

BOARD OF SUPERVISORS
Agenda Item

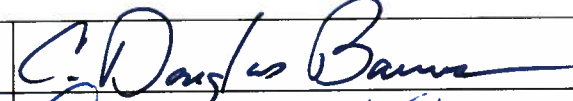

Meeting Date:	October 18, 2016
Title:	Authorize the Interim County Administrator to Execute an Amended Deed of Declaration for Tax Map Parcel No. 31-33-20D
Department:	Planning and Zoning
Staff Contact:	Jeffrey Harvey
Board Committee/ Other BACC:	N/A
Staff Recommendation:	Approval
Fiscal Impact	N/A
Time Sensitivity:	N/A

ATTACHMENTS:

1	Background Report	4	Draft Amended Deed
2	Proposed Resolution R16-315	5	Location Map
3	Recorded Deed		

<input checked="" type="checkbox"/>	Consent Agenda	<input type="checkbox"/>	Other Business	<input type="checkbox"/>	Unfinished Business
	Discussion		Presentation		Work Session
	New Business		Public Hearing		Add-On

REVIEW:

X	County Administrator	
X	County Attorney	

DISTRICT:	Aquia
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BACKGROUND REPORT

On December 13, 2006, the County recorded a Deed of Declaration of Covenants, Conditions, and Restrictions (deed restrictions) on Tax Map Parcel No. 31-33-20D (Property) and subsequently sold the property to John T. Biddulph (Property Owner). The property is 1.4 acres in size and is located on the east side of Hope Springs Lane adjacent to Aquia Creek.

The deed restrictions constitute an agreement between the Property Owner and the County, which limit the use of the property such that it cannot be developed for residential, commercial, or industrial purposes. The deed restrictions on the Property allow for construction of a pier extending into Aquia Creek and, as such, a pier has been built on the property.

The Property Owner has requested an amendment to the deed restrictions (Attachment 4). The intent of the amendment is to acknowledge that some of the supporting structures and activities have been installed on the Property for the purpose of construction, use and maintenance of the pier. A driveway has been installed from Hope Springs Lane onto the Property, and a fence and a row of trees were installed along Hope Springs Lane in order to limit access to the Property. Electrical panel shelters have been installed on the pier. The proposed amendment would make it clear that existing supporting structures and features are permitted to be on the Property, and that any additional buildings would be limited to a 200 square foot storage shed, a well water shed, utility panels, and enclosures. The Property Owner indicates that all of those features are necessary for the use and maintenance of the pier and the property in general.

The proposed deed language would be streamlined. There are several recitals in the deed that would be replaced as it speaks to the intent of the deed to protect the environmental integrity of the Property. The proposed language would be specific to limit the use of the Property to the pier and support structures. No other uses or activities would be permitted on the Property. Several recitals speak to the County's right to enforce the restrictions of the deed. Those provisions are not necessary as the County would continue to be a named party to the deed and the use restrictions on the property. The County, like any property owner, has the right to enforce its interest in covenants to which it is a party.

Staff recommends approval of proposed Resolution R16-315, which allows the Interim County Administrator to execute an amended Deed of Declaration, Covenants, Conditions, and Restrictions on the Property.

R16-315

PROPOSED

BOARD OF SUPERVISORS
COUNTY OF STAFFORD
STAFFORD, VIRGINIA

RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, George L. Gordon, Jr., Government Center, Stafford, Virginia, on the 18th day of October, 2016:

MEMBERS:

Robert "Bob" Thomas, Jr., Chairman
Laura A. Sellers, Vice Chairman
Meg Bohmke
Jack R. Cavalier
Wendy E. Maurer
Paul V. Milde, III
Gary F. Snellings

VOTE:

On motion of , seconded by , which carried by a vote of , the following was adopted:

A RESOLUTION AUTHORIZING THE INTERIM COUNTY ADMINISTRATOR TO EXECUTE AN AMENDED DEED OF DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR TAX MAP PARCEL NO. 31-33-20D, WITHIN THE AQUIA ELECTION DISTRICT

WHEREAS, on December 13, 2006, the County conveyed Tax Map Parcel No. 31-33-20D to John T. Biddulph by Quitclaim Deed; and

WHEREAS, the deed contains covenants, conditions, and restrictions that run to the favor of the County; and

WHEREAS, John T. Biddulph requested amendments to the covenants, conditions, and restrictions; and

WHEREAS, the Board believes that the requested amendments are reasonable and appropriate;

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the 18th day of October, 2016, that it be and hereby does authorize the Interim County Administrator to execute an Amended Deed of Declaration of Covenants, Conditions, and Restrictions for Tax Map Parcel No. 31-33-20D.

