

APPENDIX A

EQAC RESOLUTIONS AND POSITIONS NOVEMBER, 2001 THROUGH SEPTEMBER, 2002

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At its November 14, 2001 meeting, EQAC voted to support the following two legislative proposals that had been recommended to the Board of Supervisors by the Fairfax County Tree Commission.

**Proposed Amendments to Virginia State Code § 15.2-961
Relating To Tree Cover Requirements**

§ 15.2-961. ~~Replacement~~ Conservation of trees during development process in certain localities.

A. Any locality with a population density of at least seventy-five persons per square mile may adopt an ordinance providing for the ~~planting and replacement~~ conservation of trees during the development process pursuant to the provisions of this section. Population density shall be based upon the latest population estimates of the Cooper Center for Public Service of the University of Virginia.

B. The ordinance shall require that the site plan for any subdivision or development include the ~~planting and replacement~~ conservation of trees on the site to the extent that, at twenty years, minimum tree canopies or covers will be provided in areas to be designated in the ordinance, as follows:

1. Ten percent tree canopy for a site zoned business, commercial, or industrial;
2. Ten percent tree canopy for a residential site zoned twenty or more units per acre;
3. ~~Fifteen~~ Twenty percent tree canopy for a residential site zoned more than ten but less than twenty units per acre; and
4. ~~Twenty~~ Thirty percent tree canopy for a residential site zoned ten units or less per acre.

However, any city that was established prior to 1780 may require at ten years the minimum tree canopies or covers set out above.

C. The ordinance shall require that site plans provide for the preservation of existing trees and/or the replacement of trees.

1. If tree cover exists on site prior to development, then a proportionate amount of the required tree cover defined above shall be met through the preservation of existing trees.

2. Predevelopment tree cover percentages shall be used to determine the minimum proportion of existing tree cover area to be preserved. The remainder of the required tree cover will be met through the planting of trees.

D. As incentive to conserve trees and to optimize the level of environmental values they provide, localities may extend up to two times the normal area of tree cover credit for trees that are preserved to fulfill the following criteria:

1. The ordinance may grant additional tree cover area credits for the preservation of on-site tree cover that is contiguous to tree cover on adjacent properties. In order to receive additional

canopy credits, the connecting tree cover areas shall occur on dedicated open space, park land, conservation easements or land of a similar designation, where the long-term preservation of trees is implied.

2. The ordinance may grant additional tree cover area credits to encourage the preservation of buffers adjacent to Resource Protection Areas as defined by the local Chesapeake Bay Ordinance. The trunks of trees receiving these credits must be located no more than fifty feet from the outer edge of the Resource Protection Area.

3. The ordinance may grant additional tree cover credits to encourage the preservation of existing trees to serve as buffers between sites of dissimilar use. The tree buffer width must be at least twenty-five feet in width to receive such credits.

4. The ordinance may grant additional tree cover area credits for the preservation of trees with historic or cultural significance.

5. The ordinance may grant additional tree cover area credits for the preservation of specimen trees of outstanding size or possessing unique physical characteristics.

6. The ordinance may grant additional tree cover area credit for the preservation of trees that are components of a rare or endangered habitat or ecosystem.

7. The ordinance may grant additional tree cover area credits for trees preserved in a manner which will conserve the energy used to cool and heat buildings. The locality may designate a list of suitable tree species and effective locations to facilitate energy conservation.

8. The ordinance may grant additional tree cover area credits for trees preserved in a manner which will cool paved surfaces and parked motor vehicles.

The ordinance shall provide for reasonable exceptions to or deviations from these requirements to allow for the reasonable development of farm land or other ~~areas devoid of woody materials,~~ areas devoid of healthy or suitable woody materials, for the preservation of wetlands, or otherwise when the strict application of the requirements would result in unnecessary or unreasonable hardship to the developer. The following shall be exempt from the requirements of any tree ~~planting and replacement~~ conservation ordinance promulgated under this section: dedicated school sites, playing fields and other nonwooded recreation areas, and other facilities and uses of a similar nature.

