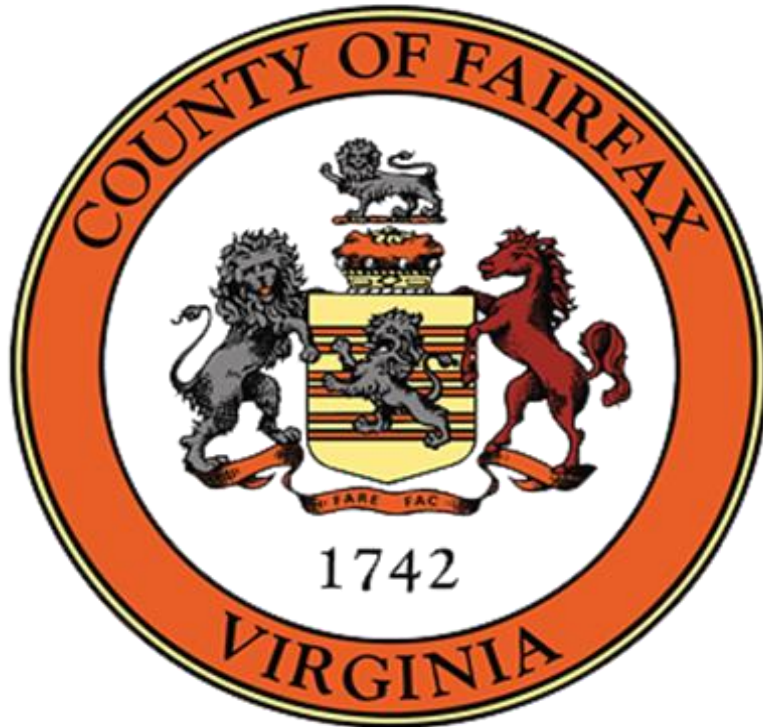


COUNTY OF FAIRFAX, VIRGINIA OFFICE OF FINANCIAL AND PROGRAM AUDIT



November 2019

Quarterly Report

**FAIRFAX COUNTY BOARD OF SUPERVISORS
AUDITOR OF THE BOARD**

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**Fairfax County
Office of Financial and Program Audit**



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ABSTRACT

Working under the guidance and direction of the Audit Committee, the Auditor of the Board provides an independent means for assessing management's compliance with policies, programs and resources authorized by the Board of Supervisors. Further to this process, efforts are made to gain reasonable assurance that management complies with all appropriate statutes, ordinances and directives.

This agency plans, designs, and conducts studies, surveys, evaluations and investigations of County agencies as assigned by the Board of Supervisors or the Audit Committee (AC). For each study conducted, the agency focuses primarily on the County's Corporate Stewardship vision elements. The agency does this by developing, whenever possible, information during the studies performed which are used to maximize County revenues or reduce County expenditures.

To assist the Office of Financial and Program Audit (OFPA) with executing the responsibilities under our charge, members of the Fairfax County Board of Supervisors (BOS) submit study recommendations of which the findings and management responses are included in published studies. This process is utilized to provide the constituents, BOS and management reasonable assurance that fiscal and physical controls exist within the County.

Additionally, this agency conducts follow-up work on prior period studies. As part of the post study work conducted, we review the agreed upon managements' action plans. To facilitate the process, we collaborate with management prior to completion of studies. Through this collaboration, timelines for the implementation of corrective action and status updates are documented for presentation at the upcoming Audit Committee Meetings.

The results of studies may not highlight all the risks/exposures, process gaps, revenue enhancements and/or expense reductions which could exist. Items reported are those which could be assessed within the scheduled timeframe, and overall organization's data-mining results. The execution of the OFPA's studies are facilitated through various processes such as; sample selections whereby documents are selected and support documentation is requested for compliance and other testing attributes. Our audit approach includes interviewing appropriate staff and substantive transaction testing. OFPA staff employs a holistic approach to assess agencies/departments whereby the review is performed utilizing a flow from origination to closeout for the areas under review.

There are several types of studies performed by OFPA, e.g.; operational, financial, compliance, internal controls, etc. To that end, it is important to note; OFPA staff reserves the option to perform a holistic financial and analytical data-mining process on all data for the organization being reviewed where appropriate. This practice is most often employed to perform reviews for highly transactional studies.

