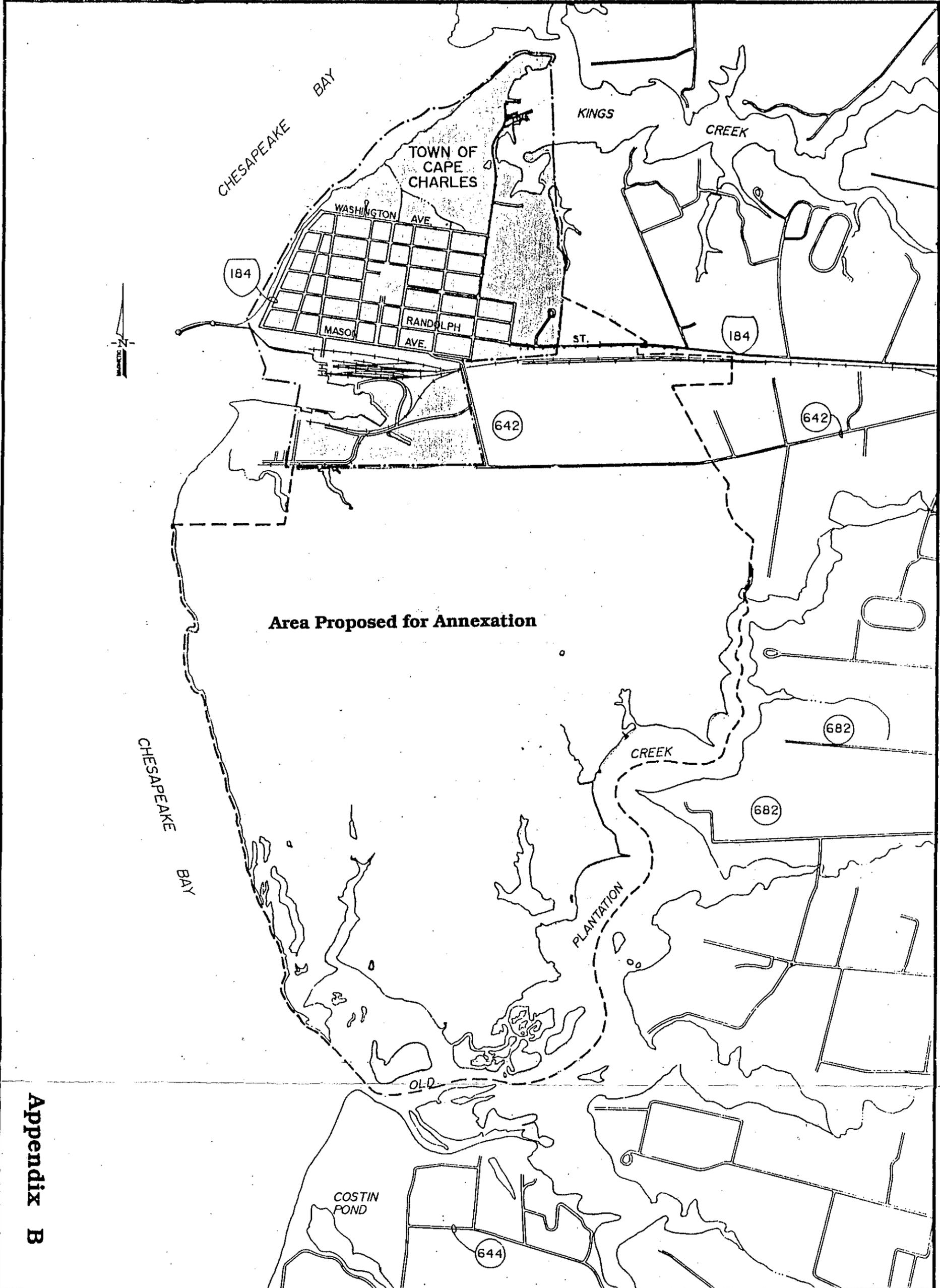
¹Statistics for Northampton County include the Town of Cape Charles.

²Assessed values for the area proposed for annexation are for Tax Year 1990.

³Land use data for the Town and the area proposed for annexation was compiled in 1990. Northampton County's land use data was collected in 1985.

