

RESOLUTION NO. 13351-20

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN REVOCABLE LICENSE AGREEMENT BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND ENGEL FAMILY FARMS DATED THE 8TH DAY OF SEPTEMBER, 2020, GRANTING PERMISSION TO USE PROPERTY OWNED BY THE CITY OF NEWPORT NEWS IN CAROLINE COUNTY, VIRGINIA, FOR AGRICULTURAL PURPOSES.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News, Virginia:

1. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, the certain Revocable License Agreement, dated the 8th day of September, 2020, by and between the City of Newport News, Virginia and Engel Family Farms, a Virginia partnership, authorizing Engel Family Farms to utilize a portion of that property owned by the City known as the “Meadow” located in Caroline County, Virginia, for agricultural purposes.
2. That a copy of said Revocable License Agreement is attached hereto and made a part hereof.
3. That this resolution shall be in effect on and after the date of its adoption, September 8, 2020.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON SEPTEMBER 8, 2020

Mabel Washin8ton Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT (the “Agreement”) is made this 8th day of September, 2020, by and between the **CITY OF NEWPORT NEWS, VIRGINIA**, a municipal corporation (the “City” or “Licensor”), and **ENGEL FAMILY FARMS**, a Virginia partnership (“Engel” or “Licensee”).

WHEREAS, Licensor owns the property known as “the Meadow,” containing approximately 349 acres and being three parcels in Reedy Church District, Caroline County, Virginia, which consists of Tax Parcels 100-A-1A1, 101-A-1B and 101-A-1A2 (the “Property”), as shown on the plat attached hereto as Exhibit A and incorporated herein by reference, and Licensee desires to obtain a revocable license to use a portion of the above described property for agricultural purposes.

NOW, THEREFORE, that for and in consideration of the sum of Ten Dollars (\$10.00) paid by Licensee to City, and other consideration as set forth below, as well as the covenants contained herein, the parties agree as follows:

1. License. Subject to all of the terms and conditions hereto, the City hereby grants to Licensee a revocable license to use such portion of the Property as is set forth in Exhibit B (the “Agricultural Area”), consisting of approximately 150 acres of arable land, for agricultural purposes. This license shall include the right to remove, trap, or otherwise control nuisance wildlife on the Property, subject to and in accordance with all applicable federal, state and local laws, rules, regulations and guidelines.

2. Term. The term of the revocable license shall be from January 1, 2021 through December 31, 2025, unless terminated by either party in accordance with paragraph 3 hereof.

3. Termination. Either party may terminate this Agreement at any time upon thirty (30)

days prior written notice to the other party. Termination of this Agreement shall mean that the revocable license granted herein is revoked. However, in the event that Licensee at the time of notice has a crop or crops in the ground, the revocable license shall terminate upon the harvesting of the existing crop or crops or one hundred fifty (150) days from notice, whichever first occurs. Upon termination of the revocable license granted by this Agreement for any reason, Licensee shall restore the property pursuant to paragraph 5 below. Should the revocable license be revoked prior to Licensee placing any crop(s) in the ground during any calendar year, all license fees paid for that calendar year shall be fully refunded. Once a crop or crops have been planted, no portion of the fees for that year shall be refunded.

4. Maintenance. Licensee shall, at its own expense, keep and maintain in good repair the access road providing access to the Agricultural Area from outside of the Property and shall not place any fixtures upon the Property.

5. Damage to Property. Upon termination of this Agreement or expiration or revocation of the revocable license granted herein, the Property shall be returned to its original condition at the expense of Licensee. Licensee shall be responsible for all damages to the Property arising out of or resulting from use of the Property by the Licensee or its agents, employees, representatives, contractors, visitors, patrons or invitees. Licensee shall correct and repair the damage, to the City's satisfaction, with seven (7) days of notification or knowledge of the damage unless otherwise directed by the City.

