

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
JUNE 7, 2011**

ADMINISTRATIVE ITEMS

(continued)

- 9 **Approved** Authorization to Advertise a Public Hearing to Consider the Adoption of Article 27, Chapter 4, of the Fairfax County Code to Establish a Local Tax Exemption Program to Allow a Transfer in Title for Previously Exempted Affordable Housing Providers

ACTION ITEMS

- 1 **Approved** Approval of Revisions to Chapter 10 of the Personnel Regulations Eliminating the Fire and Rescue Department Sick Leave Bank
- 2 **Approved** Approval of Revisions to Chapters 9, 16, and 17 of the Personnel Regulations Updating Exempt Status Definitions and Clarifying Policy Related to Employee Participation in Political Activities
- 3 **Approved** Approval of the Sale of Fairfax County Economic Development Authority Revenue Bonds (Wiehle Avenue Metrorail Station Parking Project)
- 4 **Approved** Approval of the Revised SmarTrip Operations Funding Agreement for the Regional SmarTrip Program
- 5 **Approved** Endorsement of a Break in the Fairfax County Parkway (Route 7100) Limited Access Right-of-Way to Support the Establishment of an Entrance to the National Museum of the U.S. Army on Fort Belvoir (Mount Vernon District)
- 6 **Approved** Reston-Wiehle Avenue Metrorail Station Roadway Improvements (Hunter Mill District)

CONSIDERATION ITEM

- 1 **Supervisor Hyland - Delegate
Supervisor Gross – Alternate** National Association of Counties' Annual Conference

INFORMATION ITEMS

- 1 **Noted** Minor Schedule Changes to FAIRFAX CONNECTOR Routes to be Implemented in June 2011
- 2 **Noted** Contract Award – Pohick Stream Valley Trail, Burke VRE Trail (Braddock District)

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
JUNE 7, 2011**

**INFORMATION
ITEMS**

(continued)

3	Noted	Contract Award – Seven Corners Transit Center (Mason District)
4	Noted	Planning Commission Action on Application 2232-D10-24, Fairfax County Department of Public Works and Environmental Services (Dranesville District)
10:45	Done	Matters Presented by Board Members
11:35	Done	Closed Session

PUBLIC HEARINGS

3:00	Approved	Public Hearing on SE 2008-MA-011 (Washington Baptist University, Inc.) (Mason District)
3:00	Approved	Public Hearing on RZ 2010-LE-013 (WPPI Springfield HS, LLC) (Lee District)
3:30	Approved	Public Hearing on RZ 2011-SU-003 (Lylab Holdings, LLC) (Sully District)
3:30	Approved	Public Hearing on RZ 2010-SU-015 (Lylab Holdings, LLC) (Sully District)
3:30	Approved	Public Hearing on PCA 92-P-001-07 (Cityline Partners LLC) (Providence District)
3:30	Approved	Public Hearing on SE 2010-PR-023 (Cityline Partners LLC) (Providence District)
3:30	Approved	Public Hearing on RZ 2010-LE-020 (FB Property, LLC (A Virginia Limited Liability Company)) (Lee District)
3:30	Approved (3-1-2; 3-1-19; 3-1-24) Deferred decision (3-2-24; 3-3-57)	Public Hearing on Proposed Revisions to Sections 3-1-2, 3-1-19, 3-1-24, 3-2-57, and 3-3-57 of Chapter 3 of The Code of Fairfax County
4:00	Deferred decision to 6/21/11 at 3:30 p.m. Record held open	Public Hearing to Consider Proposed Amendments to the Public Facilities Manual Re: Design of Public Streets and Sidewalks
4:00	Approved	Public Hearing on a Proposed Amendment to the Public Facilities Manual (PFM) RE: Editorial and Formatting Changes, Elimination of Metric System Units and Plates, and a PFM Reprint

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
JUNE 7, 2011**

**PUBLIC HEARING
ITEMS**

(continued)

- | | | |
|------|--|---|
| 4:00 | Approved | Public Hearing on Adoption of a New County Soils Map and Proposed Amendments to Chapter 107 (Problem Soils) of The Code of the County of Fairfax and the Public Facilities Manual
Re: New Soil Survey |
| 4:30 | Public hearing to be deferred to 6/21/11 at 5:00 p.m. | Public Hearing on Proposed Plan Amendment ST11-IV-LP1, Village of Accotink, Located on Richmond Highway (U.S. Route 1) at the Juncture of Backlick Road, East of Fairfax County Parkway (Mount Vernon District) |



Fairfax County, Virginia
BOARD OF SUPERVISORS
AGENDA

Tuesday
June 7, 2011

9:00 a.m.

Presentation of the Colors by the Army Continental Color Guard and an element of the Old Guard Fife and Drum Corps.

PRESENTATIONS

DESIGNATIONS

- PROCLAMATION – To designate June 12-18, 2011, as Army Strong Week in Fairfax County. Requested by Chairman Bulova.

LORD AND LADY FAIRFAX HONOREES

- CERTIFICATE – To recognize the 2011 Lord and Lady Fairfax honorees. Requested by Chairman Bulova.

RECOGNITIONS

- RESOLUTION – To recognize the Fairfax County Police Department for its participation for more than 25 years in the Special Olympics Law Enforcement Torch Run. Requested by Chairman Bulova.

— more —

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SPORTS/SCHOOLS

- CERTIFICATE – To recognize the Langley High School Girls Swim Team for winning the 2011 Virginia AAA state championship. Requested by Supervisor Foust.
- RESOLUTION – To recognize Frank Bensinger, principal of Forest Edge Elementary School, for his years of service to Fairfax County. Requested by Supervisor Hudgins.
- RESOLUTION – To recognize Maureen Marshall, principal of Garfield Elementary School, for her years of service to Fairfax County. Requested by Supervisor McKay.

STAFF:

Merni Fitzgerald, Director, Office of Public Affairs
Bill Miller, Office of Public Affairs

Board Agenda Item
June 7, 2011

10:30 a.m.

Items Presented by the County Executive

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Board Agenda Item
June 7, 2011

ADMINISTRATIVE – 1

Extension of Review Period for 2232 Review Application (Mason District)

ISSUE:

Extension of the review periods for specific 2232 Review applications to ensure compliance with the review requirements of *Section 15.2-2232* of the *Code of Virginia*.

RECOMMENDATION:

The County Executive recommends that the Board extend the review period for the following application: application FS-M11-12 to August 19, 2011.

TIMING:

Board action is required on June 7, 2011, to extend the review period of the application noted above before the expiration date.

BACKGROUND:

Subsection B of *Section 15.2-2232* of the *Code of Virginia* states: "Failure of the commission to act within sixty days of a submission, unless the time is extended by the governing body, shall be deemed approval." Subsection F of *Section 15.2-2232* of the *Code of Virginia* states: "Failure of the commission to act on any such application for a telecommunications facility under subsection A submitted on or after July 1, 1998, within ninety days of such submission shall be deemed approval of the application by the commission unless the governing body has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The governing body may extend the time required for action by the local commission by no more than sixty additional days."

The Board should extend the review period for application FS-M11-12 which was accepted for review by the Department of Planning and Zoning March 22, 2011. This application is for a telecommunication facility, and thus subject to the State Code provision that the Board may extend the time required for the Planning Commission to act on this application by no more than sixty additional days.

The review period for the following application should be extended:

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FS-M11-12 Fibertower
 Antenna collocation on existing monopole
 6621 Columbia Pike (Mason District Park)
 Mason District

The need for the full time of this extension may not be necessary, and is not intended to set a date for final action.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

None

STAFF:

Robert A. Stalzer, Deputy County Executive
Fred R. Selden, Acting Director, Department of Planning and Zoning (DPZ)
Chris B. Caperton, Chief, Facilities Planning Branch, Planning Division, DPZ
Sandi M. Beaulieu, Planner, Facilities Planning Branch, Planning Division, DPZ

Board Agenda Item
June 7, 2011

ADMINISTRATIVE – 2

Streets into the Secondary System (Hunter Mill, Lee and Providence Districts)

ISSUE:

Board approval of streets to be accepted into the State Secondary System.

RECOMMENDATION:

The County Executive recommends that the street(s) listed below be added to the State Secondary System.

<u>Subdivision</u>	<u>District</u>	<u>Street</u>
Crippens Corner Section 5 and Lots 177-178	Hunter Mill	Gatesmeadow Way (Route 8060)
		Aldbury Way (Route 8061)
		Hunter Gate Way (Route 10450)
		Tunwell Stable Court
Windsor Knoll	Lee	Windsor Avenue (Route 1377) (Additional Right-of-Way (ROW) Only)
Windsong South Addition	Providence	Ariana Drive (Route 10202)

TIMING:

Routine.