Sources:

Town of Cape Charles, Notice of Annexation to the Commission on Local Government, Mar. 1990; Town of Cape Charles, Comprehensive Annual Financial Report, June 30, 1989; Town of Cape Charles, Response to Commission's Letter of May 15, 1990; Stephen J. Davis, Special Counsel; Town of Cape Charles, letter to staff of Commission on Local Government, July 6, 1990; County of Northampton, Comprehensive Annual Financial Report, June 30, 1989; and County of Northampton, Comprehensive Plan, Part I, Dec. 15, 1989.

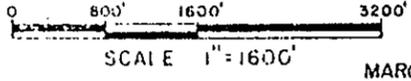


Area Proposed for Annexation

Appendix B

GENERAL LEGEND

- TOWN CORP. LIMITS
- - - PROPOSED ANNEXATION AREA



SCALE 1" = 1600'

MARCH, 1990

MAP OF THE TOWN OF CAPE CHARLES, VA AND ENVIRONS

PREPARED BY
 R. STUART ROYER & ASSOCIATES, INC.
 BASE MAP PREPARED FROM
 USGS AND BROWN & ROOT DATA

AREA PROPOSED FOR ANNEXATION

Appendix C

AGREEMENT

THIS AGREEMENT dated this 13th day of March, 1990, by and between the Town of Cape Charles, Virginia, a municipal corporation of the Commonwealth of Virginia, (hereinafter Town), and Brown & Root I, Inc., a Delaware corporation authorized to conduct business in Virginia, (hereinafter Brown & Root).

WHEREAS, Brown & Root is the owner of approximately Two Thousand acres of land partially located within the existing corporate limits of the Town and the balance of which is located in Northampton County immediately adjacent to the southern boundary of the Town; and

WHEREAS, Brown & Root desires to develop its property in cooperation with the Town and therein desires to incorporate the balance of its property, currently located outside the jurisdiction of the Town, within the corporate limits of the Town; and

WHEREAS, the Town desires to participate in the zoning and permitting of Brown & Root's property and to cooperate with Brown & Root in the development of its property as a resort, second home/retirement community; and

WHEREAS, Brown & Root desires to have its property annexed by the Town and the Town desires to annex all of Brown & Root's property into the Town's boundaries; and

WHEREAS, Brown & Root acknowledges that the Town has not agreed to rezone its property and that nothing contained herein obligates or requires the Town to rezone Brown & Root's Property.

NOW THEREFORE, for and in consideration of the following mutual covenants and agreements the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. The Town agrees to petition to have the property shown in the attached Exhibit A, (hereinafter Property), annexed as a part of the Town of Cape Charles pursuant to the applicable provisions of the Code of Virginia, (hereinafter Annexation Suit). Brown & Root agrees to support the Annexation Suit and to provide the Town's legal representation and pay for any consulting fees associated with filing and prosecuting the Annexation Suit.

2. Brown & Root agrees that within six (6) months of the effective date of the annexation of all of the Property into the Town, Brown & Root will submit a rezoning application to the Town for all of its property currently within the Town limits north of Washington Avenue and East of Fig Street, together with the balance of its property currently outside the jurisdiction of the Town. The application shall be in substantial compliance with the preliminary development plan attached hereto as Exhibit B.

3. Brown & Root shall be responsible for the cost of planning the development of its property including the cost of studies by qualified planners, environmental engineers, golf course architects, marina consultants, and other experts retained for the development of Brown & Root's property. Brown & Root agrees to

use the results of these studies on coordinated projects with the Town.

4. The Town covenants and agrees that it shall not discriminate against any portion or parcel of the Property in the application and enforcement of any laws, ordinances or regulations following annexation and that it shall provide to the Property all Town services furnished to other properties within the Town limits unless such services are reduced or waived in writing by Brown & Root.

5. The Town covenants and agrees that it shall tax the Property according to Virginia Code Section 15.1-1047.1 following annexation. The Town further agrees that at such time as the Town assumes assessment responsibilities of Brown & Root's property it shall continue the existing policy of maintaining assessed values of property until the issuance of occupancy permits for the parcel of property for which the permits are sought. Nothing contained herein shall in any way interfere with the Town's ability to approve a general tax increase or reassess the value of all property within the Town.

6. The Town agrees to fully comply with local ordinances and state statutes in the review and approval of Brown & Root's site plans, subdivision plats, zoning applications, building and other permits associated with the use of Brown & Root's property. To the extent possible, the Town agrees to the expeditious review of said plans and applications from Brown & Root. The Town further acknowledges its support of Brown & Roots' proposed development, as shown in Exhibit B, and the Town will to the

extent allowed by law, support Brown & Root's permit applications with various state and federal agencies for proposed marina basin on the southern tract, their improvements to Kings Creek Marina and their proposed 36 hole golf course.

