

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	October 21, 2019
Action Requested:	Adoption of a Resolution
Presenter:	John Blair, City Attorney
Staff Contacts:	Lisa A. Robertson, Chief Deputy City Attorney Jack Dawson, City Engineer Marty Silman, Interim Director of Public Works
Title:	Request for Acceptance of Streets within the Sunrise PUD into the Public Street System

Background:

Note: previously, Council considered this matter and adopted a resolution establishing the tasks that would need to be accomplished prior to Council's consideration of the acceptance of private streets within this PUD into the City's public street system for maintenance. This Agenda Memo repeats the one you received several months ago, with **updated materials indicated in blue font**. **Attachment 1 to this Agenda Memo is a Resolution accepting the streets within the Sunrise PUD into the City's public street system for maintenance.**

Attachment 2 is the Resolution adopted by City Council on June 3, 2019, setting forth conditions to be satisfied prior to acceptance of these streets. The status of compliance with those conditions is as follows:

Condition 1: has been satisfied, relative only to permeable pavement immediately adjacent to the Lot 15 development site. Neither Habitat nor the Lot 15 Developer has agreed to protect other areas of permeable pavement from the impacts of remaining construction. On September 23, 2019 we received correspondence on letterhead from "Marion Enterprises" advising that yet another legal entity (Sunrise Cville LLC) is the owner/developer of Lot 15, and stating that it won't provide certain assurances in relation to protection of the permeable pavement during construction. (See **Attachment 3** to this Memo).

Condition 2: Habitat and the Lot 15 Developer have apparently worked out issues relating to legal responsibility for completion of requirements of the Stormwater Management Plan for the Sunrise PUD.

Condition 3: The Lot 15 Developer has provided a cash bond, to guarantee the E&S obligation relative to the need for additional cleaning of the permeable pavement adjacent to the Lot 15 development site (reference Condition 1, above) resulting from construction activities. Neither Habitat nor the Lot 15 Developer has agreed to protect other areas of permeable pavement from the impacts of remaining construction within the PUD.

Condition 4: Neither Habitat nor the Lot 15 Developer has provided an indemnification agreement. Habitat sold off all of the lots within the PUD, without recording any stormwater facility maintenance agreement (as required by state VSMP regulations and local ordinance). Thus, it now appears that the requested indemnification is unnecessary as to Habitat.

Condition 5: The City has received a Deed of Dedication and a Plat, in a form acceptable to the City Attorney's Office.

Condition 6: The City Engineer has verified that the permeable pavement has been permanently installed. The pavement is not functioning properly in many locations; however, Habitat/ Sunrise Park LLC will not make any changes, corrections or replacements. (At the Engineer's request, Habitat cleaned several locations). At this time, since an expected level of functionality wasn't established by City staff up front (as part of the "pilot project" requirements), and Habitat can't provide any as-built documentation of how the pavement was installed, all that can be said is that the Engineer has verified that the pavement is functioning at a level of effectiveness that has been measured/ determined by mutual agreement (in other words: the level of effectiveness of the pavement—which is neither ideal nor proper—has at least been quantified).

In 2009 the Charlottesville City Council approved the Sunrise Planned Unit Development ("PUD"). The streets proposed by Habitat, acting through an LLC (Sunrise Park, LLC, the "Developer") within the PUD Development Plan were narrower than the standard width, included on-street parking lanes to satisfy the required number of parking spaces for the units within the development, and proposed pervious paving materials within the parking lanes. These three design features conflicted with the City's parking requirements and standard public street specifications; therefore, the streets were not to be dedicated for public use.¹ The PUD Development Plan included the following statement: "*Nothing in the PUD Development Plan will be interpreted to prohibit the design team from working with the City Engineer to modify the City's street standards to allow internal streets to be dedicated for public use.*"

The City's street standards have not been modified since 2009. (Notwithstanding the statement within the 2009 PUD Ordinance, the Engineer cannot do that himself; modification of the City's standards and design specifications must be done via a Council update of the City's Standards and Design Manual, which has been pending for some time). Notwithstanding this: Habitat now is asking the City to accept the constructed streets into the City's public street system, so that the City will be financially and otherwise responsible for maintenance, repair and replacement of all of the street improvements, including the permeable paving within the on-street parking areas.