BACKGROUND:

Inspection has been made of these streets, and they are recommended for acceptance into the State Secondary System.

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FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1 – Street Acceptance Forms

STAFF:
Robert A. Stalzer, Deputy County Executive
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)
Michelle Brickner, Deputy Director, DPWES, Land Development Services

Street Acceptance Form For Board Of Supervisors Resolution - June 2005

<p>FAIRFAX COUNTY BOARD OF SUPERVISORS FAIRFAX, VA</p> <p>Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.</p>	<p>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE PERMITS MANAGER, FAIRFAX, VIRGINIA</p> <p>REQUEST TO THE PERMITS MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.</p>
<p>PLAN NUMBER: 9005-SD-04</p>	
<p>SUBDIVISION PLAT NAME: Crippens Corner Section 5 and Lots 177-178</p>	
<p>COUNTY MAGISTERIAL DISTRICT: Hunter Mill</p>	

FOR OFFICIAL USE ONLY

PERMITS MANAGER: _____

DATE OF VDOT INSPECTION APPROVAL: 03/18/2011

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Gatesmeadow Way (Route 8060)	Existing Gatesmeadow Way (Route 8060) - 149' N CL Hunter Gate Way (Route 10450)	546' NE to End of Cul-de-Sac	0.10
Aldbury Way (Route 8061)	Existing Aldbury Way (Route 8061) - 127' NW CL Aldbury Court (Route 8503)	130' NW to CL Hunter Gate Way	0.02
Hunter Gate Way (Route 10450)	Existing Hunter Gate Way (Route 10450) - 131' W CL Gatesmeadow Way (Route 8060)	1,905' W to End of Cul-de-Sac	0.36
Tunwell Stable Court	CL Hunter Gate Way (Route 10450) - 868' W CL Aldbury Way (Route 8061)	551' S to End of Cul-de-Sac	0.10
TOTALS:			0.58

NOTES:

Gatesmeadow Way: 527' of 4' Concrete Sidewalk on East Side to be maintained by VDOT.

Aldbury Way: 110' of 4' Concrete Sidewalk on East Side to be maintained by VDOT.

Hunter Gate Way: 1,850' of 4' Concrete Sidewalk on South Side to be maintained by VDOT.

Tunwell Stable Court: 317' of 4' Concrete Sidewalk on East Side to be maintained by VDOT.

Street Acceptance Form For Board Of Supervisors Resolution - June 2005

<p>FAIRFAX COUNTY BOARD OF SUPERVISORS FAIRFAX, VA</p> <p>Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.</p> <p>PERMITS MANAGER: BY: <i>Nadia Aghajani</i></p>	<p>VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE PERMITS MANAGER, FAIRFAX, VIRGINIA</p> <p>REQUEST TO THE PERMITS MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.</p> <p>PLAN NUMBER: 4388-5D-001</p> <p>SUBDIVISION PLAT NAME: Windsor Knoll</p> <p>COUNTY MAGISTERIAL DISTRICT: Lee District</p> <p style="text-align: center;">FOR OFFICIAL USE ONLY</p> <p>DATE OF VDOT INSPECTION APPROVAL: 03/24/2011</p>
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STREET NAME	LOCATION		MILE LENGTH
	FROM	TO	
Windsor Avenue (Route 1377) (Additional Right-of-Way Only)	92' NW CL Beulah Street (Route 613)	409' NW to Section Line	0.0
NOTES:			TOTALS:
325' of 5' Concrete Sidewalk on West Side to be maintained by VDOT.			0.0

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Board Agenda Item
June 7, 2011

ADMINISTRATIVE - 3

Approval of “Watch for Children” Signs as Part of the Residential Traffic Administration Program (Hunter Mill and Mount Vernon Districts)

ISSUE:

Board endorsement of “Watch for Children” signs, as part of the Residential Traffic Administration Program (RTAP).

RECOMMENDATION:

The County Executive recommends the Board approve a resolution (Attachment I) for the installation of “Watch for Children” signs on the following roads:

- Myterra Way (Hunter Mill District)
- Donegal Lane (Mount Vernon District)

In addition, the County Executive recommends that the Fairfax County Department of Transportation (FCDOT) be requested to coordinate with the Virginia Department of Transportation (VDOT) to schedule the installation of the approved measures as soon as possible.

TIMING:

Board action is requested on June 7, 2011.

BACKGROUND:

The RTAP allows for installation of “Watch for Children” signs at the primary entrance to residential neighborhoods, or at a location with an extremely high concentration of children relative to the area, such as playgrounds, day care centers, or community centers. In particular, Section 33.1-210.2 of the *Code of Virginia* provides that the Board may request, by resolution to the Commissioner of VDOT, signs alerting motorists that children may be at play nearby. FCDOT reviews each request to ensure the proposed sign will be effectively located and will not be in conflict with any other traffic control devices. On April 15, 2011, FCDOT received written verification from the appropriate local supervisors confirming community support for the referenced “Watch for Children” signs.

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FISCAL IMPACT:

The estimated cost of \$500.00 is to be paid out of the VDOT secondary road construction budget.

ENCLOSED DOCUMENTS:

Attachment I: Board Resolution for a "Watch for Children" Signs

STAFF:

Robert A. Stalzer, Deputy County Executive

Tom Biesiadny, Acting Director, Fairfax County Department of Transportation (FCDOT)

Eric M. Teitelman, Chief, Capital Projects and Operations Division, FCDOT

Selby J. Thannikary, Chief, Traffic Operations Section, FCDOT

William P. Harrell, Transportation Planner, FCDOT

RESOLUTION

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)
WATCH FOR CHILDREN SIGNS
Myterra Way (Hunter Mill District)
Donegal Lane (Mount Vernon District)

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia on Tuesday, June 7, 2011, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, "Watch for Children" signs are available to local communities as part of the Fairfax County Department of Transportation Residential Traffic Administration Program (RTAP); and

WHEREAS, Section 33.1-210.2, of the *Code of Virginia*, enables the Board of Supervisors to request by resolution to the Commissioner of the Virginia Department of Transportation, signs alerting motorists that children may be at play nearby; and

WHEREAS, the Virginia Department of Transportation has indicated a willingness to install "Watch for Children" signs on the above-referenced streets;

NOW THEREFORE BE IT RESOLVED, that "Watch for Children" signs are endorsed for these streets;

AND FURTHER, the Virginia Department of Transportation is requested to install the "Watch for Children" signs at the earliest possible date, and to maintain same, with the cost of such signs to be funded from the Virginia Department of Transportation's countywide traffic services fund in the Fairfax County secondary road construction budget.

A Copy Teste:

Nancy Vehrs
Clerk to the Board of Supervisors

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Board Agenda Item
June 7, 2011

ADMINISTRATIVE - 4

Authorization for the Fairfax County Police Department to Apply for and Accept Grant Funding from the Office of Justice Programs Edward Byrne Memorial Justice Assistance Grant

ISSUE:

Board approval for the Fairfax County Police Department (FCPD) to apply for and accept funding, if received, from the Office of Justice Programs (OJP) Edward Byrne Memorial Justice Assistance Grant in the amount of \$120,472. Funding in the amount of \$120,472 will be used to support a George Mason University (GMU) research project within the Fairfax County Police Department (FCPD) studying evidence-based domestic violence policing. No Local Cash Match is required. The grant period for this award is October 1, 2011 through September 30, 2013. If the actual award received is significantly different from the application amount, another item will be submitted to the Board requesting appropriation of grant funds. Otherwise, staff will process the award administratively as per Board policy.

RECOMMENDATION:

The County Executive recommends that the Board authorize the FCPD to apply for and accept funding, if received, from the OJP Edward Byrne Memorial Justice Assistance Grant. Funding in the amount of \$120,472 will be used to support a two-year GMU research project within the Fairfax County Police Department studying evidence-based domestic violence policing.

TIMING:

Due to an April 21, 2011 application submission deadline, the application was submitted pending Board approval. If the Board does not approve this request, the application will be immediately withdrawn.

BACKGROUND:

Under the direction of George Mason University's Center for Evidence-Based Crime Policy (CEBCP), the FCPD proposes to participate in a two year, coordinated demonstration project of the *Evidence-Based Policing Matrix*[®] with five other police agencies. The Matrix is a freely accessible online tool designed by GMU personnel that visually organizes and summarizes all moderately to rigorous evaluations of policing strategies and tactics. The Matrix Demonstration Project seeks to develop knowledge and best practices on institutionalizing evidence-based policing, including altering infrastructure and culture to incorporate the consistent use of, and receptivity towards, research evidence. The GMU

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Matrix Demonstration Team will develop free toolkits and resources including learning modules, video and web-based guides and tools, sample operational procedures, and policies related to policing domestic violence situations for distribution to the law enforcement community through the Bureau of Justice Assistance.

