FORESIGHT DESIGN SERVICES

ENGINEERING • LAND PLANNING • SURVEYING

August 3, 2026

Ms. Shelly Caldwell
Montgomery County Planning & GIS
755 Roanoke Street, Suite 2A
Christiansburg, VA 24073

RE: Phipps Peppers Ferry Road SUP
Job No. 4014.0

Dear Ms. Caldwell:

Please find enclosed a submittal on the above referenced project for your review and comment. Below is a list of the items included in this submittal:

- Peppers Ferry Road Contractor Storage Yard Special Use Permit dated August 3, 2026
- Property Owner Consent and Authorization dated July 30, 2026

Thank you for your time in reviewing this project. If you have any questions, please feel free to contact me by phone or email (info@foresightdesignservices.com).

Sincerely,
Foresight Design Services

John T. Neel, P.E.
President

Enclosures

cc: Rick Phipps (via email)

JTN/lew

PEPPERS FERRY ROAD CONTRACTOR STORAGE YARD

SPECIAL USE PERMIT

Located in:

Montgomery County, Virginia

Project Number: 4014.0

Date: August 3, 2026

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1260 Radford Street · Christiansburg, Virginia 24073
540.381.6011 office · 540.381.2773 fax
www.foresightdesignservices.com

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Peppers Ferry Road Contractor Storage Yard

NARRATIVE

Executive Summary

The applicant, Black Diamond Resources, has acquired an approximately 170-acre property located on Peppers Ferry Road just before Route 114 enters Pulaski County. The applicant is a grading and utility contractor and has a need for an inert fill site to take material from time to time for use by construction projects in Montgomery County. The applicant also has a need for additional acreage to act as a contractor storage yard and proposes to use part of the site for this purpose and intends to construct 2 buildings on site up to 20,000 square feet each. These uses are being submitted as two separate SUP applications.

This proposal is consistent with the County's newly adopted Comprehensive Plan, Montgomery Matters. Further analysis is provided later in this application package.

Development Considerations

Location – This proposed Contractor Storage yard is located on Peppers Ferry Road (Rt. 114) just before entering Pulaski County. This site is uniquely suited to be a Contractor Storage Yard in that it is directly located on a minor arterial roadway as defined by VDOT's Functional Classification system. Per the VDOT Functional Classification Comprehensive Guide from June 2025, *Minor Arterials link cities and large towns, along with other major traffic generators, and form an integrated network providing interstate and inter-county service.* The location on a Minor Arterial Road along with the buffer of the Norfolk Southern railway make this site ideally located for an inert fill site and a contractor storage yard.

Access – The proposed inert fill site and contractor storage yard will be accessed directly from Peppers Ferry Road. VDOT has been consulted and while the site does not warrant a right-turn lane, the applicant is proposing to install a 100' right turn lane and taper due to the gradient of Peppers Ferry Road and the expectation that the percent of heavy trucks turning into the site will be greater than a typical commercial entrance.

Utilities – No utilities other than electricity are proposed for the site. Should the potential buildings for the contractor storage yard be constructed in the future and the applicant desire to serve the site with water and sewer, the applicant will work with the Montgomery County PSA to extend utilities to the site.

Economic Development – This site will serve a need for Montgomery County that is vitally needed. Black Diamond Resources serves multiple construction projects throughout Montgomery and Pulaski Counties. Having a convenient location to store and service equipment and materials will allow for a more competitive economic environment. This location will not only serve to provide a strategic economic advantage to Black Diamond, but will also help Montgomery County remain competitive and attractive regionally. This site will serve to support and encourage employment and the tax base of Montgomery County.

Noise – The site will intermittently have equipment delivered to and picked up from the site during business hours. The Type 4 Buffer will mitigate noise impacts to the surrounding residential property. The site is also within the vicinity of the Radford Army Ammunition Plant and the Norfolk Southern Railway line.

Dust – This site will be governed by an Erosion and Sediment Control Plan that has dust control integral to its requirements that will be enforced by the County Engineering staff through routine inspections.

Lighting – The proposed inert fill site and contractor storage yard will be secured by a gate at the entrance to the site. No lighting is proposed for the site other than security lighting for the contractor storage yard. Any lighting will meet the requirements of the Montgomery County Zoning Ordinance.

Signage – Any signage for the site will meet the requirements of the Montgomery County Zoning Ordinance.

Stormwater management – The proposed inert fill site and contractor storage yard will be developed with the submission of a site development plan to Montgomery County. The site plan will be reviewed by the Montgomery County Planning Department, Montgomery County Engineer, and VDOT. The site plan will include a full design for the stormwater management on the site. Each phase of the fill site will include a stormwater management pond designed for water quantity. Stormwater quality will be addressed through the designation of conserved open space on the undeveloped portion of the property and possibly the purchase of nutrient credits if needed.

Environmental Considerations – The proposed inert fill site and contractor storage yard are being developed on a site that was recently logged for timber. Logging operations are exempt from Virginia Erosion and Sediment Control Regulations. This proposed inert fill site and contractor storage yard will be developed with a site plan including erosion and sediment control as well as stormwater management designs in accordance with local and state regulations and the plan will be reviewed and approved by Montgomery County.

Hours of Operation – Site will generally conform to normal business hours from 7am-6pm Monday-Saturday; however occasional variances may occur as needed. Site will be closed on Sundays.

Employees – This site will typically have 0-5 employees on the site at any one time.

Conclusion

This site is ideally located for development into an inert fill site and contractor storage yard. This site has the topography needed to allow for large amounts of fill to be placed on this site with minimal geographic or visual impacts. It's location directly on a minor arterial road minimizes the potential traffic impacts to adjacent properties and this site's location allows convenient service to the critical building areas in the County, including Blacksburg and Christiansburg, as well as Pulaski County.

COMPREHENSIVE PLAN JUSTIFICATION

Comprehensive Plan Justification

Introduction:

Any development within Montgomery County is viewed by the Board of Supervisors, Planning Commission, County Staff, and Citizens through the prism of the comprehensive plan. Montgomery County recently updated its Comp Plan by adoption of the Montgomery Matters Plan 2045. The following analysis will address points within the comprehensive plan and discuss how the proposed use aligns with the vision, goals, and objectives of the comprehensive plan. The analysis below includes some excerpts from the Comp Plan. Refer to www.montgomerymatters.com for the full plan.

