APPENDIX B
EQAC RESOLUTIONS AND POSITIONS NOVEMBER 2013 THROUGH OCTOBER 2014

Date Adopted	Resolution/Position	Page
November 13, 2013	Memorandum to the Board of Supervisors providing EQAC's comments on the Countywide Dialogue on Transportation (memorandum dated December 6, 2013)	B-2
March 12, 2014	Testimony on the FY 2015 Fairfax County budget (testimony presented on April 9, 2014)	B-5
June 11, 2014:	Funding of Environmental Improvement Program projects (memorandum dated June 19, 2014)	B-6
July 9, 2014:	EQAC position on the potential for hydraulic fracturing in the George Washington National Forest (memorandum dated July 14, 2014)	B-11
July 9, 2014:	Legislative proposal regarding disposable bags	B-15
August 13, 2014:	EQAC position on Noise Ordinance modification proposal (memorandum dated August 15, 2014)	B-17

Due to formatting, the resolutions and positions may not appear precisely as they were originally transmitted.

County of Fairfax, Virginia

MEMORANDUM

DATE: December 6, 2013

TO: Board of Supervisors

FROM: Stella Koch, Chairman
Environmental Quality Advisory Council

George Lamb, At-Large member
Environmental Quality Advisory Council

SUBJECT: EQAC comments on the Countywide Dialogue on Transportation

The Fairfax County Department of Transportation recently briefed EQAC on the process and the information provided to the public regarding the identification and prioritization of transportation projects for funding. We are writing to provide you with our thoughts about this effort.

In the EQAC Annual Report on the Environment, we present Land Use and Transportation as an integrated section. Decisions in one area inherently affect the other, and the best overall decisions for the environment happen when they are considered together. As such, we suggest that transportation be considered in the context of strategic countywide directions. These include a focus on revitalization districts and multi-modal connectedness between districts and across the County, and the current Fairfax Forward planning methodology.

In our 2013 Annual Report on the Environment, we recommended the following:

> *This year the General Assembly passed legislation raising additional revenue for transportation. As the county enters a community dialogue to prioritize the allocation of these funds, EQAC recommends that the county provide priority for non-motorized/multi-modal transportation options. The county has been developing a comprehensive bicycle master plan that is ready for implementation. This complements requirements for pedestrian facilities in mixed-use centers. Proper implementation of the non-motorized/multi-modal master plan needs to include:*
>
> - *Implementation of the bicycle master plan. Bicycle paths provide healthy and effective options to move about the county and between connected destinations.*

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- *Expanded bicycle parking guidelines modeled on successful programs such as the new secure bicycle parking facilities at Silver Line stations and other county park-and-ride/transit facilities.*
- *Funding for implementation of both capital and non-capital elements of the county's bicycle master plan.*
- *Implementation of an outreach and education program for encouraging/promoting bicycling as a transportation mode. This could be called "Bike Fairfax!"*
- *Engagement of the private sector. One example of this can be seen in New York City, where CitiBank underwrites 100 percent of the cost of a bikeshare program. This could work today in several suburban and transit centers.*

EQAC commends the Department of Transportation for its outreach efforts. However, we are writing you today because we are concerned that the information provided during the outreach was unclear in the extent to which the integration with land use goals has been considered and the extent to which benefit/cost assessment results have considered this integration.

In reviewing the list of proposed transportation projects, we feel that several related and additional points should be addressed:

- Projects identified on the "Fairfax County Unfunded Transportation Projects" list have an associated benefit/cost ratio identified on the list. This is informative, but we learned that the formulas used to generate the cost benefit differ between modes. As such, the benefit/cost ratios for a road project and a pedestrian or bicycle project cannot be compared. They can only be used to analyze projects in the same category, not with projects in other categories. While we understand that it is FCDOT's intent to only compare the benefit/cost ratios of projects within categories and not between categories, we feel that the presentation is highly misleading and the benefit/cost ratio information should be listed in separate columns for different categories of projects.