Under the guidance of the GMU Matrix Demonstration Team and through their larger demonstration project, the FCPD is requesting funding to support a full graduate research assistant program for a GMU doctoral-level student who will be embedded directly into FCPD and to support all other related costs of the project. This individual will provide the constant and direct support FCPD needs with regards to research on domestic violence and provide access to knowledge and analytic support to facilitate the multiple objectives of the greater project. This researcher will be supervised by the GMU Matrix Team and will assist them in recording the efforts for the broader demonstration project and measuring outcomes, such as victim satisfaction surveys, of new approaches. To support the placement of this graduate research assistantship and all other related costs of the research effort, the FCPD is requesting funding in the total amount of \$120,472 over a two-year grant period.

FISCAL IMPACT:

Grant funding in the amount of \$120,472 has been requested from the OJP Edward Byrne Memorial Justice Assistance Grant. Funding in the amount of \$120,472 will be used to support a GMU research project within the FCPD studying evidence-based domestic violence policing. No Local Cash Match is required. This action does not increase the expenditure level in Fund 102, Federal/State Grant Fund, as funds are held in reserve for unanticipated grant awards in FY 2012. This grant does not allow the recovery of indirect costs.

CREATION OF NEW POSITIONS:

No positions will be created by this grant award.

ENCLOSED DOCUMENTS:

Attachment 1: Grant Application, Excerpt
Attachment 2: Budget Worksheet

STAFF:

Robert A. Stalzer, Deputy County Executive
Colonel David M. Rohrer, Chief of Police
Karen Gibbons, Senior Assistant County Attorney



Grant Application Package

Opportunity Title:	BJA FY 11 Smart Policing Initiative
Offering Agency:	Bureau of Justice Assistance
CFDA Number:	16.738
CFDA Description:	Edward Byrne Memorial Justice Assistance Grant Program
Opportunity Number:	BJA-2011-2942
Competition ID:	BJA-2011-2945
Opportunity Open Date:	02/23/2011
Opportunity Close Date:	04/21/2011
Agency Contact:	For assistance with any other requirement of this solicitation, contact the BJA Justice Information Center at 87X 92X 5657 or via email to JIC@telesishq.com. The BJA Justice Information Center hours of operation are 8:30 a.m. to 5:00 p.m. eastern time, Monday through Friday, and 8:30 a.m. to 8:00 p.m.

This electronic grants application is intended to be used to apply for the specific Federal funding opportunity referenced here.

If the Federal funding opportunity listed is not the opportunity for which you want to apply, close this application package by clicking on the "Cancel" button at the top of this screen. You will then need to locate the correct Federal funding opportunity, download its application and then apply.

This opportunity is only open to organizations, applicants who are submitting grant applications on behalf of a company, state, local or tribal government, academia, or other type of organization.

* Application Filing Name:

Mandatory Documents

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Move Form to Complete

Move Form to Delete

Mandatory Documents for Submission

Application for Federal Assistance (SF-424)
Assurances for Non-Construction Programs (SF-42)
Disclosure of Lobbying Activities (SF-LLL)
Other Attachments Form
Project Narrative Attachment Form
Budget Narrative Attachment Form

Optional Documents

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Move Form to Submission List

Move Form to Delete

Optional Documents for Submission

Faith Based EEO Survey

Instructions

- 1 Enter a name for the application in the Application Filing Name field.
 - This application can be completed in its entirety offline; however, you will need to login to the Grants.gov website during the submission process.
 - You can save your application at any time by clicking the "Save" button at the top of your screen.
 - The "Save & Submit" button will not be functional until all required data fields in the application are completed and you clicked on the "Check Package for Errors" button and confirmed all data required data fields are completed.
- 2 Open and complete all of the documents listed in the "Mandatory Documents" box. Complete the SF-424 form first.
 - It is recommended that the SF-424 form be the first form completed for the application package. Data entered on the SF-424 will populate data fields in other mandatory and optional forms and the user cannot enter data in these fields.
 - The forms listed in the "Mandatory Documents" box and "Optional Documents" may be predefined forms, such as SF-424, forms where a document needs to be attached, such as the Project Narrative or a combination of both. "Mandatory Documents" are required for this application. "Optional Documents" can be used to provide additional support for this application or may be required for specific types of grant activity. Reference the application package instructions for more information regarding "Optional Documents".
 - To open and complete a form, simply click on the form's name to select the item and then click on the => button. This will move the document to the appropriate "Documents for Submission" box and the form will be automatically added to your application package. To view the form, scroll down the screen or select the form name and click on the "Open Form" button to begin completing the required data fields. To remove a form/document from the "Documents for Submission" box, click the document name to select it, and then click the <= button. This will return the form/document to the "Mandatory Documents" or "Optional Documents" box.
 - All documents listed in the "Mandatory Documents" box must be moved to the "Mandatory Documents for Submission" box. When you open a required form, the fields which must be completed are highlighted in yellow with a red border. Optional fields and completed fields are displayed in white. If you enter invalid or incomplete information in a field, you will receive an error message.
- 3 Click the "Save & Submit" button to submit your application to Grants.gov.
 - Once you have properly completed all required documents and attached any required or optional documentation, save the completed application by clicking on the "Save" button.
 - Click on the "Check Package for Errors" button to ensure that you have completed all required data fields. Correct any errors or if none are found, save the application package.
 - The "Save & Submit" button will become active; click on the "Save & Submit" button to begin the application submission process.
 - You will be taken to the applicant login page to enter your Grants.gov username and password. Follow all onscreen instructions for submission.

Application for Federal Assistance SF-424

Version 02

* 1. Type of Submission: <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	* 2. Type of Application: <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision	* If Revision, select appropriate letter(s): _____ * Other (Specify) _____
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* 3. Date Received: Completed by Grants.gov upon submission.	4. Applicant Identifier: _____
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5a. Federal Entity Identifier: _____	* 5b. Federal Award Identifier: _____
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State Use Only:

6. Date Received by State: _____	7. State Application Identifier: _____
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8. APPLICANT INFORMATION:

* a. Legal Name: County of Fairfax	
* b. Employer/Taxpayer Identification Number (EIN/TIN): 54-0787833	* c. Organizational DUNS: 0748376260000

d. Address:

* Street1: 4100 Chain Bridge Road 11th Floor
Street2: _____
* City: Fairfax
County: _____
* State: VA: Virginia
Province: _____
* Country: USA: UNITED STATES
* Zip / Postal Code: 22030

e. Organizational Unit:

Department Name: Fairfax County Police	Division Name: Chief's Office of Research
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f. Name and contact information of person to be contacted on matters involving this application:

Prefix: Mr.	* First Name: Bruce
Middle Name: A.	
* Last Name: Guth	
Suffix: _____	

Title: Grants Coordinator

Organizational Affiliation: _____

* Telephone Number: (703) 246-7525	Fax Number: (703) 273-6231
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* Email: bruce.guth@fairfaxcounty.gov
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Application for Federal Assistance SF-424

Version 02

9. Type of Applicant 1: Select Applicant Type:

B: County Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

Bureau of Justice Assistance

11. Catalog of Federal Domestic Assistance Number:

16.738

CFDA Title:

Edward Byrne Memorial Justice Assistance Grant Program

*** 12. Funding Opportunity Number:**

BJA-2011-2942

* Title:

BJA FY 11 Smart Policing Initiative

13. Competition Identification Number:

BJA-2011-2945

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

County of Fairfax, including the Towns of Herndon and Vienns

*** 15. Descriptive Title of Applicant's Project:**

Institutionalization of Evidence-Based Practices for Domestic Violence Policing:
Demonstration of the GMU Evidence-Based Policing Matrix in the Fairfax County Police Department

Attach supporting documents as specified in agency instructions.