6. License Fees. Licensee agrees to pay to City as a license fee the amount of Nine Thousand Seven Hundred Fifty and no/100 Dollars (\$9,750.00) per year (the "Annual License Fee") which shall be paid annually, in advance, no later than the December 15 preceding each year of this

Agreement. Failure to pay the Annual License Fee in full on or before its due date shall incur a late payment charge of ten (10) percent of the amount delinquent (the "Late Payment Fee"). The Late Payment Fee shall be added to the outstanding balance of the Annual License Fee. Interest at the rate of ten (10) percent annually shall be imposed from the first day following the day any such payment is due, and shall be collected upon the outstanding balance of the Annual License Fee and the Late Payment Fee. All payments shall be made and payable to the City of Newport News at the following address:

Waterworks Accounting
700 Town Center Drive, Suite 400
Newport News, VA 23606

7. Indemnification. Licensee agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representatives, agents, and employees from and against all claims, liability, damages, losses, expenses and demands, including attorney's fees, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, workers' compensation, property loss or damage or any loss of any kind whatsoever which arise out of or in any manner connected with its use of and activities on the Property under this Agreement, if such injury, loss or damage is caused in whole or in part by the act, omission, error, professional error, mistake, negligence or other fault of the Licensee, its employees or agents.

8. City Use. The City, its officers, employees, representatives and agents shall have the right to enter onto the Property at any time during the term of this Agreement for any purpose authorized by the City. The City shall make reasonable efforts to avoid or minimize damage to any crops planted in the Agricultural Area.

9. Insurance.

A. Licensee agrees to procure and maintain at its own cost a policy or policies

of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Licensee pursuant to this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law and any such policy shall name the City as an additional insured.

B. Specifically, Licensee shall procure and maintain and shall cause any subcontractor of Licensee to procure and maintain general liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policies shall be applicable to all property and operations covered by this Revocable License Agreement. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interest provision, and shall be endorsed to include the City and the City's officers, employees and contractors as additional insured. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from any activity covered under paragraph 7, Indemnification.

C. Such insurance shall be procured and maintained with forms and insurers acceptable to the City.

D. Any insurance or self insurance carried by the City, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Licensee. Licensee shall be solely responsible for any deductible losses under any policy.

E. Licensee shall provide to the City a certificate of insurance, completed by Licensee's insurance agent, as evidence that the policies providing the required coverages, conditions, and minimal limits are in full force and effect. This certificate shall identify this

Agreement, and shall provide that the coverages afforded in the policy shall not be canceled, terminated, or materially changed until at least thirty (30) days prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

F. Failure on the part of Licensee to procure or maintain the insurance required herein shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, irrespective of any provision within paragraph 3 hereof, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and maintain any and all premiums in connection therewith and all monies so paid by the City shall be repaid by Licensee to the City upon demand.

10. Notices.

A. Any notice given pursuant to this Agreement by either party to the other shall be in writing and mailed by certified mail, return receipt requested, postage prepaid to the addresses as follows:

To the City: City of Newport News
 Attention: Director of Waterworks
 700 Town Center Drive, Suite 500
 Newport News, Virginia 23606

With a copy to: City Attorney
 2400 Washington Avenue, 9th Floor
 Newport News, Virginia 23607

To Licensee: Engel Family Farms
 c/o Kevin W. Engel
 3267 Wickerton Lane
 Hanover, Virginia 23069

B. The effective date of any such notice shall be the date of mailing.

11. Miscellaneous.

A. Agreement Binding. This Agreement shall inure to the benefit of and be binding upon the heirs, successors and assigns of the parties hereto, subject to any other conditions and covenants contained herein.

B. Non-Waiver. Waiver by the City of any breach of any term or provision of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision thereof.

C. Applicable Law and Venue. The laws of the Commonwealth of Virginia and applicable federal, state and local laws, rules, regulations and guidelines shall govern this Agreement and the venue for any legal proceeding arising out of this Agreement shall be the Circuit Court for the City of Newport News, Virginia.

D. Headings. The headings of the sections of this Agreement are inserted for reference purposes only and are not restrictive as to content.