- Road projects are considerably more expensive than other multi-modal projects on the list. There should be consideration given to the relative importance of each mode as part of the total solution, not taken as isolated projects. The total cost to implement Phase I of the Countywide Bicycle Master Plan, for example, would be much less than the estimated costs of many of the road projects on the list, and it is possible that this may hold true for Phase II as well. We feel that some proportion of the new transportation funding should be dedicated to non-road projects.

- Interconnectedness to transit areas and mixed-use centers needs to be emphasized as a priority. There should be more focus on how a project enhances the value of the Comprehensive Plan, and less focus on the individual projects.

- The projects do not include an initial assessment of ecological value or impact. We understand that a formal impact analysis is required once the plans moved into detailed assessment. However the ecological impact should be considered as an initial criterion to aid the public in this dialogue.

We appreciate applaud the dialogue process. The County has evolved an inclusive and thoughtful process for adopting changes and building towards the future. We hope that the selected projects complement the strategic vision and improve the total quality of life for County residents.

We hope that you find these comments helpful and we stand ready to address any questions you or County staff may have.

cc: Edward L. Long, Jr., County Executive
Robert A. Stalzer, Deputy County Executive
David J. Molchany, Deputy County Executive
Thomas P. Biesiadny, Director, Department of Transportation
EQAC file, November 2013

FY 2015 Fairfax County budget
Testimony from the Environmental Quality Advisory Council—Stella Koch, Chairman
April 9, 2014

My name is Stella Koch and I am speaking on behalf of the Fairfax County Environmental Quality Advisory Council.

EQAC thanks the board for its continued strong support of environmental programs. We understand that although budget constraints lessened again this year they continue to impact all programs within the county.

EQAC asks that you continue to support the environmental programs you have established. These programs are important if we are to maintain the high quality of life we have in Fairfax County and the high standards we have set for ourselves. We note that, for Fairfax County residents, quality of life is not just about good schools and jobs but also about having a clean and healthy environment in which to live and recreate.

EQAC's priority recommendations this year focus on the need for continuing long- term financial support to sustain these environmental programs:

1. EQAC supports continued efforts by Fairfax County to adequately fund and implement its ongoing stormwater program, which includes dam maintenance, infrastructure replacement, watershed restoration and educational stewardship programs. EQAC realizes the funding for the stormwater program will come entirely from funds generated through the Stormwater Service District rates.

   Therefore EQAC supports the Stormwater Service District rate increase in FY 2015 by at least one-quarter penny, from a rate of 2.0 cents per $100 assessed real estate value to 2.25 cents per $100. As we have noted in our Annual Report, EQAC understands that this increase would not fully meet stormwater management needs and therefore suggests that additional increases be continued each fiscal year until adequate funding to support the program is achieved. This would, once again, result in more funding for modest watershed improvement programs and a somewhat more realistic infrastructure replacement timeline.

2. EQAC recommends **support of funding for the Environmental Improvement Program for the upcoming fiscal year.** This year's advertised budget identifies a total of $535,000 for a variety of non-stormwater programs, including continuation of the Invasive Plant Removal Program, Energy Action Fairfax, energy-efficient lighting retrofits and upgrades at county park facilities, water-conserving web-based irrigation controllers at park facilities and other county sustainability initiatives. We note that these EIP projects were identified through a rigorous competitive project selection process and feel that their funding is necessary to support the Environmental Agenda adopted by the board for this county.

Thank you for your time today.

Stella Koch
Virginia Conservation Associate
Audubon Naturalist Society
703-628-6983

County of Fairfax, Virginia

MEMORANDUM

DATE: June 19, 2014

TO: Board of Supervisors

FROM: Stella Koch, Chairman
Environmental Quality Advisory Council

SUBJECT: Funding of Environmental Improvement Program projects

At its meeting on June 11, 2014, the Environmental Quality Advisory Council approved, by a unanimous vote of members present, this memorandum regarding the provision of funding for the environmental initiatives identified in the *FY 2015 Advertised Budget Plan*. This action followed a similar unanimous vote at the May 14, 2014 EQAC meeting supporting the general principles addressed in this memo.