[Add Attachments](#) [Delete Attachments](#) [View Attachments](#)

Application for Federal Assistance SF-424

Version 02

16. Congressional Districts Of:

* a. Applicant

* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

* a. Start Date:

* b. End Date:

18. Estimated Funding (\$):

* a. Federal	<input type="text" value="120,472.00"/>
* b. Applicant	<input type="text" value="0.00"/>
* c. State	<input type="text" value="0.00"/>
* d. Local	<input type="text" value="0.00"/>
* e. Other	<input type="text" value="0.00"/>
* f. Program Income	<input type="text" value="0.00"/>
* g. TOTAL	<input type="text" value="120,472.00"/>

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- a. This application was made available to the State under the Executive Order 12372 Process for review on
- b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)**

- Yes No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: * First Name:

Middle Name:

* Last Name:

Suffix:

* Title:

* Telephone Number: Fax Number:

* Email:

* Signature of Authorized Representative: * Date Signed:

**Institutionalization of Evidence-Based Practices for Domestic Violence Policing: Demonstration of the
GMU Evidence-Based Policing Matrix in the Fairfax County Police Department
October 1, 2011 – September 30, 2013**

BUDGET WORKSHEET

<u>LINE ITEMS</u>	<u>YEAR 1</u>	<u>YEAR 2</u>	<u>TOTAL</u>
<u>A. Personnel</u>			
1. Agency Personnel (0.0 FTE)	0	0	0
2. GMU Faculty (0.0 FTE)	0	0	0
3. GMU Graduate Research Assistant			
GRA – Academic Year Salary	20,500	21,115	41,615
GRA – Summer Salary	7,000	7,210	14,210
4. FCPD Staff Overtime for Project work	10,000	10,000	20,000
Total Personnel	37,500	38,325	75,825
<u>B. Fringe Benefits</u>	0	0	0
<u>C. Consultants</u>	0	0	0
<u>D. Travel</u>			
1. Conference Fees	0	0	0
2. Domestic Airfare	2,000	2,000	4,000
3. Per Diem	1,136	1,136	2,272
4. Hotel	2,512	2,512	5,024
5. Mileage/Ground Transportation	400	400	800
Total Travel	6,048	6,048	12,096
<u>E. Equipment (1 purchased laptop for GRA)</u>	1,800	0	1,800
<u>F. Supplies</u>	0	0	0
<u>G. Tuition Support (for GRA)</u>			
1. In-State – 12 Credit Hrs @ \$474.65	5,696	0	5,696
2. In State – 12 Credit Hrs @ \$522.11	0	6,265	6,265
Total Tuition	5,696	6,265	11,961
<u>H. Health Insurance (GRA at \$1,400/year)</u>	1,400	1,400	2,800
<u>I. GMU Facilities and Administrative Costs</u>	8,131	7,859	15,990
TOTAL COSTS	60,575	59,897	120,472

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Board Agenda Item
June 7, 2011

ADMINISTRATIVE - 5

Authorization for the Fairfax County Police Department to Apply for and Accept Grant Funding from the 2010 Buffer Zone Protection Program Grant from the National Preparedness Directorate, Administered by the Virginia Department of Emergency Management

ISSUE:

Board approval for the Fairfax County Police Department to apply for and accept funding, if received, from the 2010 Buffer Zone Protection Program Grant from the National Preparedness Directorate, administered by the Virginia Department of Emergency Management (VDEM) in the amount of \$190,000. Funding will be used to purchase portable police equipment and technology upgrades. No Local Cash Match is required. The grant period for this award is June 1, 2010 through November 30, 2012. If the actual award received is significantly different from the application amount, another item will be submitted to the Board requesting appropriation of grant funds. Otherwise, staff will process the award administratively as per Board policy.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize the Fairfax County Police Department to apply for and accept funding, if received, from the 2010 Buffer Zone Protection Program Grant in the amount of \$190,000. Funding will be used to purchase portable police equipment and technology upgrades.

TIMING:

Due to a June 2, 2011 application submission deadline, the application was submitted pending Board approval. If the Board does not approve this request, the application will be immediately withdrawn.

BACKGROUND:

The grant will enhance the Fairfax County Police Department's emergency readiness by providing upgraded equipment and technology needed to obtain and analyze information effectively and enhance internal communications. Specifically, the grant will fund the purchase of computers, thermal imagers and surveillance spotting scopes, camera and video equipment, portable illumination equipment, flashlights and binoculars for officers, and police radio upgrades. The equipment and technology will improve the department's ability to predict, prevent, and respond to critical incidents in the buffer zone.

Board Agenda Item
June 7, 2011

FISCAL IMPACT:

Grant funding in the amount of \$190,000 has been requested from the 2010 Buffer Zone Protection Program Grant. No Local Cash Match is required. This action does not increase the expenditure level in Fund 102, Federal/State Grant Fund, as funds are held in reserve for unanticipated grant awards in FY 2011. This grant does not allow the recovery of indirect costs.

CREATION OF NEW POSITIONS:

No positions will be created by this grant award.

ENCLOSED DOCUMENTS:

Attachment 1: Grant Application

Attachment 2: VDEM Allocation Letter

STAFF:

Robert A. Stalzer, Deputy County Executive

Colonel David M. Rohrer, Chief of Police

Lieutenant Colonel Edwin C. Roessler, Jr., Deputy Chief-Patrol

Major David R. Moyer, Commander, Operations Support Bureau

Captain Steve Thompson, Commander, McLean District Station

Captain Daniel Janickey, Commander, Special Operation Division

Karen Gibbons, Assistant County Attorney

Commonwealth of Virginia Grant Application



Virginia Department of Emergency Management

Grants Management Office

Phone: 804-897-6500

10501 Trade Court

Fax: 804-897-6613

Richmond, VA 23236-3713

Grant Year: 2011

Award Date: 5/2/2011

Sub-grantee Name: Fairfax County Police

Federal Program: BZP from NPD of Homeland Security

CFDA#: 97.078

Sub-Grantee -- Please Complete all Blank Lines and Boxes (as applicable) on All Tabs of Workbook

Jurisdiction/Agency Legal Name:

County of Fairfax

Organization Type (Check Applicable Box)

- State
- City/County
- College
- Airport
- Authority
- Planning District
- Other: (Please specify)

Legal Address:

12000 Government Center Parkway, Suite 552

Fairfax, Virginia 22035

EIN #: 54-0787833

Project Title: Procurement of Mobile and Portable Equipment

Goals and Objectives: Buffer Zone Protection

Target Capability: Protect Mission Area-Target Capabilities

Total Dollar Amount Requested: \$ **\$190,000.00** (Calculated Field)

Please Provide all Signatures (as applicable)

By signing this application, I certify (1) to the statements contained in the list of certifications; (2) that the statements herein are true, complete and accurate to the best of my knowledge; and (3) that if awarded I will not undergo any obligations until I have received approval or clearance for any Environmental Historical Preservation (EHP) requirements. I also provide the required assurances and agree to comply with any resulting terms if I obtain an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties.

* City Manager, County Administrator, State Agency Head

Information	Chief Administrative Officer *	Project Manager	Financial Officer
Name:	Anthony Griffin	Captain Daniel Janickey	Valecia Witt
Title:	Fairfax County Executive	Commander, OSB	Director of Financial resources
Organization:	County of Fairfax	Fairfax Coutny Police	Police Department
E-mail:	Tony.Griffin@fairfaxcounty.gov	Daniel.janickey@fairfaxcounty.gov	Valecia.witt@fairfaxcounty.gov
Telephone:	(703)324-2536	(703)280-0502	(703)246-7853
Fax:	(703)324-3956		(703)218-2490
Address:	Suite 552, Fairfax, Va 22025	4100 Chian Brideg Rd. Fairfax, Va.	4100 Chain Bridge Rd., Fairfax, Va.