E. Amendment. This Agreement may not be amended except in writing by mutual agreement of the parties, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

F. Assignment. This Agreement is personal to the parties hereto. Licensee may not assign or transfer this Agreement or the revocable license granted herein.

G. No Third Party Beneficiaries. Except as expressly provided herein, there are no intended third party beneficiaries to this Agreement.

H. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

I. Governmental Immunity. Nothing herein shall be construed as a waiver of any protections or immunities the City may have under Virginia law.

J. Attorney's Fees. In the event of any dispute or litigation arising under the terms of this Agreement to secure or enforce its rights or in the event of non-performance of any obligation arising under this Agreement, the City, if it prevails in such dispute, shall be entitled, in addition to other damages or costs, to receive from Licensee court costs and reasonable attorney's fees.

K. Integration. The foregoing constitutes the entire agreement between the parties and no additional or different representation, promise, or agreement shall be binding on any of the parties hereto with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective the day and year first above written.

CITY OF NEWPORT NEWS, VIRGINIA

By _____
Cynthia D. Rohlif, City Manager

Attest:

Mabel Washington Jenkins, MMC, City Clerk

Approved as to Form:

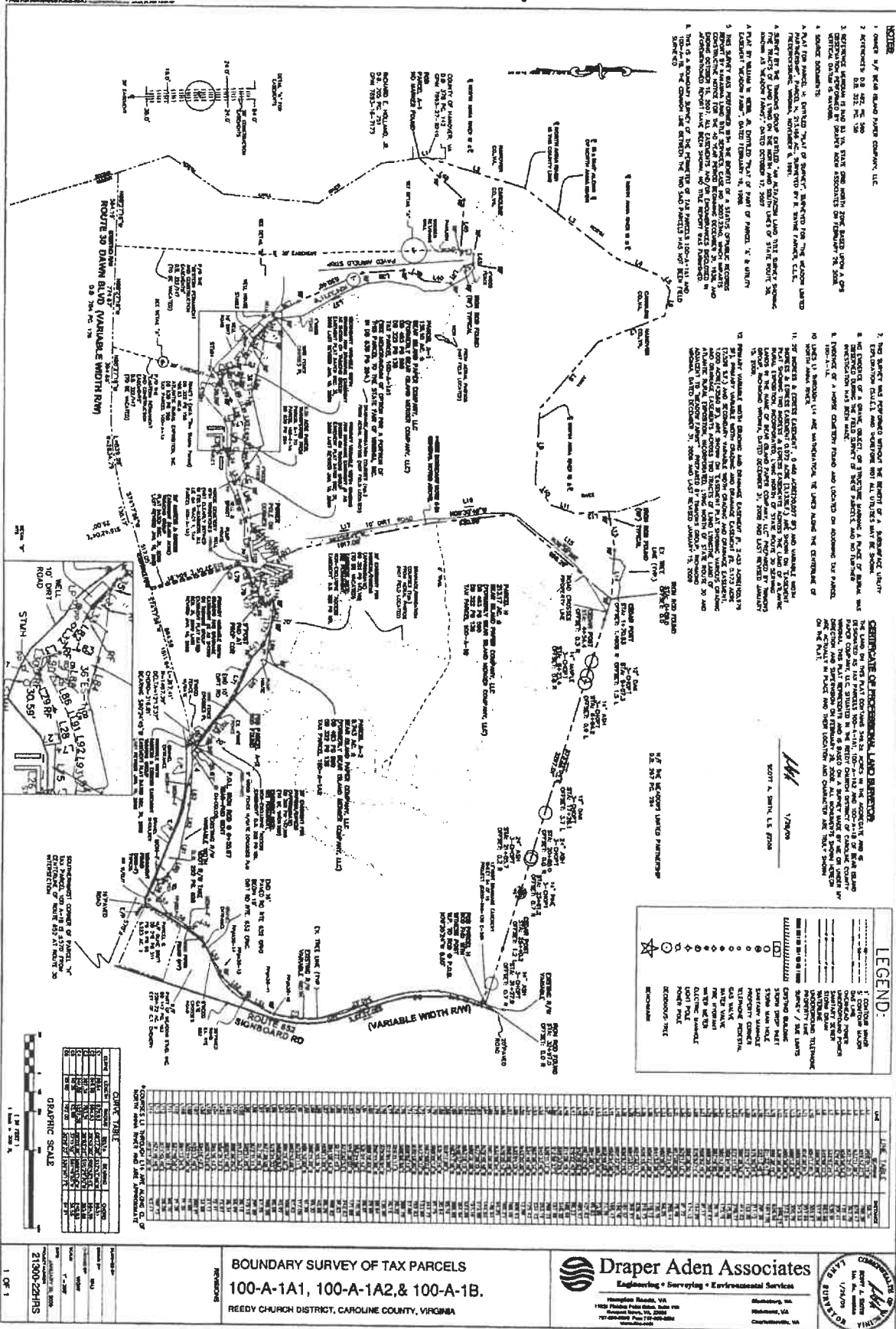
City Attorney

ENGEL FAMILY FARMS

By _____
Kevin W. Engel, Managing Partner

rag2796

Exhibit A



NOTES:

1. OWNER: 1/4 AC. REEDY CHURCH DISTRICT, CAROLINE COUNTY, VA.
2. APPROXIMATE: 100-A-1A1, 100-A-1A2, & 100-A-1B.