7. The Town agrees to incorporate within its zoning, subdivision and site plan ordinances, the regulations adopted by the Chesapeake Bay Local Assistance Board on September 20, 1989, or as amended. The Town agrees that in amending its Ordinances based on these regulations, that it will: a) adopt the buffer area requirements contained within the Board's regulations; b) recognize the creation of a channel and marina basin on Brown & Root's southern tract shown on Exhibit B, as a water dependent facility; c) provide as other localities have done, that Resource Protection Areas (RPA's) shall not apply to man made features such as the marina basin; and d) designate Kings Creek Marina and the adjacent proposed commercial area as an Intensely Developed Area (IDA) provided Brown & Root complies with at least one of the preconditions necessary for the establishment of an IDA in the Board's regulations and provided further that Brown & Root utilizes best management practices (BMP's) in the design of the facilities located within the IDA.

8. Brown & Root agrees that to the extent it employs either onshore or offshore preservation measures for the protection of its shores on the Chesapeake Bay, it will design and/or deploy said measures in a manner that will not endanger or threaten the Town's Chesapeake Bay Beach during normal tidal conditions. Brown & Root further agrees that upon receipt of the necessary dredging

permits from the appropriate state and federal agencies for the dredging of the channel into King's Creek Marina, it will, contingent on availability, make all beach quality sand resulting therefrom, in excess of that desired by Brown & Root for the enhancement of its beach on its northern tract, available for the Town. The excess amount of such sand estimated to be available for the Town is 9000 cubic yards.

9. Brown & Root acknowledges its desire not to jeopardize the downtown area of the Town by its proposed development. As a result, Brown & Root agrees to coordinate the location of retail and commercial uses on its property based on need and good planning practices in conjunction with the Town.

10. Contingent on available natural resources, the Town agrees to extend water and sewer treatment capabilities to Brown & Root's properties and to reserve for Brown & Root water and sewer treatment capabilities in sufficient capacities to serve the completed development on the Brown & Root property as depicted in Exhibit B in accordance with state regulations. Brown & Root agrees to pay the cost of the physical expansion of the Town's sewer and water treatment systems i.e. collection, distribution and treatment, to accommodate the additional treatment demands of the Brown & Root Property beyond the limits of the Town's current permitted capacities. Brown & Root agrees to construct the necessary physical improvements within its property to accommodate sewer and water services in a coordinated fashion with the Town's proposed improvements to its existing sewer and water treatment facilities. Brown & Root agrees to dedicate the treatment system

improvements i.e. collection, distribution and treatment and the sewer and water lines within the Brown & Root property to the Town. The Town agrees that its water and sewer treatment systems will be operated by qualified and licensed professionals and that the plant(s) will be operated to a standard at least equivalent to that prescribed by state and federal regulations. The provisions of this paragraph shall run with the land and be binding upon the Town or any entity that assumes the responsibility for sewer and/or water treatment services for the Brown & Root property. In the event the Town conveys or receives compensation for the water and/or sewer treatment systems, following improvements to either of those systems by Brown & Root, Brown & Root shall receive a share of said compensation in direct proportion to the Brown & Root share of funded flow capacity.

11. Brown & Root agrees that all vehicular access roads within its development, that are dedicated to the Town and/or State, shall be constructed to state standards, except as modified to not require curb, gutter and/or sidewalks. If said dedicated roads do not contain curb and gutter, Brown & Root agrees to record deed restrictions assigning the responsibility for the maintenance of the resulting swales to a home owners association or adjacent property owners. Brown & Root further agrees that any sewer and water system improvements i.e. collection, distribution, treatment and lines that it is required to construct per this Agreement will be built in accordance with state standards.

12. The Town acknowledges the potential public benefit of extending Fig Street from its current terminus in the southern

right-of-way line of Mason Avenue to the southern tract of the Brown & Root property in the annexed area to accommodate an at-grade crossing of the railway right-of-way of Eastern Shore Railroad, (hereinafter Extension). If requested by Brown & Root, and the funds are available for the Extension, the Town agrees to exercise its condemnation powers, if necessary, to obtain the necessary right-of-way for the Extension and to construct the newly extended Fig Street. The Town agrees to request the Virginia Department of Transportation to add the Extension to its six year plan. The Town shall not be responsible for any costs for either the acquisition or construction of the Extension. Brown & Root agrees to participate in the cost of the Extension. To the degree the Extension impacts the existing Little League fields south of the railway, Brown & Root agrees to relocate the Little League fields on the same property adjacent to the newly extended Fig Street.