Discussion:

Legally the City is not required to accept any street into its public street system, or to maintain street improvements, even after the street has been officially dedicated for public use. Unless and until the City officially accepts the improvements for public maintenance, the City is not financially responsible for the costs of construction, maintenance/repair, or replacement. On the other hand: despite the fact that the streets don't meet City design standards, City staff approved the subdivision and site plans for the Sunrise PUD as presented, and City Council may determine that there are now appropriate reasons for accepting the streets into the public system for maintenance despite the fact

¹ We note, however, that private streets are not authorized under the city's zoning and subdivision ordinances for any type of development other than a townhouse development.

that they don't meet City standards.

This situation is further complicated by the following facts:

- (i) Habitat and City NDS staff informally agreed several years ago that, as a means to satisfy Habitat's responsibilities under state regulations for stormwater management, a "pilot project" would be implemented, under which, if Habitat utilized permeable paving materials within on-street parking areas, they could claim credit for purposes of their stormwater compliance and the City would later agree to accept the pavement and maintain it. To our knowledge, City personnel did not undertake analysis, in conjunction with Public Works, of the costs associated with ongoing, perpetual maintenance of the permeable paving. Ongoing maintenance will be necessary in order for the larger development area to remain compliant with state stormwater regulations in the future. (In other words: the City won't be able to replace the permeable paving with regular asphalt or concrete).
- (ii) Construction activities within the Sunrise PUD have not yet been completed, so Habitat's state stormwater permit cannot yet be closed out. Originally, Habitat was to have been the land disturber/developer of all of the land within the PUD, and the permeable pavement was supposed to be installed only AFTER all construction activity was completed. However, Habitat installed the pavement out of sequence (after it finished its own construction activities, but before all construction has been completed) and then transferred vacant Lot 15 within the PUD to a private company for development.

The permeable pavement is easily damaged and clogged by dirt and sediment. Because Habitat's Stormwater Management Plan did not contemplate early construction of the permeable paving (prior to completion of construction on Lot 15), Habitat's E&S Bond was not set at an amount that would protect the pavement during construction activities taking place post-installation of the pavement. As you will note in this Resolution, City staff are requiring a supplemental E&S Bond in relation to the development of Lot 15, and the developer who will be conducting the construction activities on Lot 15 has reviewed the Resolution and has agreed to post that supplemental bond.

Much of the permeable pavement is not functioning properly. See [Attachment 3](#).

- (iii) Because this permeable paving is a stormwater management feature, what staff should have done when the "Pilot Program" was agreed to was put the details of the program into writing and specify what level of effectiveness would need to be achieved prior to acceptance into the public street system. No prior metrics were discussed or agreed to. The City Engineer has reviewed the existing condition of the permeable paving with a representative of Habitat, and the language in Paragraph (6) of the Resolution will allow for these issues to be worked through with Habitat prior to your consideration of a future resolution transferring ownership of the Right-of-Way and responsibility for maintenance of all improvements (including the pavement). We would anticipate that future resolution coming back to you within 30-60 days after you establish conditions of acceptance within this agenda item.

Alignment with City Council’s Vision and Strategic Plan:

This application supports Council’s Vision for **Quality Housing Opportunities for All: Our neighborhoods retain a core historic fabric while offering housing that is affordable and attainable for people of all income levels, racial backgrounds, life stages, and abilities.** It also is consistent with the Strategic Plan, Goal 1.3 (Increase Affordable Housing Options).

Community Engagement:

None. (None required by law as to this issue).

Budgetary Impact:

There will be some impact on the Public Works budget (within one or more of its divisions) as a result of adding responsibility for maintenance, repair and replacement of the permeable paving following acceptance by the City, but no analysis of this has been done by staff. Staff is generally aware that this type of paving material is expensive to clean and replace, and requires more frequent attention. However, as noted previously, NDS staff agreed to allow the use of this type of material as a “Pilot Project” years ago. (Since the original PUD approval did not contemplate public streets, it is unclear as to whether or not staff’s agreement to the “Pilot Project” was with the understanding that the maintenance of the pavement would at some point be a public responsibility).