LR060038801



STAFFORD COUNTY CIRCUIT COURT

**DEED OF DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS DEED of Declaration of Covenants, Conditions and Restrictions is made this 12th day of DECEMBER, 2006, by the Stafford County Board of Supervisors, a political subdivision of the Commonwealth of Virginia, as follows:

WITNESSETH:

WHEREAS, the Stafford County Board of Supervisors ("Board") is the owner of a certain parcel or tract of land identified as Tax Parcel No. 31-33-20D, consisting of approximately 1.4821 acres of land, acquired by instrument recorded in LR980012952 as shown in PB32, at page 38 in the Stafford County land records, and located in the Aquia Magisterial District of Stafford County ("the Property"); and

WHEREAS, the Board desires to protect and preserve the Property's natural resource and water shed values; to enhance the Property's biodiversity; to retain a quality habitat for native plants and animals on the Property; and to maintain, enhance, protect and preserve the natural features of the Property; and

WHEREAS, the Board desires to prohibit any uses or activities on the Property which would impair or interfere with the protection and preservation of the Property in its natural state; and

WHEREAS, it is the determination of the Board that it is necessary to restrict the uses and activities on the Property in order to protect its natural state through these conditions, covenants and restrictions into perpetuity and running with the land; and

WHEREAS, the Board finds that it is in the public interest to restrict the uses and activities that can be conducted or performed on the Property.

TAX MAP AND PARCEL: 31-33-20D

Prepared by: Stafford County Attorney's Office

P.O. Box 339

Stafford, VA 22555

17cc
[Handwritten signature]

NOW, THEREFORE, the Board hereby declares and imposes upon the Property the following covenants, conditions and restrictions to run with the Property and to be binding upon any future owners of the Property into perpetuity:

1. The Property shall not be used or developed for any residential, commercial, industrial or other use.
2. The Property shall remain in its natural state.
3. The cutting of any trees or vegetation, including pruning or trimming, is prohibited. Trees or vegetation which pose a threat to human life, or whose diseased condition threatens to damage other trees or other vegetation on the Property, may be removed after approval by the Stafford County Administrator, or his designee. Trees and vegetation may be removed to provide access to the one (1) private pier, if approved in accordance with the provisions of Paragraph 4 of this Declaration.
4. The placement or construction of any human-made modification to the Property, such as, but not limited to, structures, buildings, fences, signs, roads, alleys, parking lots is prohibited. No more than one (1) private pier to provide water access for the owner of Stafford County Tax Parcel No. 31-33-35 is allowed, subject to standard permitting processes. Shoreline stabilization in the form of rip-rap is allowed, however no bulkhead will be allowed without Board approval.
5. Motorized vehicles shall not be allowed on the Property. There shall be no off-road vehicle use for snowmobiles, all-terrain vehicles, motorcycles or other motorized vehicles on the Property.
6. The accumulation or dumping of any waste, debris, or other material is prohibited.

7. The County shall have the authority and ability to enforce the terms of this Declaration of Covenants, Conditions and Restrictions. Upon detection of a violation of this Declaration of Covenants, Conditions and Restrictions, the County shall notify the owner of the Property of the violation and provide a deadline for abating the violation and restoring the Property to its condition prior to the violation. If the condition is not remedied within the time provided by the County in its notification, the County has the right to pursue all legal remedies in order to enforce this Declaration of Covenants, Conditions and Restrictions.

8. Enforcement of the terms of this Declaration of Covenants, Conditions and Restrictions shall be at the discretion of the County, and any forbearance by the County to exercise its rights under this Declaration of Covenants, Conditions and Restrictions in the event of any breach of any terms of this Declaration of Covenants, Conditions and Restrictions by any subsequent owner of the Property shall not be deemed or construed to be a waiver by the County of such terms or of any subsequent breach of the same or any other term of this Declaration of Covenants, Conditions and Restrictions, or of any of the County's rights under this Declaration of Covenants, Conditions and Restrictions. No delay or omission by the County in the exercise of any right or remedy upon a breach by any subsequent owner of the Property shall impair such right or remedy or be construed as a waiver.