* Chief Administrative Officer

Title

Date

Project Narrative

Project Title:	<small>Data Entry limited to 90 characters</small>																																	
Project Description - Part A Describe the need. What is the gap this project addresses?	The Tysons Corner Mall area of Fairfax County has been designated in need of BZP. Currently, there is a lapse in mobile equipment needed by the Department to ensure that these protection and detection needs are met to protect the community and the infrastructure of the mall.																																	
Project Description - Part B: Describe the project. Include the purpose and scope of work.	The requested equipment purchases will promote greater response and prevention capabilities for both local and state law enforcement to better protect the critical infrastructure. By increasing the response capabilities of all entities, regardless of the affiliation, there will be greater regional collaboration, which is an underlying goal of the NIPP and state HSS																																	
Explain how the project will forward the target capability	The project will forward the target capabilities by providing Risk Analysis; Critical Infrastructure Protection; Mobile Equipment; and Citizen Preparedness and Participation.																																	
List other localities and/or agencies that will benefit from this project:	The fire department, medical examiner's office, state police and other first responders will benefit from this equipment.																																	
Project Plan :	<small>Data Entry limited to 190 characters</small>																																	
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Step No: Name</th> <th style="width: 15%;">Length of Time (Months)</th> <th style="width: 70%;">Activity Description</th> </tr> </thead> <tbody> <tr> <td>Step 1:</td> <td>2</td> <td>Receive approval from Chief, Co. Exec., and Board of Supervisors</td> </tr> <tr> <td>Step 2:</td> <td>1</td> <td>Review objectives, plan course of action, produce timelines</td> </tr> <tr> <td>Step 3:</td> <td>1</td> <td>Prepare procurement documentation for needed equipment</td> </tr> <tr> <td>Step 4:</td> <td>10</td> <td>Begin purchasing approved equipment and placing them in-service</td> </tr> <tr> <td>Step 5:</td> <td>12</td> <td>Full implementation of utilizing procured equipment to provide BZP</td> </tr> <tr> <td>Step 6:</td> <td></td> <td></td> </tr> <tr> <td>Step 7:</td> <td></td> <td></td> </tr> <tr> <td>Step 8:</td> <td></td> <td></td> </tr> <tr> <td>Step 9:</td> <td></td> <td></td> </tr> <tr> <td>Step 10:</td> <td></td> <td></td> </tr> </tbody> </table>	Step No: Name	Length of Time (Months)	Activity Description	Step 1:	2	Receive approval from Chief, Co. Exec., and Board of Supervisors	Step 2:	1	Review objectives, plan course of action, produce timelines	Step 3:	1	Prepare procurement documentation for needed equipment	Step 4:	10	Begin purchasing approved equipment and placing them in-service	Step 5:	12	Full implementation of utilizing procured equipment to provide BZP	Step 6:			Step 7:			Step 8:			Step 9:			Step 10:		
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Step 7:																																		
Step 8:																																		
Step 9:																																		
Step 10:																																		
Project Management: Who will be the project manager? How will issues with procurement delays and accountability be addressed? Where does this individual report within your governance structure?	The project manager will be Captain Dan Janickey, Commander, Operations Support Bureau. Issues of procurement and accountability will be corrected by the Director of the Financial Resources Division. Manager reports to deputy chief for investigation/operations.																																	
Sustainment: Please explain how your locality/region/agency will sustain this project. Specifically acknowledge maintained for any equipment purchased and the continued support for personnel funded.	The FCPD will sustain the equipment by keeping it operable as needed through their general funds on an as needed basis.																																	
Will this project COMPLETE this initiative?	Yes, this is much needed equipment for BZP																																	

(To Be Completed Once Funds are Awarded)

Governing Body Resolution

BE IT RESOLVED BY THE _____
(Governing Body)

OF THE _____ THAT
(Name of Applicant)

_____, OR
(Name or Title of Authorized Agent)

_____, OR
(Name or Title of Authorized Agent)

_____,
(Name or Title of Authorized Agent)

is hereby authorized to execute for and on behalf of the named applicant, a public entity established under the laws of the State of Virginia, any actions necessary for the purpose of obtaining federal financial assistance provided by the federal Department of Homeland Security and sub-granted through the State of Virginia.

Passed and approved this _____ day of _____, 20_____

Certification

I, _____, duly appointed and
(Name)

_____ of the _____
(Title) (Governing Body)

do hereby certify that the above is a true and correct copy of a resolution passed and approved by

the _____ of the _____ on the
(Governing body) (Name of Applicant)

_____ day of _____, 20_____.

(Official Position)

(Signature)

(Date)



COMMONWEALTH of VIRGINIA
Department of Emergency Management

MICHAEL M. CLINE
State Coordinator

JACK E. KING
Chief Deputy Coordinator

BRETT A. BURDICK
Deputy Coordinator

10501 Trade Court
Richmond, Virginia 23236-3713
(804) 897-6500
(TDD) 674-2417
FAX (804) 897-6506

May 2, 2011

Mr. Anthony H. Griffin
Executive Officer
Fairfax County
12000 Government Center Parkway, Suite 552
Fairfax, VA 22035

Dear Mr. Griffin:

The Virginia Department of Emergency Management (VDEM) is pleased to announce the allocation of the FY 2010 (BZPP) Buffer Zone Protection Program (CFDA # 97.078) from the National Preparedness Directorate (NPD), United States Department of Homeland Security (DHS). Your agency has been funded for:

Project Title: Procurement of Mobile and Portable Equipment
Federal Grant Allocation: \$190,000
Recipient's Required Cost Share/Match Amount: \$0.00

The obligation period for this program is June 1, 2010 to November 30, 2012. Reimbursement may be requested for items procured during this period, consistent with the project intent. As a reminder, organizations that spend more than \$500,000 in DHS funds during a fiscal year are subject to an independent audit per OMB circular A-133.

All projects must comply with Environmental and Historic Preservation (EHP) requirements. Sub-recipients must not obligate and/or expend any (federal and/or non-federal matching) funds on any project having the potential to impact environments planning and historical preservation resources without the prior approval of FEMA. A current EHP review evaluation form must be submitted as part of the VDEM application. For more information, please visit <http://www.vaemergency.com/grants/forms> or contact your grant specialist.

Mr. Anthony H. Griffin
May 2, 2011
Page 2

All sub-recipients are requested to submit a completed VDEM grant application. The application, project plan, and timeline will be due 30 days from the receipt of this letter. Below is a list of the documents that comprise the VDEM grant application:

POC Form, Budget Sheets, EHP Evaluation Form	www.vaemergency.com/grants/forms
Grant Assurances	www.vaemergency.com/grants/forms
Certification Regarding Lobbying	www.vaemergency.com/grants/forms
Non-Supplanting Certification	www.vaemergency.com/grants/forms

A quarterly report will be required 15 days after each quarter starting from the date of the award. Quarterly reports will be due until the end of the grant period or when the project is complete. An electronic copy of this document can be found at www.vaemergency.com under grant forms. The final report is due 30 days after closeout. These reports should be held for at least five years after the close of the grant period and are subject to audit by DHS and/or the Commonwealth of Virginia.

Please review and sign the required documents and return them to the Grants Management Office by June 1, 2011. If you have any questions regarding this award, please contact Paulette McWaters at the VDEM Grants Management Office at (804) 897-9764.

Sincerely,



Michael M. Cline

MMC/df

- c: Honorable Terrie L. Suit, Secretary of Veterans Affairs and Homeland Security
- Ms. Kerry Stuver, Grants Management Coordinator, Office of Veterans Affairs and Homeland Security
- Mr. Roy B. Shrou III, Deputy Coordinator, Emergency Manager, Fairfax County
- Lt. Michael A. McAlister, Fairfax County Police Department

Board Agenda Item
June 7, 2011

ADMINISTRATIVE - 6

Authorization to Advertise a Public Hearing on Amendments to the Code of the County of Fairfax, Chapter 82, Motor Vehicles and Traffic, Section 82-1-6, Adoption of State Law

ISSUE:

Board authorization to advertise amendments to Chapter 82, Motor Vehicles and Traffic. These amendments adopt actions of the 2011 General Assembly into Chapter 82 of the *Code of the County of Fairfax, Virginia*.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors authorize the advertisement of a public hearing on the proposed amendments to Chapter 82.

TIMING:

Authorization to advertise the proposed amendments on June 7, 2011; Board of Supervisors' public hearing scheduled for July 12, 2011 at 4:00 p.m. The provisions of these amendments will become effective immediately.

BACKGROUND:

As a housekeeping measure to update Chapter 82, portions of Section 82-1-6 (Adoption of State Law) have been amended to reflect changes made to the *Code of Virginia* by the 2011 General Assembly. A summary of all changes, which become effective July 1, 2011, is provided in Attachment 2.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 - Proposed Amendments to Chapter 82, Motor Vehicles and Traffic
Attachment 2 - Summary of 2011 General Assembly Amendments Affecting Chapter 82, Motor Vehicles and Traffic

STAFF:

Robert A. Stalzer, Deputy County Executive
Colonel David M. Rohrer, Chief of Police
Karen L. Gibbons, Senior Assistant County Attorney

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Proposed Amendments to
Chapter 82, Motor Vehicles and Traffic

Section 82-1-6. Adoption of State Law

Pursuant to the authority of Section 46.2-1313 of the Virginia Code, all provisions and requirements of the following sections of the Code of Virginia, as in effect on July 1, ~~2010~~ 2011, except those provisions and requirements the violation of which constitutes a felony, are hereby incorporated into the Fairfax County Code by reference, effective July 1, ~~2010~~ 2011.