Recommendation:

City NDS staff does not deny the “Pilot Program” agreement, and therefore does not oppose the proposed Resolution.

The City Engineer and the Interim Director of Public Works decline to make a recommendation one way or another. This situation, and how the “Pilot Project” has been undertaken, is less than optimal. If the City does not accept the streets into the public street system, it is unlikely that any of the landowners will be able to afford to maintain the streets and permeable pavement, and there have been no mechanisms (such as an HOA, covenants, recorded maintenance agreements, etc.) put in place to plan for this. If Council elects to accept the streets in order to promote affordable housing, Council should do so with the understanding that additional funding for maintenance will be required in future budget/ CIP requests, and Public Works will plan accordingly for ongoing maintenance pending appropriation of the necessary funding.

Alternatives:

City Council can choose to deny the Resolution, or to approve the Resolution with revisions.

Attachments:

- 1- Proposed Resolution Accepting Sunrise PUD Streets
- 2- Council’s June 3, 2019 Resolution
- 3- September 23, 2019 Correspondence from Lot 15 Developer, and City Engineer Response

**RESOLUTION
ACCEPTING SUNRISE PARK LANE AND CARL SMITH STREET
INTO THE CITY STREET SYSTEM FOR MAINTENANCE**

WHEREAS, the Sunrise Park Lane and Carl Smith Street rights-of-way have been constructed in the Sunrise Park PUD and Sunrise Park, LLC has asked the City to accept these streets into the City street system; now, therefore,

BE IT RESOLVED, by the Council of the City of Charlottesville, Virginia, that Sunrise Park Lane and Carl Smith Street, as shown on the attached plat made by Roudabush, Gale & Associates, Inc. dated July 15, 2019, are hereby accepted into the City street system for maintenance.

**RESOLUTION
ACCEPTING RESPONSIBILITY FOR MAINTENANCE OF CERTAIN
STORMWATER MANAGEMENT FACILITIES WITHIN THE SUNRISE PLANNED
UNIT DEVELOPMENT**

WHEREAS, in 2009 the Charlottesville City Council approved the Sunrise Planned Unit Development (“PUD”). Streets proposed by Sunrise Park LLC within the PUD Development Plan were narrower than the standard width, included on-street parking lanes to provide the required number of parking spaces for the units within the development, and proposed pervious paving materials within the parking lanes; these three design features conflicted with the City’s parking requirements and standard public street specifications. The PUD Development Plan included the following statement: “Nothing in the PUD Development Plan will be interpreted to prohibit the design team from working with the City Engineer to modify the City’s street standards to allow internal streets to be dedicated for public use.”

WHEREAS, the City’s Subdivision Agent granted final approval for a subdivision plat which dedicated the streets within the Sunrise PUD for public use, and that Subdivision Plat was recorded in the City’s land records several years ago. However, recordation of a subdivision plat does not create any obligation upon the City to pay for any paving, improvements or construction, and the City has not, to date, accepted the improved (paved) PUD streets into the City’s public street system for maintenance.

WHEREAS, under the ordinances, standards and specifications in effect as of the date this Resolution is adopted, the streets within the Sunrise PUD do not meet public street standards; however, Sunrise Park LLC is now asking the City to accept the constructed streets into the public street system for maintenance; and

WHEREAS, state law required the PUD Development to be constructed in accordance with a Stormwater Management Plan approved in accordance with state and local laws, which require provision of facilities for management and treatment of the quantity and quality of stormwater. Following completion of the development, all such stormwater management facilities must be maintained by the owners of land within the development. Sunrise Park LLC obtained approval of a Stormwater Management Plan which identified the permeable pavement within the PUD street parking lanes as one of the stormwater management facilities to be permanently maintained by a responsible party—generally, the owner(s) of land within the development.

WHEREAS, the City’s Water Protection Ordinance requires that, in the event a person desires to cede or transfer responsibility for maintenance, repair and replacement of a stormwater management facility to the City, that person and the City must enter into a written contract, and prior to execution of that contract, the City Council must, by resolution, accept the responsibility proposed to be ceded or transferred; the purpose of this resolution is to set forth the terms under which City Council will accept responsibility for maintenance of the pervious paving within the street right of way proposed to be transferred.