The subject property is identified in the Comprehensive Plan as having a future land use of Outdoor and Natural Preservation.

Overview:

The project proposes to develop a little less than 9 acres of an approximately 170-acre property into a contractor storage yard. The site is also proposed for an inert fill site, but this analysis is for the contractor storage yard only. The site is on Peppers Ferry Road (Route 114) just inside Montgomery County adjacent to the New River and the Pulaski County Line. The site is marked by substantial topography and being bordered by the Norfolk Southern Rail Line and Peppers Ferry Road. The site is zoned A1 – Agriculture. Stormwater Management will be achieved through the use of a detention pond or ponds constructed onsite. Stormwater Quality will be handled by the dedication of open space on the site and/or nutrient credits. Once the accompanying fill site is closed out and capped, the area will be stabilized and revegetated with grass. The contractor storage yard is anticipated to continue in perpetuity.

The designation of the property as an Outdoors and Natural Preservation Area contains within it the Wo designation which projects and allows for some land to be utilized and developed as **WORKING LAND**. Working Land is defined as "Productive open land used for agriculture, forestry, grazing, aquaculture, or other land-based production." The proposed development of this site fits that description while also preserving a significant amount of acreage on the property as conserved open space. Additionally, the fill operation will allow for future use of the land as both grazing and/or agricultural use while the contractor storage yard only takes up a little over **5%** of the entire acreage. This proposed contractor storage yard is identified as one of the Support Systems for The Periodic Table of Land-Use Elements. It should be considered both Storage and a Service Yard (see pages 195-198 of Montgomery Matters: Part Five).

Policy Chapters:

Planning and Land Use

Land Use Goals:
Goal A – Maintain and protect the County's rural qualities and natural resources by promoting growth in areas with existing infrastructure and services.

Discussion – This proposed use is allowed by SUP in the A1 zoning district. The Comprehensive Plan is a broad document, and this proposed use will serve to maintain the rural nature of this parcel for the future by only encompassing about 5% of the total parcel area. This land is not prime farmland, but the filling of it with inert fill could possibly create additional grazing and agricultural acreage in the future. That use would not be negatively impacted by an adjacent contractor storage yard. The land has previously been harvested for timber.

Economic Goals:
Goal B – Diversify the County's economy and workforce for a more resilient region that does not rely on too few industries.

Discussion – This proposed use will support ANY project in the county that has a need to dispose of inert fill and is being serviced by Black Diamond Resources. This provides wide-ranging support to construction and development projects of all kinds and throughout the western half of the County.

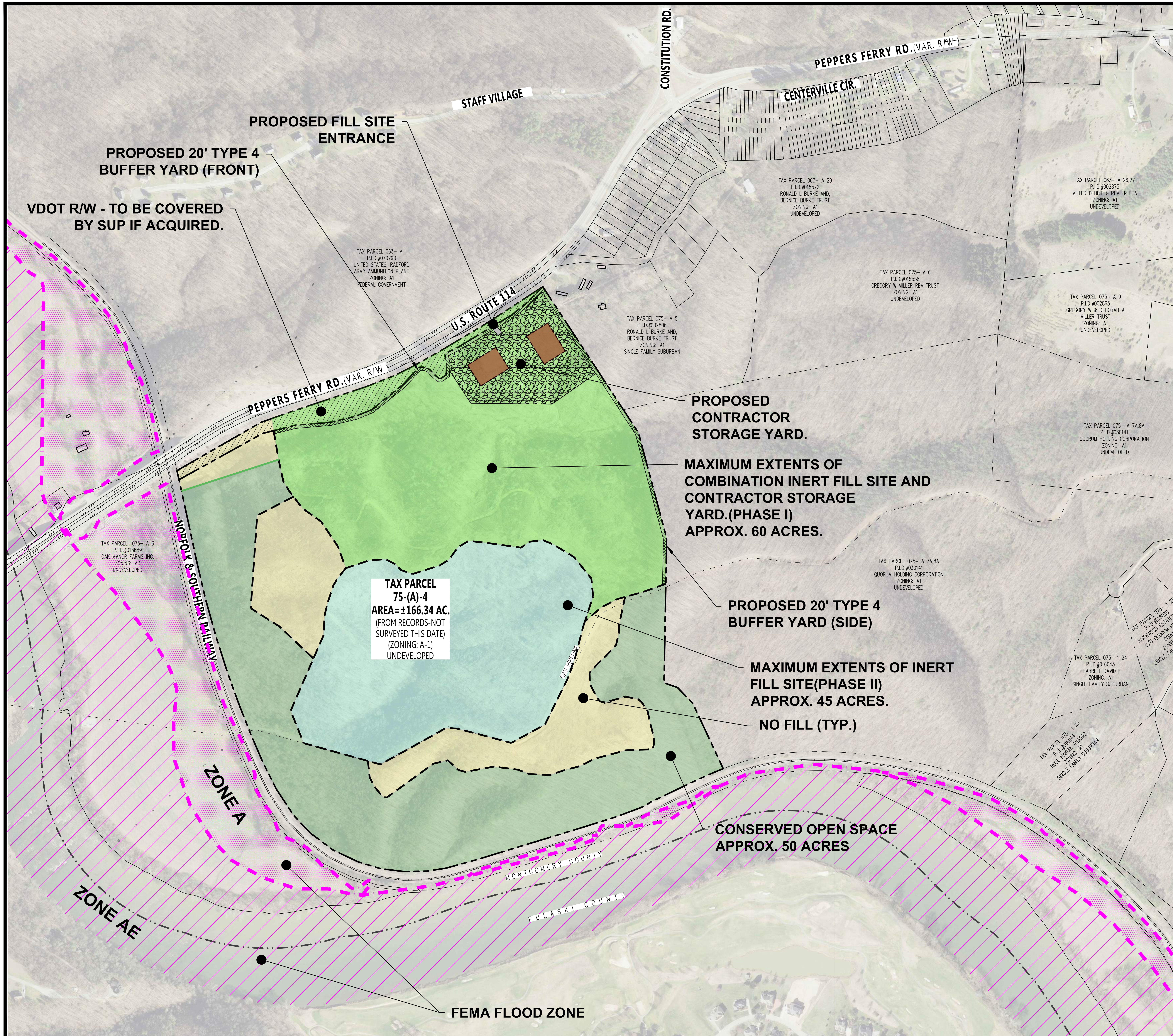
Environmental Goals:
Goal A – Preserve, conserve, and manage natural resources and rural qualities as a sustainable asset to benefit County citizens and future generations..