The ordinance will provide for exceptions or deviations from the tree preservation requirements delineated in C. above, if the locality determines that the requirements would preclude or significantly hinder uses allowed by local zoning ordinance. If the tree preservation requirements are waived or modified on these sites, then the balance of the minimum tree cover requirements will be met by the planting of trees.

For purposes of this section:

"Tree canopy" or "tree cover" includes all areas of coverage by plant material exceeding five feet in height, and the extent of planted tree canopy at ten or twenty maturity shall be based on published reference texts generally accepted by landscape architects, nurserymen, and arborists in the community, and the texts shall be specified in the ordinance. "Predevelopment tree cover levels" shall be defined by the total percentage of the development site that is covered by tree canopy or cover at the time of plan submission.

The ordinance may designate or provide a system for rating the desirability for the planting and preservation of various tree species. All trees to be planted shall meet the specifications of the American Association of Nurserymen. The planting of trees shall be done in accordance with either the standardized landscape specifications jointly adopted by the Virginia Nurserymen's Association, the Virginia Society of Landscape Designers and the Virginia Chapter of the American Society of Landscape Architects, or the road and bridge specifications of the Virginia Department of Transportation.

Existing trees which are to be preserved may be included to meet all or part of the canopy requirements, and may include wooded preserves, if the site plan identifies such trees and the trees meet standards of desirability and life-year expectancy which the locality may establish.

~~C. E.~~ Penalties for violations of ordinances adopted pursuant to this section shall be the same as those applicable to violations of zoning ordinances of the locality.

~~D. F.~~ In no event shall any local tree ~~planting and replacement~~ conservation ordinance adopted pursuant to this section exceed the requirements set forth herein.

~~E. G.~~ Nothing in this section shall be construed to invalidate any local ordinance adopted pursuant to the provisions of this section prior to July 1, 1990, which imposes standards for ten year minimum tree cover replacement or planting during the development process.

H. Nothing in this section shall be construed to invalidate any local ordinance adopted by a city that was established prior to 1780 which imposes standards for ten year minimum tree cover replacement or planting during the development process.

I. Nothing in this section shall be construed to invalidate any local ordinance adopted pursuant to the provisions of this section after July 1, 1990, which imposes standards for twenty year minimum tree cover replacement or planting during the development process.

**Proposed Amendments to Virginia State Code, Section 15.2-961
To Enable Localities To Regulate The Use of Native and Other Desirable Trees**

Section 15.2-961. Replacement of trees during development process in certain localities.

A. Any locality with a population density of at least seventy-five persons per square mile may adopt an ordinance providing for the planting and replacement of trees during the development process pursuant to the provisions of this section. Population density shall be based upon the latest population estimates of the Cooper Center for Public Service of the University of Virginia.

B. The ordinance shall require that the site plan for any subdivision or development include the planting or replacement of trees on the site to the extent that, at twenty years, minimum tree canopies or covers will be provided in areas to be designated in the ordinance, as follows:

1. Ten percent tree canopy for a site zoned business, commercial, or industrial;
2. Ten percent tree canopy for a residential site zoned twenty or more units per acre;
3. Fifteen percent tree canopy for a residential site zoned more than ten but less than twenty units per acre; and
4. Twenty percent tree canopy for a residential site zoned ten units or less per acre.

However, any city that was established prior to 1780 may require at ten years the minimum tree canopies or covers set out above.

The ordinance shall provide for reasonable exceptions to or deviations from these requirements to allow for the reasonable development of farm land or other areas devoid of woody materials, for the preservation of wetlands, or otherwise when the strict application of the requirements would result in unnecessary or unreasonable hardship to the developer. The following shall be exempt from the requirements of any tree replacement or planting ordinance promulgated under this section: dedicated school sites, playing fields and other nonwooded recreation areas, and other facilities and uses of a similar nature.

For purposes of this section:

“Tree canopy” or “tree cover” includes all areas of coverage by plant material exceeding five feet in height, and the extent of canopy at maturity shall be based on published reference texts generally accepted by landscape architects, nurserymen, and arborists in the community, and the texts shall be specified in the ordinance.