WHEREAS, this Charlottesville City Council is willing to accept responsibility for maintenance of the pervious pavement within the parking lanes and sidewalks within the Sunrise PUD, but only if: **(i)** Sunrise Park LLC remains bound to complete the entire PUD Development in accordance with the approved stormwater management plan for the PUD, **(ii)** the City is held harmless from all impacts of construction activities within uncompleted portions of the PUD on the permeable pavement, within a written indemnification agreement satisfactory to the City Attorney, and **(iii)** following a formal offer dedicating the streets and sidewalks within the Sunrise PUD right-of-way for public use, the City accepts the streets and sidewalks and title is transferred to the City of Charlottesville;

NOW THEREFORE, BE IT RESOLVED by the Charlottesville City Council that it will accept responsibility for maintenance, repair and replacement of the permeable pavement

within the parking lanes and sidewalks of the right-of-way within the Sunrise PUD Development, effective on the date on which all of the following conditions have been satisfied:

1. All erosion and sediment control (E&S) plans, and any agreement-in-lieu-of-a plan, required pursuant to Chapter 10 of the City Code for construction activities within Phase 4 of the Stormwater Management Plan (Lot 15 as designated within the site plan for the PUD Development), shall include measures specifically designed to protect the permeable pavement from damage, silt, sedimentation, oil/ petroleum spills, hazardous materials spills, and other reasonably foreseeable impacts of construction activities.

2. The Stormwater Management Plan and/or the Stormwater Pollution Prevention Plan for the Sunrise PUD shall be modified or amended, as may be necessary: **(i)** to reflect the fact that the permeable pavement has been installed prior to completion of all construction activities within the Sunrise PUD and to correctly identify the numbered phases of construction activity, **and (ii)** to reflect any change in legal responsibility for completion of all requirements of the Stormwater Management Plan, the Stormwater Pollution Prevention Plan, or Virginia State Construction General Permit coverage, so that at no time will there be any lapse in coverage under the Construction General Permit and there will at all times be and remain a person that is legally responsible for compliance with and completion of all requirements of the Stormwater Management Plan or the Stormwater Pollution Prevention Plan for the Sunrise PUD. The City shall not be required to approve any final release of stormwater management or erosion and sediment control bonds posted by Sunrise Park LLC in accordance with VSMP/ VESCP regulations, until a Notice of Termination of construction general permit coverage has been approved in accordance with state regulations and city ordinances.

3. The City shall be provided with a supplemental E&S bond, in the form of a cash bond or letter of credit ("Supplemental Bond") in an amount deemed by the City Engineer to be sufficient to cover the cost of repairing, replacing and/or cleaning the permeable pavement in the event that the protective measures are insufficient under any circumstances, or otherwise fail, in whole or in part, prior to final completion of all requirements of the Erosion and Sediment Control Plan for the Sunrise PUD ("Final Completion"). The Supplemental Bond shall be provided by the person (including, without limitation, any corporation or limited liability company) who is permitted to conduct land disturbing activity within Lot 15 of the PUD Development.

- a. If the E &S measures are insufficient under any circumstances, or otherwise fail, in whole or in part, to protect the permeable pavement, then the City shall have the right, following reasonable written notice to the land disturber, to repair or replace the damage or clean the permeable pavement, as may be necessary, at the sole expense of the land disturber. Funds from the Supplemental Bond shall be released to the City upon request to pay the cost thereof. Thereafter, the Land Disturber shall immediately replenish the line of credit, so that the full amount of funds required to be posted as the Supplemental Bond will remain available to the City for subsequent use prior to Final Completion.
- b. No action by the City to replace, repair or clean the permeable pavement prior to Final Completion shall preclude the City from taking any action(s) to enforce the

requirements of the E&S Plan, or the Stormwater Management Plan for the Sunrise PUD.