In adopting the FY 2015 budget for the county, the Board of Supervisors chose to not fund $535,000 for several environmental initiatives that had been proposed for funding in the *FY 2015 Advertised Budget Plan* (see Attachment 1). These projects would support the board's Environmental Agenda and had been identified through a rigorous Environmental Impact Program (EIP) project selection process. EQAC is asking the board to restore funding for these projects through its FY 2014 Carryover budget process, as they are not funded through any other part of the budget.

While some of the EIP projects in question would be stand-alone projects, the proposed funding would also be used to provide support for on-going programs. Some of the EIP projects, if implemented, would show effective cost savings. In one case in particular, the Invasive Management Area Program, the money would be highly leveraged and provide cost savings for the Fairfax County Park Authority—we have attached information about this program that was provided to us, upon our request, by the Fairfax County Park Authority (see Attachment 2). A year of not funding this volunteer program not only slows progress, it creates an opportunity for regrowth of invasive species and subsequently sets the program back more than just this missed year.

We thank the board for its on-going support for our environment in Fairfax County.

Attachments: As Stated

cc: Edward L. Long, Jr., County Executive
David J. Molchany, Deputy County Executive
EQAC file, June 2014

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Summary of environmental initiatives that had been included in the
FY 2015 Advertised Budget Plan

♦ An amount of $150,000 was included to continue the Invasive Plant Removal Program. The Park Authority has managed this volunteer program, as well as other invasive removal initiatives. These programs have restored hundreds of acres of important natural areas, protected tree canopy, and reached thousands of volunteers. More than 7,700 trained volunteer leaders have contributed 26,000 hours of service since the Program's inception in 2005, improving over 1,000 acres of parkland.

♦ An amount of $75,000 was included for Energy Education and Outreach initiatives. This program has been intended to increase the awareness of Fairfax County residents and businesses regarding their energy consumption and to encourage them to reduce consumption. Program objectives have included educating residents and businesses about home and workplace energy consumption, explaining the energy assessment (audit) process, and encouraging residents and businesses to undertake energy-savings measures.

♦ An amount of $10,000 was included for the Green Purchasing Program. This program was designed to support two interns to assist in clearly specifying environmental attributes during the county's procurement process. Fairfax County has a current inventory of more than 2,400 contracts and emphasizing environmental attributes such as recycling, energy efficiency, durability and reduced toxicity during the procurement process can contribute to the purchase of green products, creating fiscal and environmental savings.

♦ An amount of $30,000 was included for a Watershed Protection and Energy Conservation Matching Grant Program. This program was intended to promote community engagement around sustainability and conservation issues. Specifically, the Watershed Protection and Energy Conservation matching grant pilot program would have provided financial incentives to empower homeowners through their associations to implement on-the-ground sustainability projects. The initiative would have built on current programs that provide technical assistance, hands-on support, outreach and education to Fairfax County homeowners and residents. Projects would have improved water quality, reduced greenhouse gas emissions and conserved energy and water. The proposed program funding level would have supported printing and materials, matching grants of $300 - $2,500 up to $10,000 total for all grants and two seasonal paid interns to help run the program and conduct the community survey.

♦ An amount of $170,000 was included for lighting retrofits and upgrades at Fairfax County Park Authority facilities for energy efficiency and conservation. Lighting would have been upgraded to LED fixtures and lighting controls would have been installed to manage operating hours more efficiently. These energy saving retrofit replacements would have reduced approximately 80 percent of energy usage, improved lighting, reduced the Greenhouse gas inventory and contributed to the dark skies initiative.

♦ An amount of $92,000 was included to install Water Smart web-based irrigation controllers utilizing ET (Evapotranspiration) weather technology at 20 Park facilities that have existing

irrigation systems with the opportunity to reduce energy use, water consumption and reduce environmental impacts.

♦ An amount of $8,000 was included to install a Weather Station for efficient water usage at Greendale Golf Course. This system would have helped measure air temperature, relative humidity, barometric pressure, rainfall, and other weather indicators in order to modify watering requirements. It was estimated that installing this weather station could save 10 million gallons of water per year. Estimated cost savings of more than $50,000 per year.