The ordinance may ~~designate or provide a system for rating the desirability for planting of various tree species~~ to designate the tree species that can and cannot be planted in order to receive tree canopy credits. The ordinance may preclude the use of certain tree species based on their tendency to cause negative impacts to native plant communities, or based on inherent physiological traits that lend themselves to premature structural failure of trees. All trees to be planted shall meet the specifications of the American Association of Nurserymen. The planting of trees shall be done in accordance with either the standardized landscape specifications jointly adopted by the Virginia Nurseryman's Association, the Virginia Society of Landscape Designers and the Virginia Chapter of the American Society of Landscape Architects, or the road and bridge specifications of the Virginia Department of Transportation.

Existing trees which are to be preserved may be included to meet all or part of the canopy requirements, and may include wooded preserves, if the site plan identifies such trees and the trees meet standards of desirability and life-year expectancy which the locality may establish.

C. Penalties for violations of ordinances adopted pursuant to this section shall be the same as those applicable to violations of zoning ordinances of the locality.

D. In no event shall any local tree replacement or planting ordinance adopted pursuant to this section exceed the requirements set forth herein.

E. Nothing in this section shall be construed to invalidate any local ordinance adopted pursuant to the provisions of this section prior to July 1, 1990, which imposes standards for tree replacement or planting during the development process.

This resolution was not adopted officially by the Environmental Quality Advisory Council. However, in a poll of individual Council members that was conducted subsequent to the Council's January 9, 2002 meeting, a majority of Council members expressed support for it.

ENVIRONMENTAL QUALITY ADVISORY COUNCIL

**RESOLUTION REGARDING
TREE PRESERVATION, TREE PLANTING, AND TREE COVER
January, 2002**

WHEREAS, The planting of native and other desirable trees ensures the ecological health of the County's open space and natural areas; and

WHEREAS, The planting of native and other desirable trees ensures direct benefits to wildlife and native plant communities; and

WHEREAS, The planting of native and other desirable trees has proven benefits in helping the County support the Chesapeake Bay 2000 agreement; and

WHEREAS, The preservation of mature riparian forest buffers has proven benefits in helping the County support the Chesapeake Bay 2000 agreement; and

WHEREAS, Preservation of mature tree buffers between sites of dissimilar use helps maintain and enhance the quality of life in the County; and

WHEREAS, Preservation of total tree coverage can provide ecological benefits; and

WHEREAS, Low, moderate, and high density residential development creates special challenges for localities relating to tree preservation, tree planting, and tree cover; and

WHEREAS, Amendments to the Zoning Ordinance, Subdivision Ordinance and the Public Facilities Manual (PFM) are being proposed in order to update, clarify, and codify various requirements regarding tree preservation, tree planting, and tree cover; and

WHEREAS, These proposed amendments would clarify the various requirements dealing with the methodology for determining tree cover, selection of trees, and the procedures for restoration efforts within Resource Protection Areas; now therefore

BE IT RESOLVED, That the Environmental Quality Advisory Council (EQAC) supports the County staff recommendations that the proposed amendments to the Zoning Ordinance, Subdivision Ordinance and the Public Facilities Manual (PFM) regarding tree preservation, tree planting, and tree cover be adopted by the Board of Supervisors; and

BE IT FURTHER RESOLVED, That EQAC recommends that the printing and distribution of the updated Zoning Ordinance, Subdivision Ordinance and the Public Facilities Manual (PFM) regarding tree preservation, tree planting, and tree cover be expedited.

ENVIRONMENTAL QUALITY ADVISORY COUNCIL
RESOLUTION REGARDING
REGIONAL STORMWATER MANAGEMENT
February 13, 2002

WHEREAS, The Fairfax County Board of Supervisors approved a Policy Plan Amendment regarding Stream Protection on October 30th, 2000 that updated stream protection language and definitions that govern the review of development applications; and

WHEREAS, This amendment was not intended to address the full range of stream protection and restoration issues; and

WHEREAS, In recent years, there have been advances in the way stormwater is managed, including managing stormwater as close to the source as feasible, the use of bioretention and low impact site design practices; and

WHEREAS, The County has successfully initiated a Stream Protection Strategy and embarked on a comprehensive Watershed Management Strategy; and

WHEREAS, Watersheds are interconnected, with watersheds for smaller streams forming the watersheds of larger bodies of water; and

