

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ORANGE  
SIXTEENTH JUDICIAL CIRCUIT

PIEDMONT ENVIRONMENTAL COUNCIL, )  
 )  
*Plaintiff-Petitioner,* )  
 )  
 v. )  
 )  
 ORANGE COUNTY, VIRGINIA, )  
 )  
Serve: Thomas E. Lacheney, Esquire )  
 County Attorney )  
 Gordon Building )  
 112 West Main Street )  
 Orange, VA 22960 )  
 )  
*Defendant-Respondent.* )

Case No. CL \_\_\_\_\_



**PETITION FOR A WRIT OF MANDAMUS TO REMEDY ORANGE COUNTY'S  
VIOLATION OF THE VIRGINIA FREEDOM OF INFORMATION ACT**

Piedmont Environmental Council ("PEC"), by counsel, files this Petition for a Writ of Mandamus (the "Petition") against Orange County, Virginia (the "County" or "Orange County"):

**INTRODUCTION**

1. In stating the policy underpinning the Virginia Freedom of Information Act ("VFOIA"), Virginia Code § 2.2-3700 provides that "[t]he affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government." The statute also provides that "[a]ny exemption from public access to records or meetings shall be *narrowly construed* and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law." (Emphasis added.) Finally, "[u]nless a public body or its

officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, ... all public records shall be available for inspection and copying upon request.”

2. On April 25, 2023, the Board of Supervisors for Orange County, Virginia (the “Board of Supervisors”) granted an application to rezone more than 2,500 acres of land in the Germanna-Wilderness Area of Orange County to Planned Development – Mixed Use (Conditional), REZ 22-03 (the “Wilderness Crossing Land”).

3. Prior to the rezoning, the Board of Supervisors ignored VFOIA’s requirements and barred the public from access to records related to the Wilderness Crossing Land, presumably to shield the public from knowledge of the types of operations and development that will occur on the Wilderness Crossing Land.

4. As set forth below, and pursuant to VFOIA, PEC properly requested access to documents related to the Wilderness Crossing Land from the County to which the County improperly denied access.

5. Accordingly, PEC respectfully requests that the Court grant its Petition and order the County to provide PEC with access to the documents that it properly requested from the County.

#### **PARTIES AND STANDING**

6. PEC is a locally based, donor supported 501(c)(3) nonprofit, and an accredited land trust. It strives to make the Virginia Piedmont a model and leader in conservation, restoration and smart growth.

7. PEC is headquartered in Warrenton, Virginia and has standing to bring this action as a citizen of the Commonwealth of Virginia pursuant to Va. Code § 2.2-3704(A). Moreover, PEC has met the requirement of Va. Code § 2.2-3713 to support this Petition with an affidavit (attached as **Exhibit 1**).

8. The County is a body politic and corporate and political subdivision of the Commonwealth of Virginia dated to 1735.

9. The County is a “Public Body” pursuant to Va. Code § 2.2-3701.

### **JURISDICTION AND VENUE**

10. This Court has jurisdiction to hear PEC’s claims pursuant to Va. Code § 8.01-644.

11. PEC has requested “Public Records” as defined by Va. Code § 2.2-3701 from the County.

12. Venue is proper in this jurisdiction because this forum is the Circuit Court for the County that has failed to produce Public Records as required by VFOIA. Va. Code § 2.2-3713(A)(1).

13. This Court has the authority to issue a writ of mandamus directing the County to comply with its statutory obligations to produce Public Records pursuant to Va. Code § 2.2-3713.

### **BACKGROUND REGARDING THE WILDERNESS CROSSING LAND AND PROPOSED DEVELOPMENT**

14. The Wilderness Crossing Land, the subject of the largest rezoning in Orange County’s history, is comprised of twenty (20) parcels totaling 2,618.47 acres. It lies just north of Germanna Highway (Route 3), to the north and west of where Route 3 and Route 20 (Constitution Highway) intersect with Plank Road.

15. Even before expanding the scope of the development of the Wilderness Crossing Land, the developer projected that the rezoned property would add tens of thousands of vehicle trips per day at full buildout to the traffic already burdening these roadways and the adjoining lands and landowners with noise, dust, and odor. Moreover, the Rezoning fundamentally alters the manner in which the land at issue has been used. The proposed development of the Wilderness Crossing Land is referred to as the “Wilderness Crossing Project.”

16. The Wilderness Crossing Project contemplates the construction of up to 5,000 residences, as much as 750+ acres of industrial development, and hundreds of acres of commercial development. These residential, commercial, and industrial uses would involve the erection of structures dwarfing the natural landscape, some rising eighty (80) or more feet in the air, and would be built in four (4) phases across forty (40) years, all on largely unimproved land within or overlooking the Wilderness and/or Chancellorsville Battlefields.

17. This mammoth development, sited on land crisscrossed by streams and pocked by inactive gold mines, would occur over the course of several decades, add thousands of vehicles per day to the roads serving those historic sites, and further tax already overdrawn and overextended public infrastructure, including water, wastewater, and electricity.

18. There has been massive public interest in and opposition to the Wilderness Crossing Project given its enormous scale and scope, its detrimental impacts, and the manner in which it will fundamentally alter Orange County and the historic area in which it is located.

**PEC's VFOIA RECORDS REQUESTS AND  
THE COUNTY'S VIOLATION OF VFOIA**

19. Because of its concerns about the Wilderness Crossing Project, PEC sent a VFOIA records request to Orange County on September 27, 2022 (the "First VFOIA Request") (attached as **Exhibit 2**). In the First VFOIA Request, PEC requested documents regarding the pending rezoning case for the Wilderness Crossing Land.

20. Orange County provided PEC a partial response to the First VFOIA Request, producing documents to PEC on October 27, 2022, October 31, 2022, and November 6, 2022.

21. In its responses, Orange County produced dozens of pages of electronic mail that had sender and/or recipient names, as well as random words in the body of the emails, redacted without explanation.

22. Va. Code § 2.2-3704.01 provides that “only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public records that are not so excluded shall be disclosed.”

23. Furthermore, Va. Code § 2.2-3704 requires that a response that withholds any part of a requested record “identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific code section that authorizes the withholding of the records.”

24. Despite VFOIA’s plain terms governing what a public body must do if it withholds or redacts records, Orange County failed to identify why it had redacted such records.

25. On November 7, 2022, PEC sent correspondence to Orange County, requesting Orange County to correct its VFOIA deficiencies (attached as **Exhibit 3**).

26. On November 10, 2022, Orange County responded to PEC’s request that Orange County correct its VFOIA deficiencies (attached as **Exhibit 4**) and, in doing so, acknowledged that it had improperly redacted names and e-mail addresses from the documents provided to PEC. In that same correspondence, Orange County identified 33 individuals at Orange County who had responsive information to PEC’s First VFOIA Request. Orange County informed PEC that Orange County intended to compile and redact electronic communications from all 33 individuals in responding to PEC’s First VFOIA Request.

27. On November 28, 2022, Orange County produced additional documentation responsive to PEC’s First VFOIA Request. In doing so, Orange County notified PEC that Orange County had withheld and redacted additional documentation (attached as **Exhibit 5**), asserting that it was authorized to withhold the following two categories of documents from production:

- Documents allegedly protected by the attorney-client privilege; and,

- Documents allegedly containing “proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body,” (the “Proprietary Information Exception”) pursuant to Virginia Code § 2.2-3705.6(3).

Yet, Orange County failed to provide either a privilege log or any specific information regarding the allegedly proprietary nature of the documents withheld.

28. On December 5, 13, and 28, 2022, Orange County again produced some documents responsive to PEC’s First VFOIA Request, but withheld documentation allegedly covered under the Proprietary Information Exception and the attorney-client privilege (attached as **Exhibits 6, 7, and 8**). As before, Orange County failed to provide either a privilege log or any specific information regarding the allegedly proprietary nature of the documents withheld.

29. In those documents produced by Orange County, there were multiple references to nondisclosure agreements signed by numerous Orange County officials, including Board of Supervisors members Lee Frame and Jim Crozier, Interim Director of Planning and Development Services David Smitherman, Orange County Administrator Theodore L. Vorhees, and Director of Economic Development Rose Deal (the “Nondisclosure Agreements”). Orange County failed to produce the Nondisclosure Agreements themselves, however.

30. The Nondisclosure Agreements constitute records created in the transaction of public business and are subject to disclosure under VFOIA.

31. Typically, nondisclosure agreements are form agreements that do not contain proprietary information. Rather, parties typically execute nondisclosure agreements prior to sharing documents containing proprietary information.

32. Consequently, on February 6, 2023, PEC requested copies of the Nondisclosure Agreements (the “Second VFOIA Request”).

33. In response to the Second VFOIA Request, Orange County took the position that the Nondisclosure Agreements themselves allegedly contained proprietary information; accordingly, Orange County failed to produce those agreements.

34. Thus, Orange County took the position that the mere fact that a business may be considering doing business in, and not even with, Orange County is, in and of itself, proprietary. Moreover, Orange County did not offer to redact the Nondisclosure Agreements to remove any allegedly proprietary information.

35. Orange County’s position constitutes a flagrant disregard of the letter and spirit of the VFOIA, which instructs that “[t]he affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.” Va. Code § 2.2-3700(B).

36. Being taken in the context of legislative proceedings regarding permitted uses of property that culminate in the exercise of the Board’s legislative power, the County’s position strikes at the heart of VFOIA’s commitment to local government transparency and accountability, the bulwarks of popular sovereignty and of all political rights. See Va. Const. art. I, § 2 (“That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.”); see also Va. Const. art. I, § 12.

37. Moreover, Orange County’s position fails to comport with the language of Va. Code § 2.2-3705.6, which allows a public body to withhold the production of documents in two instances: (1) when a private business has voluntarily provided proprietary information to a public body based on a promise of confidentiality from the public body, which proprietary information is



used by the public body for business, trade, and tourism development or retention; and, (2) memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, “where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.” Va. Code § 2.2-3705.6.

