

King George County, Virginia

Department of
Community Development
10459 Courthouse Drive, Suite 104
King George, VA 22485



Jack Green, AICP, Director
Michael Clift, CBO, Building Official
(540) 775-7111 (office)
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August 21, 2002

Julie A. Caiafa, Vice President
Birchwood Power Partners, LP
Mirant Birchwood, Inc.
10900 Birchwood Drive
King George, Virginia 22485

RE: Rezoning Application: 91-03-Z01a (w/proffer statement); and to
Amend to Special Exception Permit 91-03-E02
Tax Map 21, Parcel 50

Dear Ms. Caiafa:

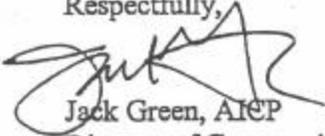
At its August 21, 2002 meeting, the King George County Board of Supervisors approved your request to rezone, with proffers, Tax Map 21, Parcel 50 and to amend Special Exception Permit 91-03-E02.

The Proffer Statement as accepted by the Board of Supervisors and the Special Exception Permit as amended by the Board of Supervisors is attached. The Proffer Statement must be recorded in the Clerk's office along with the Special Exception Permit.

The amended Special Exception Permit must be fully executed by yourself and King George County and then recorded in the Clerk's Office amongst the land records of King George County. Upon your signature, please return the Special Exception Permit for execution by the County. The permit will then be returned to you for recordation.

If you have any questions, please contact me.

Respectfully,


Jack Green, AICP
Director of Community Development

Cc: Dennis Kerns, County Administrator
Chron. File
Parcel File

Proffer Statement

REFERENCE: Rezoning Application No. 91-03-Z01a
Tax Map 21, Parcel 50

APPLICANT: Mirant Birchwood Power Facility

DATE: August 8, 2002

Pursuant to Section 15.2-2298, Et. Seq. of the Code of Virginia as amended, the owner, hereinafter referred to as applicant, and its successors in title to the land subject to Zoning Map Amendment No. 91-03-Z01a do hereby proffer the following conditions contingent upon the approval by King George County of this proffer statement.

These proffers shall run with the land and shall be binding upon the applicant and the property, which is the subject of this application.

1. Use of the property shall be limited to a power production facility and a power switching facility and a manufactured aggregate facility and uses incidental thereto, as well as such uses as are permitted in the Rural Agricultural (A-2) Zoning District. Any future steam host not within such permitted uses shall require a special exception permit pursuant to the normal procedures for issuance of such permits.
2. The portion of the property north of the RF&P rail spur (approximately 110 acres) shall not be disturbed nor its timber removed except for the extension of power lines and other utilities through such area.
3. Two high pressure fire hydrants will be constructed outside the site fence line along Route 665, giving the volunteer fire department pump trucks access to the project's fire protection system water supply.

Any proposed amendments to this proffer statement shall be considered in conformance with the same legal procedures as required for its initial acceptance.

The applicant hereby proffers that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission. The applicant further represents that it is the owner of all the property included within this application and that the signatures below constitute all the necessary signatures of record owners of the property to subject the land within this application to these proffers. These proffers shall be binding upon the applicant, its successors and assigns.

By: Julie Caiafa

Given under my hand this 7th day of Aug., 2002.

Commonwealth of Virginia, County of King George, To Wit:

I, the undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that Julie Caiafa whose name is signed to the foregoing bearing the date of 8/7, 2002, has this day personally appeared before me in my State and County aforesaid and acknowledged the same.

Notary Public: Anne C. McDermott. My Commission Expires: 7/31/04

Given under my hand this 7th day of Aug., 2002.

**AMENDED
SPECIAL EXCEPTION PERMIT
CASE NUMBER 91-03-E02**

Pursuant to Article 5, Section 5.4 of the King George County Zoning Ordinance, SEI Birchwood, Inc., "the Owner", is hereby granted an amended Special Exception Permit, "the Permit", to construct and operate a 220 Megawatt Coal-Fired Electrical Generating Facility, "the Facility" on Tax Map Parcel Numbers 21-25A and a portion of 21-50, consisting of 212.71942 acres.