4. Sunrise Park LLC and the permitted land disturber engaging in construction activities within Lot 15 of the Sunrise PUD shall each execute a written agreement satisfactory to the City Attorney, indemnifying and holding the City of Charlottesville harmless from and against all claims, contributions and responsibilities, financial or otherwise, for maintenance, operation or repair of any stormwater management facility(ies) within the Sunrise PUD (other than the permeable pavement within the on-street parking lanes and sidewalks, following City Council's acceptance of the Sunrise PUD streets and sidewalks into the public system for maintenance).

5. Sunrise Park LLC shall prepare a formal offer of dedication of the land within the boundaries of the platted right-of-way within the Sunrise PUD to the City. The formal offer of dedication shall be in a form approved by the City Attorney, and shall be accompanied by a deed and plat suitable for recordation within the City's land records which can be recorded in the land records of the Circuit Court and will transfer clear title to the City, as indicated by a title report and binding title commitment issued by a title company satisfactory to the City Attorney.

6. Within 90 days prior to the date of any City Council meeting at which Council will be requested to authorize the City Attorney to accept conveyance of title to the land and improvements located within the Rights of Way of the Sunrise PUD, the City Engineer shall verify in writing that the permeable paving within the street right-of-way proposed to be dedicated for public use and conveyed to the City has been permanently installed and is functioning to a level of effectiveness mutually agreed to by the Engineer and Sunrise Park LLC.

BE IT FURTHER RESOLVED THAT, when all of the conditions referenced above within this Resolution have been satisfied, Sunrise Park, LLC may submit a written request to the City Attorney's Office for a certification of compliance. Following certification of compliance by the City Attorney, the City Manager is authorized to place on a City Council agenda a resolution authorizing the City Attorney to accept conveyance of title to the streets and sidewalks within the Sunrise PUD, and a resolution accepting the improved streets and sidewalks within the Sunrise PUD into the City's public system for maintenance.

Approved by Council
June 3, 2019



Kyna Thomas, CMC
Clerk of Council

ATTACHMENT 3 (7 pages, total)

MARION
ENTERPRISES



September 23, 2019
Jack Dawson
City Engineer
City of Charlottesville

Re: Sunrise Lot 15 Permeable Pavement Agreement

Jack,

With this letter, we intend to memorialize our shared understanding of responsibility for the permeable concrete located at Sunrise Lot 15 as well as document the existing conditions on which our responsibility is based. It should be noted that the parcel is owned by Sunrise Cville LLC not BMC and the subsequent agreement will be between the City and Sunrise Cville LLC.

On Friday June 21, the City of Charlottesville represented by yourself and Hugh Blake met members of Sunrise Cville LLC (David Michaelson, Daniel Michaelson, and Reid Murphy) at Lot 15 to conduct pre-construction infiltration testing using ASTM C 1701. Prior to the meeting, the City established that the pervious concrete in the street was the only pervious infrastructure that Sunrise LLC needed to consider. As such, we conducted the infiltration tests at 4 locations in the pervious street parking denoted by locations 1 and 2 (Area 1) and locations 3 and 4 (Area 2) shown in the attached document. The results indicated that locations 1, 2, and 3 were completely clogged. Location 4 showed an infiltration rate of 16.7 in/hr, making the average for Area 2, 8.35 in/hr.

Per your email dated Monday June 24, 2019 the baseline infiltration rate for Area 1 is 0 in/hr in the. As such, we are not obligated to maintain or improve this condition post construction. For Area 2, we are obligated to maintain infiltration rates to 85% of the baseline or 7.098 in/hr. The 85% threshold was discussed as a compromise to the original figure proposed by phone call in July 2019.

Following construction, we will schedule a time to meet with City staff to evaluate Area 2 using ASTM C 1701 to ensure that the 85% threshold is met. If the average of Locations 3 and 4 is 7.098 in/hr or greater Sunrise LLC and Marion Enterprises will have no further liability for the pervious concrete street parking and our erosion and sediment control bond cannot be withheld thereafter on the basis of permeable pavement performance. If the threshold is not met, we agree to clean, re-test and if possible obtain the 7.098 in/hr threshold. In no circumstance will we be responsible for replacement of the existing pervious pavement as we are unaware whether it was constructed correctly to begin with and are not in control of many of the variables influencing performance such as road maintenance or incidental use such as resident oil changes and debris deposition.