Discussion – One of the key parts of this SUP request is the proposed conserved open space that might not be part of a residential development or a fully agricultural use. This SUP proposes to preserve approximately 50 acres of open space buffering the property line closest to the New River. This acreage averages over 400' in width. Additionally, this particular SUP request only utilizes about 5% of the overall site.

Conclusion:

With typical grading and utility contractors needing places to store equipment, the best location for a use such as this is adjacent to a minor arterial road that will minimize the impacts to adjacent properties. This central location adjacent to Route 114 is ideal for the creation of an inert fill site and contractor storage yard also is in alignment with the Montgomery Matters Comprehensive Plan.

EXHIBIT



GENERAL NOTES:

1. OWNER/DEVELOPER: BLACK DIAMOND RESOURCES, LLC
   6067 ALUM RIDGE RD NW
   RINER, VIRGINIA 24149

   PROJECT LOCATION: PEPPERS FERRY ROAD
   CHRISTIANSBURG, VIRGINIA 24073

2. TAX PARCEL NUMBER: 75–(A)–4; P.I.D. #007990

   * ALL WORK PROPOSED IN THESE PLANS IS TO BE DONE WITHIN THE ABOVE LISTED TAX PARCEL, EASEMENTS OBTAINED, OR PUBLIC RIGHTS–OF–WAY.

   ZONING DISTRICT: ZONING MONTGOMERY COUNTY, A1

   SETBACKS:
   FRONT= 40'
   REAR= 40'
   PARKING= N/A
   SIDE= 15'

3. THE SUBJECT PROPERTY DOES NOT LIE WITHIN A F.E.M.A. DESIGNATED 100–YEAR FLOOD HAZARD ZONE. THIS DETERMINATION HAS BEEN MADE BY GRAPHIC METHODS ONLY. NO ELEVATION STUDY HAS BEEN PERFORMED AS A PART OF THIS PROJECT.

4. ZONING/PLANNING AREAS

TOTAL PARCEL AREA:	166.34 AC.
TOTAL DISTURBED AREA:	166.34 (APPROX.)
TOTAL BUILDING AREAS:	40,000 S.F. (FOOTPRINT AREA – TWO BUILDINGS)
BUILDING USE(S):	OFFICE AND CONTRACTOR STORAGE
BUILDING HEIGHT:	LESS THAN 30'
CURRENT USE:	UNDEVELOPED
PROPOSED USE:	INERT DEBRIS LANDFILL

TYPE 4 LANDSCAPING BUFFER REQUIREMENTS:

FRONT
20' WIDTH
3 CANOPY TREES, 4 UNDERSTORY TREES, AND 10 SHRUBS PER 100 LF

SIDE
20' WIDTH
2 CANOPY TREES, 3 UNDERSTORY TREES,
25 SHRUBS, AND 4 EVERGREEN TREES PER 100 LF

REAR
25' WIDTH
2 CANOPY TREES, 7 UNDERSTORY TREES,
25 SHRUBS, AND 8 EVERGREEN TREES PER 100 LF
*STRUCTURAL SCREEN REQUIRED ALONG FULL LENGTH OF ADJACENT PROPERTIES WITH EXISTING OR PROPOSED USE OF LOWER INTENSITY

** TYPE 4 BUFFER YARD WILL CONSIST OF WHAT IS REQUIRED WITHIN THE ZONING ORDINANCE OR AN EQUIVALENT BUFFER OF EXISTING VEGETATION AS DETERMINED BY THE ZONING ADMINISTRATOR.

INERT FILL SITE NOTES

1. FILL AREA SHALL BE ONLY FOR THE DISPOSAL OF INERT WASTE. THE DISPOSAL OF ANY OTHER MATERIALS IN A FILL OR WASTE AREA IS PROHIBITED.
2. ANY FILL ACTIVITIES ADJACENT TO RIVERS, STREAM CHANNELS, WATERS AND OTHER NATURAL RESOURCES SHALL COMPLY WITH ALL APPLICABLE STATE AND FEDERAL REGULATIONS.
3. FILL AREA SHALL BE KEPT CLEAR OF STAGNANT WATER, DRAINED, ETC., TO ELIMINATE BREEDING PLACES FOR MOSQUITOES AND OTHER INSECTS.
4. PRIOR TO ISSUANCE OF A PERMIT TO ESTABLISH A FILL AREA, THE ZONING ADMINISTRATOR WILL COORDINATE WITH THE PROGRAM ADMINISTRATOR TO INSURE THE PROPOSED FILL AREA MEETS THE REQUIREMENTS OF MONTGOMERY COUNTY CODE, CHAPTER 8, ARTICLE III.
5. UNLESS AUTHORIZED BY THE PROGRAM ADMINISTRATOR, RECLAMATION OF FILL AREA SHALL COMMENCE WITHIN SEVEN (7) DAYS OF COMPLETION OF THE FILL ACTIVITY. RECLAMATION SHALL INCLUDE:
   5.1. COVERING THE AREA WITH CLEAN SOIL TO A MINIMUM DEPTH OF TWO (2) FEET TO ALLOW FOR PERMANENT STABILIZATION AND RECLAMATION;
   5.2. ESTABLISHING A PERMANENT VEGETATIVE GROUND COVER; EXCEPT THAT THE PROGRAM ADMINISTRATOR MAY REDUCE THE MINIMUM DEPTH OF CLEAN FILL TO ONE (1) FOOT IF THE AREA IS UNLIKELY TO BE REDEVELOPED.
6. FILL AREAS AND THE ACCESS ROADS THERETO SHALL BE TREATED OR MAINTAINED TO PREVENT DUST OR DEBRIS FROM BLOWING OR SPREADING ONTO ADJACENT PROPERTIES AND PUBLIC STREETS.
7. PROJECT SITE DOES NOT LIE WITHIN A FEMA FLOOD PLAIN.