18.2-266	18.2-269	46.2-203.1
<u>18.2-266.1</u>	18.2-270	46.2-218
18.2-267	18.2-270.01	46.2-300
18.2-268.1	18.2-270.1	46.2-301
18.2-268.2	18.2-271	46.2-301.1
18.2-268.3	<u>18.2-271.1</u>	46.2-302
18.2-268.4	18.2-272	46.2-329
18.2-268.5	<u>46.2-100</u>	46.2-334.001
18.2-268.6	46.2-102	46.2-341.21
18.2-268.7	46.2-104	46.2-346
18.2-268.8	46.2-108	46.2-349
18.2-268.9	46.2-109	46.2-357
18.2-268.10	46.2-110	46.2-371
18.2-268.11	46.2-111	46.2-373
18.2-268.12	46.2-112	46.2-376

46.2-379	46.2-808	<u>46.2-833</u>
46.2-380	46.2-808.1	46.2-833.1
46.2-391.2	46.2-810	46.2-834
46.2-391.3	46.2-811	46.2-835
46.2-392	46.2-812	46.2-836
46.2-393	46.2-814	46.2-837
46.2-398	46.2-816	46.2-838
46.2-613	46.2-817	46.2-839
46.2-616	46.2-818	46.2-841
46.2-617	46.2-819.4	46.2-842
46.2-618	46.2-820	46.2-842.1
46.2-704	46.2-821	46.2-843
46.2-716	46.2-822	46.2-845
46.2-724	46.2-823	46.2-846
46.2-730	46.2-824	46.2-848
46.2-800	46.2-825	46.2-849
46.2-801	46.2-826	46.2-850
46.2-802	46.2-827	46.2-851
46.2-803	46.2-828	46.2-852
46.2-804	46.2-829	46.2-853
46.2-805	46.2-830	46.2-854
46.2-806	46.2-831	46.2-855
46.2-807	46.2-832	46.2-856

46.2-857	46.2-878.3	46.2-903
46.2-858	46.2-879	46.2-905
<u>46.2-859</u>	46.2-880	46.2-906
46.2-860	46.2-882	<u>46.2-908.1</u>
46.2-861	46.2-883	46.2-909
46.2-862	46.2-884	46.2-910
46.2-863	46.2-885	46.2-911.1
<u>46.2-864</u>	46.2-886	46.2-912
46.2-865	46.2-887	46.2-914
46.2-865.1	46.2-888	46.2-915
46.2-866	46.2-889	46.2-918
46.2-868	46.2-890	46.2-919
46.2-868.1	46.2-891	46.2-919.1
46.2-869	46.2-892	<u>46.2-920</u>
46.2-870	46.2-893	46.2-921
46.2-871	46.2-894	46.2-921.1
46.2-872	46.2-895	46.2-922
46.2-873	46.2-896	46.2-923
46.2-874	46.2-897	46.2-924
46.2-876	46.2-898	46.2-926
46.2-877	46.2-899	46.2-927
46.2-878.1	46.2-900	46.2-928
46.2-878.2	46.2-902	46.2-929

46.2-930	46.2-1023	46.2-1053
46.2-932	46.2-1024	46.2-1054
46.2-936	46.2-1025	46.2-1055
46.2-937	46.2-1026	46.2-1056
46.2-940	46.2-1027	46.2-1057
46.2-942	46.2-1030	46.2-1058
46.2-1001	46.2-1031	46.2-1059
46.2-1002	46.2-1032	46.2-1060
46.2-1003	46.2-1033	46.2-1061
46.2-1004	46.2-1034	46.2-1063
46.2-1010	46.2-1035	46.2-1064
46.2-1011	46.2-1036	46.2-1065
46.2-1012	<u>46.2-1037</u>	46.2-1066
46.2-1013	46.2-1038	46.2-1067
46.2-1014	46.2-1039	46.2-1068
46.2-1015	46.2-1040	46.2-1070
46.2-1016	46.2-1041	46.2-1071
46.2-1017	46.2-1043	46.2-1072
46.2-1018	46.2-1044	46.2-1076
46.2-1019	46.2-1047	<u>46.2-1077</u>
46.2-1020	46.2-1049	46.2-1077.01
46.2-1021	46.2-1050	46.2-1078
46.2-1022	46.2-1052	46.2-1078.1

46.2-1079	46.2-1120	46.2-1508.2
46.2-1080	46.2-1121	46.2-1552
46.2-1081	46.2-1130	46.2-1561
46.2-1082	<u>46.2-1137</u>	46.2-2812
46.2-1083	46.2-1150	
46.2-1084	46.2-1151	
46.2-1088	46.2-1154	
46.2-1088.1	46.2-1155	
46.2-1088.2	46.2-1156	
46.2-1088.5	<u>46.2-1157</u>	
46.2-1088.6	46.2-1158	
46.2-1090	<u>46.2-1158.01</u>	
46.2-1091	<u>46.2-1158.02</u>	
46.2-1092	46.2-1158.1	
46.2-1093	46.2-1172	
46.2-1102	46.2-1173	
46.2-1105	46.2-1218	
46.2-1110	46.2-1219.2	
46.2-1111	46.2-1234	
46.2-1112	46.2-1240	
46.2-1115	46.2-1242	
46.2-1116	46.2-1250	
46.2-1118	46.2-1309	

References to "highways of the state" contained in such provisions and requirements hereby adopted shall be deemed to refer to the streets, highways and other public ways within the County. Such provisions and requirements are hereby adopted, mutatis mutandis, and made a part of this chapter as fully as though set forth at length herein; and it shall be unlawful for any person, within the county, to violate or fail, neglect or refuse to comply with any provision of Title 46.2 or Title 18.2-266, 18.2-266.1, 18.2-267, 18.2-268.1 through 18.2-268.12, 18.2-269, 18.2-270, 18.2-270.01, 18.2-270.1, 18.2-271, 18.2-271.1 and 18.2-272 of the *Code of Virginia* which is adopted by this section; provided, that in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under Title 46.2 or Title 18.2-266, 18.2-266.1, 18.2-267, 18.2-268.1 through 18.2-268.12, 18.2-269, 18.2-270, 18.2-270.01, 18.2-271, 18.2-270.1, 18.2-271.1 and 18.2-272 of the *Code of Virginia*.

SUMMARY OF 2011 GENERAL ASSEMBLY
AMENDMENTS AFFECTING CHAPTER 82

The information presented below summarizes changes to Title 18.2 and Title 46.2 of the *Code of Virginia*, portions of which are adopted by reference into Chapter 82 of the *Code of the County of Fairfax*.

Section 18.2-266 amended. Punishment for underage drinking and driving; penalty. Provides that "zero tolerance" (0.02% BAC) underage drinking and driving is punishable as a Class 1 misdemeanor. Currently, the punishment is loss of license for six months and a fine of no more than \$500. This bill provides that the punishment must include forfeiture of such person's license to operate a motor vehicle for a period of one year from the date of conviction and either a mandatory minimum fine of \$500 or 50 hours of community service.

Section 18.2-271.1 amended. Restricted license. Authorizes the court to issue a restricted license to a person convicted of DUI and certain other offenses to travel to and from jail to serve a sentence of confinement in jail on weekends or nonconsecutive days.

Section 46.2-100 amended. Moped; definition. Sets out in the definitions for Title 46.2 what is already set out in § 46.2-914: that a moped shall be considered a motorcycle when operated at speeds in excess of 35 miles per hour.

Section 46.2-833 amended. Traffic lights. Allows motorcycle and moped drivers and bicycle riders, in certain situations, to proceed through intersections controlled by traffic lights showing steady red signals.

Section 46.2-859 amended. Reckless driving; failing to stop at a school bus. Provides that a person driving a motor vehicle shall stop his vehicle when approaching, from any direction, any school bus that is stopped on any highway, private road, or school driveway for the purpose of taking on or discharging children, etc., and remain stopped until all the persons are clear of the highway, private road, or school driveway and the bus is put in motion and that failure to do so is reckless driving.

Section 46.2-864 amended. Reckless driving on parking lots. Expands the list of places where a person can be found guilty of reckless driving to include governmental property open to the public.

Section 46.2-908.1 added. Electric personal assistive mobility devices, electrically powered toy vehicles, and electric power-assisted bicycles. A corrective measure as this code section had been inadvertently removed in a previous update to the *Code of the County of Fairfax, Virginia*.

Section 46.2-920 amended. Emergency vehicles proceeding past red lights. Provides that emergency vehicles proceeding past any steady or flashing red signals, traffic lights, stop signs, or other devices indicating moving traffic shall stop, must flash emergency lights and either (i) sound a siren, exhaust whistle, or air horn designed to give automatically intermittent signals or (ii) yield right-of-way or, if required for safety, bring the vehicle to a complete stop before proceeding with due regard to the safety of persons and property.

Section 46.2-1077 amended. Televisions in motor vehicles. Prohibits the use of a television receiver in a motor vehicle when moving images are visible to the driver while the vehicle is in motion.

Section 46.2-1137 amended. Size and weight compliance agents; citations for overweight vehicles. Allows the Commissioner of the Department of Motor Vehicles to appoint staff as "size and weight compliance agents" to enforce certain vehicle size limits. The bill outlines procedures for issuance of citations and enforcement of certain vehicle size limits by size and weight compliance agents.