In summary, Sunrise LLC agrees to maintain Area 2 to a minimum of 7.098 in/hr. but shall not be beholden to measure or guarantee any other pervious surfaces associated with Sunrise Lot 15 including the sidewalks or Area 1. We trust that we have accurately reflected the understanding between Sunrise Cville LLC and the City of Charlottesville, Virginia and that you will revise your document previously sent to us related to this matter to reflect this understanding.

Thank you for your consideration. Should we need to have a further discussion let me know.

Sincerely,

Daniel Michaelson,
Project Manager
Marion Enterprises, Inc.



24'

2'

TEST #1

EXHIBIT 1

12'

TEST #2

2'

Google

3D

+

-

^

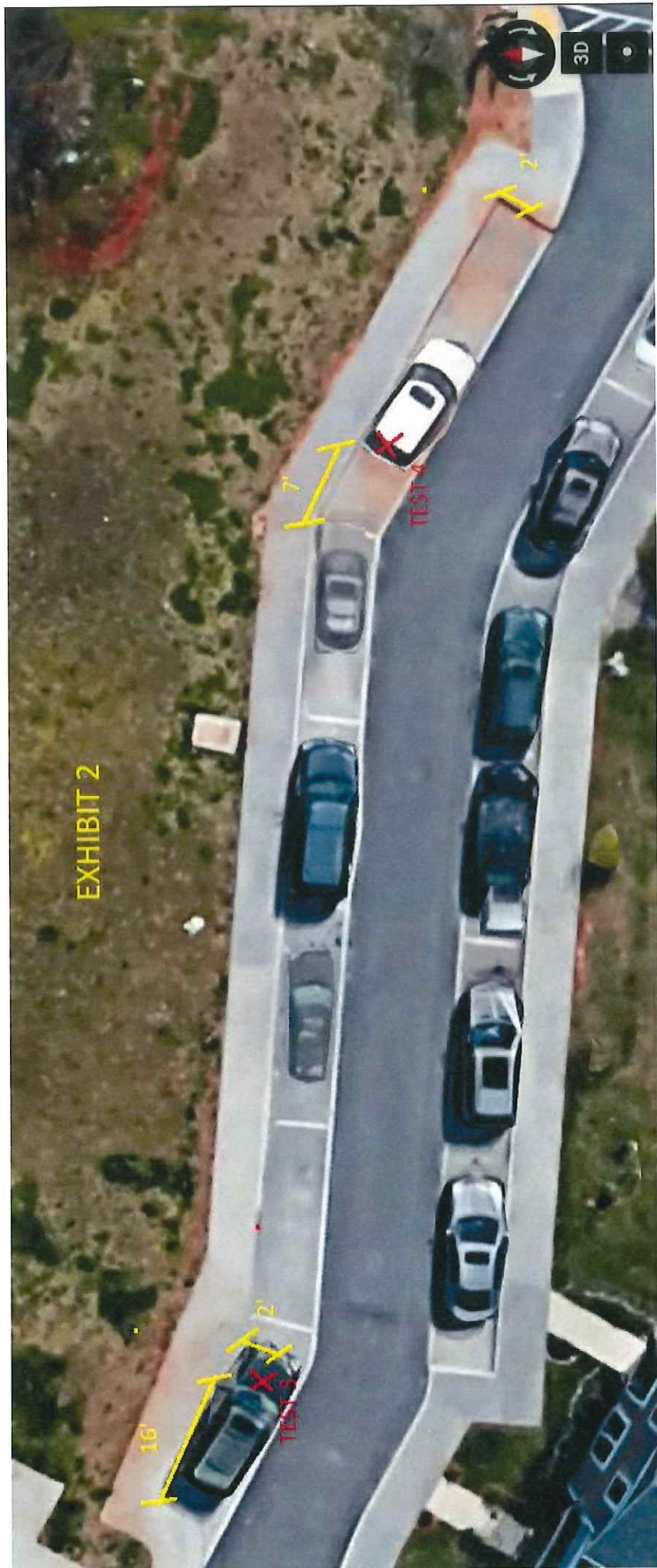


EXHIBIT 2

EXHIBIT 3

$$I = \frac{KM}{(D^2 * t)}$$

where:

- I = Infiltration rate, mm/h [in./h],
- M = Mass of infiltrated water, kg [lb],
- D = Inside diameter of infiltration ring, mm [
- t = time required for measured amount of wa
- K = 4 583 666 000 in SI units or 126 870 in [

NOTE 5—The factor K has units of $(\text{mm}^3 \cdot \text{s}) / (\text{kg} \cdot \text{h})$ [needed to convert the recorded data (W , D , and t) to in mm/h [in./h].