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Web: www.foresightdesignservices.com

PEPPERS FERRY ROAD INERT FILL SITE

MONTGOMERY COUNTY, VIRGINIA

REVISIONS

NO.	COMMENTS	DATE

PROJECT TEAM

PIC	JOHN T. NEEL, PE
PM	JOHN T. NEEL, PE
DESIGN	SEC

ISSUE DATE
7/31/2026

FDS JOB NO.
4014

SHEET TITLE
PROJECT SITE

SHEET NUMBER
1 OF 3

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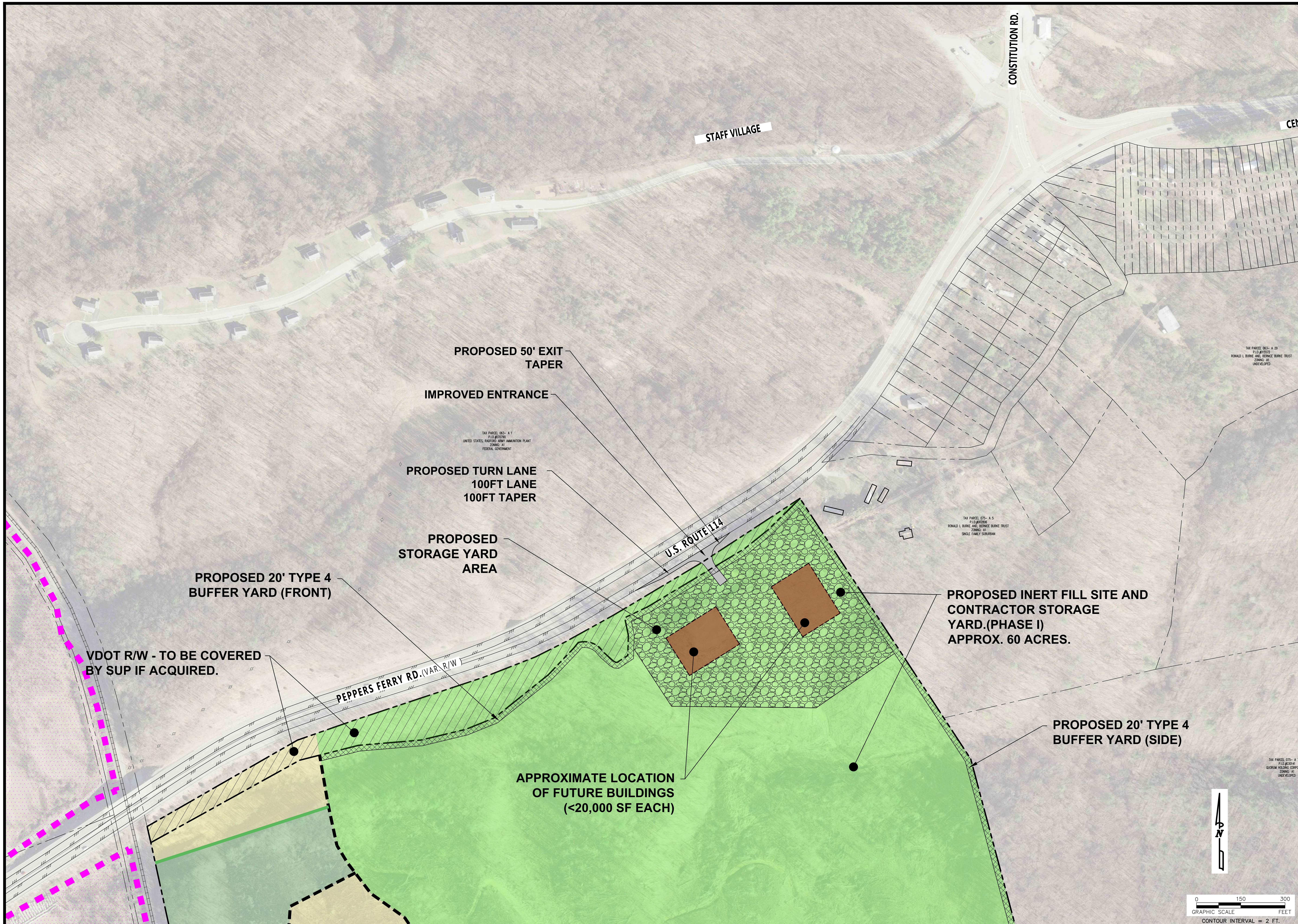

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PEPPERS FERRY ROAD INERT FILL SITE

MONTGOMERY COUNTY, VIRGINIA

REVISIONS

NO.	COMMENTS	DATE

PROJECT TEAM

PIC	JOHN T. NEEL, PE
PM	JOHN T. NEEL, PE
DESIGN	SEC

ISSUE DATE

7/31/2026

FDS JOB NO.

4014

SHEET TITLE

ENTRANCE EXHIBIT

SHEET NUMBER

2 OF 3

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PEPPERS FERRY ROAD INERT FILL SITE

MONTGOMERY COUNTY, VIRGINIA

REVISIONS

NO.	COMMENTS	DATE

PROJECT TEAM

PIC	JOHN T. NEEL, PE
PM	JOHN T. NEEL, PE
DESIGN	SEC

ISSUE DATE

7/31/2026

FDS JOB NO.

4014

SHEET TITLE

PROPOSED CONTRACTORS STORAGE YARD

SHEET NUMBER

3 OF 3

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MONTGOMERY COUNTY VIRGINIA EST. 1776

DEVELOPMENT REVIEW TEAM
PLANNING | PSA | ENGINEERING
755 Roanoke Street, Suite 2A
Christiansburg, VA 24073

PROPERTY OWNER CONSENT AND AUTHORIZATION

This consent is required to be submitted with all Planning applications.

If the Property Owner is a corporation/other legal entity, please list the corporation/other legal entity as the owner. In such cases, proof of signature authority must be attached as well. If the Property is owned by multiple entities (as in a family trust, or otherwise co-owners), a signed consent form is required to be completed by each individual.

The Property Owner may designate a representative for the application review process.

- The Owner or Representative is solely responsible for the accuracy of the application documentation (electronic and paper forms/drawings/exhibits/narratives, etc.)
- The Owner or Representative is solely responsible for the accuracy and coordination of the submitted application documentation (electronic and paper forms/drawings/exhibits/narratives, etc.) to the County or other jurisdictions requiring permit approval.
- The Owner or Representative is solely responsible for providing access to the property if requested by the County and/or it's agencies.
- The Owner or Representative is solely responsible for payment of all applicable application fees, legal advertisement fees, etc.