Invasive Management Area (IMA) Program Information

At the request of EQAC, the Fairfax County Park Authority has furnished this information about the IMA program

Overview

- Over 32,200 volunteer hours have been spent restoring habitat since IMA's inception in 2005. In calendar year 2013, volunteers logged 5,472 hours for a total volunteer value of $121,150.
- Over 10,000 volunteers have participated. There are over 50 core volunteers that act as site leaders.
- 6,600 bags of invasive plants have been removed, plus numerous roll-off dumpsters. 5,000 native plants have been planted.
- Over 1,700 workdays have occurred.
- Over 2,500 acres of parkland have been treated for invasive species by staff and contractors since 2008.
- Many instances of stewardship/education of citizens on natural resource issues and thousands of annual contacts have occurred.
- The program supports the school curriculum, the Park Authority's Natural Resource Management Plan, county tree canopy goals, the Municipal Separate Storm Sewer System (MS4) permit and the county's comprehensive plan.
- A large portion of the volunteer base consists of Fairfax County Public School children who are performing their public service hours while being educated on invasive species and environmental issues.

Funding History:

- $100,000 from FY 2005 Carryover in support of the Environmental Agenda. $50,000 matching grant funding provided by National Fish and Wildlife Foundations' Small Watersheds Grant Program. $500 grant from the Corporate Community Relations Council.
- $300,000 additional funding from FY 2006 Carryover, in support of the Environmental Agenda.
- $150,000 funded in FY 2008 budget for environmental projects.

- $150,000 funded in the FY 2009 budget for environmental projects.

- No additional funding in FY 2010 and FY 2011.

- $70,000 funded in the FY 2012 budget for environmental projects. REI Community Grant for $10,000.

- $75,000 funded in the FY 2013 budget for environmental projects. REI Community Grant for $15,000.

- $100,000 funded in the FY 2014 budget for environmental projects. REI Community Grant for $10,000.

Funding supports equipment/materials, operations and maintenance, contracted herbicide treatments and seasonal staffing.

County of Fairfax, Virginia

MEMORANDUM

DATE: July 14, 2014

TO: Board of Supervisors

FROM: Stella Koch, Chairman
Environmental Quality Advisory Council

SUBJECT: EQAC position on the potential for hydraulic fracturing in the George Washington National Forest

Recommendation

At its meeting on May 14, 2014, the Environmental Quality Advisory Council approved, by a unanimous vote of members present (with three recusals), a recommendation that the Board of Supervisors join other localities in support of the proposed ban on horizontal drilling in the George Washington National Forest until environmental concerns are addressed. The members who recused themselves from the vote were: Robert McLaren (At-Large); Richard Weisman (Sully); and Larry Zaragoza (Mount Vernon). After further discussion, EQAC confirmed that position at its June 11 meeting by a unanimous vote of members present (please note that Robert McLaren and Richard Weisman were not present at that meeting). At its July 9 meeting, EQAC approved this letter to transmit this position to the board, again by a unanimous vote of members present, with Robert McLaren and Richard Weisman recusing themselves from the vote (please note that Larry Zaragoza was not present at the July meeting).

Brief Examination of Issues, Concerns and Suggestions

The U.S. Forest Service is in the process of revising its management plan for the George Washington National Forest. As part of that effort, the Forest Service is considering the extent to which, if any, horizontal drilling should be allowed within the national forest. Portions of the national forest are located above the Marcellus shale formation, which is a natural gas-bearing formation that extends from southern New York State to eastern Kentucky. Hydraulic fracturing or "fracking" is typically used in conjunction with horizontal drilling. Horizontal drilling and fracking would be needed to extract the natural gas from this formation. The Draft Forest Plan for the national forest would establish that horizontal drilling for gas or oil (which would include fracking) would not be allowed. The oil and gas industry has, however, recommended that this proposed ban be removed, arguing that extraction of natural gas can occur in a manner that would have minimal environmental impact. The Forest Service's proposed ban is being considered at this time.

The draft management plan and associated oil and gas decisions were subject to an Environmental Impact Statement, and the comment period for the draft plan and EIS closed in

2011. At this time, the Forest Service's Regional Forester is considering the fracking issue; it is uncertain when she will issue a report with a decision on this question. While no new comments are being accepted on the draft plan and EIS, the Forest Service will accept comments, outside of the official comment period, from any interested party.