38. With respect to the first type of proprietary information exempted, while the Nondisclosure Agreements executed by Frame, Crozier, Smitherman, Vorhees, and Deal presumably contain a promise of confidentiality, the Nondisclosure Agreements themselves lack any confidential or proprietary information. Even if the Nondisclosure Agreements did contain proprietary information, such proprietary information could be redacted with the remainder of the Nondisclosure Agreements made available to PEC for review.

39. Also, with respect to this theory of exemption, PEC has been provided no basis for concluding that any information disclosed in the Nondisclosure Agreements were actually “used by the public body for business, trade, and tourism development or retention.”

40. Only through access to the language of the Nondisclosure Agreements may citizens determine whether the County has withheld records provided by the private entity that are not covered by the promise of confidentiality that the County provided or test whether such information might actually be “used by the public body for business, trade, and tourism development or retention.”

41. Turning to the second type of proprietary information exempted, Nondisclosure Agreements are not “memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia” in the context of the plain and ordinary meaning



of the quoted language, and should not be so construed under the rule of narrow construction provided by VFOIA.

42. Even if the agreements are deemed to be possibly within the ambit of that provision, there has been no showing made or basis given for the conclusion that they were “prepared by a public body,” namely Orange County.

43. Even if that were shown, there has also been no showing made or basis given for the conclusion that “competition or bargaining is involved” in the subject matter of the Nondisclosure Agreements or that “disclosure of such information would adversely affect the financial interest of the public body,” rather than the counterpart or no one at all. Rather, it seems that the County read this exemption to apply beyond the realm of public contracts to cover lobbying activities directed at the exercise of core legislative powers.

44. The County’s position in response to the Second VFOIA Request for the Nondisclosure Agreements is directly at odds with Va. Code § 2.2-3700, which provides that any exemption from public access “shall be narrowly construed,” and constitutes a blatant violation of VFOIA

45. The County’s failure, in response to the First VFOIA Request, to more specifically identify or describe the additional records withheld pursuant to Va. Code § 2.2-3705.6(3) also violates VFOIA because it inhibits PEC’s ability to assess whether Orange County has properly withheld such records.

46. Likewise, the County’s failure, also in response to the First VFOIA Request, to more specifically identify or describe the records allegedly withheld based on the attorney-client privilege also violates VFOIA because it precludes PEC from assessing whether such records are, in fact, protected from disclosure to PEC pursuant to the attorney-client privilege.

47. PEC provided the County with a copy of this Writ on October 26, 2023. A true and accurate copy of PEC's request that the County reconsider its position regarding the failure to produce the Nondisclosure Agreements, as well as the County's refusal to produce a privilege log, (attached as **Exhibit 9**).

48. More than three working days have passed since PEC provided the County with a copy of the Petition. Accordingly, PEC is entitled to have the Petition heard within seven days of its filing.

### **PRAYER FOR RELIEF**

WHEREFORE, PEC prays that the Court:

1. Hear this matter within seven days of its filing pursuant to Va. Code § 2.2-3713(C);
2. Require the County, prior to or during the hearing, to submit for in camera review all public records withheld by the County on the basis of privilege and submit the Nondisclosure Agreements to both the Court and counsel to PEC for attorney's eyes-only-review;
3. Grant the Petition and find that the County denied PEC the rights and privileges conferred by VFOIA by, inter alia, withholding the Nondisclosure Agreements;
4. Declare that PEC is entitled to the Nondisclosure Agreements withheld by the County and issue a writ of mandamus, requiring the County to disclose the Nondisclosure Agreements to PEC within ten business days after service of the writ;
5. Require that the County produce both to the Court and to counsel for PEC for attorney's eyes-only-review any additional documents withheld pursuant to Va. Code § 2.2-3705.6(3) within ten business days after service of said writ;

6. Require that the County to produce to PEC a privilege log or otherwise more specifically identify the documents withheld by the County on the basis of privilege and the facts allegedly justifying such withholding within ten business days after service of said writ;


7. Hold a further hearing on all such other public records withheld pursuant to a claim of exemption under VFOIA, require the County to bear “the burden of proof to establish an exclusion by a preponderance of the evidence” with respect to any such public records withheld or redacted, and order the County to produce any and all public records within its possession, custody and control responsive to the First and Second VFOIA Requests that the County does not prove to be statutorily exempted from disclosure under the exemptions properly invoked;

8. Award PEC its reasonable costs, including costs and fees for expert witnesses and attorney fees, incurred in prosecuting the Petition, in accordance with Va. Code § 2.2-3713(D) and County Code § 70-95; and

9. Grant PEC such other and further relief as justice may require and to equity may seem meet.

Dated: November 9, 2023

Respectfully submitted,

By:   
Turner A. Broughton, Esquire  
WILLIAMS MULLEN  
200 South 10<sup>th</sup> Street (23219)  
PO Box 1320  
Richmond, VA 23218-1320  
Telephone: (804) 420-6000  
Facsimile: (804) 420-6507  
Email: [tbroughton@williamsmullen.com](mailto:tbroughton@williamsmullen.com)

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ORANGE  
SIXTEENTH JUDICIAL CIRCUIT

PIEDMONT ENVIRONMENTAL COUNCIL, )  
)  
*Plaintiffs-Petitioner,* )

v. )

Case No. CL \_\_\_\_\_

ORANGE COUNTY, VIRGINIA, )

Serve: Thomas E. Lacheney )  
County Attorney )  
Gordon Building )  
112 West Main Street )  
Orange, VA 22960 )

*Defendants-Respondents.* )

**DECLARATION OF DON MCCOWN IN SUPPORT OF PIEDMONT ENVIRONMENTAL COUNCIL'S PETITION FOR A WRIT OF MANDAMUS TO REMEDY ORANGE COUNTY'S VIOLATION OF THE VIRGINIA FREEDOM OF INFORMATION ACT**

Don McCown, declares and states, pursuant to Va. Code §§ 8.01-4.3 and 2.2-7713, the following:

1. I am an adult over eighteen years of age and otherwise competent to testify.
2. I have personal knowledge of and am fully familiar with the facts set forth in PEC's Petition for a Writ of Mandamus (the "Petition"), as well as in this declaration.
3. I am employed by Piedmont Environmental Council ("PEC") as its Land Use Field Representative for Madison and Orange Counties.
4. I, on behalf of PEC, requested that Orange County, Virginia produce certain books and records pursuant to Virginia's Freedom of Information Act ("VFOIA") as set forth in



the Petition to which this declaration is attached. More specifically, I issued VFOIA requests to Orange County, Virginia on September 27, 2022 and February 6, 2023.

5. The facts set forth in the Petition truly and accurately describe PEC's efforts to obtain public records from Orange County, as well as Orange County's failure to produce certain public records that PEC requested.

6. I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.

Dated: October 23, 2023

PIEDMONT ENVIRONMENTAL COUNCIL

Don McCown

By: DON McCOWN

Its: \_\_\_\_\_

September 27, 2022

Michelle Williams  
County Administrator's Office  
Orange County  
P. O. Box 111  
Orange, Virginia 22960

**RE: Request for records under the Virginia Freedom of Information Act**

Dear Ms. Williams:

Under the Virginia Freedom of Information Act, §2.2-3704 et seq., I am requesting copies (electronic preferred) of meeting minutes and any and all correspondence between County elected or appointed officials, staff and/or consultants, and the following property owners and/or their representatives:

- King-Evans Culpeper Property LLC;
- KEG Associates III LLC;
- Evans King 2 LLC;
- Evans King LLC;
- Jan King Evans [et al];
- Charles B. [or "Chip"] King Jr. [et al];
- Jan A K Evans, Trustee et al;
- Jennifer Lee King, Trustee;
- Charles B. King, Trustee; and
- Kenny Dotson.

I am requesting copies of said minutes and correspondence from January 2020 through the present, including but not limited to documents in your possession, custody or control relating to the pending rezoning case for Wilderness Crossing and/or the proposed realignment of Rte. 20.

I request that records be provided in an electronic format as available. If there are any fees for searching or copying these records, please inform me if the cost will exceed \$200.00. This information is not being sought for commercial purposes.

The Virginia Freedom of Information Act requires a response to this request be made within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records. If you deny any or all of this request, please cite each specific exemption you



feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for your consideration. If you have any questions or require additional information in order to process my request, please do not hesitate to contact me via email or my direct number, listed below.

Respectfully,

A handwritten signature in black ink that reads "Don McCown". The signature is written in a cursive, slightly slanted style.

Don McCown  
Land Use Field Representative, Madison and Orange Counties  
Piedmont Environmental Council  
410 East Water Street, Suite 700  
Charlottesville, VA 22902  
434-977-2033 x7047  
dmccown@pecva.org





November 7, 2022

Michelle Williams  
County Administrator's Office  
Orange County  
P. O. Box 111  
Orange, Virginia 22960

**RE: Request for records under the Virginia Freedom of Information Act**

Dear Ms. Williams:

I am in receipt of Part 1 (October 27, 2022), Part 2 (October 31, 2022), and Part 3 (November 6, 2022) of the documents you have provided in partial response to my Virginia Freedom of Information Act (FOIA) request of September 27, 2022.

By enacting FOIA, the General Assembly intended to ensure ready access to public records and to promote an increased awareness of governmental activities. Subsection B of § 2.2-3700 states in relevant part,

*Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.... Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law.*

Regarding records containing both excluded and nonexcluded information, § 2.2-3704.01 provides that *only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed.*

Finally, the procedure set forth in subdivision B 2 of § 2.2-3704 requires that a response that withholds requested records in part and provides records in part *shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.*



The responses I have received so far contain dozens of pages of records, specifically emails (many in duplicate), **with sender and/or recipient names, as well as seemingly random words in the body of the emails** (e.g. the word "working" from my own emails to Rose Deal), redacted. We view the extensive redactions as "withheld portions" under § 2.2-3704. Because you fail to cite a specific Code section that authorizes the withholding of such portions of the otherwise disclosed records, we believe your responses thus far to be an improper denial of the rights and privileges conferred by FOIA.