9. Any costs incurred by the County in enforcing the terms of this Declaration of Covenants, Conditions and Restrictions against any subsequent owner of the Property, including, without limitation, costs of suit and attorney's fees and any costs of restoration necessitated by the violation of the terms of this Declaration of Covenants, Conditions and Restrictions, shall be borne by the Property owner.

10. This Declaration of Covenants, Conditions and Restrictions does not grant public any right to access or any right of use of the Property that is not specifically approved by the County.

11. This Declaration of Covenants, Conditions and Restrictions shall run into perpetuity and shall run with the land. Any future conveyance of the Property shall remain subject to the terms of this Declaration of Covenants, Conditions and Restrictions, and any and all subsequent assignees or grantees shall be bound by all obligations set forth in this Declaration of Covenants, Conditions and Restrictions. Any conveyance of the Property shall incorporate the terms and conditions of this Declaration of Covenants, Conditions and Restrictions in any deed or any other legal instrument by which any legal interest to any or all of the Property is conveyed to a subsequent owner.

12. If any portion of this Declaration of Covenants, Conditions and Restrictions is determined to be invalid by a competent court of law, all of the remaining provisions herein will remain in full force and effect.

13. This Deed of Declaration of Covenants, Conditions and Restrictions was approved by the Board of Supervisors in Resolution No. R06-206.

WITNESS the following signature and seal:

STAFFORD COUNTY BOARD OF SUPERVISORS

BY: 
STEVE CROSBY, County Administrator

STATE OF VIRGINIA

COUNTY OF STAFFORD, to-wit:

I, the undersigned Notary Public of and for the jurisdiction aforesaid, do hereby certify that Steve Crosby, County Administrator, of the Stafford County Board of Supervisors, whose name is signed to the foregoing Deed of Declaration of Covenants, Conditions and Restrictions dated DECEMBER 12, 2006, has this date appeared before me, and acknowledged the same.

Given under my hand and seal this 12TH day of DECEMBER, 2006.

Vivian A. Wharton

NOTARY PUBLIC

My commission expires: JAN. 31, 2010.

APPROVED AS TO FORM:

BY: *Joseph L. Howard, Jr.*
JOSEPH L. HOWARD, JR.
STAFFORD COUNTY ATTORNEY

COMMONWEALTH OF VIRGINIA
COUNTY OF STAFFORD TO-WIT:
IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT FOR
THE COUNTY OF STAFFORD, THE 14 DAY OF Dec 20 06
THE FOREGOING DEED Declaration WAS PRESENTED AND WITH
THE CERTIFICATE ANNEXED ADMITTED TO RECORD AT 10:04
AND INDEXED AFTER PAYMENT OF \$ TAX IMPOSED BY
58.1-800., ET, SEQ.

TESTE:

BARBARA G. DECATUR, CLERK

By: Allen West, DC

Prepared by: James W. Hilldrup, PLC **VSB#:** 19658
4343 Plank Road, Suite 220
Fredericksburg, VA 22407

Tax Map Number: 31-33-20D **Consideration:** \$00.00 **File:** B63.5

***THIS AMENDED DEED OF DECLARATION PREPARED
WITHOUT BENEFIT OF TITLE EXAMINATION***

AMENDED DEED OF DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AMENDED DEED of Declaration of Covenants, Conditions and Restrictions is made this ____ day of _____, 2016 by the **STAFFORD COUNTY, VIRGINIA BOARD OF SUPERVISORS**, the governing body of Stafford County, Virginia, a political subdivision of the Commonwealth of Virginia, Grantor and Grantee for indexing purposes, (hereinafter referred to as "Stafford") and **JOHN T. BIDDULPH**, Grantor and Grantee for indexing purposes, (hereinafter referred to as "Biddulph") as follows:

WITNESSETH:

WHEREAS, Biddulph is the owner of a certain parcel or tract of land identified as Tax Map Parcel No. 31-33-20D, consisting of approximately 1.4821 acres of land acquired by Quitclaim Deed from Stafford dated December 13, 2006, duly recorded in the Clerk's Office of the Circuit Court of Stafford County, Virginia ("Land Records") as Instrument LR060038802; it being composed of 1.4135 acres as shown on that certain plat, dated July 9, 1998, recorded among the Land Records in Plat Book 32 at page 38, and 0.0686 acres as soon on that certain plat dated August 7, 1974, recorded among the Land Records in Plat Book 11 at Page 157 (hereinafter referred to as "the Property"); and

WHEREAS, Stafford, to protect the Property, restricted certain uses and activities by recording that certain Deed of Declaration of Covenants, Conditions and Restrictions, dated December 12, 2006, on December 14, 2006, among the Land Records as Instrument LR060038801 (hereinafter referred to as “the Declaration”); and

WHEREAS, Stafford, which pursuant to the Declaration retains enforcement authority, and Biddulph have agreed to certain amendments and modifications to the Declaration, as set forth below.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Stafford and Biddulph hereby amend and modify the Declaration, paragraphs numbered 2 through 5 inclusive, as follows, all other portions of the Declaration remaining unchanged, which shall run with the Property and are binding upon the current and any future owners of the Property in perpetuity:

2. Improvements on the Property shall be limited to the primary structure (the pier) and structures that support the primary structure. Supporting structures may include utility panels and enclosures, well water shed, storage shed (maximum 200 square feet), driveways and parking area, fencing, entrance pillars and gate, and rip-rap or other retaining material along the driveways and parking area, subject to meeting any and all requirements and restrictions set by federal, state, and local laws, including the Stafford County Zoning Ordinance.

3. The cutting of any trees or vegetation will be prohibited unless approved by the Stafford County Administrator, or his designee. Trees which pose a threat to human life or property, or whose condition threatens to damage other trees or vegetation on the Property, may be removed, after advanced written notice is provided to Stafford. Trees and vegetation may be removed as necessary for shoreline stabilization and to provide access to the private pier, with advanced written notice.

4. The construction of any additional human-made modifications to the Property, including but not limited to buildings, roads, alleys, and parking lots is prohibited unless approved in advance in writing by the Stafford County Administrator, or his designee. Land and shoreline stabilization including but not limited to rip-rap and/or bulkhead is allowed, subject to standard permitting processes. Maintenance, repair, and improvement of existing structures, which does not include the expansion thereof, is permitted. Passive recreation facilities such as boardwalks, trails, and pathways are permitted.

5. Motorized vehicles including off-road vehicles, motorcycles, snowmobiles, all-terrain vehicles, or any other motorized vehicles shall not be operated on the Property except for in approved pier access, parking, and driveway areas.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.
SIGNATURES FOLLOW ON THE NEXT TWO PAGES**

WITNESS the following signatures and seals:

The forgoing amendments to the Declaration are hereby accepted and agreed to by the Stafford County, Virginia Board of Supervisors, as evidenced by the signature of the undersigned, who is authorized to execute this Amended Deed, as evidenced by Resolution R16-_____, adopted on _____, 2016.

STAFFORD COUNTY, VIRGINIA
BOARD OF SUPERVISORS

By: _____ (SEAL)
C. Douglas Barnes, Interim County Administrator

COMMONWEALTH OF VIRGINIA

COUNTY OF STAFFORD, to-wit:

The foregoing Amended Deed of Declaration of Covenants, Conditions and Restrictions, was acknowledged before me this ____ day of _____, 2016, by C. Douglas Barnes, Interim County Administrator of Stafford County, Virginia.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

My Registration Number: _____

APPROVED AS TO FORM:
Virginia Code § 15.2-1803

Stafford County Attorney's Office
Printed Name:
Title:

John T. Biddulph (SEAL)

COMMONWEALTH OF VIRGINIA

COUNTY OF SPOTSYLVANIA, to-wit:

The foregoing Amended Deed of Declaration of Covenants, Conditions and Restrictions, was acknowledged before me this ____ day of _____, 2016, by John T. Biddulph.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