The question of horizontal drilling and fracking in the George Washington National Forest is important to Fairfax County because a substantial portion of the national forest is located within the watershed of the Potomac River. Fairfax County relies on the Potomac River as its largest water supply resource, so the contamination of the Potomac would have a significant impact on Fairfax County residents, businesses and organizations.

At EQAC's May 14, 2014 meeting, the council heard from representatives from the American Petroleum Institute, Earthworks and Fairfax Water. Based on this discussion and its subsequent consideration of the horizontal drilling and fracking issue, EQAC members identified a series of concerns that they indicated should be addressed before horizontal drilling and fracking should be allowed within the national forest, or anywhere within the watersheds supplying water to the people of Fairfax County. The issues were discussed further at the June 11 EQAC meeting, with the assistance of the former Director of the Virginia Department of Mines, Minerals and Energy (participating in the discussion as an informed individual/resource and not representing DMME). Potential impacts being studied by United States Environmental Protection Agency (USEPA) and additional concerns raised by EQAC members are as follows:

Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources: The USEPA is engaged in a study to evaluate the following water supply issues.

- Water acquisition: What are the possible impacts to drinking water resources of large volumes of water withdrawals from ground and surface waters?
- Chemical mixing: What are the possible impacts to drinking water resources of hydraulic fracturing fluid surface spills on or near well pads?
- Well injection: What are the possible impacts to drinking water resources of the injection and fracturing process?
- Flowback and produced water: What are the possible impacts to drinking water resources of flowback and produced water (collectively referred to as "hydraulic fracturing wastewater") surface spills on or near well pads? (Note this is of particular concern to Fairfax County as discussed below)
- Wastewater treatment and waste disposal: What are the possible impacts to drinking water resources of inadequate treatment of hydraulic fracturing wastewater?

Additional EQAC Concerns:
In addition to the potential impacts being evaluated by USEPA, individual EQAC members raised these additional concerns:

- Financial Assurance: There is a need for site-specific financial assurance so that communities will be protected from the liability of cleanup of releases of contaminants. These financial assurances should be of magnitudes that are commensurate with the risks posed by facilities. Current law sets minimum

financial assurance amounts at levels that are inadequate to address spills, leaks and other pollution.

- Monitoring: In order to assess the impacts of horizontal drilling and fracking, baseline monitoring of the environment before fracking begins is critical. This baseline assessment must be complete and performed by a neutral party to ensure that the baseline information will be credible.
- Chemicals Used: The Virginia Department of Mines, Minerals and Energy (DMME) is in the process of updating Commonwealth regulations in order to ensure that the gas and oil regulation reflects current industry best practices. Disclosure of ingredients used in gas and oil well stimulation and completion on permitted gas and oil operations in the Commonwealth is being considered. On June 4, 2014, an EQAC member attended the first meeting of the DMME advisory panel addressing this issue. Disclosure of chemicals and contaminants that will be used in the horizontal drilling and hydraulic fracturing process is important to protecting the county's Potomac River drinking water source.
- Risk to Fairfax County's Water Supply: The USEPA study will assist in evaluating the risk of fracking. One such potential and debated risk is specific to the drinking water treatment processes used by Fairfax Water. Bromide has been identified in groundwater and surface water associated with fracking in Pennsylvania. The source of the bromide is contested. Fairfax Water uses ozone to assist in providing safe drinking water. Bromide when combined with ozone, forms bromate, a chemical that could impact the health of Fairfax County residents. While EQAC cannot resolve the debate on this and other issues, special caution is advised to protect Fairfax County's Potomac River drinking water source.

Other Considerations

Natural gas may play a key beneficial role in our nation's clean energy future. Fracking should provide these benefits only if it includes regulations that protect the environment and public health.

Risk Study Recommended

From the speakers who addressed fracking at our meeting on May 14, 2014 and further information gathered at the EQAC meeting on June 11, 2014, it is clear there is controversy over the potential impact of fracking on water supplies. EQAC is not able to resolve this controversy. Nevertheless, DMME's intended regulatory action and USEPA's on-going study indicates that careful evaluation before proceeding is the prudent course. Due to the importance of issues specific to Fairfax County, EQAC concludes that a risk study specifically addressing impacts to Fairfax County's drinking water is needed to find the correct path forward. Before drilling is allowed, risk analyses by state regulators, federal regulators or other neutral third party should be required that includes assessments of risks to downwater users and specifically to the Fairfax County's drinking water.