In addition, there are dozens of pages of emails and other documents relating to Visit Orange and tourist marketing materials that do not appear to be responsive to my request, yet presumably we have been charged for your time accessing, duplicating, and supplying these documents.

In an effort to move forward in an expeditious manner for all concerned, and to avoid legal proceedings to enforce FOIA, I propose the following:

- 1) Please provide the specific Code section that authorizes the extensive redactions, in particular, the redaction of email sender and/or recipient names.
- 2) If there are documents that you believe to be responsive to my request, but where the relevance is not readily apparent on its face (e.g. Visit Orange materials), please provide a short description, and I may be able to further narrow my request.
- 3) You have previously mentioned 33 individuals whose emails you are compiling and redacting. Please provide a list of those individuals, and I may be able to further narrow my request.

Thank you for your assistance, and if you are relying on any other legal authority that I have not considered, please inform me and I will be happy to review.

Respectfully,



Don McCown  
Land Use Field Representative, Madison and Orange Counties  
Piedmont Environmental Council  
410 East Water Street, Suite 700  
Charlottesville, VA 22902  
434-977-2033 x7047  
dmccown@pecva.org

cc: Thomas Lachenev



November 10, 2022

Don McCown  
Piedmont Environmental Council  
410 E. Water Street, Suite 700  
Charlottesville, Virginia 22902

TRANSMITTED VIA E-MAIL TO [dmccown@pecva.org](mailto:dmccown@pecva.org)

Dear Mr. McCown:

You have requested records related to the following:

1. Copies (electronic preferred) of meeting minutes and any and all correspondence between County elected or appointed officials, staff and/or consultants, and the following property owners and/or their representatives:

King-Evans Culpeper Property LLC;  
KEG Associates III LLC;  
Evans King 2 LLC;  
Evans King LLC;  
Jan King Evans [et al];  
Charles B. [or "Chip"] King Jr. [et al];  
Jan A K Evans, Trustee et al;  
Jennifer Lee King, Trustee;  
Charles B. King, Trustee; and  
Kenny Dotson.



I am requesting copies of said minutes and correspondence from January 2020 through the present, including but not limited to documents in your possession, custody or control relating to the pending rezoning case for Wilderness Crossing and/or the proposed realignment of Rte. 20.

On Monday, November 7, 2022, we received a letter regarding the three (3) separate responses you received on October 27, 2022, October 31, 2022, and November 6, 2022. In the letter you were concerned about the following (please see explanation in red):

- *Regarding records containing both excluded and nonexcluded information, § 2.2-3704.01 – in my haste to provide you with documents, per our agreement on October 25, 2022, I did not draft and send a letter, that I normally would, that included the code allowing for such exclusions and redactions. For this, I apologize.*
- *(A) The responses I have received so far contain dozens of pages of records, specifically emails (many in duplicate), (B) with sender and/or recipient names, (C) as well as seemingly random words in the body of the emails (e.g. the word "working" from my own emails to Rose Deal), redacted. We view the extensive redactions as "withheld portions" under § 2.2-3704. Because you fail to cite a specific Code section that authorizes the withholding of such portions of the otherwise disclosed records, we believe your*

*responses thus far to be an improper denial of the rights and privileges conferred by FOIA.*

– (A) The Code of Virginia does not require us to remove duplicate copies of emails. It would take an unreasonable amount of time to sort through the emails of each person that was copied on an email to delete what was not needed. When emails are requested, the requestor receives all copies. I would be in violation of not providing them to you if I took them out without your knowledge. (B) Most of my experience in redaction is complaint based and with that, I redact names, email addresses, and any other identifiable information. Mr. Lacheney and I have discussed this error and I will correct it if you allow me to do so. (C) When using the redaction feature in Adobe Pro, it gives you the option to manually redact words or search for single words or multiple words. To help expedite the process, I would use the Find Text option to search for multiple words in the large files. When doing so, it would not give me the option to unselect certain words such as “working” or “adequate.” I had planned to explain this to you but again, due to my haste, I failed to include my normal response letter.

- *In addition, there are dozens of pages of emails and other documents relating to Visit Orange and tourist marketing materials that do not appear to be responsive to my request, yet presumably we have been charged for your time accessing, duplicating, and supplying these documents.* – When Information Technology staff use the keywords provided by the requestor to search for emails, they are not aware of the reason for the request, nor am I. Therefore, we would not sort out irrelevant documents. We simply provided the documents that have the keywords in it that you requested.
- *In an effort to move forward in an expeditious manner for all concerned, and to avoid legal proceedings to enforce FOIA, I propose the following:*
  - *Please provide the specific Code section that authorizes the extensive redactions, in particular, the redaction of email sender and/or recipient names.* – As I explained previously, most of my experience in redaction is complaint based and with that, I redact names, email addresses, and any other identifiable information. Mr. Lacheney and I have discussed this error and I will correct it if you allow me to do so.
  - *If there are documents that you believe to be responsive to my request, but where the relevance is not readily apparent on its face (e.g. Visit Orange materials), please provide a short description, and I may be able to further narrow my request.* – Again, when Information Technology staff use the keywords provided by the requestor to search for emails, they are not aware of the reason for the request, nor am I. Therefore, we would not sort out irrelevant documents. We simply provided the documents that have the keywords in it that you requested.
  - *You have previously mentioned 33 individuals whose emails you are compiling and redacting. Please provide a list of those individuals, and I may be able to further narrow my request.* -
    - Administration: Ted Voorhees, Glenda Bradley, Alyson Simpson, and Michelle Williams
    - Board of Supervisors: Mark Johnson, Jim White, Keith Marshall, Jim Crozier, Lee Frame, and Teel Goodwin (deceased)
    - Economic Development: Rose Deal, Susan Turner, and Regan McKay
    - Economic Development Authority: Bob McConnell, Jack Rickett, Bill Hager, Arthur Bryant, Sunnie Capelle, Ronnie Rankin, Sharon Hujik, and Doug Rogers (deceased)

- Planning Commission: Jason Capelle, George Yancey, Donald Brooks, Adam Bryington, J. Bryan Nicol, Julie Zeijlmaker, and Jim Hutchison (deceased)
- Planning Services: David Smitherman, Josh Gillespie, Sandra Thornton, Tracey Newman, Keri Ragland, Nicole Ganoë-Washington, Josh Frederick, Kyra Davis, and Eric Bittner

If you will allow me, I can provide you with properly redacted documents and the appropriate codes allowing for such redaction. It is my belief that it will still require the 30 hours quoted, but I will have to reevaluate my time spent to accurately charge you for the research, review, and redaction.

Please advise me on how you wish to move forward.

Sincerely,

A handwritten signature in cursive script that reads "Michelle L. Williams".

Michelle L. Williams  
Deputy Clerk  
FOIA Officer

**Dillon, Donna A.**

**From:** Michelle Williams <mlwilliams@orangecountyva.gov>  
**Sent:** Monday, November 28, 2022 12:26 PM  
**To:** Don McCown  
**Subject:** FOIA Request - McCown (NEW Part 1)

Dear Mr. McCown:

This office is in receipt of your request for records made in accordance with The Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq. of Chapter 37 of Title 2.2). You have requested records related to the following:

1. Copies (electronic preferred) of meeting minutes and any and all correspondence between County elected or appointed officials, staff and/or consultants, and the following property owners and/or their representatives:

King-Evans Culpeper Property LLC;  
KEG Associates III LLC;  
Evans King 2 LLC;  
Evans King LLC;  
Jan King Evans [et al];  
Charles B. [or "Chip"] King Jr. [et al];  
Jan A K Evans, Trustee et al;  
Jennifer Lee King, Trustee;  
Charles B. King, Trustee; and  
Kenny Dotson.



I am requesting copies of said minutes and correspondence from January 2020 through the present, including but not limited to documents in your possession, custody or control relating to the pending rezoning case for Wilderness Crossing and/or the proposed realignment of Rte. 20.

Please use the following Dropbox link to access the documents:  
<https://www.dropbox.com/sh/ih2r4bk88rire58/AAAobyEXRXj1YdNZr6CaL5F2a?dl=0>. This link will be accessible for seven (7) days.

- Michelle Williams' Emails – We are not providing 14 pages of emails pursuant to § 2.2-3705.1(2) of the Code of Virginia as they are protected by the attorney-client privilege.
- Mark Johnson's Emails
- Jim White's Emails – Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.
- Keith Marshall's Emails – We are not providing 5 pages of emails pursuant to § 2.2-3705.1(2) of the Code of Virginia as they are protected by the attorney-client privilege. Additionally, pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.
- Jim Crozier's Emails – We are not providing 7 pages of emails as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of

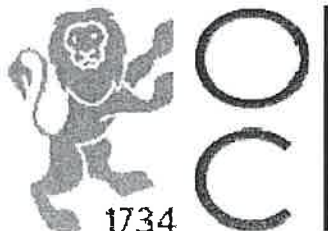


confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body," pursuant to Virginia Code § 2.2-3705.6(3). Additionally, pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.