WHEREAS, Protecting and restoring watersheds is necessary to the County's goals of protecting water quality and the ecological integrity of its streams; and

WHEREAS, The County's Regional Stormwater Management Plan was approved by the Board in 1989 and has not been reviewed in context with these new initiatives; and

WHEREAS, Waivers are routinely approved administratively during site plan approval because regional stormwater ponds are in the plan; and

WHEREAS, The County does not have adequate funding to construct many of these planned facilities yet development continues, leaving streams in the County with inadequate protection from stormwater and subject to flooding and degradation; and

WHEREAS, When funding is available, the planned regional ponds are being constructed without an adequate analysis of the impact on stream ecosystems and morphology; and

WHEREAS, Recent research demonstrates that such ponds can actually be harmful to aquatic ecosystems and riparian habitat, and may not adequately filter out the pollutants that reach the County's streams; and

WHEREAS, Many of the proposed and current stormwater management facilities and regional ponds maybe inconsistent with our commitments under the Chesapeake Bay Preservation Act to minimize impact on, restore, and protect the health of tributary streams; now therefore

BE IT RESOLVED, That EQAC recommends that the Board of Supervisors review and revise the County's Regional Stormwater Management Plan in context of the Stream Protection Strategy and the development of the County's Master Watershed Plan, including necessary amendments to the Policy Plan.

**RESOLUTION TO SUPPORT THE PROPOSED AMENDMENTS
TO THE FAIRFAX COUNTY CHESAPEAKE BAY ORDINANCE**

February 13, 2002

WHEREAS, The Commonwealth of Virginia and Fairfax County have committed to the restoration and protection of the Chesapeake Bay; and

WHEREAS, The Commonwealth of Virginia passed the Chesapeake Bay Preservation Act in 1988 to ensure Virginia's contribution to the partnership to restore and protect the Chesapeake Bay; and

WHEREAS, The protection and restoration of the Chesapeake Bay is dependent upon the protection and restoration of individual rivers and streams in the Chesapeake Bay watershed, including the Potomac River and local streams within Fairfax County; and

WHEREAS, The Fairfax County Chesapeake Bay Preservation Ordinance, enacted in 1993, seeks to protect sensitive streamside forestland and aquatic resources by limiting development in Resource Protection Areas (RPAs) that border streams and rivers in the County; and

WHEREAS, The current ordinance allows exceptions to the law that can result in potentially harmful development in RPAs; and

WHEREAS, The current ordinance has no provisions for issuing fines or imposing penalties for violations of the ordinances; and

WHEREAS, The newly proposed amendments include: restricting removal of trees within the RPA; requirements for written approval for before any pruning or cutting may proceed, and limiting total clearing to 5,000 square feet or 25% of the buffer area, whichever is less; and prohibiting boardwalks, pathways, and paved paths greater than four feet in width; and

WHEREAS, The proposed amendments also include designating RPA violations as Class One misdemeanors and instituting civil penalties up to \$5,000 for each day of violation; now therefore

BE IT RESOLVED THAT the Fairfax County Environmental Quality Advisory Council supports the immediate adoption of the proposed amendments to the Chesapeake Bay Ordinance in Fairfax County.

This response was not adopted officially by the Environmental Quality Advisory Council. However, in a poll of individual Council members that was conducted subsequent to the Council's February 13, 2002 meeting, a majority of Council members expressed support for it.

ENVIRONMENTAL QUALITY ADVISORY COUNCIL

RESPONSE TO THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY'S DRAFT FECAL COLIFORM TMDL FOR ACCOTINK CREEK February, 2002

The Environmental Quality Advisory Council (EQAC) has reviewed the proposed Virginia Department of Environmental Quality (DEQ) Total Maximum Daily Load (TMDL) for Accotink Creek. EQAC strongly supports improvements in water quality in streams, creeks, and other water bodies within the County. However, the proposed TMDL presents concerns regarding the process for proposal and public comment, the use of data from an unsubstantiated simulation model, and the proposal of reduction goals for which solutions cannot be implemented and that cannot, as a result, be achieved. We request that the Board of Supervisors forward the following comments on the Accotink TMDL to the DEQ in response to requests for comment.