3. SURVEY: THIS SURVEY WAS CONDUCTED BY DRAPER ADEN ASSOCIATES, INC. ON BEHALF OF THE REEDY CHURCH DISTRICT, CAROLINE COUNTY, VA. ON FEBRUARY 28, 2008.
4. SOURCE: REEDY CHURCH DISTRICT, CAROLINE COUNTY, VA. RECORDS.
5. THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING ACT OF 1968, AS AMENDED, AND THE RULES AND REGULATIONS OF THE BOARD OF SURVEYING AND MAPPING, CAROLINE COUNTY, VA.
6. THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING ACT OF 1968, AS AMENDED, AND THE RULES AND REGULATIONS OF THE BOARD OF SURVEYING AND MAPPING, CAROLINE COUNTY, VA.
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11. THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING ACT OF 1968, AS AMENDED, AND THE RULES AND REGULATIONS OF THE BOARD OF SURVEYING AND MAPPING, CAROLINE COUNTY, VA.
12. THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING ACT OF 1968, AS AMENDED, AND THE RULES AND REGULATIONS OF THE BOARD OF SURVEYING AND MAPPING, CAROLINE COUNTY, VA.

CERTIFICATE OF PROFESSIONAL LAND SURVEYOR

I, the undersigned, a duly Licensed Professional Land Surveyor, do hereby certify that the above described land is the property of the Reedy Church District, Caroline County, Virginia, and that the same is shown on the attached map and plat, which is a true and correct copy of the original survey as conducted by me on February 28, 2008. All necessary precautions were taken to ensure the accuracy of this survey.

W. A. SMITH, L.S. 7508

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| GRAPHIC SCALE | |
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| 0 | 400 |
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| 0 | 700 |
| 0 | 800 |
| 0 | 900 |
| 0 | 1000 |