- Lee Frame's Emails – We are not providing 4 pages of emails pursuant to § 2.2-3705.1(2) of the Code of Virginia as they are protected by the attorney-client privilege. Additionally, we are not providing 12 pages of emails as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body," pursuant to Virginia Code § 2.2-3705.6(3).
- Rose Deal's Emails – We are not providing 104 pages of emails as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body," pursuant to Virginia Code § 2.2-3705.6(3).
- Susan Turner's Emails
- Regan McKay's Emails
- Jason Capelle's Emails
- George Yancey's Emails
- Adam Bryington's Emails
- Julie Zeijlmaker's Emails
- Bob McConnell's Response
- Jack Rickett's Response
- Bill Hager's Response
- Arthur Bryant's Response
- Sunnie Capelle's Response

Kind Regards,

*Michelle L. Williams*



**Michelle L. Williams**

Deputy Clerk / Senior Administrative Assistant  
FOIA Officer / Litter Control Committee Coordinator  
County of Orange, Virginia  
Office of the County Administrator



T (540) 672-3313

F (540) 672-1679

[orangecountyva.gov](http://orangecountyva.gov)

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**Dillon, Donna A.**

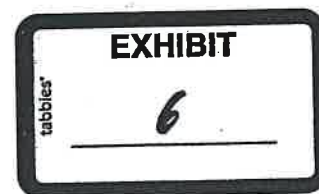
**From:** Michelle Williams <mlwilliams@orangecountyva.gov>  
**Sent:** Monday, December 5, 2022 1:31 PM  
**To:** Don McCown  
**Subject:** FOIA Request - McCown (NEW Part 2)

Dear Mr. McCown:

This office is in receipt of your request for records made in accordance with The Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq. of Chapter 37 of Title 2.2). You have requested records related to the following:

1. Copies (electronic preferred) of meeting minutes and any and all correspondence between County elected or appointed officials, staff and/or consultants, and the following property owners and/or their representatives:

King-Evans Culpeper Property LLC;  
KEG Associates III LLC;  
Evans King 2 LLC;  
Evans King LLC;  
Jan King Evans [et al];  
Charles B. [or "Chip"] King Jr. [et al];  
Jan A K Evans, Trustee et al;  
Jennifer Lee King, Trustee;  
Charles B. King, Trustee; and  
Kenny Dotson.



I am requesting copies of said minutes and correspondence from January 2020 through the present, including but not limited to documents in your possession, custody or control relating to the pending rezoning case for Wilderness Crossing and/or the proposed realignment of Rte. 20.

Please use the following Dropbox link to access the documents:

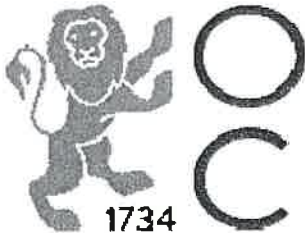
[https://www.dropbox.com/sh/pg51tx4ovz8zc97/AABqjrbZ0IKKNea\\_7ZtVbkEga?dl=0](https://www.dropbox.com/sh/pg51tx4ovz8zc97/AABqjrbZ0IKKNea_7ZtVbkEga?dl=0). This link will be accessible for seven (7) days.

- Alyson Simpson's Emails – Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege. Additionally, pursuant to Virginia Code § 2.2-3705.6(3), certain information was redacted as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body."
- David Smitherman's Emails - Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege. Additionally, pursuant

to Virginia Code § 2.2-3705.6(3), certain information was redacted as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body."

- Glenda Bradley's Emails – Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.
- Ronnie Rankin's Response

Kind Regards,  
*Michelle L. Williams*



**Michelle L. Williams**

Deputy Clerk / Senior Administrative Assistant  
FOIA Officer / Litter Control Committee Coordinator  
County of Orange, Virginia  
Office of the County Administrator

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**Dillon, Donna A.**

---

**From:** Michelle Williams <mlwilliams@orangecountyva.gov>  
**Sent:** Tuesday, December 13, 2022 10:38 AM  
**To:** Don McCown  
**Subject:** FOIA Request - McCown (NEW Part 3)

**Importance:** High

Dear Mr. McCown:

This office is in receipt of your request for records made in accordance with The Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq. of Chapter 37 of Title 2.2). You have requested records related to the following:

1. Copies (electronic preferred) of meeting minutes and any and all correspondence between County elected or appointed officials, staff and/or consultants, and the following property owners and/or their representatives:

King-Evans Culpeper Property LLC;  
KEG Associates III LLC;  
Evans King 2 LLC;  
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Charles B. [or "Chip"] King Jr. [et al];  
Jan A K Evans, Trustee et al;  
Jennifer Lee King, Trustee;  
Charles B. King, Trustee; and  
Kenny Dotson.



I am requesting copies of said minutes and correspondence from January 2020 through the present, including but not limited to documents in your possession, custody or control relating to the pending rezoning case for Wilderness Crossing and/or the proposed realignment of Rte. 20.

Please use the following Dropbox link to access the documents:

[https://www.dropbox.com/sh/69w830csq2mhc1q/AAAdkFINGtkFiZuBG81VN\\_Osa?dl=0](https://www.dropbox.com/sh/69w830csq2mhc1q/AAAdkFINGtkFiZuBG81VN_Osa?dl=0) This link will be accessible for seven (7) days.

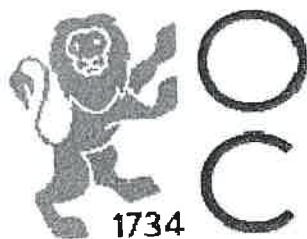
- Josh Frederick's Emails – Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.
- Josh Gillespie's Emails - Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege. Additionally, pursuant to Virginia Code § 2.2-3705.6(3), certain information was redacted as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is

involved and where disclosure of such information would adversely affect the financial interest of the public body."

- Eric Bittner's Emails – Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege. Additionally, pursuant to Virginia Code § 2.2-3705.6(3), certain information was redacted as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body."
- Sandra Thornton's Emails – Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.

Kind Regards,

*Michelle L. Williams*



**Michelle L. Williams**

Deputy Clerk / Senior Administrative Assistant  
FOIA Officer / Litter Control Committee Coordinator  
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Office of the County Administrator

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## Dillon, Donna A.

---

**From:** Michelle Williams <mlwilliams@orangecountyva.gov>  
**Sent:** Wednesday, December 28, 2022 9:40 AM  
**To:** Don McCown  
**Subject:** FOIA Request - McCown (Part 4)

Dear Mr. McCown:

This office is in receipt of your request for records made in accordance with The Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq. of Chapter 37 of Title 2.2). You have requested records related to the following:

1. Copies (electronic preferred) of meeting minutes and any and all correspondence between County elected or appointed officials, staff and/or consultants, and the following property owners and/or their representatives:

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Jan King Evans [et al];  
Charles B. [or "Chip"] King Jr. [et al];  
Jan A K Evans, Trustee et al;  
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Charles B. King, Trustee; and  
Kenny Dotson.



I am requesting copies of said minutes and correspondence from January 2020 through the present, including but not limited to documents in your possession, custody or control relating to the pending rezoning case for Wilderness Crossing and/or the proposed realignment of Rte. 20.

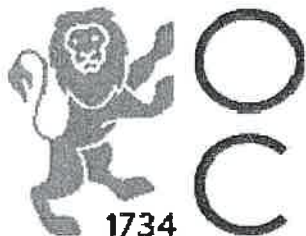
Please use the following Dropbox link to access the documents:

<https://www.dropbox.com/sh/a24ai2lb8zsns99/AAAYraCg6NtVycHtbDRB6TYVa?dl=0>. This link will be accessible for seven (7) days.

- Ted Voorhees' Emails
  - Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.
  - Pursuant to Virginia Code § 2.2-3705.6(3), certain information was redacted as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body."

- We are not providing 37 documents as working papers of the County Administrator pursuant to §2.2-3705.7(2) of the Code of Virginia.
- Sharon Hujik's Emails – A response was not received from Ms. Hujik.
- Donald Brooks' Emails – A response was not received from Mr. Brooks.

Kind Regards,  
*Michelle L. Williams*



**Michelle L. Williams**

Deputy Clerk / Senior Administrative Assistant  
FOIA Officer / Litter Control Committee Coordinator  
County of Orange, Virginia  
Office of the County Administrator

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# WILLIAMS MULLEN

Direct Dial: 804.420.6926  
tbroughton@williamsmullen.com

October 24, 2023

Our File No.: 066749.0019

**By Private Process Server**

Thomas E. Lacheny, Esquire  
County Attorney of Orange County, Virginia  
Gordon Building  
112 West Main Street  
Orange, VA 22960

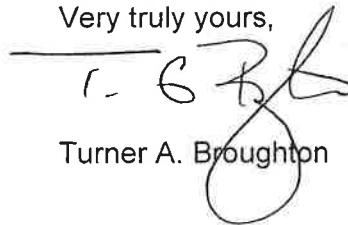
Re: Piedmont Environmental Council's Petition for a Writ of Mandamus

Dear Mr. Lacheny:

Enclosed is a Petition for a Writ of Mandamus, supported by an affidavit showing good cause, pursuant to which the Piedmont Environmental Council ("PEC") is seeking Orange County's records to which it is entitled pursuant to the Virginia Freedom of Information Act ("VFOIA"). More specifically, PEC is seeking records related to the rezoning of more than 2,500 acres of land in the Germanna-Wilderness Area of Orange County described in the attached Petition as the "Wilderness Crossing Land."

I am available later this week to discuss the Petition and whether Orange County is amenable to producing the documents and information requested by PEC. Otherwise, PEC intends to file the Petition with the Circuit Court of Orange County during the week of October 30, 2023 and seek a prompt hearing with the Court regarding the Petition.

Very truly yours,



Turner A. Broughton

TAB:jrm  
Enclosures

103792409.1



VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ORANGE  
SIXTEENTH JUDICIAL CIRCUIT

PIEDMONT ENVIRONMENTAL COUNCIL, )

*Plaintiff-Petitioner,* )

v. )

ORANGE COUNTY, VIRGINIA, )

Serve: Thomas E. Lacheney, Esquire )  
County Attorney )  
Gordon Building )  
112 West Main Street )  
Orange, VA 22960 )

*Defendant-Respondent.* )

Case No. CL \_\_\_\_\_

**PETITION FOR A WRIT OF MANDAMUS TO REMEDY ORANGE COUNTY'S  
VIOLATION OF THE VIRGINIA FREEDOM OF INFORMATION ACT**

Piedmont Environmental Council ("PEC"), by counsel, files this Petition for a Writ of Mandamus (the "Petition") against Orange County, Virginia (the "County" or "Orange County"):

**INTRODUCTION**

1. In stating the policy underpinning the Virginia Freedom of Information Act ("VFOIA"), Virginia Code § 2.2-3700 provides that "[t]he affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government." The statute also provides that "[a]ny exemption from public access to records or meetings shall be *narrowly construed* and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law." (Emphasis added.) Finally, "[u]nless a public body or its

officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, ... all public records shall be available for inspection and copying upon request.”