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LDS DEVELOPER DEFAULT PROGRAM STUDY

OVERVIEW AND UPDATES

The results of this study may not highlight all of the risks/exposures, process gaps, revenue enhancements and/or expense reductions which could exist. Items reported are those which could be assessed within the scheduled **timeframe, and overall organization's data-mining results**. The execution of the **Office of Financial and Program Audit (OFPA's) studies** are facilitated through various processes such as; sample selections whereby documents are selected and support documentation is requested for compliance and other testing attributes. There are several types of studies performed by OFPA, e.g.; performance, operational, financial, compliance, etc. To that end, it is important to note OFPA staff reserves the option to perform a holistic financial and analytical data-mining process on all data for the organization being reviewed where appropriate. This practice is most often employed to perform reviews for highly transactional studies.

The purpose of this study was to execute a performance review of the Fairfax County Developer Default Program managed by Land Development Services (LDS). This study included (**but not limited to**) reviews of; active & closed-out developer default projects, oversight/tracking process for defaulted projects, time-to-complete defaulted projects, funding collection efforts for defaulted projects, etc. The period of review for this study was FY17-YTD. OFPA with the assistance of LDS compiled FY20 statistical data for this program in the table below:

FY20 DEVELOPER DEFAULT PROGRAM STATISTICS	
Land Development Services	
Data Metrics	Stats
No. of Bonded Default Projects in Program	88
No. of Default FFX County Projects	14
Total Bonded Amount	\$52,060,627

Data Source: Data provided by LDS.

The Developer Default Program is designed to safeguard the completion of public and proffered improvements including; roads, curbs, gutters, walkways, storm sewers, etc. that are required for development projects in the County. The Developer Default Program is necessitated by economic conditions or other factors that result in some developers not completing the required public facilities and/or site improvements. A developer project is considered in default should any of the following criteria be met, such as; lack of project progress (as confirmed by LDS Site Development and Inspection Division inspectors); the expiration of development agreements, extension requests not submitted by the developer.

As of FY20, **102** projects are in the Developer Default Program. Of the **102** projects, **88** are bonded and **14** are non-bonded County projects. These projects are distributed by LDS Site Development and Inspection Division (SDID) branches in the following ways: North Branch (*Dranesville, Hunter Mill, Sully Districts*), Central Branch (*Braddock, Providence, Springfield Districts*) and South Branch (*Mason, Mount Vernon, Lee Districts*) based on location in the County.

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The table below details the projects by district, count, and bond amounts.

<i>OFPA Analysis</i>			
FY20 DEVELOPER DEFAULT PROGRAM STATISTICS			
Branch	District	Number of Projects	Total Bond
CENTRAL	Braddock	3	\$995,700.00
	Providence	14	\$14,019,900.00
	Springfield	11	\$3,560,427.00
CENTRAL Total		28	\$18,576,027.00
NORTH	Dranesville	12	\$2,254,900.00
	Hunter Mill	10	\$7,370,800.00
	Sully	15	\$8,638,300.00
NORTH Total		37	\$18,264,000.00
SOUTH	Lee	11	\$7,222,000.00
	Mason	7	\$2,131,000.00
	Mount Vernon	19	\$5,867,600.00
SOUTH Total		37	\$15,220,600.00

A project is considered in default if the developer has not completed all the required improvements by the date specified in the development agreement with the County. When projects default, a five-year statute of limitations (Per Virginia Code § 8.01-246) exist whereby the County may enforce the requirements of the development agreement and/or pursue legal action to acquire the developer's security to complete the required improvements.

There are two different types of default projects within the Developer Default Program, technical default and critical default. Technical defaults are those whereby the bond recently expired, and the developer is in the process of submitting an extension request to LDS or will soon be off bond. Critical defaults are those whereby the developer is unresponsive and does not get off bond after three notices are issued by LDS.

OFPA obtained several sources of data from LDS to select samples and perform substantive testing. Testing was performed on several areas to include; submission of legal packages to Office of the County Attorney (OCA), legal actions performed timely prior to the expiration of the statute of limitations (SOL), time-to-complete developer default projects, developer financial instruments, project extension review process, site-plan submission process, project delays, inspector evaluations, etc. Some testing results are provided in **Appendix A**. We also interviewed a sample of developers with projects in the Developer Default Program. This outreach was performed to obtain feedback to identify project delays and potential process improvements.

We also contacted four surrounding jurisdictions (Prince William County, Arlington County, Montgomery County & Loudoun County) to use as resources for comparable data and management practices. Loudoun and Montgomery Counties provided useful information which is detailed in this report.