This Permit is effective as of May 20, 1997 and as amended on August 2, 1995, September 3, 1996, May 7, 1997, and August 28, 2002.

This permit is issued with the following conditions to which the undersigned Owner does agree to comply. Failure to comply with these conditions may result in suspension or revocation of this Permit without regard to whether any other State or Federal Permit issued for this Facility is revoked or suspended.

1. Ash shall not be disposed in any manner, including use as cover material in the King George County Landfill prior to the execution of a written agreement between the County, SEI and Garnet of Virginia regarding tipping fees or any other fees generated by the disposal of said ash in the King George Landfill. Ash generated at the site may be used beneficially within King George County by the Owner or by third parties.
2. Route 665 shall be upgraded from the intersection of Route 605 to Route 3, including whatever crossing improvements are determined necessary at the railroad to current Virginia Department of Transportation industrial access standards as described in the "Guide to the Industrial Access Roads Program of the Virginia Department of Transportation, Secondary Roads Division memorandum SR-46-89" (July, 1989). The right of way for the upgraded Route 665 shall be 70 feet. The Owner shall not be responsible for obtaining any additional right of way not already owned or contracted for purchase by the Owner, the County or the Department of Transportation. In the event additional right of way is obtained and the cost of such right of way is not covered by state industrial access funds, the Owner will pay just compensation for such additional right of way. The County will make a good faith effort with the Owner to apply for and obtain industrial access funds through the Virginia Department of Transportation to assist in the upgrading of Route 665.
3. The Stormwater runoff collection pond shall be designed for a 10 year 24-hour storm. The coal pile run-off pond shall be designed to store a 100 year 24-hour storm.
4. The County, through the Department of Community Development, shall be provided with copies of all Federal and State permits necessary for the operation of the power plant facility prior to the issuance of a building permit.

5. The Owner, during construction and operation of the Facility, shall provide the County, through the Department of Community Development, with copies of all federal and state environmental monitoring reports and any notices of violation.
6. The Owner agrees to comply with all applicable federal and state laws regulating air quality or air pollution control, including those requiring any future upgrade in standards under such laws.
7. The Owner shall develop with the County an Emergency Operations Plan for chemical and/or fire hazards at the Facility. Said plan shall include training and information regarding the resources available on site. The Emergency Operations Plan shall be coordinated through the King George County Emergency Services Coordinator; King George County Volunteer Fire Departments; King George County Rescue Squads and any fire and/or rescue squads located outside the County that participate through a mutual aid agreement in providing emergency services within King George County.
8. The Owner shall construct the Facility to conform in all respects with Section C.4 "Dust Control During Construction and Operation" as set forth in the "SEI Birchwood Power Facility, King George County Virginia, Applications and Information Package for Rezoning and Special Exception Permit" dated March 21, 1991 (revised April 29, 1991 and May 2, 1991) and Exhibit A attached hereto and entitled "Railroad Car Handling, Coal Handling System and Ash Handling System Description."

The Owner acknowledges acceptance of these conditions as herein described and does affix his signature hereto seals to assure a guarantee of compliance.

President
SEI, Birchwood, Inc.

County Administrator
King George County, Virginia

Date

Date

EXHIBIT A
RAILORAD CAR HANDLING, COAL HANDLING SYSTEM
AND ASH HANDLING SYSTEM DESCRIPTION

Material Handling Description

- Railroad Car Handling

A unit car train will deliver coal from the mine to the plant site. The train will be scheduled to arrive at the plant approximately every 4 to 5 days. The locomotive will pull the bottom dump cars to the turnover car dumper to unload the train. The pneumatic discharge cars that haul fly ash will be positioned after the unit car train leaves. A trackmobile or engine will move these cars for unloading coal and loading ash. These cars with the ash will then be moved into position to leave with the next unit train.

- Hauling System

Coal (approximately size 2" x 0") will be delivered by unit car train with bottom dump cars. The material handling system will be sized to unload the unit train in approximately 4 to 6 hours. Coal will be unloaded using a turnover car dumper.

The turnover car dumper will unload the coal into a receiving hopper. The discharge of the hopper will have associated slide gates and belt feeders. The coal from the belt feeders will transfer to a collecting conveyor. The radial stacker will have a capacity of up to two train loads with an unloading rate of approximately 2500 tph.