2. On April 25, 2023, the Board of Supervisors for Orange County, Virginia (the “Board of Supervisors”) granted an application to rezone more than 2,500 acres of land in the Germanna-Wilderness Area of Orange County to Planned Development – Mixed Use (Conditional), REZ 22-03 (the “Wilderness Crossing Land”).

3. Prior to the rezoning, the Board of Supervisors ignored VFOIA’s requirements and barred the public from access to records related to the Wilderness Crossing Land, presumably to shield the public from knowledge of the types of operations and development that will occur on the Wilderness Crossing Land.

4. As set forth below, and pursuant to VFOIA, PEC properly requested access to documents related to the Wilderness Crossing Land from the County to which the County improperly denied access.

5. Accordingly, PEC respectfully requests that the Court grant its Petition and order the County to provide PEC with access to the documents that it properly requested from the County.

#### **PARTIES AND STANDING**

6. PEC is a locally based, donor supported 501(c)(3) nonprofit, and an accredited land trust. It strives to make the Virginia Piedmont a model and leader in conservation, restoration and smart growth.

7. PEC is headquartered in Warrenton, Virginia and has standing to bring this action as a citizen of the Commonwealth of Virginia pursuant to Va. Code § 2.2-3704(A). Moreover, PEC has met the requirement of Va. Code § 2.2-3713 to support this Petition with an affidavit (attached as **Exhibit 1**).

8. The County is a body politic and corporate and political subdivision of the Commonwealth of Virginia dated to 1735.

9. The County is a “Public Body” pursuant to Va. Code § 2.2-3701.

#### **JURISDICTION AND VENUE**

10. This Court has jurisdiction to hear PEC’s claims pursuant to Va. Code § 8.01-644.

11. PEC has requested “Public Records” as defined by Va. Code § 2.2-3701 from the County.

12. Venue is proper in this jurisdiction because this forum is the Circuit Court for the County that has failed to produce Public Records as required by VFOIA. Va. Code § 2.2-3713(A)(1).

13. This Court has the authority to issue a writ of mandamus directing the County to comply with its statutory obligations to produce Public Records pursuant to Va. Code § 2.2-3713.

#### **BACKGROUND REGARDING THE WILDERNESS CROSSING LAND AND PROPOSED DEVELOPMENT**

14. The Wilderness Crossing Land, the subject of the largest rezoning in Orange County’s history, is comprised of twenty (20) parcels totaling 2,618.47 acres. It lies just north of Germanna Highway (Route 3), to the north and west of where Route 3 and Route 20 (Constitution Highway) intersect with Plank Road.

15. Even before expanding the scope of the development of the Wilderness Crossing Land, the developer projected that the rezoned property would add tens of thousands of vehicle trips per day at full buildout to the traffic already burdening these roadways and the adjoining lands and landowners with noise, dust, and odor. Moreover, the Rezoning fundamentally alters the manner in which the land at issue has been used. The proposed development of the Wilderness Crossing Land is referred to as the “Wilderness Crossing Project.”

16. The Wilderness Crossing Project contemplates the construction of up to 5,000 residences, as much as 750+ acres of industrial development, and hundreds of acres of commercial development. These residential, commercial, and industrial uses would involve the erection of structures dwarfing the natural landscape, some rising eighty (80) or more feet in the air, and would be built in four (4) phases across forty (40) years, all on largely unimproved land within or overlooking the Wilderness and/or Chancellorsville Battlefields.

17. This mammoth development, sited on land crisscrossed by streams and pocked by inactive gold mines, would occur over the course of several decades, add thousands of vehicles per day to the roads serving those historic sites, and further tax already overdrawn and overextended public infrastructure, including water, wastewater, and electricity.

18. There has been massive public interest in and opposition to the Wilderness Crossing Project given its enormous scale and scope, its detrimental impacts, and the manner in which it will fundamentally alter Orange County and the historic area in which it is located.

**PEC's VFOIA RECORDS REQUESTS AND  
THE COUNTY'S VIOLATION OF VFOIA**

19. Because of its concerns about the Wilderness Crossing Project, PEC sent a VFOIA records request to Orange County on September 27, 2022 (the "First VFOIA Request") (attached as **Exhibit 2**). In the First VFOIA Request, PEC requested documents regarding the pending rezoning case for the Wilderness Crossing Land.

20. Orange County provided PEC a partial response to the First VFOIA Request, producing documents to PEC on October 27, 2022, October 31, 2022, and November 6, 2022.

21. In its responses, Orange County produced dozens of pages of electronic mail that had sender and/or recipient names, as well as random words in the body of the emails, redacted without explanation.

22. Va. Code § 2.2-3704.01 provides that “only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public records that are not so excluded shall be disclosed.”

23. Furthermore, Va. Code § 2.2-3704 requires that a response that withholds any part of a requested record “identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific code section that authorizes the withholding of the records.”

24. Despite VFOIA’s plain terms governing what a public body must do if it withholds or redacts records, Orange County failed to identify why it had redacted such records.

25. On November 7, 2022, PEC sent correspondence to Orange County, requesting Orange County to correct its VFOIA deficiencies (attached as **Exhibit 3**).

26. On November 10, 2022, Orange County responded to PEC’s request that Orange County correct its VFOIA deficiencies (attached as **Exhibit 4**) and, in doing so, acknowledged that it had improperly redacted names and e-mail addresses from the documents provided to PEC. In that same correspondence, Orange County identified 33 individuals at Orange County who had responsive information to PEC’s First VFOIA Request. Orange County informed PEC that Orange County intended to compile and redact electronic communications from all 33 individuals in responding to PEC’s First VFOIA Request.

27. On November 28, 2022, Orange County produced additional documentation responsive to PEC’s First VFOIA Request. In doing so, Orange County notified PEC that Orange County had withheld and redacted additional documentation (attached as **Exhibit 5**), asserting that it was authorized to withhold the following two categories of documents from production:

- Documents allegedly protected by the attorney-client privilege; and,

- Documents allegedly containing “proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body,” (the “Proprietary Information Exception”) pursuant to Virginia Code § 2.2-3705.6(3).

Yet, Orange County failed to provide either a privilege log or any specific information regarding the allegedly proprietary nature of the documents withheld.

28. On December 5, 13, and 28, 2022, Orange County again produced some documents responsive to PEC’s First VFOIA Request, but withheld documentation allegedly covered under the Proprietary Information Exception and the attorney-client privilege (attached as **Exhibits 6, 7, and 8**). As before, Orange County failed to provide either a privilege log or any specific information regarding the allegedly proprietary nature of the documents withheld.

29. In those documents produced by Orange County, there were multiple references to nondisclosure agreements signed by numerous Orange County officials, including Board of Supervisors members Lee Frame and Jim Crozier, Interim Director of Planning and Development Services David Smitherman, Orange County Administrator Theodore L. Vorhees, and Director of Economic Development Rose Deal (the “Nondisclosure Agreements”). Orange County failed to produce the Nondisclosure Agreements themselves, however.

30. The Nondisclosure Agreements constitute records created in the transaction of public business and are subject to disclosure under VFOIA.

31. Typically, nondisclosure agreements are form agreements that do not contain proprietary information. Rather, parties typically execute nondisclosure agreements prior to sharing documents containing proprietary information.



32. Consequently, on February 6, 2023, PEC requested copies of the Nondisclosure Agreements (the “Second VFOIA Request”).

33. In response to the Second VFOIA Request, Orange County took the position that the Nondisclosure Agreements themselves allegedly contained proprietary information; accordingly, Orange County failed to produce those agreements.

34. Thus, Orange County took the position that the mere fact that a business may be considering doing business in, and not even with, Orange County is, in and of itself, proprietary. Moreover, Orange County did not offer to redact the Nondisclosure Agreements to remove any allegedly proprietary information.

35. Orange County’s position constitutes a flagrant disregard of the letter and spirit of the VFOIA, which instructs that “[t]he affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.” Va. Code § 2.2-3700(B).

36. Being taken in the context of legislative proceedings regarding permitted uses of property that culminate in the exercise of the Board’s legislative power, the County’s position strikes at the heart of VFOIA’s commitment to local government transparency and accountability, the bulwarks of popular sovereignty and of all political rights. See Va. Const. art. I, § 2 (“That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.”); see also Va. Const. art. I, § 12.

37. Moreover, Orange County’s position fails to comport with the language of Va. Code § 2.2-3705.6, which allows a public body to withhold the production of documents in two instances: (1) when a private business has voluntarily provided proprietary information to a public body based on a promise of confidentiality from the public body, which proprietary information is

used by the public body for business, trade, and tourism development or retention; and, (2) memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, “where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.” Va. Code § 2.2-3705.6.

38. With respect to the first type of proprietary information exempted, while the Nondisclosure Agreements executed by Frame, Crozier, Smitherman, Vorhees, and Deal presumably contain a promise of confidentiality, the Nondisclosure Agreements themselves lack any confidential or proprietary information. Even if the Nondisclosure Agreements did contain proprietary information, such proprietary information could be redacted with the remainder of the Nondisclosure Agreements made available to PEC for review.

39. Also, with respect to this theory of exemption, PEC has been provided no basis for concluding that any information disclosed in the Nondisclosure Agreements were actually “used by the public body for business, trade, and tourism development or retention.”

40. Only through access to the language of the Nondisclosure Agreements may citizens determine whether the County has withheld records provided by the private entity that are not covered by the promise of confidentiality that the County provided or test whether such information might actually be “used by the public body for business, trade, and tourism development or retention.”

41. Turning to the second type of proprietary information exempted, Nondisclosure Agreements are not “memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia” in the context of the plain and ordinary meaning

of the quoted language, and should not be so construed under the rule of narrow construction provided by VFOIA.