OFPA performed several onsite visits and interviewed LDS, OCA and Capital Facilities staff to understand the nature of the operations. We have identified observations and recommendations based on this review. The areas identified for potential enhancements are detailed further in this document.

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OBJECTIVES AND RESULTS

Business Objectives	Study Assessments
Submission of Projects to OCA Prior to SOL	Satisfactory
Developers Financial Instruments Expiration	Needs Improvement
Developer Default Project Oversight/Tracking	Needs Improvement
Developer Default Projects Time-to-Complete Analysis	Needs Improvement
Developer Default File Submissions to OCA	Needs Improvement

Performance Summary	
Good Controls	Performance Enhancement Opportunities
<ul style="list-style-type: none"> LDS submitted legal packages to OCA for default projects timely, based on our sample reviewed. 	<ul style="list-style-type: none"> Implement triggers for expiring financial instruments in the LDS tracking platform. Enhance system coding for the developer default projects to identify project status. Run periodic developer default inactivity reports and perform reviews. Also, enhance coordination efforts for project inspections with VDOT. Develop an electronic submission process for litigation packages to OCA.

OBSERVATIONS AND ACTION PLANS

The following table(s) detail observation(s) and recommendation(s) from this study along with management’s action plan(s) to address these issue(s).

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DEVELOPERS FINANCIAL INSTRUMENTS EXPIRATION

Risk Ranking

HIGH

Based on the data provided during our fieldwork, we noted **68 out of 88 (or 77%)** of the projects in the Developer Default Program were operating with expired financial instruments. This analysis was based on conservative threshold provided by LDS staff whereby projects under **~\$100K** being covered by cash posting. The extrapolated approach was used in lieu of empirical analysis due to the burden that would be put-on staff to run data on the full population of the projects in the program. Currently, these instruments are tracked in the LDS site plan system of record, PAWS. There are various types of financial instruments used by the developers for the Developer Default Program, to include; Performance Bonds, Letters of Credit, and Cash Bonds. Cash Bonds and Letters of Credit are the most preferred financial instruments due to their liquidity. Enhancing the current LDS platform to include a financial instrument tracking system would allow LDS to set automated triggers to timely identify financial instruments approaching expiration.

Recommendation

We recommend LDS develop an automated financial instrument tracking process for developers in the existing agency platform. This information could assist in prioritizing actions needed to; ensure the completion of projects, actions to pursue other avenues, and/or limit the use of County funds to complete projects due to, developer bankruptcy, insufficient developer resources, developer abandonment, etc.

Action Plan

Point of Contact	Target Implementation Date	Email Address
Bill Hicks (LDS, Director)	December 31, 2020	William.Hicks@fairfaxcounty.gov
Michael Peter (LDS, FMB Chief)		Michael.Peter@fairfaxcounty.gov
Morgan Wolfe (LDS, BAC Chief)		Morgan.Wolfe@fairfaxcounty.gov

MANAGEMENT RESPONSE:

Quarterly reports are run to identify expired financial instruments. In addition, LDS runs reports every Friday that show projects that identify projects within 60 days and 30 days of Expiration of their financial instruments. Appropriate notices are sent at 60 days to expiration, 30 days to expiration, at expiration, 15 days after expiration, 30 days after expiration, 45 days after expiration, and a final notice at 60 days after expiration stating that the developer has 15 days to resolve before

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additional action will be taken. If the developer fails to take action after the final notice LDS reaches out to OCA for support. Staff send notices out every Friday.

LDS recognizes the benefits of an enhanced and more automated tracking process for the expiration of financial instruments. Although we have followed accepted procedures in this area, a proactive and automated approach to reach out to developers and to develop our prioritized workflow could be helpful.

At this time, LDS is working with the Department of Information Technology (DIT) and other land development departments on the implementation of the online permitting system (PLUS) which can include this functionality. Given the time horizon for the PLUS program the County will not apply resources into the legacy PAWS system to create this enhancement. This PLUS program is projected to launch in Winter 2020-2021. LDS will work with the PLUS implementation team to identify and potentially add this functionality to the new system.