First, we are deeply troubled by the process for obtaining public input and comment. An announcement was made in December for a January 9, 2002 public meeting, with public comments originally due by January 29, 2002. This date was subsequently extended to February 28, 2002. However, supporting documentation, including a critical U.S. Geological Survey (USGS) Bacteria Source Tracking study that is utilized in the TMDL development, are not available for review.

Second, the proposed waste load reduction scenarios are based on preliminary data and TMDL models that may or may not be appropriate for this application. The final study from USGS supporting the TMDL development is currently undergoing peer review and will not be available in its entirety until March 18, 2002, after the close of the comment period. This report will substantiate bacteria load allocations with information regarding modeling, yet neither the County staff nor the public can review assumptions made in the modeling and comment on their appropriateness. As a result, the TMDL is being developed using preliminary data that have not gone through an adequate peer review process. The use of unreviewed, preliminary data in the establishment of the Accotink Creek TMDL is unacceptable from both a scientific and regulatory standpoint. The problems associated with the use of preliminary, unreviewed USGS data are further compounded by the models being used in the development of the TMDL. The model used to develop the TMDL is simplistic and does not reflect the reality of modeling a water body that receives bacteria loadings from two different jurisdictions (Fairfax City and Fairfax County) and does not consider the municipal separate storm sewer system (MS4). It is our considered opinion that the TMDL process for Accotink Creek is being unduly and unnecessarily accelerated to meet arbitrary deadlines established by DEQ.

Finally, the results of the modeling are proposed TMDL waste load reductions that are not achievable. For example, geese represent 24 percent of the fecal coliform sources identified. The TMDL would call for a 92 to 98 percent reduction in fecal coliform from geese and ducks located on pervious land surfaces (such as yards, parks, and forests) and a 93 to 99 percent reduction in fecal coliform from geese on impervious surfaces (such as parking lots and roads). Geese are a protected species in Virginia, and the elimination of geese (as well as other wildlife) is impractical. It is highly unlikely that these reductions can be achieved through population control. Thus, the County will be faced with an unachievable TMDL. Of particular concern is the potential that noncompliance with the specified TMDL could be tied to the County's VPDES permit and result in fines for failure to improve an impaired water body.

EQAC is firmly committed to the improvement of water quality in the County and state-wide. Alternatives exist that can be implemented by Virginia that will result in improvements in the water quality in Accotink Creek, but at levels that are achievable and with solutions that are implementable. Under the U.S. Environmental Protection Agency's Use Attainability standard, states can demonstrate that the water quality goals cannot be achieved. Virginia can seek relief for Accotink Creek, and other such water bodies, where a significant source of the impairment is wildlife. Such relief would allow DEQ to establish a reasonable TMDL that can be implemented.

This position was supported by a majority of EQAC members and was forwarded to the Board of Supervisors on April 19, 2002 as an unofficial position. The position was adopted, by a unanimous vote of members present, as a resolution on May 8, 2002

ENVIRONMENTAL QUALITY ADVISORY COUNCIL

RESOLUTION REGARDING THE PROPOSED ELIMINATION OF THE HEALTH DEPARTMENT STREAM MONITORING PROGRAM

April 19, 2002/May 8, 2002

WHEREAS, all Fairfax County departments and agencies have been asked by the County Executive to reduce their FY2003 budgets by five percent; and

WHEREAS, the Department of Health has proposed to eliminate \$66,407 from its budget by total elimination of the Health Department Stream Monitoring Program, which is currently staffed by one part-time position and one intermittent temporary position; and

WHEREAS, this monitoring program is critical to the identification and control of fecal coliform and chemical pollution of our streams, lakes and watersheds; and

WHEREAS, the Department of Health has suggested that this activity might be undertaken by the Stream Protection Program in the Department of Public Works and Environmental Services (DPWES) or the Virginia Department of Environmental Quality (DEQ); and

WHEREAS, DPWES does not have the requisite laboratory facilities nor the personnel trained in the requisite technical methodologies, and would require a budget supplement if it were required to undertake this function; and

WHEREAS, the state DEQ does not have the capabilities for accepting such a transfer of responsibility; now therefore

BE IT RESOLVED, the Environmental Quality Advisory Council urgently requests the Board of Supervisors to direct the Department of Health **not to eliminate** the program to monitor fecal coliform and chemical pollution of Fairfax County streams and to retain the necessary budgetary allocation for it; and

BE IT FURTHER RESOLVED, that if the Adopt-a-Stream Program, currently under Health Department aegis, can be better handled by a consortium of agencies, this be considered even though no overall budgetary reduction is realized.