Join Other Localities

EQAC recommends that the Board of Supervisors join other localities in support of the proposed ban on horizontal drilling in the George Washington National Forest until the concerns identified above are addressed; that is, until a risk analysis of fracking specific to

Fairfax County's Potomac River drinking water source is conducted and reasonable protections for health and the environment are instated. If fracking is to provide the benefits that natural gas offers, it must be regulated and monitored to protect public health and the environment. EQAC further recommends that this position be communicated to the appropriate personnel in the Governor's Office, General Assembly, DMME, the U.S. Congress and the U.S. Forest Service. While the public comment period on the draft management plan for the forest and associated EIS has closed, the Forest Service will continue to accept comments on this matter outside the official comment process, and we expect that all comments will be considered carefully.

cc: Edward L. Long, Jr., County Executive
David J. Molchany, Deputy County Executive
EQAC file, July 2014

POSITION STATEMENT FORM

(Completed form to be provided to the Legislative Committee)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

REDUCING ENVIRONMENTAL CONTAMINATION FROM PLASTIC AND PAPER BAGS

PROPOSAL:

Support legislation to reduce the use of plastic disposable bags. If disposable bags are provided they should be paper with a high recycled content and with a nominal fee/deposit of a nominal amount, such as 5-10 cents. The use of reusable bags should be encouraged.

SOURCE:

Environmental Quality Advisory Council, July 2014

BACKGROUND:

Plastic bags do not completely degrade in the environment. They present a real threat to wildlife and aquatic organisms. In the open ocean, plastic bags break up into small pieces that resemble food that fish ingest. While plastic bags may be recycled or disposed of so that they are not released to the environment, many plastic bags end up in fields, streams, lakes, rivers and the oceans. Paper bags are disposable and are expected to pose fewer environmental risks. Paper bags in Fairfax County can be recycled or disposed of as trash, where they would be incinerated. Incinerated bags will release some carbon dioxide. Discarding paper bags after one use is also resource intensive in terms of trees and all of the efforts to harvest trees and manufacture the paper.

The goal should be to encourage the use of reusable bags. In order to discourage the use of single use throw away bags, a nominal deposit/fee should be required for each bag. The proposal is broad so that there may be support for legislation for statewide actions, as well as legislation authorizing localities to take certain actions to meet this goal.

In past legislative sessions, legislation aimed at reducing the use of plastic and/or paper bags has been introduced; however, these bills have either been tabled or left in the committees to which they were referred.

The Fairfax County Board of Supervisors' 2014 Legislative Program included the following position statement, which updated and reaffirmed a previous position: "Support legislation or other efforts which would encourage the use of reusable shopping bags, consistent with the County's waste reduction goals and environmental stewardship efforts. As in previous sessions, it is anticipated that legislation to ban plastic bags or impose a fee for their use may be introduced again in 2014. Such legislation would need to be examined by the County for efficacy, cost, and ease of administration." EQAC supports retention of this position statement in the 2015 Legislative Program.

RECOMMENDATION:
(*Do not fill out-- This will be indicated by the Legislative Director and County Executive)*

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

Support from environmental and civic organizations is expected for bills that encourage the reuse of bags, ban plastic bags or require deposits for disposable bags. Organizations such as The Alice Ferguson Foundation, Choose Clean Water Coalition, Clean Water Action, Institute for Local Self Reliance, Surfrider Foundation-DC Chapter and other cities and towns have also supported such legislation. We expect at least some retail establishments and consumer groups may oppose such legislation.

