

Board of Supervisors
County of Prince George, Virginia

Resolution

At a regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia this 22nd day of September, 2020.

Present:

Donald R. Hunter, Chairman
Alan R. Carmichael, Vice-Chairman
Floyd M. Brown, Jr.
Marlene J. Waymack
T. J. Webb

Vote:

C-3

On motion of _____, which carried unanimously, the following Resolution was adopted:

RESOLUTION; AUTHORITY TO EXECUTE MEMORANDUM OF AGREEMENT BETWEEN THE U.S. FISH AND WILDLIFE SERVICE NORTH ATLANTIC APPALACHIAN REGION JAMES RIVER NATIONAL WILDLIFE REFUGE AND PRINCE GEORGE COUNTY CONCERNING ENHANCED NATURE-BASED RECREATIONAL OPPORTUNITIES

BE IT RESOLVED That the Board of Supervisors of the County of Prince George this 22nd day of September, 2020, does hereby authorize the execution of a Memorandum of Agreement Between the U.S. Fish and Wildlife Service North Atlantic Appalachian Region James River National Wildlife Refuge and Prince George County Concerning Enhanced Nature-Based Recreational Opportunities.

A Copy Teste:

Percy C. Ashcraft
County Administrator

MEMORANDUM OF AGREEMENT
BETWEEN
THE U.S. FISH AND WILDLIFE SERVICE
NORTH ATLANTIC APPALACHIAN REGION
JAMES RIVER
NATIONAL WILDLIFE REFUGE
AND
PRINCE GEORGE COUNTY
CONCERNING
ENHANCED NATURE-BASED RECREATIONAL OPPORTUNITIES

1. References

This Memorandum of Agreement, hereinafter called “MOA”, is made and entered into this ____ day of _____, 2020, between PRINCE GEORGE COUNTY, a political subdivision of the Commonwealth of Virginia, with an address at P.O. Box 68, 11100 Old Stage Road, Prince George, VA 23875, under authority 15.2-1800 within the licensing section of the Virginia Code, hereinafter called “the County” and the U.S. FISH AND WILDLIFE SERVICE, acting by and through its Regional Director, North Atlantic Appalachian Region, Hadley, Massachusetts, under authority granted in 16 U.S.C. 742f(d), hereinafter called “the Service”.

2. Background

WHEREAS, the Service, by policy of Congress, administers National Wildlife Refuges for the purposes of (1) preserving, restoring, and enhancing in their natural ecosystems all species of animals and plants that are endangered or threatened with becoming endangered; (2) perpetuating migratory bird resources; (3) preserving a natural diversity and abundance of fauna and flora on the refuge lands; (4) providing and understanding and appreciation of fish and wildlife ecology and human’s role in the environment; (5) providing refuge visitors with high quality safe, wholesome and enjoyable recreational experiences oriented toward wildlife to the extent that these activities are compatible with the purpose for which the wildlife refuge was established; and,

WHEREAS, the County is charged to provide municipal services and promote recreational opportunity for its residents by maintaining facilities and grounds that support public programs and activities within the district boundary. Whose mission statement is: To enhance the quality of life for Prince George County residents by promoting healthy lifestyles and providing enriching leisure services.

3. Purpose and Scope

WHEREAS, the Service, on behalf of the United States, manages the property described as follows:

James River National Wildlife Refuge located in Prince George County, Virginia, hereinafter referred to as “James River NWR”, containing approximately 4,400 acres; and, WHEREAS, James River NWR is an important natural area within the James River ecosystem that protects significant wildlife habitat and the opportunity for providing an understanding and appreciation of the fish and wildlife ecology and human’s role in the environment; and,

WHEREAS, the Service and the County desire to work together to further protect and preserve the James River NWR for the benefit of native wildlife and the education of the public about the natural environment of the James River ecosystem; and,

WHEREAS, the mutual effort would complement the goals and objectives of both parties, would be in the best interest of the resource and in the best interest of the public.

4. *Allocation of Responsibilities*

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

THE COUNTY AGREES TO:

- a.) Promote the National Wildlife Refuge System and coordinate with the Service on any and all actions with respect to the James River NWR and their legislated purposes.
- b.) Utilize the James River NWR for the purposes of nature-based recreation solely as specified and delineated in the Special Use Permit provided by the Service.
- c.) Use lands, materials, and facilities only under the provisions and conditions of the Special Use Permit that is reviewed, and revised as necessary, every year from the date of this signed document.
- d.) Meet with the Service’s representative by January 15 annually to determine mutually acceptable programs, infrastructure needs/improvements, and measures for protecting resources.
- e.) Promptly notify the Service’s designated point of contact (outlined below) via phone/text and e-mail, no less than twenty-four (24) hours, following any fire, accident, fatality, personal injury or property damage, emergency, violation of the law, or unsafe condition(s) determined by its agents and employees to exist on the James River NWR.