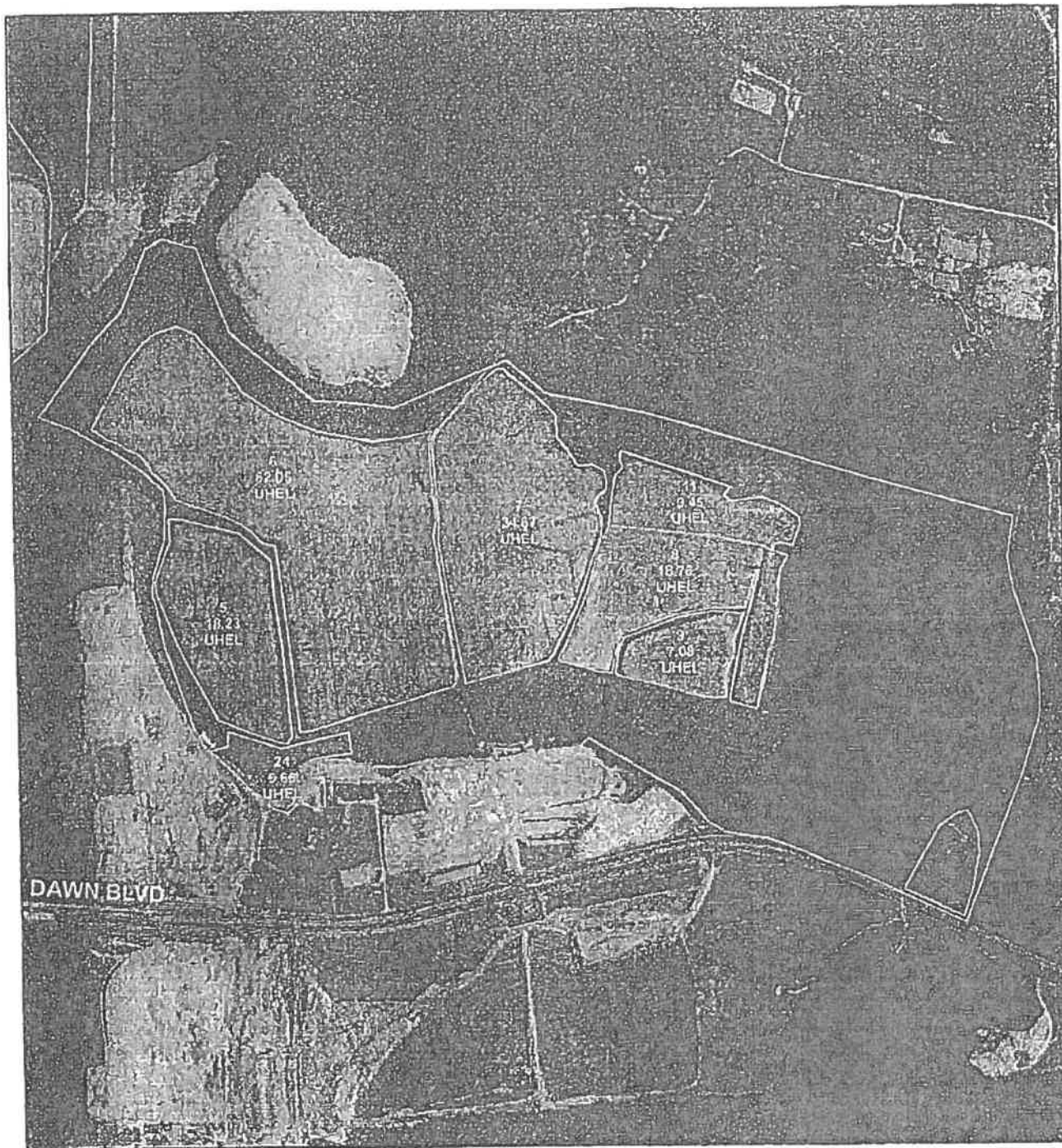
BOUNDARY SURVEY OF TAX PARCELS
100-A-1A1, 100-A-1A2, & 100-A-1B.
 REEDY CHURCH DISTRICT, CAROLINE COUNTY, VIRGINIA

Draper Aden Associates
 Engineering • Surveying • Environmental Services

11000 Parkway Plaza Blvd, Suite 100
 Reedy Church, VA 22136
 757-699-0000 Fax 757-699-0001
www.dra-aden.com

Richmond, VA
 Williamsburg, VA
 Charlottesville, VA

EXHIBIT B



United States Department of Agriculture
Farm Service Agency

Farm: 2693
Tract: 10193

Caroline County, VA

1:10,310

ENGEL FAMILY FARMS
November 05, 2009



Disclaimer: Wetland identifiers do not represent the size, shape or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NRCS.