ENVIRONMENTAL QUALITY ADVISORY COUNCIL

Board of Supervisors
County of Fairfax
12000 Government Center Parkway
Fairfax, VA 22035

July 24, 2002

Dear Madam Chairman and Members of the Board:

This is to inform you of an incident that occurred on June 10, 2002 during which approximately 200,000 gallons of raw sewage were spilled onto the Little Rocky Run stream valley and during which the proper authorities in Fairfax County were not notified. This incident occurred in close proximity to houses and yards.

A Fairfax County citizen became aware that the spillage occurred at the Little Rocky Run pumping station, which is located along Compton Road near Route 28 and which is operated by the Upper Occoquan Sewage Authority (UOSA). After several telephone calls by the citizen, it became evident that neither the Fairfax County Water Authority nor the Fairfax County Department of Health had any knowledge of this incident. EQAC is also aware that the Hazardous Materials and Investigative Services Section of the Fairfax County Fire and Rescue Department was also unaware of this release. We understand that UOSA did contact the Virginia Department of the Environmental Quality (DEQ) to report the incident. DEQ did not provide the proper notifications to authorities in Fairfax County.

Furthermore, 48 hours after the incident occurred, it was observed that no signage was posted at or near the site of the release informing the public of this incident or warning citizens to avoid contact with Little Rocky Run. This incident occurred near several communities and therefore presented a health risk to the public. Fortunately, about 60 hours after the incident, Fairfax County received a major rain event that provided necessary cleansing in the affected area, thereby minimizing impacts to the public. However, we would like to emphasize to the Board that proper notifications to the various County agencies and the public did not occur, and coordination with County hazardous materials units did not occur.

By a unanimous vote of the members present at the July 10, 2002 EQAC meeting, EQAC approved a motion to recommend that the Board of Supervisors forward a strong letter of concern to the Department of the Environment Quality, urging them of the need to provide notification to the local government where the event occurred when an event like this happens. Through this correspondence, I am making this request on behalf of EQAC.

Sincerely,

(signed by Chairman)

Robert D. McLaren, Chairman
Environmental Quality Advisory Council

cc: EQAC File, July, 2002

**2003 GA POSITION FORM -- LEGISLATION OR FUNDING POSITION
STATEMENT
RECOMMENDED BY THE FAIRFAX COUNTY ENVIRONMENTAL
QUALITY ADVISORY COUNCIL**

Legislative or funding position statements for Board endorsement or opposition relate to key legislative or budget issues which are important to Fairfax County and which may be considered by the General Assembly. Brief appropriate background information and the reason for the proposed position also should be included with each request (statutory language is not necessary). Please submit your budget amendment initiative using the following form:

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL: Tree Conservation

PROPOSAL: *(brief description of the position)*

Support legislation that:

- (1) allows local governments to require that a percentage of required tree canopy be fulfilled through tree conservation;
- (2) allows local governments to ban the planting of trees that satisfy canopy requirements if the trees are invasive, are known to be structurally unsound, or can cause damage to nearby structures; and
- (3) increases the amount of tree canopy required after 20 years in certain categories.

BACKGROUND: *(briefly summarize why the position is necessary to the County; list any pros/cons, any previous General Assembly or Board of Supervisors' action or position, whether there has been any General Assembly study of this issue, or any other helpful information -- this section should be **no more than 2-3 paragraphs**)*

In the last General Assembly, three tree conservation bills were introduced but not passed. One of these, Senate Bill 484, was sponsored by Fairfax County. SB 484 would have provided for the measures noted above in the "proposal" section.

At present, Fairfax County cannot require any tree conservation. Tree canopy requirements can be satisfied completely through planting – and this is done too often. However, mature communities of trees are low-cost self-generating systems that are very efficient at purifying both water and air, mitigating storm water runoff and moderating ambient air temperature. These benefits do not exist with planted trees until many years after their planting. If Fairfax County had the authority to require conservation of trees, we would see a number of benefits, particularly to our stressed streams and stream valleys.