f.) Cooperate to the best of its abilities, through its agents and employees in the prevention of unauthorized entry, taking and disturbance of wildlife, vandalism, destruction of property, and littering on James River NWR.

g.) Secure prior written approval from the Service's authorized representative for improvements proposed to be placed at James River NWR.

h.) Maintain use records for the County's programming at James River NWR, noting the number of participants, dates, and type of use. The report is to be provided to the Service's designated point of contact prior to August 1st of each year.

i.) Submit all publicity and/or public outreach communications that involve James River NWR to the Service for review and approval prior to publication. Such communications do not include correspondence or communications to individuals. Language that has been previously approved by the Service may be used without additional review and approval.

j.) Be subject to and abide by all regulations and rules promulgated by the Service including those listed in Code of Federal Regulations, Title 50 including, but not limited to, collecting/harming plants and animals, access to unauthorized areas, etc.

k.) Supervise all County uses authorized by this agreement.

l.) To the extent allowed under Virginia law, indemnify, defend, and hold the United States of America, its agents and employees harmless from and against any and all claims, damages, losses, or expenses arising out of our resulting from the County's use of James River NWR under this MOA.

m.) To the extent allowed under Virginia law, waive any and all claims for compensation against the United States or the Service for work performed or structures constructed on Service properties.

n.) Authorize as its representative, in the administration of the terms of this MOA, the Director of Parks and Recreation Department for Prince George County, whose address is the same as noted as the organization. The current Director is Keith Rotzoll.

o.) Coordinate with the Service to schedule programs, promote public opportunities, determine promotional language, and support joint activities.

p.) Shared tools, equipment, or materials (i.e., canoes, personal floatation devices, paddles) are to be guarded and maintained at a level suitable for safe public use. The County will

fully repay the Service for any and all damage directly or indirectly resulting from negligence or failure on their part, and/or the part of anyone of the County's associates, to use reasonable care. If damage resulted from normal wear and tear, cost falls on the Service.

q.) Furnish the Service a certificate of insurance, as evidence of the existence of the following insurance coverage in amounts not less than identified below. This insurance must be maintained during the entire duration of the agreement. The certificate of insurance shall provide for a thirty day written notice to the Government by the insurance company prior to cancellation or material change in policy coverage.

- Comprehensive General Liability: \$500,000 per occurrence.
- Automobile Liability: \$200,000 per person; \$500,000 per occurrence for bodily injury, \$20,000 per occurrence for property damage.
- Workmen's Compensation: As required by federal and state worker's compensation and occupational disease statutes.
- Employer's Liability Coverage: \$100,000, except in a state where worker's compensation may not be written by private carriers.
- Property Damage: \$100,000.
- Other as required by state law.

THE SERVICE AGREES TO:

- a.) Determine, as the hosting agency, what projects or facets thereof are appropriate within the parameters of James River NWR purposes, missions, and objectives, and complete compatibility determination(s) prior to permitting use.
- b.) Issue a Special Use Permit by January 30th annually which specifies and delineates permitted activities.
- c.) Maintain signs, parking lot, trails, and support infrastructure in good, working order to support FWS-approved County programming.
- d.) Unless otherwise mutually agreed upon by the County and the Service, the Service will be responsible for all repair and maintenance of facilities/structures.

- e.) Provide adequate means to convey refuge regulations to the public. Regulations will be disseminated at refuge trail heads, kiosks, informational signs, rack cards, and website.
- f.) Coordinate with the County to schedule programs, promote public opportunities, determine promotional language, and support joint activities.
- g.) Authorize as its representative, the administration of the terms of this MOA, the Refuge Manager of the Eastern VA Rivers National Wildlife Refuge Complex, whose address is 336 Wilna Road, Warsaw, VA 22572. The current Refuge Manager is Kendra Pednault.

5. *Applicable Laws*

THE COUNTY AND THE SERVICE AGREE:

That all provisions of this MOA are subject to the laws of the United States and the regulations governing the Service and the policies adopted pursuant thereto.

That this MOA and the obligations of the Service hereunder shall be subject to the availability of funding, and nothing contained herein shall be construed as binding the Service to expend in one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of the MOA for the fiscal year, or to involve the Service in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

That this MOA is not transferable and no privileges hereunder may be sublet or assigned to any person or interest not a party hereto.