42. Even if the agreements are deemed to be possibly within the ambit of that provision, there has been no showing made or basis given for the conclusion that they were “prepared by a public body,” namely Orange County.

43. Even if that were shown, there has also been no showing made or basis given for the conclusion that “competition or bargaining is involved” in the subject matter of the Nondisclosure Agreements or that “disclosure of such information would adversely affect the financial interest of the public body,” rather than the counterpart or no one at all. Rather, it seems that the County read this exemption to apply beyond the realm of public contracts to cover lobbying activities directed at the exercise of core legislative powers.

44. The County’s position in response to the Second VFOIA Request for the Nondisclosure Agreements is directly at odds with Va. Code § 2.2-3700, which provides that any exemption from public access “shall be narrowly construed,” and constitutes a blatant violation of VFOIA

45. The County’s failure, in response to the First VFOIA Request, to more specifically identify or describe the additional records withheld pursuant to Va. Code § 2.2-3705.6(3) also violates VFOIA because it inhibits PEC’s ability to assess whether Orange County has properly withheld such records.

46. Likewise, the County’s failure, also in response to the First VFOIA Request, to more specifically identify or describe the records allegedly withheld based on the attorney-client privilege also violates VFOIA because it precludes PEC from assessing whether such records are, in fact, protected from disclosure to PEC pursuant to the attorney-client privilege.

47. PEC provided the County with a copy of this Writ on October \_\_, 2023. A true and accurate copy of PEC's request that the County reconsider its position regarding the failure to produce the Nondisclosure Agreements, as well as the County's refusal to produce a privilege log, (attached as **Exhibit 9**).

48. More than three working days have passed since PEC provided the County with a copy of the Petition. Accordingly, PEC is entitled to have the Petition heard within seven days of its filing.

#### **PRAYER FOR RELIEF**

WHEREFORE, PEC prays that the Court:

1. Hear this matter within seven days of its filing pursuant to Va. Code § 2.2-3713(C);
2. Require the County, prior to or during the hearing, to submit for in camera review all public records withheld by the County on the basis of privilege and submit the Nondisclosure Agreements to both the Court and counsel to PEC for attorney's eyes-only-review;
3. Grant the Petition and find that the County denied PEC the rights and privileges conferred by VFOIA by, inter alia, withholding the Nondisclosure Agreements;
4. Declare that PEC is entitled to the Nondisclosure Agreements withheld by the County and issue a writ of mandamus, requiring the County to disclose the Nondisclosure Agreements to PEC within ten business days after service of the writ;
5. Require that the County produce both to the Court and to counsel for PEC for attorney's eyes-only-review any additional documents withheld pursuant to Va. Code § 2.2-3705.6(3) within ten business days after service of said writ;

6. Require that the County to produce to PEC a privilege log or otherwise more specifically identify the documents withheld by the County on the basis of privilege and the facts allegedly justifying such withholding within ten business days after service of said writ;

7. Hold a further hearing on all such other public records withheld pursuant to a claim of exemption under VFOIA, require the County to bear "the burden of proof to establish an exclusion by a preponderance of the evidence" with respect to any such public records withheld or redacted, and order the County to produce any and all public records within its possession, custody and control responsive to the First and Second VFOIA Requests that the County does not prove to be statutorily exempted from disclosure under the exemptions properly invoked;

8. Award PEC its reasonable costs, including costs and fees for expert witnesses and attorney fees, incurred in prosecuting the Petition, in accordance with Va. Code § 2.2-3713(D) and County Code § 70-95; and

9. Grant PEC such other and further relief as justice may require and to equity may seem meet.

Dated: October 24, 2023

Respectfully submitted,

By: \_\_\_\_\_

Turner A. Broughton, Esquire  
WILLIAMS MULLEN  
200 South 10<sup>th</sup> Street (23219)  
PO Box 1320  
Richmond, VA 23218-1320  
Telephone: (804) 420-6000  
Facsimile: (804) 420-6507  
Email: [tbroughton@williamsmullen.com](mailto:tbroughton@williamsmullen.com)

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ORANGE  
SIXTEENTH JUDICIAL CIRCUIT

PIEDMONT ENVIRONMENTAL COUNCIL, )

*Plaintiffs-Petitioner,* )

v. )

ORANGE COUNTY, VIRGINIA, )

Serve: Thomas E. Lacheney )  
County Attorney )  
Gordon Building )  
112 West Main Street )  
Orange, VA 22960 )

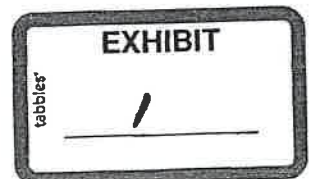
*Defendants-Respondents.* )

Case No. CL \_\_\_\_\_

**DECLARATION OF DON MCCOWN IN SUPPORT OF PIEDMONT ENVIRONMENTAL COUNCIL'S PETITION FOR A WRIT OF MANDAMUS TO REMEDY ORANGE COUNTY'S VIOLATION OF THE VIRGINIA FREEDOM OF INFORMATION ACT**

Don McCown, declares and states, pursuant to Va. Code §§ 8.01-4.3 and 2.2-7713, the following:

1. I am an adult over eighteen years of age and otherwise competent to testify.
2. I have personal knowledge of and am fully familiar with the facts set forth in PEC's Petition for a Writ of Mandamus (the "Petition"), as well as in this declaration.
3. I am employed by Piedmont Environmental Council ("PEC") as its Land Use Field Representative for Madison and Orange Counties.
4. I, on behalf of PEC, requested that Orange County, Virginia produce certain books and records pursuant to Virginia's Freedom of Information Act ("VFOIA") as set forth in



the Petition to which this declaration is attached. More specifically, I issued VFOIA requests to Orange County, Virginia on September 27, 2022 and February 6, 2023.

5. The facts set forth in the Petition truly and accurately describe PEC's efforts to obtain public records from Orange County, as well as Orange County's failure to produce certain public records that PEC requested.

6. I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.

Dated: October 23, 2023

PIEDMONT ENVIRONMENTAL COUNCIL

Don McCown

By: DON McCOWN

Its: \_\_\_\_\_

September 27, 2022

Michelle Williams  
County Administrator's Office  
Orange County  
P. O. Box 111  
Orange, Virginia 22960

**RE: Request for records under the Virginia Freedom of Information Act**

Dear Ms. Williams:

Under the Virginia Freedom of Information Act, §2.2-3704 et seq., I am requesting copies (electronic preferred) of meeting minutes and any and all correspondence between County elected or appointed officials, staff and/or consultants, and the following property owners and/or their representatives:

- King-Evans Culpeper Property LLC;
- KEG Associates III LLC;
- Evans King 2 LLC;
- Evans King LLC;
- Jan King Evans [et al];
- Charles B. [or "Chip"] King Jr. [et al];
- Jan A K Evans, Trustee et al;
- Jennifer Lee King, Trustee;
- Charles B. King, Trustee; and
- Kenny Dotson.

I am requesting copies of said minutes and correspondence from January 2020 through the present, including but not limited to documents in your possession, custody or control relating to the pending rezoning case for Wilderness Crossing and/or the proposed realignment of Rte. 20.

I request that records be provided in an electronic format as available. If there are any fees for searching or copying these records, please inform me if the cost will exceed \$200.00. This information is not being sought for commercial purposes.

The Virginia Freedom of Information Act requires a response to this request be made within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records. If you deny any or all of this request, please cite each specific exemption you





feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for your consideration. If you have any questions or require additional information in order to process my request, please do not hesitate to contact me via email or my direct number, listed below.

Respectfully,

A handwritten signature in black ink that reads "Don McCown". The signature is written in a cursive style with a large initial "D" and "M".

Don McCown  
Land Use Field Representative, Madison and Orange Counties  
Piedmont Environmental Council  
410 East Water Street, Suite 700  
Charlottesville, VA 22902  
434-977-2033 x7047  
dmccown@pecva.org



November 7, 2022

Michelle Williams  
County Administrator's Office  
Orange County  
P. O. Box 111  
Orange, Virginia 22960

**RE: Request for records under the Virginia Freedom of Information Act**

Dear Ms. Williams:

I am in receipt of Part 1 (October 27, 2022), Part 2 (October 31, 2022), and Part 3 (November 6, 2022) of the documents you have provided in partial response to my Virginia Freedom of Information Act (FOIA) request of September 27, 2022.

By enacting FOIA, the General Assembly intended to ensure ready access to public records and to promote an increased awareness of governmental activities. Subsection B of § 2.2-3700 states in relevant part,

*Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.... Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law.*

Regarding records containing both excluded and nonexcluded information, § 2.2-3704.01 provides that *only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed.*

Finally, the procedure set forth in subdivision B 2 of § 2.2-3704 requires that a response that withholds requested records in part and provides records in part *shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.*



The responses I have received so far contain dozens of pages of records, specifically emails (many in duplicate), with sender and/or recipient names, as well as seemingly random words in the body of the emails (e.g. the word "working" from my own emails to Rose Deal), redacted. We view the extensive redactions as "withheld portions" under § 2.2-3704. Because you fail to cite a specific Code section that authorizes the withholding of such portions of the otherwise disclosed records, we believe your responses thus far to be an improper denial of the rights and privileges conferred by FOIA.

In addition, there are dozens of pages of emails and other documents relating to Visit Orange and tourist marketing materials that do not appear to be responsive to my request, yet presumably we have been charged for your time accessing, duplicating, and supplying these documents.

In an effort to move forward in an expeditious manner for all concerned, and to avoid legal proceedings to enforce FOIA, I propose the following:

- 1) Please provide the specific Code section that authorizes the extensive redactions, in particular, the redaction of email sender and/or recipient names.
- 2) If there are documents that you believe to be responsive to my request, but where the relevance is not readily apparent on its face (e.g. Visit Orange materials), please provide a short description, and I may be able to further narrow my request.
- 3) You have previously mentioned 33 individuals whose emails you are compiling and redacting. Please provide a list of those individuals, and I may be able to further narrow my request.