AUTHORIZATION BY PROPERTY OWNER(S) (Complete one for each owner)

I, (Printed Name) Ricky Phipps, or the authorized representative(s) listed below, are submitting this Application, and am solely responsible for its accuracy and completeness. I understand that incomplete or inaccurate applications can lead to a delay in review and processing. I further confirm that I am the owner of the property at Peppers Ferry Road, PID(s) # 007990, that is/are the subject of this application. I further confirm that I am fully aware of the County's application fee(s) and procedural requirements, and I hereby consent to this application.

Property Owner - Signature   Date 7/30/2026

AUTHORIZED REPRESENTATIVE INFORMATION*

I, (Printed Name) Ricky Phipps, confirm that I am the authorized representative for this Application and understand the requirements as noted above.

Authorized Representative Signature   Date 7/30/2026

*Only used when someone other than the property owner is submitting the application.

Commonwealth of Virginia
State Corporation Commission
Office of the Clerk
Entity ID: 11514057
Filing Number: 2505068590916
Filing Date/Time: 05/06/2025 03:37 PM
Effective Date/Time: 05/06/2025 03:37 PM

Limited Liability Company - Statement of Change of Registered Office and/or Registered Agent

Entity Information

Entity Name: Black Diamond Resources LLC
Entity Type: Limited Liability Company
Entity ID: 11514057
Formation Date: 03/15/2023
Status: Active

Previous Registered Agent Information

RA Type: An Individual who is a resident of Virginia
Locality: FLOYD COUNTY
RA Qualification: Member or Manager of the Limited Liability Company
Name: Remington Lee Phipps

The company's registered office address, including the street and number, if any, which is identical to the business office of the registered agent, is:

Registered Office Address: 6067 Alum Ridge Rd NW, Riner, VA, 24149 - 3702, USA

Registered Agent Information

RA Type: An Individual who is a resident of Virginia
Locality: Floyd
RA Qualification: General Partner of a General or Limited Partnership that is a Member or Manager of the Limited Liability Company
Name: Ricky Lee Phipps

The company's registered office address, including the street and number, if any, which is identical to the business office of the registered agent, is:

Registered Office Address: 6067 Alum Ridge Rd NW, Riner, VA, 24149 - 3702, USA

Signature Information

Date Signed: 05/06/2025
Executed in the name of the limited liability company by:
The person signing this statement affirms that after the foregoing change or changes are made, the company will be in compliance with the requirements of § 13.1-1015 of the Code of Virginia, as the case may be.

Printed Name	Signature	Title
Ricky Lee Phipps	Ricky Lee Phipps	President

Operating Agreement of Black Diamond Resources LLC

A Limited Liability Company

This Operating Agreement ("Agreement") of Black Diamond Resources LLC, ("Company"), is executed and agreed to, for good and valuable consideration, by the undersigned members (individually, "Member" or collectively, "Members").

I. Formation.

(a) **State of Formation.** This Agreement is for Black Diamond Resources LLC, a member-managed Virginia limited liability company formed under and pursuant to Virginia law.

(b) **Operating Agreement Controls.** To the extent that the rights or obligations of the Members, or the Company under provisions of this Agreement differ from what they would be under Virginia law absent such a provision, this Agreement, to the extent permitted under Virginia law, shall control.

(c) **Principal Office.** The Company's principal office will be as set out in the Company's Articles of Organization or other filing on record with the Secretary of State, or such other location as shall be selected from time to time by the Members.

(d) **Registered Agent and Office.** The name of the Company's registered agent for service of process and the address of the Company's registered office will be as specified in the Company's Articles of Organization or any subsequent filings with the Secretary of State. If this information changes, the Company will promptly file a statement of change with the Secretary of State according to applicable law.

(e) **No State Law Partnership.** No provisions of this Agreement shall be deemed or construed to constitute a partnership (including, without limitation, a limited partnership) or joint venture, or any Member a partner or joint venturer of or with any other Member, for any purposes other than federal and state tax purposes.

II. Purposes and Powers.

(a) **Purpose.** The Company is created for the following business purpose:

Land purchase

(b) **Powers.** The Company shall have all of the powers of a limited liability company set forth under Virginia law.

(c) **Duration.** The Company's term shall commence upon the filing of Articles of Organization and all other such necessary materials with Virginia. The Company will operate until terminated as outlined in this Agreement unless:

(i) The Members vote unanimously to dissolve the Company;
(ii) No Member of the Company exists unless the business of the Company is continued in a manner permitted by Virginia law;
(iii) It becomes unlawful for any Member or the Company to continue in business;
(iv) A judicial decree is entered that dissolves the Company; or
(v) Any other event results in the dissolution of the Company under federal or Virginia law.

III. Members.

(a) **Members.** The Members of the Company and their membership interest at the time of adoption of this Agreement are as follows:

Ricky Lee Phipps, 50.00 percent

Remington Lee Phipps, 50.00 percent

(b) **Initial Contribution.** Each Member shall make an initial contribution to the company. The initial contributions of each shall be as described in Attachment A, "Initial Contributions of the Members."

No Member shall be entitled to interest on their initial contribution. Except as expressly provided by this Agreement, or as required by law, no Member shall have any right to demand or receive the return of their initial contribution. Any modifications as to the signatories' respective rights as to the receipt of their initial contributions must be set forth in writing and signed by all interested parties.

(c) **Limited Liability of the Members.** Except as otherwise provided for in this Agreement or otherwise required by Virginia law, no Member shall be personally liable for any acts, debts, liabilities, or obligations of the Company beyond their respective initial contribution, including liability arising under a judgment, decree or order of a court. The Members shall look solely to the Company property for the return of their initial contribution, or value thereof, and if the Company property remaining after payment or discharge of the debts, liabilities, or obligations of the Company is insufficient to return such initial contributions or value thereof, no Member shall have any recourse against any other Member except as is expressly provided for by this Agreement or as otherwise allowed by law.

(d) **Death, Incompetency, Resignation, or Termination of a Member.** Should a Member die, be declared incompetent, or withdraw from the Company voluntarily or involuntarily, the remaining Members will have the option to buy out that Member's membership interest in the Company. If a Member is removed involuntarily, it must be by vote recorded in the official minutes. If a Member resigns, they should submit a notarized resignation letter to the Agent. Should the Members agree to buy out the membership interest of the withdrawing Member, that Interest shall be paid for equally by the remaining Members and distributed in equal amounts to the remaining Members. The Members agree to hire an outside firm to assess the value of the membership interest.