13. The Town agrees to develop the property owned by the Town at the intersection of Route 642 and the Delmarva power utility easement, as shown on Exhibit C, into a wetlands park. Brown & Root agrees to include and dedicate to the Town a triangular portion of property adjacent to the Town's property for inclusion in the wetlands park. The Town agrees to develop the wetlands park with nature trails, indigenous wildlife and exhibits. Brown & Root agrees to provide 25% of the cost of developing the wetlands park, excluding grants, to the Town in yearly installments, over a 5 year period running from the date of the start of construction. The Town agrees to grant Brown & Root drainage

retention and access rights to the wetlands park. Brown & Root agrees to file a Rezoning Application for 10 acres of its Property adjacent to the property owned by the Virginia Port Authority, to light industrial. If all or portions of the rezoned light industrial property are not utilized within 10 years of said rezoning, Brown & Root reserves the right to submit a rezoning application to the Town for this 10 acre area to a more appropriate category. Should the Town grant a rezoning application for Brown & Root's property, following annexation; the Town agrees to grant density credit to Brown & Root for the property dedicated for the wetlands park, at the same unit per acre ratio as that approved by the Town for the balance of Brown & Root's property.

14. Brown & Root and the Town agree to jointly support the creation of a special zoning district along Route 184 into the Town and along Route 13 within one mile of each direction of the intersection of Route 13 and Route 184. The Town and Brown & Root agree to urge reasonable restrictions on commercial development, sign restrictions, increased setbacks, landscaping requirements and other measures to encourage quality development within the this area.

15. Brown & Root covenants and agrees that the obligations set forth herein shall run with the land and be binding upon the owners of its property, their successors and assigns.

16. The Town hereby expressly waives any defenses available to it by statute such as sovereign immunity with respect to obligations made by the Town herein. The Town represents that it intends to fulfill its obligations in this Agreement and will

continue to use its best efforts to comply with all its obligations contained herein.

17. Should an election within the Town be required by Section 15.1-1054, immediately following the annexation of the Property, Brown & Root agrees to reimburse the Town for cost of said election up to \$2,500.00.

18. The provisions of this Agreement other than paragraph 1 shall be contingent upon the approval of the Annexation Suit filed by the Town and the annexation of all of Brown & Root's property at one time into the Town. Brown & Root's obligations with respect to the improvement or replacement of public facilities shall be expressly contingent upon receipt of the necessary local, state and federal approvals for the development of its property in accordance with the preliminary development plan (Exhibit B) attached hereto.

19. The Town agrees that upon receipt and review of the zoning application submitted by Brown & Root in accordance with paragraph 2 herein, it will not require proffers or contributions from Brown & Root other than those contained in this Agreement, with the following exceptions:

a) Brown & Root shall provide the local share of the Town's grant match for planning or engineering design for break waters for the Town's Chesapeake Bay Beach.

b) Brown & Root shall provide the local share of the Town's grant match for planning the redevelopment of the "Old Town Park" i.e., old school site, if and when the County School Board vacates said site.

c) Within 18 months of the date of annexation of the Property, if feasible from an engineering standpoint, Brown & Root agrees to provide funds to the Town for aesthetically enhancing the appearance of the Town's proposed new water tower, as a lighthouse, by installing a catwalk and light-beam structure at the top of the tank, and painting the tank and enhancements to give the appearance of a lighthouse. The Town shall be responsible for maintenance of the water tower and improvements.

d) Within 18 months of the effective date of annexation of the Property, Brown & Root shall construct a Cape Charles Welcome Center on the same site as that containing the Town's enhanced water tower. The Center shall be used by the Town to welcome visitors and display points of interest within the Town. Brown & Root shall retain title to the Center and reserves the right to use a portion of the Center for sales purposes. The Town shall be responsible for maintenance of the Center.

e) Within 12 months of the effective date of annexation of the Property, Brown & Root shall install sidewalks on the north, south and west borders of its property at the corners of Mason Avenue and Bay Avenue. The sidewalks shall be consistent in design and materials to the sidewalks adjacent to the site.

f) Within 24 months of the effective date of annexation of the Property, Brown & Root shall construct 2 regulation size, laykold surface tennis courts and 4 shuffleboard courts at a mutually agreed upon location within the corporate limits of the Town immediately prior to the time of the filing of the Annexation Suit. If, prior to the start of construction of the tennis

courts, the Town requests that the tennis courts be lighted, Brown & Root shall also provide the funds for said lighting.

g) Within 12 months following the effective date of the annexation of the Property, Brown & Root agrees to donate to the Town, \$1,000.00 for multi media equipment for the Cape Charles Municipal Library.