EQAC therefore recommends that the Fairfax County Board of Supervisors continue to support tree conservation as part of the current Legislature package. Additionally, EQAC recommends that the Board of Supervisors continue its support of SB 484.

STAFF CONTACT PERSON(S): *(provide name/phone number of County staff person(s) best able to able to provide any additional research or information necessary)*

This position has been recommended by the Fairfax County Environmental Quality Advisory Council (EQAC). The following members of EQAC can provide further guidance: Bob McLaren (Chairman), [REDACTED]; and Stella Koch (Vice Chairman), [REDACTED]. Noel Kaplan, Department of Planning and Zoning (the staff liaison to EQAC), can also assist if further information is needed. Noel can be reached at [REDACTED].

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS: *(list any organizations or groups, if any, which might be in favor of or against the proposed position)*

EQAC has not solicited support for its recommended position but would anticipate that numerous environmental advocacy groups would be supportive of it. Development interests may oppose it.

ENVIRONMENTAL QUALITY ADVISORY COUNCIL

M E M O R A N D U M

TO: Robert A. Stalzer
Deputy County Executive

FROM: Environmental Quality Advisory Council (Drafted by J. Craig Potter)

DATE: August 28, 2002 (Sent via e-mail)

SUBJECT: Air Quality Management/Fairfax County

BACKGROUND/DISCUSSION

In the 2000 Annual Report on the Environment ("ARE"), EQAC initiated a "big picture" analysis with related recommendations regarding air quality planning and management capabilities and needs in Fairfax County. The ARE conclusions followed the discussion of a series of inter-related problems (summarized below) that have combined to make the air quality management situation extremely difficult in Fairfax County. EQAC concluded the 2000 ARE by recommending that the County take steps to integrate air quality planning needs directly into the County planning process, possibly through the establishment within the County of its own air quality planning capability. In response to this recommendation and the other related recommendations, staff largely agreed with the recommendations of EQAC, but also recommended that in the meanwhile EQAC might ... "wish to better define or identify areas where it feels attention needs to be directed." This latter point and some of the other staff responses were clearly made in recognition of the fact that the process of establishing a new planning position might take some time and that in the meanwhile EQAC might be able to help refine the nature of the problems and perhaps also the solutions.

The inter-related problems that were summarized in the 2000 ARE included (1) ongoing litigation over transport of nitrogen oxides (NO_x); (2) the then-pending challenge to the newly promulgated ozone eight-hour standard; (3) the difficulties and shortcomings associated with Phase II Attainment Planning (rate of progress planning) for Northern Virginia; (4) the complexities associated with SIP planning in Northern Virginia, and; (5) the increasing likelihood of difficulties associated with need for conformity analysis associated with transportation planning and construction in Northern Virginia.

Subsequently, in the 2001 ARE, the same issues were discussed with somewhat more urgency since the Supreme Court subsequently rejected industry petitions on the NO_x SIP call and had also rejected challenges to the new ozone eight-hour standard. The 2001 ARE went on to describe the continuing difficulties with Phase II Attainment Planning, the failure of EPA to complete its mobile 6 air quality model in a timely manner, and the increasing likelihood of problems associated with conformity. Finally, the 2001 ARE made special note of the pending Sierra Club (Earth Justice Legal Defense Fund) law suit filed against EPA seeking the rejection

of the approved extension for the Washington Metropolitan area attainment deadline. This last law suit, in particular, substantially heightened EQAC's concerns about the situation and led to our reiteration of the essential recommendation in the 2000 ARE that the County takes steps as soon as possible to integrate air quality planning through the establishment of air quality planning capability in the County. Now that the D.C Court of Appeals has rejected the extension of the nonattainment deadline and sustained the arguments of the Sierra Club, the situation has become even more dire.

The essential thrust of the key recommendation of EQAC throughout this time has been that the County must develop its own capability to systematically evaluate air quality compliance needs and address them more directly within the context of the many air-quality-related management activities that are directly managed through the operations of the County under the auspices and guidance of the Board of Supervisors. Further, EQAC recommended and continues to support the notion that the County, perhaps through the Environmental Coordinating Committee ("ECC") or other appropriate County entities, including EQAC, heighten its focus on air quality planning needs, whether or not additional staffing occurred.