The live storage pile will be sized for approximately 30 days, based on design operating conditions. The reclaim system will include either a single or redundant conveyors into the boiler house. These conveyors will have vibrating pile discharges with belt feeders that will reclaim coal from under the live storage pile. These conveyors will have self-cleaning magnetic separators at the discharge chutes. Both conveyors will then transfer the coal into the coal crushers to reduce the coal to approximately 1-1/4" to 0".

The coal from the crushers will discharge onto conveyors which will transport the coal into the boiler house silo bay. A conveyor with a traveling belt tripper will discharge into the silos.

The boiler house coal silos will be sized for a total of approximately 26 hours storage at design operating conditions. The fuel handling system will be fitted with a dust suppression system at the turnover car dumper and at the radial stacker. A dust collection system will be used at the transfer points in the reclaim tunnel, the crusher building, and the traveling belt tripper.

The lime handling system will be designed to receive lime delivery by either rail or truck for unloading into the lime storage silo.

Ash Handling System

- Bottom Ash

The bottom ash system includes a submerged drag chain, which will convey the bottom ash directly to the rail cars or to trucks. Rejects from the pulverizers will be collected in a dry storage bin for manual removal.

- Fly Ash

The fly ash system will consist of individual airlocks on each hopper feeding into pneumatic conveying lines going directly to the fly ash storage silo. A spare air blower will be supplied to provide redundancy.

- Silo Equipment

The storage silo will receive only the fly ash. The silo will be positioned over the railroad track for loading through a dry unloading spout directly into pneumatic discharge rail cars, properly tarped dump trucks, or pneumatic discharge trucks. The rail cars or trucks will be vented back through the unloading spout. The silo aeration system will have two blowers for redundancy. The silo will also be equipped with the appropriate bin vent filter and vacuum/pressure relief doors.

A pug mill wet ash conditioner may be installed on the silo. If so, the conditioned ash will be loaded directly into properly covered dump trucks.

All trucking options listed above will be for purposes of beneficial use of the ash generated at the site.

PLANNING COMMISSION

July 9, 2002

7:00 p.m.

Mr. John Donegan called the regular meeting of the King George County Planning Commission to order at 7:00 p.m. in the Board Room of the Revercomb Building. A quorum was present.

STAFF PRESENT: Mr. Jack Green, Director of Community Development
Mr. Kyle Conboy, GIS Coordinator/Planner
Mr. Matthew J. Britton, County Attorney

MEMBERS PRESENT: John Donegan, Chairman
Carolyn Daniels
William G. Eschmann, II
Stephen Eckel
Karla Frank
Gary Kendrick
David Kitterman
Thomas Poland
Elmore Tyler

MEMBERS ABSENT: Whit Turner, Vice-Chairman

Mr. Poland led the Pledge of Allegiance.

Mr. Tyler provided the Invocation.

Mr. Donegan introduced Mr. David Kitterman as the newly appointed member to the Planning Commission. Mr. Kitterman was appointed to fill the position previously held by Mr. John King.

The consensus of the Commission members was to send a letter to Mr. King expressing their appreciation for his service and dedication to the County as a Planning Commission member and a term as Chairman of the Commission.

Approval of Minutes:

On a motion by Ms. Frank, seconded by Mr. Eckel, and carried by a 7-0-2 vote, each member voting as follows: Mr. Donegan Aye; Ms. Daniels Aye; Mr. Eschmann Aye; Mr. Eckel Aye; Ms. Frank Aye; Mr. Kendrick Aye; Mr. Poland Aye; Mr. Kitterman Abstaining and Mr. Tyler Abstaining, the King George County Planning Commission approved the minutes of the June 6, 2002, work session, as amended.

On a motion by Mr. Tyler, seconded by Ms. Frank, and carried by a 6-0-3 vote, each member voting as follows: Mr. Donegan Aye; Ms. Daniels Aye; Mr. Eschmann Aye; Mr.

Eckel Aye; Ms. Frank Aye; Mr. Tyler Aye; Mr. Kendrick Abstaining; Mr. Poland Abstaining; and Mr. Kittermann Abstaining, the King George County Planning Commission approved the minutes of the regular meeting of June 11, 2002, as amended.