20. This agreement is intended to benefit only the parties hereto and no other person or entity has or shall acquire any rights hereunder.

21. If any provision of this Agreement is determined to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and affect and shall in no way be affected or invalidated thereby.

22. All exhibits to which references are made are hereby incorporated in this Agreement whether or not actually attached hereto. Those exhibits consist of:

1. Exhibit A - Map of Proposed Annexation;
2. Exhibit B - Preliminary Plan of Development;
3. Exhibit C - Proposed Wetlands Park.

23. This Agreement may be recorded by either party in the Clerk's Office of Northampton County, by indexing it in the name of both Brown & Root and the Town of Cape Charles, Virginia.

TOWN OF CAPE CHARLES,
a municipal corporation

By Richard Barton

-11-

BROWN & ROOT I, INC.

By

T. E. Knight

STATE OF VIRGINIA
NORTHAMPTON COUNTY to-wit:

The foregoing was subscribed and sworn to before me, the undersigned Notary Public, in and for the aforesaid Town and State, by Richard Barton on behalf of The Town of Cape Charles, a municipal corporation, this 13th day of March, 1990.

Colleen Marie Coon
Notary Public

My commission expires:

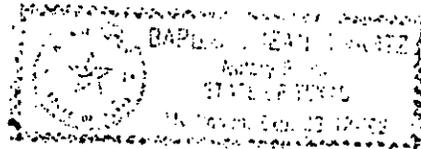
August 10, 1990

STATE OF TEXAS
CITY OF HOUSTON, to-wit:

The foregoing was subscribed and sworn to before me, the undersigned Notary Public, in and for the aforesaid City and State, by T. E. Knight, on behalf of Brown & Root I, Inc., this 22 day of March, 1990.

Barbara Jean Swartz
Notary Public

My commission expires:



Appendix D

PROPOSAL FOR WATER AND WASTEWATER TREATMENT PLANT IMPROVEMENTS

Wastewater Treatment Plant Improvements.

1. Brown & Root will prepare an application for a VPDES permit to submit on behalf of the Town to the State Water Control Board (SWCB) for the initial expansion of the plant within 90 days of the effective date of annexation.
2. Prior to the initial expansion of the plant, Brown & Root will agree to coordinate the connection of residential units to the plant with the capacity of the plant to accommodate the connections. The "capacity of the plant" shall be based upon SWCB regulations, including but not limited to, Section 4.1 "Special Permit Requests" of VR 680-14-01, or as otherwise allowed by the SWCB.
3. Following the initial expansion, Brown & Root will likewise coordinate the connection of additional units in Accawmacke Plantation with the capacity of the improvements Brown & Root has constructed and reserved in the plant, unless otherwise allowed by the SWCB and/or State Health Department. Should the Town construct additional capacity beyond that provided by Brown & Root, then such additional capacity may be used to extend the unit construction limits otherwise applicable.
4. Brown & Root will monitor the Town's wastewater treatment capacity and coordinate the expansion and development of its project accordingly. The Town will provide information to Brown & Root, in a timely manner, of its ongoing plant operations, of any proposed changes to the plant's capacity and of proposed new demands on the plant's capacity.
5. Following review by the Town, the Town authorizes Brown & Root to file the necessary applications for the plant expansion(s) to accommodate Accawmacke Plantation with the appropriate permitting State agencies. Brown & Root agrees that its proposed expansion(s) of the Town's plant will not interfere with the Town's provision of wastewater treatment services to its citizens.
The Town will agree to immediately proceed with the expansion of the plant when the SWCB and State Health Department permits are obtained or it will authorize Brown & Root to begin the expansion(s) of the plant upon receipt of the necessary permits.
6. These obligations and conditions shall apply to the Town and Brown & Root, their respective successors and/or assigns.