Section 46.2-1157 amended; Sections 46.2-1158.01 and 46.2-1158.02 added. Inspection of motor vehicles. Restates requirements for motor vehicle safety inspections and places exemptions under a single Code section.

Board Agenda Item
June 7, 2011

ADMINISTRATIVE - 7

Authorization to Advertise Public Hearings on Proposed Amendments to Chapter 104 (Erosion and Sedimentation Control), Chapter 112 (Zoning Ordinance), and Appendix Q (Land Development Services Fee Schedule) of *The Code of the County of Fairfax, Virginia* RE: Conservation Plan for Land Disturbing Activities 2,500 – 5,000 sq. ft.

ISSUE:

Board authorization to advertise public hearings on proposed amendments to Chapter 104 (Erosion and Sedimentation Control), Chapter 112 (Zoning Ordinance), and Appendix Q (Land Development Services Fee Schedule) of *The Code of the County of Fairfax, Virginia* (County Code). The proposed amendments address issues related to requirements for land disturbing activities greater than 2,500 sq. ft. and equal to or less than 5,000 sq. ft.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of the proposed amendments to the Erosion and Sedimentation Control Ordinance, Zoning Ordinance, and Appendix Q of the County Code as set forth in the Staff Report dated June 7, 2011.

TIMING:

Board action is requested on June 7, 2011, to provide sufficient time to advertise public hearings on July 7, 2011, before the Planning Commission and on July 26, 2011, at 4:30 p.m., before the Board. The proposed amendments will become effective at 12:01 a.m. on the day following adoption.

BACKGROUND:

A grading plan is a drawing of a site showing existing and proposed topography, erosion and sediment controls, existing and proposed vegetation, demolition, existing and proposed improvements to the land, engineering calculations, and other information necessary for the review of proposed construction and issuance of required permits. A grading plan incorporates all of the elements of the grading plan required under Article 2 of the Zoning Ordinance, the plat required for issuance of a Building Permit under Article 18 of the Zoning Ordinance, and the conservation plan (a.k.a. erosion and sediment control plan) required under the Erosion and Sedimentation Control Ordinance. It also satisfies the requirement in the Chesapeake Bay Preservation Ordinance for a “plan of development” for development or redevelopment within Chesapeake Bay Preservation Areas. Currently, a grading plan is required for any land disturbing activity greater than 2,500 sq. ft. It was set at that square footage in 1993 because of requirements in the

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newly adopted Chesapeake Bay Preservation Ordinance, mandated by state regulations, that require compliance with Erosion and Sediment Control Regulations, water quality controls for projects with 18% impervious area or more, and the submission of a “plan of development” for any development or redevelopment disturbing greater than 2,500 sq. ft. in Chesapeake Bay Preservation Areas.

Over the course of time, with changes to federal, state, and County requirements, the complexity and cost of preparing grading plans have increased. Also, with increased infill development/redevelopment, problems with building on small lots have been magnified. At the direction of the Board, staff reviewed the requirements for grading plans as applied to additions to existing single family homes and other relatively small-scale land-disturbing activities to develop possible alternatives to the current grading plan requirement for such activities. Staff discussed the issues with industry representatives and presented the substance of the proposed amendments to the Board’s Development Process Committee on November 23, 2010. The Committee directed staff to prepare amendments for authorization.

The proposed amendments only apply to the demolition of a single family dwelling, demolition of an accessory structure to a single family dwelling, construction of an addition to a single family dwelling as currently defined in Chapter 61 of the County Code, or construction of an accessory structure to a single family dwelling, that results in a disturbed area of 5,000 square feet or less and does not require the installation of water quality controls (required if controls were not installed with the original subdivision and the impervious area is equal to or greater than 18%) or other drainage improvements. If these conditions are met, such projects may be permitted in accordance with a plat certified by a land surveyor, engineer, landscape architect or architect, meeting the requirements of Part 6 of Article 18 of the Zoning Ordinance, and which plat includes erosion and sediment control (E & S) measures in conformance with Chapter 104 of The Code. In order to demonstrate compliance with the requirements of Chapter 104, in addition to the display of the E & S controls, an adequate outfall certification and responsible land disturber certification is required. In order to demonstrate compliance with the 5,000 sq. ft. and water quality control limitations, computations of disturbed area and total impervious area will be needed. If the impervious area is equal to or greater than 18%, there would still be the possibility of obtaining a water quality control waiver. A fee of \$980 is proposed to cover E & S inspections. The standard conservation deposit for maintenance of the E & S controls and final stabilization and payment of pro-rata share based on the increase in impervious area also are required. This new plan using a certified plat as its base will be called a Conservation Plan. This will not affect the current requirements or processes for obtaining building permit approval for projects that disturb less than 2,500 sq. ft. of land.

During preparation of the amendments for use of a Conservation Plan in lieu of a grading plan, it was determined that there was a need to clarify the review standards and enforcement provisions in the Erosion and Sedimentation Control Ordinance and update

the related plat requirements in the Zoning Ordinance to collect needed information. Amendments addressing these items are included in this package.

PROPOSED AMENDMENTS:

The proposed amendments to the Zoning Ordinance include provisions that:

- Allow a new plat certified by a land surveyor, engineer, landscape architect or architect that includes siltation and erosion control measures in conformance with Chapter 104 of The Code to be used in lieu of a grading plan for the demolition of a single family dwelling, demolition of an accessory structure to a single family dwelling, construction of an addition to a single family dwelling as defined in Chapter 61 of the County Code, or construction of an accessory structure to a single family dwelling, that results in a disturbed area of 5,000 square feet or less and does not require the installation of water quality controls or other drainage improvements.
- Requires that various existing easements, any mapped floodplain boundary, and distances to certain features demonstrating compliance with minimum yard requirements be delineated on plats submitted in conjunction with building permit approval when no site plan is required.
- Clarify and add additional requirements for the information required to be shown on the as-built house location survey plat required to be submitted to the Zoning Administrator within 30 days of the issuance of the Residential Use Permit for a single family detached dwelling.

The proposed amendment to the Erosion and Sedimentation Control Ordinance include provisions that:

- Allow the conservation plan to be incorporated into a new plat certified by a land surveyor, engineer, landscape architect or architect in lieu of a grading plan for the demolition of a single family dwelling, demolition of an accessory structure to a single family dwelling, construction of an addition to a single family dwelling as defined in Chapter 61 of the County Code, or construction of an accessory structure to a single family dwelling, that results in a disturbed area of 5,000 square feet or less and does not require the installation of water quality controls or other drainage improvements.
- Clarify the standards to be used in reviewing conservation plans.
- Make the provisions relating to penalties, injunctions and other legal actions applicable to all of Chapter 104 not just Sections 104-1-2 and 104-1-5.

The proposed amendment to Appendix Q of the County Code incorporates a fee of \$980 for the Conservation Plan:

REGULATORY IMPACT:

The proposed amendments are intended to address the costs to applicants applying for permits to construct additions to existing single family dwellings and accessory structures to single family dwellings or demolition of such structures by providing a lower cost alternative to a grading plan for projects that disturb between 2,500 sq. ft. and 5,000 sq. ft. A rough estimate is that 20% of grading plans for additions, accessory structures, and demolitions fall within the above range. In addition to the cost difference, the review of a conservation plan based on a certified plat should take much less time than review of a grading plan. Without the topography displayed on a grading plan, there is some possibility of unforeseen impacts on adjoining properties and waterways. However, in complying with the requirements of the Erosion and Sedimentation Control Ordinance, the preparer of the plat must certify that, in their professional opinion, there will be no adverse impacts. Additionally, the County will be performing inspections for compliance with the approved conservation plan. The proposed amendments also will have some impact on how violations of the Erosion and Sedimentation Control Ordinance are remedied. For land disturbing activities greater than 2,500 sq. ft. without a permit, the remedy for the violation will include either a conservation plan or a grading plan depending on the amount of disturbance and impact on drainage. The remedy for a violation of the approved conservation plan that results in a disturbed area of greater than 5,000 sq. ft. or that substantively alters drainage will include submission of a grading plan.

FISCAL IMPACT:

None on County staff or the budget. The cost for preparation of a conservation plan is estimated at \$1,000 to \$2,000 versus \$8,000 to \$15,000 for a grading plan. The County fee for the conservation plan will be \$980 to cover inspections versus \$1,640 for the first submission of a grading plan to cover review and inspections.