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DEVELOPER DEFAULT PROJECT OVERSIGHT / TRACKING

Risk Ranking

MEDIUM

Between FY17-19 **31 out of 88 (or 35%)** of Developer Default Projects were sent to OCA due to; bankruptcy, inactivity and/or the need for legal action. Although these items are largely related to financial issues, a generic “Default” label is used for tracking projects other than bankruptcies and inactivity. While two of the 31 were coded as bankruptcy and five of the projects were labeled as inactive, **24 of the 31 projects (or 77%)** of these projects were labeled in a manner which does not allow for management oversight to datatize information to effectively manage to remedy.

Recommendation

We recommend LDS review “Default” system coding for the developer default projects to identify a coding methodology that would provide detail which expressly states the reason these projects are sent to OCA. This updated system approach would ensure information is maintained in a manner that makes it readily available reducing management’s efforts to research.

Action Plan

Point of Contact	Target Implementation Date	Email Address
Bill Hicks (LDS, Director)	December 31, 2020	William.Hicks@fairfaxcounty.gov
Michael Peter (LDS, FMB Chief)		Michael.Peter@fairfaxcounty.gov
Morgan Wolfe (LDS, BAC Chief)		Morgan.Wolfe@fairfaxcounty.gov

MANAGEMENT RESPONSE:

Currently, the legacy PAWS system allows the LDS Bonds and Agreements Center (BAC) to code projects being sent to the OCA in three different ways for Defaults: Bankrupt (Developer ran out of funds), Inactive (work has not been started), or Default (Developer has not applied for an extension and are noncommunicative).

To know why a project is being sent to the Office of the County Attorney (OCA) BAC obtains the Project Punchlist from the Site Inspector. There could be many outstanding items on the Project Punchlist, or just a few items. Listing all the items on the Project Punchlist in PAWS for coding would be redundant when we have the Project Punchlist, which shows exactly which items on the Surety Value

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Estimate are bonded and still need to be completed. At the same time, LDS recognizes the need for some additional specificity in how projects are coded.

Currently, LDS is working with the Department of Information Technology (DIT) and other land development departments on the implementation of the online permitting system (PLUS). The County will apply only limited resources into the legacy PAWS system in order to maintain current functionality until the new system can go live. The PLUS project is projected to launch in Winter 2020-2021. LDS will work with the PLUS implementation team to identify and potentially add some additional codes for this process.

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DEVELOPER DEFAULT PROJECTS TIME-TO-COMPLETE ANALYSIS

Risk Ranking

MEDIUM

At the time of this review, **14** Developer Default Construction Projects were completed by the County's Capital Facilities Department between FY17 – 18. Based on available data, **7 out of 14 (or 50%)** of these projects were reviewed for analysis. The average time-to-complete these projects whereby litigation was involved was **7,837** days. The average time-to-complete these projects without litigation was **3,723** days. Based on a random sample of **9** Developer Agreements (**from OCA**), the average agreement term was **~1.06** years. We identified several lengthy hold times (potential bottlenecks) inherent in these construction and administrative functions in this project process. These hold times were:

Developer Default Projects Time-To-Complete Compilation W/ OCA	
Administrative Days Worked By LDS	2,490
Administrative Days Worked By OCA	359
Construction Days Worked By CAP	4,980
Administrative Release Days By LDS	8
Total Project Days	7,837

Developer Default Projects Time-To-Complete Compilation W/O OCA	
Administrative Days Worked By LDS	1,544
Construction Days Worked By CAP	2,176
Administrative Release Days By LDS	3
Total Project Days	3,223

The average time-to-complete Developer Default Construction Projects vis-a-vis the developer agreement vs the average time-to-complete these projects vis-à-vis the random sample analysis was; **~387** days and **~5,530** days respectively. There was a **~5,143** days analysis difference between the agreement days and actual completion days.

Detailed in the compilation are two agencies whereby the projects were held for extended times, LDS and Capital Facilities, detailed in the tables above. One notable item contributing to the extended time to complete (based on a sample of inspection reports) was interactions with Virginia Department of Transportation (VDOT). Of the sample of **7** SDID inspection reports, VDOT had **107** interaction events (or an average of **15**) per projects. We also identified two instances of inactivity on projects (1 project with nine-year delay and another project with 2-year delay) in this sample. Additionally, of the **31** projects for which we reviewed project status, **5 (or 16%)** were inactive.