Public Hearing:

The Chairman, Mr. Donegan, called the public hearing to order, noting that it had been advertised in accordance with provisions of the Code of Virginia, 1950, as amended. Mr. Donegan stated that the purpose of the public hearing was to receive comments concerning the following case: Request by Mirant Birchwood, Inc. to Modify Proffer Statement Rezoning Application: 91-03-Z01 and to Amend Special Exception Permit 91-03-E02, Tax Map 21, Parcel 50.

Request by Mirant Birchwood, Inc. to Modify Proffer Statement Rezoning Application: 91-03-Z01 and to Amend Special Exception Permit 91-03-E02, Tax Map 21, Parcel 50:

Mr. Green provided a staff report on this request and stated that Ms. Julie A. Caiafa, Vice President Manager, Birchwood Power Partners, L.P., was requesting an amendment to the Proffer Statement associated with Rezoning Application 91-03-Z01 and Special Exception Permit 91-03-E02. The purpose of the amendment would be to allow Universal Aggregates (UA), LLC of Bridgeville, PA (UA) to use the fly and bottom ash produced as a residual of the electric production process of the coal fired power plant to manufacture a light weight aggregate. Mr. Green reported that UA had received a \$7.2 million grant from the U.S. Department of Energy (DOE) to help augment its start up cost in developing a plan to reuse fly ash to make lightweight aggregate for concrete masonry blocks or concrete. The proposed facility would have nine employees.

Mr. Green provided background information concerning Birchwood's rezoning application, with proffers, and special exception permit granted on August 6, 1991 and subsequent amendments to the special exception permit on August 2, 1995; September 3, 1996, and May 20, 1997.

Mr. Green stated that this request was to allow the on-site beneficial use of ash generated in the power production process. He further explained that Birchwood was a coal-fired power plant, that the fly ash was generated as a by-product of burning coal, and that the fly ash currently was being disposed of in the King George County Landfill.

Mr. Green explained that Birchwood and Universal Aggregates had developed a proposal in which UA would develop an aggregate plant on three acres of the existing Birchwood Power Plant site. If the permit were approved, UA would construct their plant on the north side of the Birchwood Plant, near the existing ash silo. The UA plant would consist of a 48-foot by 72-foot two-story building to house the equipment, a modular office, and a 24-foot by 35-foot two-story building for the crushing and screening operations.

Mr. Green stated that the proposed project would not impact a Resource Protection Area and storm water would be detained for quality and quantity in a facility specifically designed to serve the proposed aggregate facility. UA would also develop its own potable water supply and septic system to treat wastewater.

Mr. Green shared the results of a traffic impact analyses study done by Universal Aggregates and explained that currently an average of 60 trucks per day were carrying ash from the Birchwood Facility to the Landfill. Once the aggregate plant was operational, the truck traffic on the road would decrease from 60 trucks per day to 20-30 trucks per day and would generate a turning action at the intersection of Route 3 and 605 of additional 2-3 trucks per hour.

Regarding water use, Mr. Green stated that Birchwood Power Facility, through its Rappahannock River water withdrawal permit, would provide the minimal amount of water necessary for Universal Aggregate to process the ash to aggregate. Universal Aggregate would not discharge water as a by-product of the ash processing, because all of the water used in the process would be absorbed.

Mr. Poland expressed his concern about the possible loss of revenue to the County in that the County landfill was currently receiving the ash from Birchwood. Mr. Green concurred that there would be some monetary loss to the County but there would also be monetary gain to the County with the establishment of this new facility.

The Chairman opened the floor for public comment regarding this case.

Three Members of the Project Development Team of Universal Aggregates, Mark Williams, Compliance Manager of Birchwood Power Facility; Roy O. Scandrol, Manager of Engineering with Universal Aggregates; and Douglas Fraser of GeoEnvironmental Services, Inc., addressed the Commission and provided a comprehensive overview of their proposal which included extensive detail related to the process of aggregate production using the fly and bottom ash from the Birchwood Power Facility, the benefits of such a project, a technical description of the facility and a detailed impact assessment.