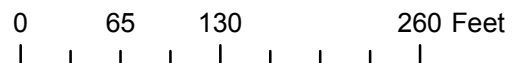
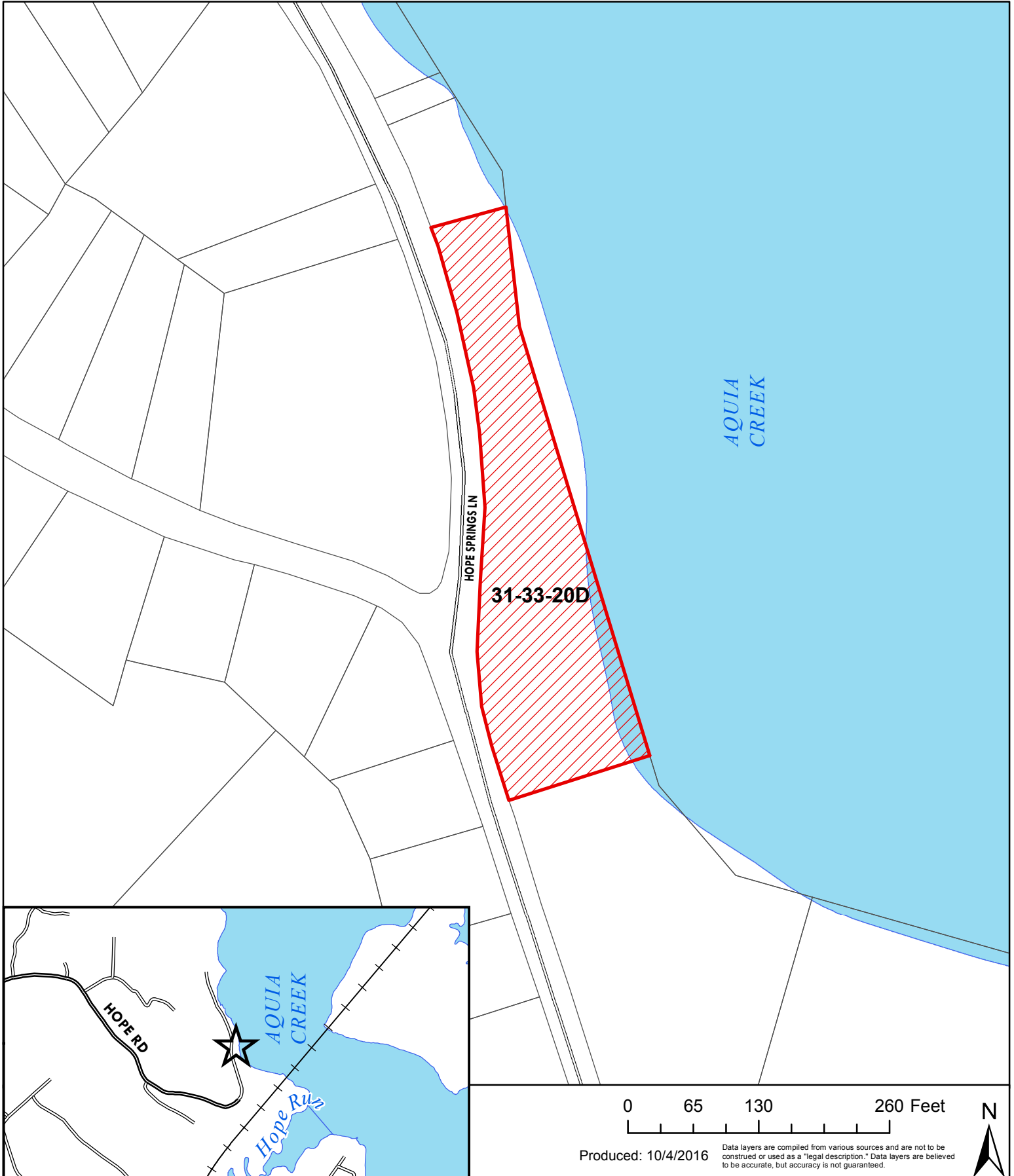
My Registration Number: _____



Tax Map Parcel No. 31-33-20D

Amended Deed of Declaration - John T. Biddulph

Produced by the Stafford County Department of Planning and Zoning
540-658-8668 | P.O. Box 339 Stafford, VA 22555



Produced: 10/4/2016

Data layers are compiled from various sources and are not to be construed or used as a "legal description." Data layers are believed to be accurate, but accuracy is not guaranteed.