Recommendation

To the items detailed in the observation above; we recommend LDS incorporate in the Developer Default Program oversight, a process whereby inactivity reports are run and reviewed by management to identify emerging issues. The reporting should be run by periods deemed appropriate by management with existing staff (preferably monthly). This report should include the review and analysis of reasons extended periods of inactivity such as; plan revisions, changing of owners, unidentified abandonments, multiple uncoordinated VDOT interactions, etc. Additionally, there appears to be a high level of VDOT interaction on some of these projects. We also recommend that LDS liaise with VDOT to incorporate a documented process to facilitate VDOT inspections and other interactions. This endeavor is being recommended to streamline the process and lessen any delays attributed to these interactions.

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Action Plan

Point of Contact	Target Implementation Date	Email Address
Bill Hicks (LDS, Director) Michael Peter (LDS, FMB Chief) Bruce McGranahan (LDS, SDID Director)	December 31, 2020	William.Hicks@fairfaxcounty.gov Michael.Peter@fairfaxcounty.gov Bruce.McGranahan@fairfaxcounty.gov

MANAGEMENT RESPONSE:

The long time horizon metrics reflect the difficulty in completing a projects abandoned by their rightful owners. The most efficient process for project completion is for the developer not to default and to complete the project as agreed to in their approval documents. Specific areas of difficulty to address abandoned projects include faulty infrastructure, owing to age or poor construction, that ultimately must be accepted by outside agencies, like VDOT. To this end, LDS has engaged VDOT on various plan review and inspection issues on a regular basis for a number of years. However, since VDOT is under the authority of the state and not the County, LDS authority to push for process changes is limited. At the same time, LDS does appreciate the need to have coordinated and documented VDOT inspections and reviews. We will continue to work with local VDOT staff to develop new processes and to attempt to coordinate on these areas, reporting back regularly on the progress with VDOT coordination.

Within available inspector staff resources in SDID, LDS will refine the process to proactively review sites that are in inactive status with a goal to visually visit each inactive site every six months to both ensure that the site is safe and contained and to document any changes. This process should begin in Winter 2020.

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DEVELOPER DEFAULT FILE SUBMISSIONS TO OCA

Risk Ranking

LOW

Under the current process, hard copies of developer default files are forwarded to OCA for administrative and/or legal action. OCA uses a datatized file format to review and compile cases and administrative actions. These manual files limit OCA staffs' ability to query and compile information until these items are scanned into the OCA case management system (Pro-Law). Based on interviews with OCA, receiving scanned files would decrease the submission time, assist in datatizing information for the files, assist with research and analysis, reduce paper usage and reduce physical storage. We noted in the meeting, Department of Code Compliance (DCC) submits scanned files to OCA. Based on our meeting with OCA, the process used by DCC is effective and beneficial.

Recommendation

We recommend that LDS liaise with OCA to identify a pathway to this operational enhancement whereby LDS developer default program files are submitted electronically, going forward. We recommend that this enhancement be implemented with the existing staff, prioritizing project phases in a manner determined by LDS and OCA.

Action Plan

Point of Contact	Target Implementation Date	Email Address
Bill Hicks (LDS, Director)	March 31, 2020	William.Hicks@fairfaxcounty.gov
Michael Peter (LDS, FMB Chief)		Michael.Peter@fairfaxcounty.gov
Morgan Wolfe (LDS, BAC Chief)		Morgan.Wolfe@fairfaxcounty.gov
Beth Teare (OCA, County Attorney)		Elizabeth.Teare@fairfaxcounty.gov
Paul Emerick (OCA, Sen. Asst. County Attorney)		Paul.Emerick@fairfaxcounty.gov

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MANAGEMENT RESPONSE:

In discussion with OCA, it is clear that the transfer of hard paper files for developer default cases has not slowed down any legal processes. Nonetheless, electronic transfer could make the archiving and retrieval process more efficient. The recommendation to scan files and transfer them to OCA electronically can be implemented as soon as appropriate resources in BAC are available. LDS will work with OCA to define a process for what is scanned, to whom it is sent, and how receipt is confirmed.