The Members will have 90 days to decide if they want to buy the membership interest together and disperse it equally. If all Members do not agree to buy the membership interest, individual members will then have the right to buy the membership interest individually. If more than one Member requests to buy the remaining membership interest, the membership interest will be paid for and split equally among those Members wishing to purchase the membership interest. If all Members agree by unanimous vote, the Company may choose to allow a non-Member to buy the membership interest thereby replacing the previous Member.

If no individual Member(s) finalize a purchase agreement by 90 days, the withdrawing Member, or their estate, may dispose of their membership interest however they see fit, subject to the limitations below. If a Member is a corporation, trust, partnership, limited liability company, or other entity and is dissolved or terminated, the powers of that Member may be exercised by its legal representative or successor.

The name of the Company may be amended upon the written and unanimous vote of all Members if a Member withdraws, dies, is found incompetent, or is terminated.

(e) **Creation or Substitution of New Members.** Any Member may assign in whole or in part its membership interest only after granting their fellow Members the right of first refusal, as established above.

> (i) **Entire Transfer.** If a Member transfers all of its membership interest, the transferee shall be admitted to the Company as a substitute Member upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement. Such admission shall be deemed effective immediately upon the transfer, and, simultaneously, the transferor Member shall cease to be a Member of the Company and shall have no further rights or obligations under this Agreement.

(ii) **Partial Transfer.** If a Member transfers only a portion of its membership interest, the transferee shall be admitted to the Company as an additional Member upon its execution of an instrument signifying its Agreement to be bound by the terms and conditions of this Agreement.

(iii) **Voting.** Whether a substitute Member or an additional Member, absent the written consent of all existing Members of the Company, the transferee shall be a limited Member and possess only the percentage of the monetary rights of the transferor Member that was transferred without any voting power as a Member in the Company.

(f) **Member Voting.**

(i) **Voting Power.** The Company's Members shall each have one vote equal to the vote of each other Member, regardless of the Member's share of membership interest in the Company.

(ii) **Proxies.** At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Such proxy shall be delivered to the Secretaryother Members of the Company before or at the time of the meeting. No proxy shall be valid after 11 months from the date of its execution unless otherwise provided in the proxy.

(g) **Duties of the Members.** The Members shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory), and franchises. The Members also shall cause the Company to:

(i) Maintain its own books, records, accounts, financial statements, stationery, invoices, checks, and other limited liability company documents and bank accounts separate from any other person;

(ii) At all times hold itself out as being a legal entity separate from the Members and any other person and conduct its business in its own name;

(iii) File its own tax returns, if any, as may be required under applicable law, and pay any taxes required to be paid under applicable law;

(iv) Not commingle its assets with assets of the Members or any other person, and separately identify, maintain, and segregate all Company assets;

(v) Pay its own liabilities only out of its own funds, except with respect to organizational expenses;

(vi) Maintain an arm's length relationship with the Members, and, with respect to all business transactions entered into by the Company with the Members, require that the terms and conditions of such transactions (including the terms relating to the amounts paid thereunder) are the same as would be generally available in comparable business transactions if such transactions were with a person that was not a Member;

(vii) Pay the salaries of its own employees, if any, out of its own funds and maintain a sufficient number of employees in light of its contemplated business operations;

(viii) Not guarantee or become obligated for the debts of any other person or hold out its credit as being available to satisfy the obligations of others;

(ix) Allocate fairly and reasonably any overhead for shared office space;

(x) Not pledge its assets for the benefit of any other person or make any loans or advances to any person;

(xi) Correct any known misunderstanding regarding its separate identity;

(xii) Maintain adequate capital in light of its contemplated business purposes;

(xiii) Cause its Members to meet or act pursuant to written consent and keep minutes of such meetings and actions and observe all other Virginia limited liability company formalities;

(xiv) Make any permitted investments directly or through brokers engaged and paid by the Company or its agents;

(xv) Not require any obligations or securities of the Members; and

(xvi) Observe all other limited liability formalities.

Failure of the Members to comply with any of the foregoing covenants shall not affect the Company's status as a separate legal entity or the Members' limited liability.

(h) **Fiduciary Duties of the Members.**

(i) **Loyalty and Care.** Except to the extent otherwise provided herein, each Member shall have a fiduciary duty of loyalty and care similar to that of members of limited liability companies organized under the laws of Virginia.

(ii) **Competition with the Company.** The Members shall refrain from dealing with the Company in the conduct of the Company's business as or on behalf of a party having an interest adverse to the Company unless a majority, by individual vote, of the Members excluding the interested Member, consents thereto. The Members shall refrain from competing with the Company in the conduct of the Company's business unless a majority, by individual vote, of the Members excluding the interested Member, consents thereto. In the event that a Member is the sole Member of the Company, no vote shall be required.

(iii) **Duties Only to the Company.** The Member's fiduciary duties of loyalty and care are to the Company and not to the other Members. The Members shall owe fiduciary duties of disclosure, good faith, and fair dealing to the Company and to the other Members. A Member who so performs their duties shall not have any liability by reason of being or having been a Member.

(iv) **Reliance on Reports.** In discharging the Member's duties, a Member is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

1. One or more Members, officers, or employees of the Company whom the Member reasonably believes to be reliable and competent in the matters presented.
2. Legal counsel, public accountants, or other persons as to matters the Member reasonably believes are within the person's professional or expert competence.
3. A committee of Members of which the affected Member is not a participant, if the Member reasonably believes the committee merits confidence.

(i) **Waiver of Partition: Nature of Interest.** Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, each Member hereby irrevocably waives any right or power that such Member might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. No Member shall have any interest in any specific assets of the Company.

(j) **Compensation of Members.** The Members shall have the authority to fix the compensation of individual Members. All Members may be paid their expenses, if any, of attendance at meetings of the Members, which may be a fixed sum for attendance at each meeting of the Members or a stated salary as a Member. No such payment shall preclude any Member from serving the Company in any other capacity and receiving compensation.