If approved, the proposed construction schedule for the project would begin with a groundbreaking ceremony in mid to late October 2002; contractor mobilization in mid-November 2002, with construction completed July 2003 and plant startup, with production beginning in September 2003.

There being no further public comment, the Chairman closed that portion of the public hearing.

There were several questions from the Commission members regarding specific operations of such a facility, i.e. noise level during production, truck traffic and timing of transport, hours of operation, contingency plans in the event of plant failure, safety issues etc., as well as questions relating to the economic impact to the County with respect to the landfill no longer receiving the ash from the power plant.

On a motion by Mr. Eckel, seconded by Ms. Daniels, and carried unanimously, each member voting as follows: Mr. Donegan Aye; Ms. Daniels Aye; Mr. Eschmann Aye; Mr. Eckel Aye; Ms. Frank Aye; Mr. Kendrick Aye; Mr. Kitterman Aye; Mr. Poland Aye; and Mr. Tyler Aye, the King George County Planning Commission forwarded the Rezoning Request with Proffers by Mirant Birchwood, Inc. , Case No. 91-93-Z01 to the King George County Board of Supervisors with a recommendation for approval.

On a motion by Mr. Tyler, seconded by Mr. Poland, and carried unanimously, each member voting as follows: Mr. Donegan Aye; Ms. Daniels Aye; Mr. Eschmann Aye; Mr. Eckel Aye; Ms. Frank Aye; Mr. Kendrick Aye; Mr. Kitterman Aye; Mr. Poland Aye; and Mr. Tyler Aye, the King George County Planning Commission forward the Amendment to Special Exception Permit 91-03-E02, Tax Map 21, Parcel 50, to the King George County Board of Supervisors with a recommendation for approval.

Old Business:

Mr. Green provided copies of the most recent Draft Revisions to the King George County's Subdivision Ordinance in which he had incorporated comments received from Commission members. He also provided a copy of the Virginia Code Requirements for management of common facilities or property owners associations. Section 6.1, Access Standards, had been revised to add standards for additional entrances and inter-parcel connectors.

Mr. Donegan asked Mr. Green to provide a summary sheet highlighting the proposed revisions to the Subdivision Ordinance that the Commission members could use in meeting with various groups and organizations throughout the County prior to the public hearing on this issue. Mr. Green would provide that tutorial document available at the August Planning Commission meeting.

There was continued discussion about the proposed changes and the legal issues relating to some of those amendments. Mr. Donegan inquired of Mr. Britton about a legal review of the Draft Revision to the Subdivision Ordinance. Mr. Green stated that the document had not been formally sent to Mr. Britton for review.

Mr. Donegan also asked that, in an effort to make the public more aware of these proposed changes, that the draft Subdivision Ordinance be placed on the County's website for easy access to County residents as well as place draft copies in the public library.

Mr. Britton expressed his concern about the proposed timeframe for a public hearing on the Subdivision Ordinance changes vs. the amount of time involved for a legal review of the document

After considerable discussion, the consensus of the Commission was to allow time for the legal review, continue to provide comments on the Ordinance to Mr. Green, and reassess

at the August meeting the need for additional work sessions as well as the date for a public hearing on the Draft Revisions to the Subdivision Ordinance based on the completion of the legal review

Public Comment:

The Chairman opened the floor for public comment.

Mr. Alan West addressed the Commission regarding the proposed changes to the Subdivision Ordinance from the vantage point of the development community and hoped that the local builders and developers would have a chance to review the proposed changes and perhaps be invited to participate in a future work session on the document. He did say that the Builders Association had seen a copy of the original draft of the Revisions to the Subdivision Ordinance.

Mr. Robert VanValzah expressed his concern over the rights of landowners in King George County and asked that careful consideration be given to the issue of dividing family owned property.

There being no further public comment, the Chairman closed that portion of the meeting.

There being no further business to come before the Commission, the meeting adjourned on a motion by Mr. Eschmann, seconded by Mr. Poland, and carried unanimously, each member voting as follows: Mr. Donegan Aye; Ms. Daniels Aye; Mr. Eschmann Aye; Mr. Eckel Aye; Ms. Frank Aye; Mr. Kendrick Aye; Mr. Kitterman Aye; Mr. Poland Aye; and Mr. Tyler Aye.