M=	8 Lb
D=	12 in
t	422 s
K	126,870
I	16.70221 in/hr

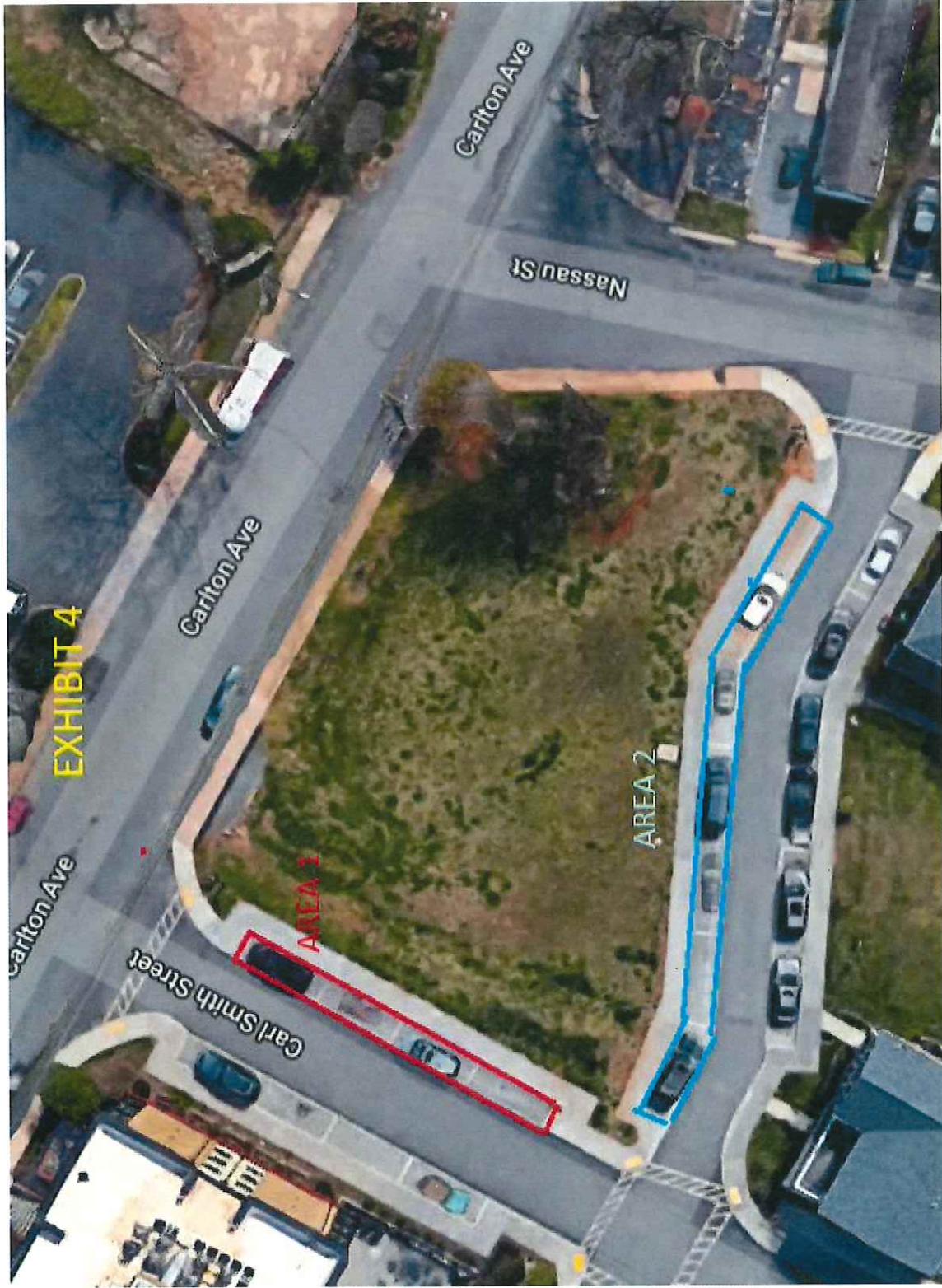


EXHIBIT 4

Carlton Ave

Nassau St

Carlton Ave

Carlton Ave

Carl Smith Street

AREA 1

AREA 2

CITY ENGINEER RESPONSE

Sunrise PUD Lot 15-Baseline Infiltration and Post Development Acceptance Procedures

List of Exhibits:

Exhibit 1: Area 1 Testing Locations

Exhibit 2: Area 2 Testing Locations

Exhibit 3: Test 4 Calculation

Exhibit 4: Area Locations

The work to be conducted by Sunrise Cville LLC ("SC") on Lot 15 is immediately adjacent 2 areas of parking, one of which is immediately downstream (identified on Exhibit 4 as "Area 2"). Both areas are constructed of porous concrete and are intended to function as SWM BMP's, which is within the ROW and will eventually be accepted for City maintenance. The following procedure will be conducted to ensure the efficiency of the BMP's is not degraded beyond a reasonable level during the build out of Lot 15.

Baseline

At a time prior to the start of any construction by SC on the site (including the establishment of perimeter sediment and erosion controls), staff from NDS Engineering and SC, will meet onsite to conduct infiltration tests. Test will be conducted in accordance with ASTM C1701, with any minor modifications agreed upon by both parties. For each area identified on the attached exhibit, 2 locations will be selected and agreed upon by NDS/SC. Each should be somewhat distant from the other and located in an area of which the surface appears to be representative of the area generally, in regards to apparent porosity and any obvious deposition of sediment or other clogging factors. The location should be noted accurately for future use in acceptance testing. One infiltration test should be conducted at each location (total of 4 tests). The results will be recorded and made available to all interested parties.

Acceptance