(k) **Members as Agents.** All Members are agents of the Company for the purpose of its business. An act of any Member, including the signing of an instrument in the Company's name, binds the Company where the

Member executed the act for apparently carrying on the Company's business or business of the kind carried on by the Company in the ordinary course, unless the Member had no authority to act for the Company in the particular matter and the person with whom the Member was dealing knew or had notice that the Member lacked authority. An act of a Member binds the Company, however, even where the Member executed the act not apparently for carrying on the Company's business or business of the kind carried on by the Company in the ordinary course only if the act was authorized by the other Members.

IV. Accounting and Distributions.

(a) **Fiscal Year.** The Company's fiscal year shall end on the last day of December.

(b) **Records.** All financial records including tax returns and financial statements will be held at the Company's primary business address and will be accessible to all Members.

(c) **Distributions.** Distributions shall be issued, as directed by the Company's Treasurer or Assistant Treasurer, on an annual basis, based upon the Company's fiscal year. The distribution shall not exceed the remaining net cash of the Company after making appropriate provisions for the Company's ongoing and anticipatable liabilities and expenses. Each Member shall receive a percentage of the overall distribution that matches that Member's percentage of membership interest in the Company.

V. Tax Treatment Election.

The Company has not filed with the Internal Revenue Service for treatment as a corporation. Instead, the Company will be taxed as a pass-through organization. The Member(s) may elect for the Company to be treated as a C-Corporation, S-Corporation, or a partnership at any time.

(a) **Partnership Representative.** The Company designates Ricky Lee Phipps as the "Partnership Representative" as defined in 26 U.S.C. § 6223. The Company may replace the Partnership Representative or "Designated Individual" at its own discretion when filing its annual tax return.

VI. Officers.

(a) **Appointment and Titles of Officers.** The initial officers shall be appointed by the Members and shall consist of at least a Chairman, a Secretary, and a Treasurer. Any additional or substitute officers shall be chosen by the Members. The Members may also choose one or more Presidents, Vice-Presidents, Assistant Secretaries, and Assistant Treasurers. Any number of offices may be held by the same person, as permitted by Virginia law. The Members may appoint such other officers and agents as they shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Members. The officers and agents of the Company shall hold office until their successors are chosen and qualified. Any officer elected or appointed by the Members may be removed at any time, with or without cause, by the affirmative vote of a majority of the Members. Any vacancy occurring in any office of the Company shall be filled by the Members. Unless the Members decide otherwise, if the title of an officer is one commonly used for officers of a limited liability company formed under Virginia law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office.

(i) **Chairman.** The Chairman shall be the chief executive officer of the Company, shall preside at all meetings of the Members, shall be responsible for the general and active management of the business of the Company, and shall see that all orders and resolutions of the Members are carried into effect. The Chairman shall execute all contracts on behalf of the Company, except:

1. Where required or permitted by law or this Agreement to be otherwise signed and executed;
2. Where signing and execution thereof shall be expressly delegated by the MemberMembers to some other officer or agent of the Company.

(ii) **President.** In the absence of the Chairman or in the event of the Chairman's inability to act, the President shall perform the duties of the Chairman, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman. The President shall perform such other duties and have such other powers as the Members may from time to time prescribe.

(iii) **Vice-Presidents.** In the absence of the Chairman and President or in the event of their inability to act, any Vice-Presidents in the order designated by the Members (or, in the absence of any designation, in the order of their election) shall perform the duties of the Chairman, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman. Vice-Presidents, if any, shall perform such other duties and have such other powers as the Members may from time to time prescribe.

(iv) **Secretary and Assistant Secretary.** The Secretary shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall attend all meetings of the Members and record all the proceedings of the meetings of the Company and of the Members in a book to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the Members, as required in this Agreement or by Virginia law, and shall perform such other duties as may be prescribed by the Members, or the Chairman, under whose supervision the Secretary shall serve. The Secretary shall cause to be prepared such reports and/or information as the Company is required to prepare by applicable law, other than financial reports. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Members (or if there be no such determination, then in order of their election), shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Members may from time to time prescribe.

(v) **Treasurer and Assistant Treasurer.** The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company according to generally accepted accounting practices, using a fiscal year ending on the last day of the month of December. The Treasurer shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Members. The Treasurer shall distribute the Company's profits to the Members. The Treasurer shall disburse the funds of the Company as may be ordered by the Members and shall render to the Chairman and to the Members, at their regular meetings or when the Members so require, an account of all of the Treasurer's transactions and of the financial condition of the Company. As soon as practicable after the end of each fiscal year of the Company, the Treasurer shall prepare a statement of financial condition as of the last day of the Company's fiscal year, and a statement of income and expenses for the fiscal year then ended, together with supporting schedules. Each of said annual statements shall be prepared on an income tax basis and delivered to the Members forthwith upon its preparation. In addition, the Treasurer shall keep all financial records required to be kept pursuant to Virginia law. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Members (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Members may from time to time prescribe.

(b) **Officers as Agents.** The officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Members not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of the officers taken in accordance with such powers shall bind the Company.

(c) **Fiduciary Duties of the Officers.**

(i) **Loyalty and Care.** Except to the extent otherwise provided herein, each officer shall have a fiduciary duty of loyalty and care similar to that of officers of limited liability companies organized under the laws of Virginia.

(ii) **Competition with the Company.** The officers shall refrain from dealing with the Company in the conduct of the Company's business as or on behalf of a party having an interest adverse to the Company unless a majority, by individual vote, of the Members, excluding the interested officer if that officer is a Member, consents thereto. The officers shall refrain from competing with the

Company in the conduct of the Company's business unless a majority, by individual vote, of the Members, excluding the interested officer if that officer is a Member, consents thereto. In the event that the interested officer is the sole Member, no vote shall be required.

(iii) **Duties Only to the Company.** The officers' fiduciary duties of loyalty and care are to the Company and not to the Members or other officers. The officers shall owe fiduciary duties of disclosure, good faith, and fair dealing to the Company and to the Members, but shall owe no such duties to officers unless the officer is a Member. An officer who so performs their duties shall not have any liability by reason of being or having been an officer.

(iv) **Reliance on Reports.** In discharging the officer's duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

1. One or more Members, officers, or employees of the Company whom the officer reasonably believes to be reliable and competent in the matters presented.
2. Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.
3. A committee of Members of which the affected officer is not a participant, if the officer reasonably believes the committee merits confidence.

VII. Dissolution.

(a) **Limits on Dissolution.** The Company shall have a perpetual existence, and shall be dissolved, and its affairs shall be wound up only upon the provisions established above.