Thank you for your assistance, and if you are relying on any other legal authority that I have not considered, please inform me and I will be happy to review.

Respectfully,



Don McCown  
Land Use Field Representative, Madison and Orange Counties  
Piedmont Environmental Council  
410 East Water Street, Suite 700  
Charlottesville, VA 22902  
434-977-2033 x7047  
dmccown@pecva.org

cc: Thomas Lachency



ADMINISTRATION

MAIL: PO Box 111, Orange, VA 22960 | PHONE: (540) 672-3313

PHYSICAL: 112 West Main Street, Orange, VA 22960

November 10, 2022

Don McCown  
Piedmont Environmental Council  
410 E. Water Street, Suite 700  
Charlottesville, Virginia 22902

TRANSMITTED VIA E-MAIL TO [dmccown@pecva.org](mailto:dmccown@pecva.org)

Dear Mr. McCown:

You have requested records related to the following:

1. Copies (electronic preferred) of meeting minutes and any and all correspondence between County elected or appointed officials, staff and/or consultants, and the following property owners and/or their representatives:

King-Evans Culpeper Property LLC;  
KEG Associates III LLC;  
Evans King 2 LLC;  
Evans King LLC;  
Jan King Evans [et al];  
Charles B. [or "Chip"] King Jr. [et al];  
Jan A K Evans, Trustee et al;  
Jennifer Lee King, Trustee;  
Charles B. King, Trustee; and  
Kenny Dotson.



I am requesting copies of said minutes and correspondence from January 2020 through the present, including but not limited to documents in your possession, custody or control relating to the pending rezoning case for Wilderness Crossing and/or the proposed realignment of Rte. 20.

On Monday, November 7, 2022, we received a letter regarding the three (3) separate responses you received on October 27, 2022, October 31, 2022, and November 6, 2022. In the letter you were concerned about the following (please see explanation in red):

- *Regarding records containing both excluded and nonexcluded information, § 2.2-3704.01 – in my haste to provide you with documents, per our agreement on October 25, 2022, I did not draft and send a letter, that I normally would, that included the code allowing for such exclusions and redactions. For this, I apologize.*
- *(A) The responses I have received so far contain dozens of pages of records, specifically emails (many in duplicate), (B) with sender and/or recipient names, (C) as well as seemingly random words in the body of the emails (e.g. the word "working" from my own emails to Rose Deal), redacted. We view the extensive redactions as "withheld portions" under § 2.2-3704. Because you fail to cite a specific Code section that authorizes the withholding of such portions of the otherwise disclosed records, we believe your*

responses thus far to be an improper denial of the rights and privileges conferred by FOIA.

– (A) The Code of Virginia does not require us to remove duplicate copies of emails. It would take an unreasonable amount of time to sort through the emails of each person that was copied on an email to delete what was not needed. When emails are requested, the requestor receives all copies. I would be in violation of not providing them to you if I took them out without your knowledge. (B) Most of my experience in redaction is complaint based and with that, I redact names, email addresses, and any other identifiable information. Mr. Lacheney and I have discussed this error and I will correct it if you allow me to do so. (C) When using the redaction feature in Adobe Pro, it gives you the option to manually redact words or search for single words or multiple words. To help expedite the process, I would use the Find Text option to search for multiple words in the large files. When doing so, it would not give me the option to unselect certain words such as "working" or "adequate." I had planned to explain this to you but again, due to my haste, I failed to include my normal response letter.

- *In addition, there are dozens of pages of emails and other documents relating to Visit Orange and tourist marketing materials that do not appear to be responsive to my request, yet presumably we have been charged for your time accessing, duplicating, and supplying these documents.* – When Information Technology staff use the keywords provided by the requestor to search for emails, they are not aware of the reason for the request, nor am I. Therefore, we would not sort out irrelevant documents. We simply provided the documents that have the keywords in it that you requested.
- *In an effort to move forward in an expeditious manner for all concerned, and to avoid legal proceedings to enforce FOIA, I propose the following:*
  - *Please provide the specific Code section that authorizes the extensive redactions, in particular, the redaction of email sender and/or recipient names.* – As I explained previously, most of my experience in redaction is complaint based and with that, I redact names, email addresses, and any other identifiable information. Mr. Lacheney and I have discussed this error and I will correct it if you allow me to do so.
  - *If there are documents that you believe to be responsive to my request, but where the relevance is not readily apparent on its face (e.g. Visit Orange materials), please provide a short description, and I may be able to further narrow my request.* – Again, when Information Technology staff use the keywords provided by the requestor to search for emails, they are not aware of the reason for the request, nor am I. Therefore, we would not sort out irrelevant documents. We simply provided the documents that have the keywords in it that you requested.
  - *You have previously mentioned 33 individuals whose emails you are compiling and redacting. Please provide a list of those individuals, and I may be able to further narrow my request.* -
    - Administration: Ted Voorhees, Glenda Bradley, Alyson Simpson, and Michelle Williams
    - Board of Supervisors: Mark Johnson, Jim White, Keith Marshall, Jim Crozier, Lee Frame, and Teel Goodwin (deceased)
    - Economic Development: Rose Deal, Susan Turner, and Regan McKay
    - Economic Development Authority: Bob McConnell, Jack Rickett, Bill Hager, Arthur Bryant, Sunnie Capelle, Ronnie Rankin, Sharon Hujik, and Doug Rogers (deceased)

- Planning Commission: Jason Capelle, George Yancey, Donald Brooks, Adam Bryington, J. Bryan Nicol, Julie Zeijlmaker, and Jim Hutchison (deceased)
- Planning Services: David Smitherman, Josh Gillespie, Sandra Thornton, Tracey Newman, Keri Ragland, Nicole Ganoë-Washington, Josh Frederick, Kyra Davis, and Eric Bittner

If you will allow me, I can provide you with properly redacted documents and the appropriate codes allowing for such redaction. It is my belief that it will still require the 30 hours quoted, but I will have to reevaluate my time spent to accurately charge you for the research, review, and redaction.

Please advise me on how you wish to move forward.

Sincerely,

A handwritten signature in cursive script that reads "Michelle L. Williams".

Michelle L. Williams  
Deputy Clerk  
FOIA Officer



**Dillon, Donna A.**

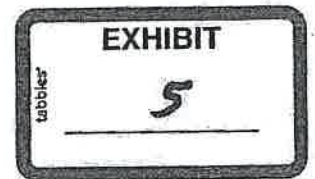
**From:** Michelle Williams <mlwilliams@orangecountyva.gov>  
**Sent:** Monday, November 28, 2022 12:26 PM  
**To:** Don McCown  
**Subject:** FOIA Request - McCown (NEW Part 1)

Dear Mr. McCown:

This office is in receipt of your request for records made in accordance with The Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq. of Chapter 37 of Title 2.2). You have requested records related to the following:

1. Copies (electronic preferred) of meeting minutes and any and all correspondence between County elected or appointed officials, staff and/or consultants, and the following property owners and/or their representatives:

King-Evans Culpeper Property LLC;  
KEG Associates III LLC;  
Evans King 2 LLC;  
Evans King LLC;  
Jan King Evans [et al];  
Charles B. [or "Chip"] King Jr. [et al];  
Jan A K Evans, Trustee et al;  
Jennifer Lee King, Trustee;  
Charles B. King, Trustee; and  
Kenny Dotson.



I am requesting copies of said minutes and correspondence from January 2020 through the present, including but not limited to documents in your possession, custody or control relating to the pending rezoning case for Wilderness Crossing and/or the proposed realignment of Rte. 20.

Please use the following Dropbox link to access the documents:

<https://www.dropbox.com/sh/ih2r4bk88rire58/AAAobyEXRXj1YdNZr6CaL5F2a?dl=0>. This link will be accessible for seven (7) days.

- Michelle Williams' Emails – We are not providing 14 pages of emails pursuant to § 2.2-3705.1(2) of the Code of Virginia as they are protected by the attorney-client privilege.
- Mark Johnson's Emails
- Jim White's Emails – Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.
- Keith Marshall's Emails – We are not providing 5 pages of emails pursuant to § 2.2-3705.1(2) of the Code of Virginia as they are protected by the attorney-client privilege. Additionally, pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.
- Jim Crozier's Emails – We are not providing 7 pages of emails as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of



confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body," pursuant to Virginia Code § 2.2-3705.6(3). Additionally, pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.

- Lee Frame's Emails – We are not providing 4 pages of emails pursuant to § 2.2-3705.1(2) of the Code of Virginia as they are protected by the attorney-client privilege. Additionally, we are not providing 12 pages of emails as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body," pursuant to Virginia Code § 2.2-3705.6(3).
- Rose Deal's Emails – We are not providing 104 pages of emails as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body," pursuant to Virginia Code § 2.2-3705.6(3).
- Susan Turner's Emails
- Regan McKay's Emails
- Jason Capelle's Emails
- George Yancey's Emails
- Adam Bryington's Emails
- Julie Zeijlmaker's Emails
- Bob McConnell's Response
- Jack Rickett's Response
- Bill Hager's Response
- Arthur Bryant's Response
- Sunnie Capelle's Response

Kind Regards,  
*Michelle L. Williams*



**Michelle L. Williams**  
Deputy Clerk / Senior Administrative Assistant  
FOIA Officer / Litter Control Committee Coordinator  
County of Orange, Virginia  
Office of the County Administrator

T (540) 672-3313  
F (540) 672-1679  
[orangecountyva.gov](http://orangecountyva.gov)

**CONFIDENTIAL COMMUNICATION**

This electronic mail message and any attachments are intended for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee, or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you are receiving this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.