Again, the staff responses to these air quality management recommendations have been largely supportive, while recognizing, as before, that establishing a direct air quality planning capability in the County might take some time. Meanwhile, EQAC has begun to study the relationship between land use, transportation, and air quality matters in a more deliberative manner at the same time that staff clearly continues to acknowledge that County efforts with respect to regional air quality planning falls short of the level of effort that is needed.

No matter what happens, EQAC is prepared to move forward within its limited venue to continue to address these issues in any way that it possibly can in cooperation with other entities in the County that might be able to be helpful. As a result, EQAC has scheduled a meeting with the Planning Commission Environment Committee and the Transportation Advisory Commission ("TAC") on September 11, 2002. EQAC anticipates that this meeting will be the beginning of a limited effort to discuss and focus County needs as they relate to air quality management and planning.

We anticipate that, as a result of this meeting, we will begin to develop more insight into where the Planning Commission is on these issues and how they are currently addressing needs associated with these matters. We also anticipate that at the same time we will have discussions with the TAC on related activities that they are undertaking that may be helpful. Meanwhile, the nature of the planning crisis continues to escalate.

RECOMMENDATION

Even assuming the most successful outcome from the September 11 meeting, EQAC continues to recommend that the ECC, through the efforts of Mr. Stalzer and other of its key members, take all possible steps to create a senior staff position so that air quality planning can be integrated more directly into the County planning process, as we have suggested. EQAC remains available to discuss and coordinate the thrust of this effort so that it is accomplished in a fiscally responsible manner and in a manner that will fulfill the needs of the County as they relate to this problem. In order to initiate this in the most satisfactory fashion, EQAC believes

that the County should hire at least one air quality planner (and possibly two) with sufficient staff support to do the job. We cannot overemphasize the need to carefully focus the search on a person or persons with qualifications necessary to do the job. With that in mind, we have attached a job description that we think may help to define County planning needs as they relate to this problem.

JOB DESCRIPTION

Recommended Experience

- Senior air quality management capability including, if possible, Federal air quality management experience. Specific experience should include detailed knowledge about and if possible experience with Federal air quality programs and particularly with SIP management needs in the states and regions. Direct experience with non-attainment program management is also critical, including detailed knowledge regarding the stationary air quality management program of the U.S. EPA.
- Familiarity with ozone formation and atmospheric chemistry with particular emphasis on ground level ozone transport. This includes knowledge of precursor air quality chemistry and especially air quality modeling.
- Ability to work with people in politically charged and sensitive situations. This includes not only the ability to absorb and analyze complex scientific and regulatory details but also the ability to persuasively interpret and accurately summarize those materials for decision-makers who may not be as technically proficient.
- Familiarity with County and local government structure and operations, preferably in Fairfax County.

Whoever staffs this position will need to have appropriate access to the Board of Supervisors and other entities within the County who make decisions relating to air quality management. It goes without saying that this position will be of little benefit if appropriate lines of authority and responsibility are not created to actually integrate the work of this planner into the many activities of the County that bear on these issues. Most important, this staff position should carry with it the responsibility of representing the County and assisting elected officials and others who are involved in interactions with COG and with the Commonwealth of Virginia as well as with the State of Maryland.

FOLLOW-UP NECESSARY

In order to maximize the likelihood of success of this initiative, it would be advisable to consider what steps, if any, will need to be taken to actually integrate planning capabilities into the Fairfax County system. What this means is that there needs to be recognition that planning capability will mean nothing unless the results of that capability can be adequately integrated into County activities. Merely hiring a County planner will not solve the problems that the County is now facing in this area. It will be essential that the planner be empowered and supported in his or her efforts to use his or her expertise in a way that facilitates the development

goals of the County but also accomplishes air quality management needs, which may sometimes run counter to those goals and objective. Along with the creation of this position should be the recognition that land use management issues and transportation management issues in particular will need to be managed in a manner that is more consistent with air quality management objectives.

JCP/jm