Notwithstanding any other provision of this Agreement, the bankruptcy of any Member shall not cause such Member to cease to be a Member of the Company, and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

Each Member waives any right that it may have to agree in writing to dissolve the Company upon the bankruptcy of any Member or the occurrence of any event that causes any Member to cease to be a Member of the Company.

(b) **Winding Up.** Upon the occurrence of any event specified in the earlier "Duration" section above, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors. One or more Members, selected by the remaining Members, shall be responsible for overseeing the winding up and liquidation of the Company, shall take full account of the liabilities of the Company and its assets, shall either cause its assets to be distributed as provided under this Agreement or sold, and if sold as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided under this Agreement.

(c) **Distributions in Kind.** Any non-cash asset distributed to one or more Members in liquidation of the Company shall first be valued at its fair market value (net of any liability secured by such asset that such Member assumes or takes subject to) to determine the profits or losses that would have resulted if such asset were sold for such value, such profit or loss shall then be allocated as provided under this Agreement. The fair market value of such asset shall be determined by the Members or, if any Member objects, by an independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) approved by the Members.

(d) **Termination.** The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities, and obligations of the Company, shall have been distributed to the Members in the manner provided for under this Agreement and (ii) the Company's registration with Virginia shall have been canceled in the manner required by Virginia law.

(e) **Accounting.** Within a reasonable time after complete liquidation, the Company Treasurer shall furnish the Members with a statement which shall set forth the assets and liabilities of the Company as at the date of dissolution and the proceeds and expenses of the disposition thereof.

(f) **Limitations on Payments Made in Dissolution.** Except as otherwise specifically provided in this Agreement, each Member shall only be entitled to look solely to the assets of the Company for the return of its initial contribution and shall have no recourse for its initial contribution and/or share of profits (upon dissolution or otherwise) against any other Member.

(g) **Notice to Virginia Authorities.** Upon the winding up of the Company, the Member with the highest percentage of membership interest in the Company shall be responsible for the filing of all appropriate notices of dissolution with Virginia and any other appropriate state or federal authorities or agencies as may be required by law. In the event that two or more Members have equally high percentages of membership interest in the Company, the Member with the longest continuous tenure as a Member of the Company shall be responsible for the filing of such notices.

VIII. Exculpation and Indemnification.

(a) No Member, officer, employee, or agent of the Company and no employee, agent, or affiliate of a Member (collectively, "Covered Person") shall be liable to the Company or any other person who has an interest in or claim against the Company for any loss, damage, or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage, or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage, or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. Expenses, including legal fees, incurred by a Covered Person defending any claim, demand, action, suit, or proceeding shall be paid by the Company. The Covered Person shall be liable to repay such amount if it is determined that the Covered Person is not entitled to be indemnified as authorized in this Agreement. No Covered Person shall be entitled to be indemnified in respect of any loss, damage, or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions. Any indemnity under this Agreement shall be provided out of and to the extent of Company assets only.

(c) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports, or statements presented to the Company by any person as to matters the Covered Person reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Members might properly be paid.

(d) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement. The provisions of the Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person.

(e) The foregoing provisions of this article shall survive any termination of this Agreement.

IX. Insurance.

The Company shall have the power to purchase and maintain insurance, including insurance on behalf of any Covered Person against any liability asserted against such person and incurred by such Covered Person in any such capacity, or arising out of such Covered Person's status as an agent of the Company, whether or not the Company would have the power to indemnify such person against such liability under the applicable law provision. This is separate and apart from any business insurance that may be required as part of the business in which the Company is engaged.

X. Settling Disputes.

All Members agree to enter into mediation before filing suit against any other Member or the Company for any dispute arising from this Agreement or Company. Members agree to attend one session of mediation before filing suit. If any Member does not attend mediation, or the dispute is not settled after one session of mediation, the Members are free to file suit. Any lawsuits will be under the jurisdiction of Virginia.

XI. Independent Counsel.

All Members entering into this Agreement have been advised of their right to seek the advice of independent legal counsel before signing this Agreement. All Members and each of them have entered into this Agreement freely and voluntarily and without any coercion or duress.

XII. General Provisions.

(a) **Notices.** All notices, offers, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and may be personally served or sent by United States mail and shall be deemed to have been given when delivered in person or three business days after deposit in United States mail, registered or certified, postage prepaid, and properly addressed, by or to the appropriate party.

(b) **Number of Days.** In computing the number of days (other than business days) for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday, or holiday on which national banks are or may elect to be closed, then the final day shall be deemed to be the next day which is not a Saturday, Sunday, or such holiday.

(c) **Execution of Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall together constitute one and the same instrument.

(d) **Severability.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid, illegal, or unenforceable, but that by limiting such provision, it will become valid, legal, and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

(e) **Headings.** The article and section headings in this Agreement are for convenience, and they form no part of this Agreement and shall not affect its interpretation.

(f) **Governing Law.** This Agreement shall be governed by the laws of Virginia (without regard to conflicts of law principles thereof).

(g) **Application of State Law.** Any matter not specifically covered by a provision of this Agreement shall be governed by the applicable provisions of Virginia law.

(h) **Amendment.** This Agreement may be amended only by written consent of all the Members. Upon obtaining the approval of any such amendment, supplement, or restatement as to the Certificate, the Company shall cause a Certificate of Amendment or Amended and Restated Certificate to be prepared, executed, and filed in accordance with Virginia law.

(i) **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter contained herein. No other promises, warranties, representations, agreements, or understandings, whether oral or written, exist concerning this subject matter. This Agreement supersedes any previous or simultaneous oral or written promises, warranties, representations, agreements, or conditions between the parties.

IN WITNESS WHEREOF, the Members have executed and agreed to this Limited Liability Company Operating Agreement, which shall be effective as of March 15, 2023.

Ricky Phipps

Ricky Lee Phipps

03/15/2023

Date

Remington Lee Phipps

3/15/23

Date

Attachment A
Initial Contributions of the Members

The initial contributions of the Members of Black Diamond Resources LLC are as follows:

Ricky Lee Phipps
Contribution:
Cash: $35,000.00

Remington Lee Phipps
Contribution:
Cash: $35,000.00

Document Summary: Limited Liability Company Agreement of Black Diamond Resources LLC