**Dillon, Donna A.**

---

**From:** Michelle Williams <mlwilliams@orangecountyva.gov>  
**Sent:** Monday, December 5, 2022 1:31 PM  
**To:** Don McCown  
**Subject:** FOIA Request - McCown (NEW Part 2)

Dear Mr. McCown:

This office is in receipt of your request for records made in accordance with The Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq. of Chapter 37 of Title 2.2). You have requested records related to the following:

1. Copies (electronic preferred) of meeting minutes and any and all correspondence between County elected or appointed officials, staff and/or consultants, and the following property owners and/or their representatives:

King-Evans Culpeper Property LLC;  
KEG Associates III LLC;  
Evans King 2 LLC;  
Evans King LLC;  
Jan King Evans [et al];  
Charles B. [or "Chip"] King Jr. [et al];  
Jan A K Evans, Trustee et al;  
Jennifer Lee King, Trustee;  
Charles B. King, Trustee; and  
Kenny Dotson.



I am requesting copies of said minutes and correspondence from January 2020 through the present, including but not limited to documents in your possession, custody or control relating to the pending rezoning case for Wilderness Crossing and/or the proposed realignment of Rte. 20.

Please use the following Dropbox link to access the documents:

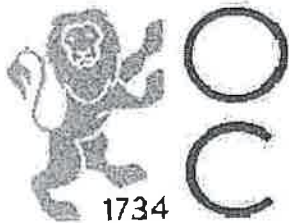
[https://www.dropbox.com/sh/pg51tx4ovz8zc97/AABqirbZ0IKKNea\\_7ZtVbkEga?dl=0](https://www.dropbox.com/sh/pg51tx4ovz8zc97/AABqirbZ0IKKNea_7ZtVbkEga?dl=0). This link will be accessible for seven (7) days.

- Alyson Simpson's Emails – Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege. Additionally, pursuant to Virginia Code § 2.2-3705.6(3), certain information was redacted as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body."
- David Smitherman's Emails - Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege. Additionally, pursuant

to Virginia Code § 2.2-3705.6(3), certain information was redacted as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body."

- Glenda Bradley's Emails – Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.
- Ronnie Rankin's Response

Kind Regards,  
*Michelle L. Williams*



**Michelle L. Williams**

Deputy Clerk / Senior Administrative Assistant  
FOIA Officer / Litter Control Committee Coordinator  
County of Orange, Virginia  
Office of the County Administrator

T (540) 672-3313

F (540) 672-1679

[orangecountyva.gov](http://orangecountyva.gov)

**CONFIDENTIAL COMMUNICATION**

This electronic mail message and any attachments are intended for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee, or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you are receiving this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.

**Dillon, Donna A.**

---

**From:** Michelle Williams <mlwilliams@orangecountyva.gov>  
**Sent:** Tuesday, December 13, 2022 10:38 AM  
**To:** Don McCown  
**Subject:** FOIA Request - McCown (NEW Part 3)  
**Importance:** High

Dear Mr. McCown:

This office is in receipt of your request for records made in accordance with The Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq. of Chapter 37 of Title 2.2). You have requested records related to the following:

1. Copies (electronic preferred) of meeting minutes and any and all correspondence between County elected or appointed officials, staff and/or consultants, and the following property owners and/or their representatives:

King-Evans Culpeper Property LLC;  
KEG Associates III LLC;  
Evans King 2 LLC;  
Evans King LLC;  
Jan King Evans [et al];  
Charles B. [or "Chip"] King Jr. [et al];  
Jan A K Evans, Trustee et al;  
Jennifer Lee King, Trustee;  
Charles B. King, Trustee; and  
Kenny Dotson.



I am requesting copies of said minutes and correspondence from January 2020 through the present, including but not limited to documents in your possession, custody or control relating to the pending rezoning case for Wilderness Crossing and/or the proposed realignment of Rte. 20.

Please use the following Dropbox link to access the documents:

[https://www.dropbox.com/sh/69w830csq2mhc1q/AAAdkFINGtkFiZuBG81VN\\_Osa?dl=0](https://www.dropbox.com/sh/69w830csq2mhc1q/AAAdkFINGtkFiZuBG81VN_Osa?dl=0) This link will be accessible for seven (7) days.

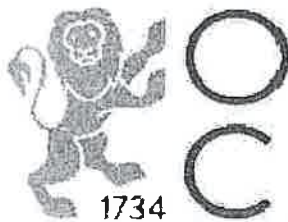
- Josh Frederick's Emails – Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.
- Josh Gillespie's Emails - Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege. Additionally, pursuant to Virginia Code § 2.2-3705.6(3), certain information was redacted as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is

involved and where disclosure of such information would adversely affect the financial interest of the public body."

- Eric Bittner's Emails – Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege. Additionally, pursuant to Virginia Code § 2.2-3705.6(3), certain information was redacted as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body."
- Sandra Thornton's Emails – Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.

Kind Regards,

*Michelle L. Williams*



**Michelle L. Williams**

Deputy Clerk / Senior Administrative Assistant  
FOIA Officer / Litter Control Committee Coordinator  
County of Orange, Virginia  
Office of the County Administrator

T (540) 672-3313

F (540) 672-1679

[orangecountyva.gov](http://orangecountyva.gov)

**CONFIDENTIAL COMMUNICATION**

This electronic mail message and any attachments are intended for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee, or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you are receiving this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.



**Dillon, Donna A.**

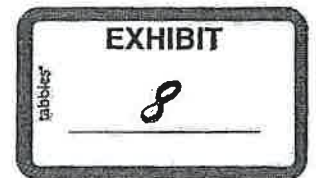
**From:** Michelle Williams <mlwilliams@orangecountyva.gov>  
**Sent:** Wednesday, December 28, 2022 9:40 AM  
**To:** Don McCown  
**Subject:** FOIA Request - McCown (Part 4)

Dear Mr. McCown:

This office is in receipt of your request for records made in accordance with The Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq. of Chapter 37 of Title 2.2). You have requested records related to the following:

1. Copies (electronic preferred) of meeting minutes and any and all correspondence between County elected or appointed officials, staff and/or consultants, and the following property owners and/or their representatives:

King-Evans Culpeper Property LLC;  
KEG Associates III LLC;  
Evans King 2 LLC;  
Evans King LLC;  
Jan King Evans [et al];  
Charles B. [or "Chip"] King Jr. [et al];  
Jan A K Evans, Trustee et al;  
Jennifer Lee King, Trustee;  
Charles B. King, Trustee; and  
Kenny Dotson.



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<https://www.dropbox.com/sh/a24ai2lb8zsns99/AAAYraCg6NtVychTbDRB6TYVa?dl=0>. This link will be accessible for seven (7) days.

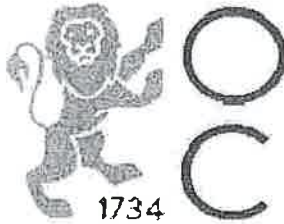
- Ted Voorhees' Emails
  - Pursuant to § 2.2-3705.1(2) of the Code of Virginia, certain information was redacted, as it is protected by the attorney-client privilege.
  - Pursuant to Virginia Code § 2.2-3705.6(3), certain information was redacted as these pages contain "proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body."



- o We are not providing 37 documents as working papers of the County Administrator pursuant to §2.2-3705.7(2) of the Code of Virginia.
- Sharon Hujik's Emails – A response was not received from Ms. Hujik.
- Donald Brooks' Emails – A response was not received from Mr. Brooks.

Kind Regards,

*Michelle L. Williams*



**Michelle L. Williams**

Deputy Clerk / Senior Administrative Assistant  
FOIA Officer / Litter Control Committee Coordinator  
County of Orange, Virginia  
Office of the County Administrator

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**SERVICE OTHER THAN BY VIRGINIA SHERIFF**  
Commonwealth of Virginia VA. CODE 8.01-296; 8.01-320; 8.01-325

Case No:

Hearing Date:

Attorney: **Turner A. Broughton**

Location: **Orange County**  
Court: **Circuit Court**

**Piedmont Environment Council v. Orange County, Vir**  
**V./In re:**  
**Thomas E. Lacheney, County Attorney of Orange County, Virginia**

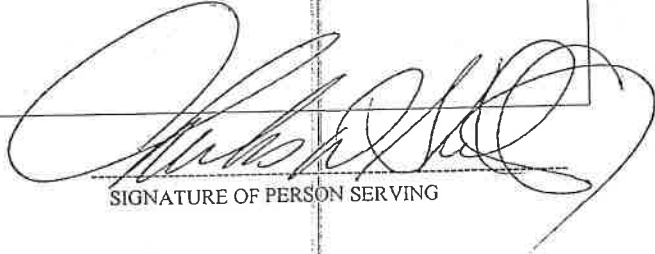
Document:  
**Pettiton for a Writ of Mandamus**

I, the undersigned, swear/affirm that:

1. I am a private process server: **Charles D. Sheffer, Jr. Shenandoah Civil Service, LLC**  
80 B Woodlee Road, Staunton, VA. 24401 (540)245-0143  
ADDRESS AND TELEPHONE NUMBER
2. I am not a party to, or otherwise interested in, the subject matter in controversy in this case.
3. I am 18 years of age or older.
4. I served, as shown below, the above-named person upon whom service of process was to be made, with copies described above.

|  |  |
|--|--|
| Date and time of service: <b>10-26-23 9:48am</b>   |  |
| Name/Place of service: <b>Thomas E. Lacheney, County Attorney of Orange County, Virginia, 112 West Main Street, Orange, VA</b><br>STREET ADDRESS, CITY AND STATE   |  |
| Method of service:<br><input type="checkbox"/> Personal Service<br>Being unable to make personal service, a copy was delivered in the following manner:<br><input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above. Name, age of recipient, and relation of recipient to party<br><input checked="" type="checkbox"/> Place of Business Personally Served: <b>Alyson A. Simpson, Chief Deputy Clerk</b><br><input type="checkbox"/> Letter Mailed on:<br><input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode (other authorized recipient not found).<br><input type="checkbox"/> Not Found: |  |

DATE: 10-26-23

  
SIGNATURE OF PERSON SERVING

Name (print or type): **Charles D. Sheffer, Jr.**

State of Virginia

City of Staunton

Subscribed and sworn to/affirmed before me this day by Charles D. Sheffer, Jr.

DATE: 10-26-23