When all work by SC is completed on Lot 15, and the site is otherwise ready for termination of the general permit (asbuilts have been submitted and accepted, and all inspection punch lists completed), representatives of both NDS engineering and SC will meet again onsite to retest infiltration in the same locations. For each area, the results will be compared to the results for that same location within the area. Taking Area 1 as an example, the baseline test will be labeled with as A1 and A2, for a location 1 and location 2. The Acceptance test, will be labeled B1 and B2.

If

$$\left(\frac{B_1}{A_1} + \frac{B_2}{A_2}\right) \times \frac{1}{2}$$

$$Is \geq 0.85$$

Than area 1 will be considered passing and will be accepted. Area 2 will have the same 85% threshold. If either areas fail to meet the 85% threshold, another cleaning shall be conducted by a professional cleaning service contracted and paid for by SC, and another test performed. If the 85% threshold is not met after cleaning, the facilities will not be considered acceptable, and further action will be taken.

If cleaning (by Habitat for Humanity, SC, or others) is conducted on any of the subject areas in between the Baseline and Acceptance testing, the testing procedures will proceed as described above without consideration to the cleaning, to the benefit of the contractor.

Baseline Results and Future Standards of Acceptance

Testing was conducted jointly by staff of City of Charlottesville NDS and representatives of SC (Sunrise Cville LLC) on June 21st, 2019. Four test were conducted at the locations shown on Exhibit 1 and Exhibit 2. The results of tests at locations 1-3 was that the material was completely clogged, while test location 4 yielded a result of 16.7 in/hr. Per the above formula, the minimum infiltration rates needed to be achieved for each area to be considered 'passing' and therefor acceptable to the City is :

Area 1: 0 in/hr

Area 2: 8.35 in/hr

ACKNOWLEDGED AND AGREED BY SUNRISE CVILLE LLC:

By: _____ Date: _____

Its: Member SCC Registr. #: _____

ACKNOWLEDGED BY BMC

By: _____ Date: _____

Its: _____