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APPENDICIES

APPENDIX A

Current Developer Default Projects Testing - Legal Action Coordination				
<i>Sample Attributes</i>	<i>Testing Attributes</i>			
Order Description	Project Status When Forwarded to OCA	SOL Date (Per LDS Report)	Date Sent to OCA	OCA Action w/n 6 Month of SOL
DD-Lucky Estates 7723-SD-02	Default	7/6/2006	12/21/2004	Performed Timely
DD-Kelly Estates 9770-SD-01	Default	10/5/2007	N/A:Cash Bond	N/A:Cash Bond
DD-Meadowmere 8056-SD-01	Default	7/10/2005	N/A:Cash Bond	N/A:Cash Bond
DD-SullyManorRd & DrainageImp 5282-SP-01	Default	2/23/2013	3/25/2009	Performed Timely
DD-River Chase-Plan 0736-SD-01	Default	2/12/2011	12/2/2009	Performed Timely
DD-Miller Way 5639-SD-02	Default	5/30/2015	10/31/2011	Performed Timely
DD-Crimmins Subdivision 7145-SD-02	Default	1/25/2016	7/14/2006	Performed Timely
DD-Tyson's Executive Village 8370-SD-01	Default	11/10/2005	10/10/2003	Performed Timely
DD-Westfields Northridge Dr 6178-PI-25	Default	1/5/2000	9/29/1997	Performed Timely
Trinity Centre(On-Site Roads) 7265-SP-02	Default	3/18/2018	1/26/2015	Performed Timely

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LIST OF ACRONYMS

AC	Audit Committee
BAC	Bonds and Agreements Center
BOS	Board of Supervisors
DCC	Department of Code Compliance
DIT	Department of Information Technology
FY	Fiscal Year
LDS	Land Development Services
OCA	Office of the County Attorney
OFPA	Office of Financial and Program Audit
SDID	Site Development and Inspection Division
SOL	Statute of Limitation
VDOT	Virginia Department of Transportation
Y-T-D	Year to Date

ADDENDUM SHEET

OFPA (November 2019 /Agency Report and/or Debriefing)

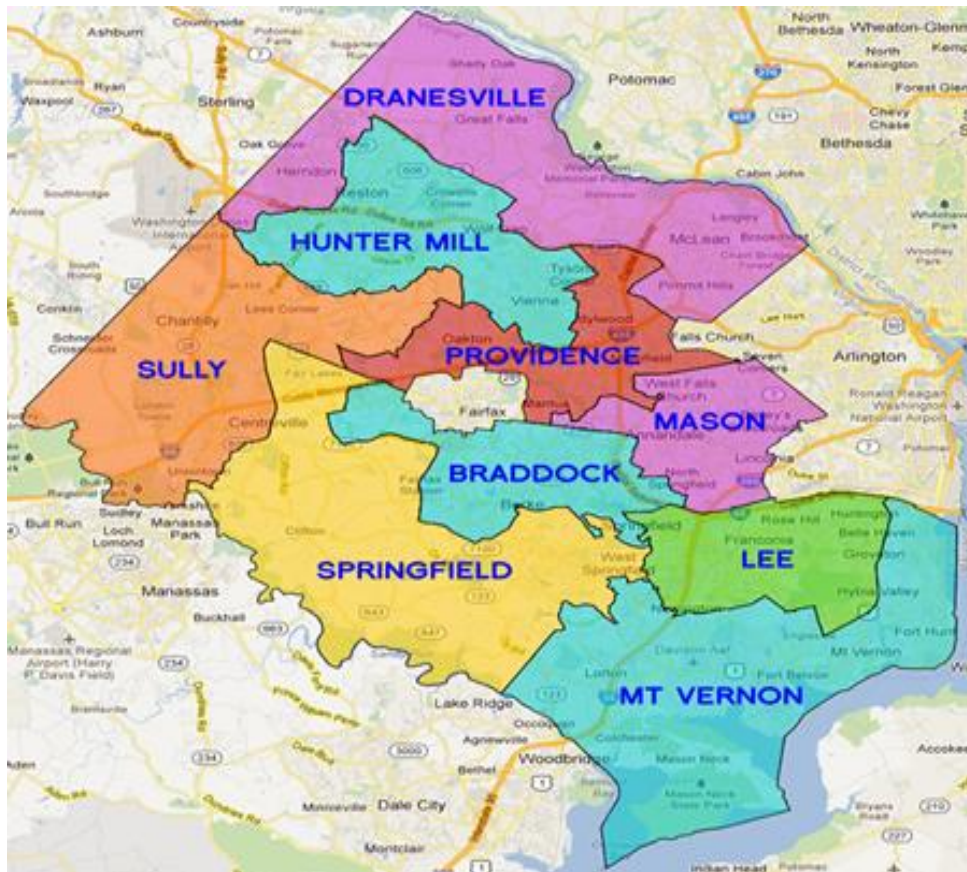
11/26/2019

The table below lists discussions from the Audit Committee.

<i>Location in Document</i>	<i>Comments</i>

~End~

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