To maintain the following provisions:

a.) Civil Rights

During the performance of this agreement, the participants agree to abide by the terms of the U.S. Department of the Interior civil rights assurance certification, and will not discriminate against any person because of race, color, religion, sex, disabilities, age, sexual orientation, or national origin.

b.) Officials Not to Benefit

No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom.

c.) Promotions

The County shall not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts, or other publications) which state or imply governmental, departmental, bureau or government employee endorsement of a product, service, or positions which the County represents. No release of information relating to this agreement may state or imply that the Federal government approves of the County's work product, or considers the work product to be superior to other products or services.

d.) Public Information Release

The County must obtain prior approval from the Refuge Manager for any public information releases related to this agreement or activities on James River NWR which refer to the Department of Interior, the Service, any bureau, refuge unit, or employee (by name or title), or to this agreement. The specific text, layout, photographs, etc., of the proposed release must be submitted with the request for approval.

e.) Public Records

Any information furnished to any of the undersigned parties may be subject to the Freedom of Information Act (5 U.S.C. § 552), subject to all applicable exemptions.

6. *Dispute Resolution*

THE COUNTY AND THE SERVICE AGREE,

To maintain communication between parties to resolve issues and avoid conflicts.

To annually orient its field personnel to the provisions of this MOA.

To coordinate to maximum mutual benefit on habitat protection, public infrastructure upkeep, and safety.

To notify the other in writing, within thirty (30) days, following a change in the designated representative.

7. *Key Officials and Contacts*

For the Service:

Name: Kendra Pednault

Title: Project Leader, Eastern VA Rivers NWR Complex

Address: 336 Wilna Road, Warsaw, VA 22572
Phone: 804-333-1470 x 115
Fax: 804-333-3396
Email: kendra_pednault@fws.gov

Service Designated Point of Contact

Name: Cyrus Brame
Title: Wildlife Refuge Specialist
Address: 11116 Kimages Road, Charles City, VA 23030
Phone: 804-829-9020
Fax: 804-829-9606
Email: cyrus_brame@fws.gov

For Prince George County:

Name: Keith Rotzoll
Title: Director, Prince George County Parks and Recreation Department
Address: 111000 Old Stage Road, Prince George, VA 23875
Phone: 804-458-6164
Fax: 804-458-5021
Email: krotzoll@princegeorgecountyva.gov

8. Effective Date

This agreement shall become effective _____ day of _____, 2020, and continue for five years and may be renewed by mutual agreement for subsequent five year periods, unless sooner terminated.

9. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile or electronic transmission), but all of which together shall constitute one and the same instrument.

10. Modification and Termination

THE COUNTY AND THE SERVICE AGREE,
Requests for amendments to this agreement shall be submitted to the other party for review, consultation, and consideration not less than thirty (30) days in advance of the effective date desired.

Termination of this agreement occurs:

- a.) with thirty (30) days written notice by the Service for any material breach in the conditions contained herein, subject to the conditions outlined below;
- b.) upon one hundred eighty (180) days written notice resulting from changes in any laws, regulations, or Service policies or requirements relating to governmental operations effecting the James River NWR that prevents this MOA from being implemented;
- c.) upon thirty (30) days written notice by the Service or County.

This MOA is made upon the express condition that if the County shall fail to keep and perform any of the terms, agreements, covenants, conditions and provisions in this MOA, then this MOA shall become void at the option of the Service, provided that the Service shall first give the County written notice, at least thirty (30) days in the case of default, of the Service's intention to terminate this agreement and shall set forth therein the specific default under this agreement and the Service's intention to declare this agreement forfeited if such default continues. If the default is one that would ordinarily take more than thirty (30) days to cure, then the County shall present a written plan to the Service, outlining the proposed cure and setting reasonable goals and reporting dates toward completion of the cure.

If this MOA is terminated by the Service prior to the expiration date, subject to the conditions below all of the rights of the County, and those claiming possession by, through or under it, under this agreement and in the James River NWR shall terminate without compensation.

No failure by the Service to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this MOA or to exercise any right or remedy upon a default, shall constitute a waiver of any such default or such term, covenant, agreement, provision, condition or limitation. No term, covenant, agreement, provision, condition or limitation of this MOA and no default under this MOA may be waived, altered or modified except by a written instrument executed by the Service. No waiver or any default shall affect or alter this MOA, but each and every term, covenant, agreement, provision, condition and limitation of this MOA shall continue in full force and effect with respect to any other existing or subsequent default.

Upon notice of termination by either party, the County and the Service will enter into discussions to develop a mutual agreement on the future use of any shared resources.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

U.S. FISH AND WILDLIFE SERVICE
NORTH ATLANTIC APPALACIAN REGION

PRINCE GEORGE COUNTY
PRINCE GEORGE, VIRGINIA

NAME, TITLE
NAME, TITLE

DATE
DATE

DRAFT