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

Noel Kaplan (EQAC staff liaison)
Environment and Development Review Branch
Fairfax County Department of Planning and Zoning
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County of Fairfax, Virginia

MEMORANDUM

DATE: August 15, 2014

TO: Board of Supervisors

FROM: Stella Koch, Chairman Stella M. Koch
Environmental Quality Advisory Council

SUBJECT: EQAC position on Noise Ordinance Modification Proposal

Recommendation

At its meeting on August 13, 2014, the Environmental Quality Advisory Council approved the following recommendation with respect to the proposed Noise Ordinance amendment:

- Specific sound pressure level limits should be included for outdoor construction during daytime hours.
- Specific sound pressure level limits should be included for lawn maintenance.
- An easily enforceable limit should be placed on pet noise

This recommendation was approved by a unanimous vote of the members present, with no abstentions or recusals. Voting in favor were: Larry Zaragoza (Vice Chairman, Mount Vernon); Linda Burchfiel (At-Large); Frank Crandall (Dranesville); George Lamb (At-Large); Robert McLaren (At-Large); David Smith (Braddock); Richard Weisman (Sully); Glen White (Mason); and Clyde Wilber (Springfield).

Brief examination of issues, concerns and suggestions

The Department of Planning and Zoning has developed a proposed amendment to the county's Noise Ordinance (Chapter 108.1 of the Fairfax county Code) in response to a Board of Supervisors' request. This proposal addresses many issues and would be a significant improvement over the existing ordinance. It would provide good protection from noise in the overnight hours while providing exceptions anytime for emergency needs. It also would retain a broad variance option to address conditions where compliance with the noise limits would produce serious hardship without producing equal or greater benefit to the public. However, EQAC is concerned about the extent to which the proposed amendment would relax the existing ordinance by providing additional exceptions to the ordinance during the daytime. People are impacted by noise in the daytime--in particular, shift workers who work at night and need to rest during the daytime exceptions period.

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In addition to emergency conditions, the existing ordinance allows the operation of power lawn mowers and chain saws between the hours of 7 a.m. and 9 p.m. Prior to 2013, the ordinance included a provision to prevent daytime noises that "constitute a noise disturbance." The provision regarding "constitute a noise disturbance" was deleted in December 2013. A broader provision was added as a new Article 6 of Chapter 5 of the County Code (addressing excessive noise), stating that *no person in any residential area or dwelling shall permit or cause sound that is audible and discernible in any other person's residential dwelling with the doors and windows to the other person's residential dwelling closed.* A recent court decision has called into question the legality of noise ordinances that do not provide "ascertainable standards." As a result, the proposed amendment relies on objective and/or quantitative numerical limits to meet the ascertainable standards test.

Under the modified ordinance as proposed, there would be no limitations on noise produced from lawn maintenance sources as long as the noise would be generated during the specified daytime period. In addition, all daytime noise restrictions would also be removed from construction activities, including repair, maintenance, remodeling or demolition, grading or other improvement of real property. The proposed provisions establishing total daytime exceptions for lawn maintenance and construction activities would be relaxations of the noise protections provided by the current ordinance.

It is EQAC's view that the establishment of daytime limits on construction and lawn maintenance activities at property boundaries at the levels proposed for other sources would be impractical. It is also EQAC's view that it is not appropriate to expect these activities to meet the noise restrictions generally applicable to other sources. However, having no limits is not acceptable.

It would be difficult to select a daytime limit for lawn maintenance and construction that would completely address the noise concerns of all potentially affected individuals. A modified ordinance could, for example, include limitations on lawn maintenance and construction at or near 75 dB at a distance of 50-200 feet from the source. 75 dB would typically be perceived at about three times the 60 dB noise level. There will be construction activities that will exceed such a criterion; however, the variance procedures provide a wide range of flexibility where required. Before adopting a specific noise level limit, it is recommended that the lawn equipment and construction industries be consulted.

Pet noise, and in particular barking dogs, can be a serious imposition on quality of life. Enforcement can be difficult. The following language is one possible approach that could be considered:

It shall be unlawful for any person who owns, possesses or harbors any animal or bird to allow that animal or bird to create an unprovoked frequent or unprovoked continued noise disturbance that is audible at least once per minute for twenty (20) consecutive minutes within any dwelling unit, house or apartment of another person, at any street edge, or across a real property boundary or within a nearby dwelling unit.

cc: Edward L. Long, Jr., County Executive
David J. Molchany, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning
EQAC file, August 2014