ENCLOSED DOCUMENTS:

Attachment I - Staff Report (Available online at http://www.fairfaxcounty.gov/dpwes/publications/pfm/sr_conservationplan.pdf)
Attachment II - Resolution

STAFF:

Robert A. Stalzer, Deputy County Executive
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)
Michelle Brickner, Deputy Director, DPWES

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center Building, Fairfax, Virginia, on June 7, 2011, at which meeting a quorum was present and the following resolution was adopted:

WHEREAS, the County has requirements for the removal and addition of soil and the grading of land so that such activities receive appropriate review and are conducted so as not to adversely impact adjoining properties and the environment;

WHEREAS, the County requires permits for land-disturbing activity greater than 2,500 sq. ft. and the erection of buildings and structures and reviews such applications for compliance with the Zoning Ordinance and other codes;

WHEREAS, Article 2 of the Zoning Ordinance contains the current limitations on the removal and addition of soil to lots, including when grading plans are required and requirements for siltation and erosion control measures;

WHEREAS, Article 18 of the Zoning Ordinance contains the current requirements for Building Permit applications, including requirements for plats when a site plan is not required;

WHEREAS, amendments are necessary to provide for the use of plats in lieu of grading plans for land-disturbing activities of 2,500 to 5,000 sq. ft.;

WHEREAS, the public necessity, convenience, general welfare, and good zoning practice require consideration of the proposed revisions to Chapter 112 (Zoning Ordinance) of the County Code.

NOW THEREFORE BE IT RESOLVED, for the foregoing reasons and as further set forth in the Staff Report, the Board of Supervisors authorizes the advertisement of the proposed Zoning Ordinance amendment as recommended by staff.

A Copy Teste:

Nancy Vehrs
Clerk to the Board of Supervisors

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ADMINISTRATIVE - 8

Authorization to Advertise a Public Hearing on Amendments to the Code of the County of Fairfax, Chapter 6, Weapons, and Appendix J, Designating Where Firearms and Pneumatic Guns May Not Be Shot

ISSUE:

Board authorization to advertise a public hearing to consider amendments to Chapter 6 (Weapons), and Appendix J of the *Fairfax County Code*. The amendments are necessary to bring Chapter 6 and Appendix J into compliance with a recently enacted amendment to Virginia Code § 15.2-915.4, the state enabling legislation that authorizes the County to regulate the use of pneumatic guns. In addition, the proposed amendments to Chapter 6 and Appendix J address other recent amendments to Virginia Code § 15.2-915, relating to local regulation of the use of firearms.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of the public hearing.

TIMING:

Immediate. Amendments are needed before July 1, 2011, because legislation enacted during the 2011 Session of the Virginia General Assembly will nullify portions of Chapter 6 unless the Board adopts amendments to conform the County Code to the amended enabling legislation. Therefore, Board action is requested on June 7, 2011, to provide sufficient time to advertise the proposed public hearing on June 21, 2011, at 5:00 p.m. If approved by the Board after the public hearing, these amendments will become effective immediately.

BACKGROUND:

During its 2011 Session, the Virginia General Assembly enacted legislation amending Virginia Code § 15.2-915.4, the enabling legislation that authorizes the County to regulate the use of pneumatic guns, commonly called BB-guns or pellet guns. See 2011 Virginia Acts, Chapter 832 (copy enclosed). Briefly stated, effective July 1, 2011, that legislation will prohibit localities from restricting the use of pneumatic guns "...on or within private property with permission of the owner or legal possessor thereof when conducted with reasonable care to prevent a projectile from crossing the bounds of the property." That legislation includes a provision rendering void any local ordinance adopted prior to July 1, 2011, that is inconsistent with the new restriction. Fairfax County Code Sections 6-1-2 and 6-1-2.1 are

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currently more restrictive on the use of pneumatic guns, so the County's ordinance needs to be amended to address the 2011 state legislation.

As a result, staff proposes an amendment to County Code Section 6-1-2.1. – Discharge of pneumatic guns in certain places prohibited; exceptions, as shown below in proposed subsection (a) (3)'s exception to the general prohibition on pneumatic gun usage outside of the areas shown in County Code Appendix J:

(a) (3) Use of pneumatic guns on private property if the person shooting has permission of the owner or legal possessor of the property on which the pneumatic gun is being used and the owner or legal possessor of the property within the projectile may reasonably be foreseen to pass or to land.

Additionally, staff proposes the following amendments to Chapter 6:

Section 6-1-1. Definitions.

- Deletion of the definition of *Gun* to ensure clear delineation between firearms and pneumatic weapons throughout the chapter.
- Deletion of the definition of *Rifle* as it is not a term used elsewhere in the chapter, making its definition unnecessary.
- Formatting and wording changes to enhance clarity and reflect amendments to other Sections.

Section 6-1-2. Hunting or discharge of firearms in certain places prohibited; exceptions.

- Substitution of the word "firearm" for the word "gun" to conform the restrictions in Section 6-1-2 to the County's enabling legislation.
- Removal of all references to the registration requirement in Section 6-1-3.
- Formatting and wording changes to enhance clarity.

Section 6-1-3. Registration statement authorizing the discharge of a gun.

- Repeal of the Section and deletion of all references to it in Chapter 6, as the Office of the County Attorney has determined that current state law does not authorize the County to require such registration.

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APPENDIX J. – Ordinance to Designate Areas Where Firearms and Pneumatic Guns May Not Be Shot.

- Removal of all references to registration that authorize the discharge of a gun, as Section 6-1-3 requiring such registration is repealed.
- Wording changes to enhance clarity and reflect the amendment of other Sections.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: 2011 Virginia General Assembly – Chapter 832

Attachment 2: Virginia Code § 15.2-915

Attachment 3: Proposed Amendment to Chapter 6, “Weapons,” and Appendix J, Designating Areas Where Firearms and Pneumatic Guns May Not Be Shot

Attachment 4: Text of Section 6-1-3

STAFF:

Robert A. Stalzer, Deputy County Executive

Colonel David M. Rohrer, Chief of Police

Erin Ward, Assistant County Attorney

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VIRGINIA ACTS OF ASSEMBLY -- 2011 RECONVENED SESSION

CHAPTER 832

An Act to amend and reenact § 15.2-915.4 of the Code of Virginia, relating to localities regulation of pneumatic guns.

[S 757]

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-915.4 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-915.4. Counties, cities and towns authorized to regulate use of pneumatic guns.

A. A locality may prohibit, by ordinance, the shooting of pneumatic guns in any areas of the locality that are in the opinion of the governing body so heavily populated as to make such conduct dangerous to the inhabitants thereof, and may require supervision by a parent, guardian, or other adult supervisor approved by a parent or guardian of any minor below the age of 16 in all uses of pneumatic guns on private or public property. The ordinance may specify that minors above the age of 16 may, with the written consent of a parent or guardian, use a pneumatic gun at any place designated for such use by the local governing body or on private property with the consent of the owner. The ordinance may specify that any minor, whether permitted by a parent or guardian to use a pneumatic gun or not, shall be responsible for obeying all laws, regulations and restrictions governing such use. Any penalty for a pneumatic gun offense set forth in such an ordinance shall not exceed a Class 3 misdemeanor.

B. No such ordinance authorized by subsection A shall prohibit the use of pneumatic guns at facilities approved for shooting ranges or, on other property where firearms may be discharged, *or on or within private property with permission of the owner or legal possessor thereof when conducted with reasonable care to prevent a projectile from crossing the bounds of the property.*

C. Training of minors in the use of pneumatic guns shall be done only under direct supervision of a parent, guardian, Junior Reserve Officers Training Corps instructor, or a certified instructor. Training of minors above the age of 16 may also be done without direct supervision if approved by the minor's instructor, with the permission of and under the responsibility of a parent or guardian, and in compliance with all requirements of this section. Ranges and instructors may be certified by the National Rifle Association, a state or federal agency that has developed a certification program, any service of the Department of Defense, or any person authorized by these authorities to certify ranges and instructors.

D. Commercial or private areas designated for use of pneumatic paintball guns may be established and operated for recreational use. Equipment designed to protect the face and ears shall be provided to participants at such recreational areas, and signs must be posted to warn against entry into the paintball area by persons who are unprotected or unaware that paintball guns are in use.

E. As used in this section, "pneumatic gun" means any implement, designed as a gun, that will expel a BB or a pellet by action of pneumatic pressure. "Pneumatic gun" includes a paintball gun that expels by action of pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

2. That notwithstanding any other provision of law, general or special, any local ordinance adopted prior to the effective date of this act that prohibits the use of pneumatic guns on or within private property with permission of the owner or legal possessor of the property when conducted with reasonable care to prevent a projectile from crossing the bounds of the property shall be invalid.

§ 15.2-915. Control of firearms; applicability to authorities and local governmental agencies.

A. No locality shall adopt or enforce any ordinance, resolution or motion, as permitted by § [15.2-1425](#), and no agent of such locality shall take any administrative action, governing the purchase, possession, transfer, ownership, carrying, storage or transporting of firearms, ammunition, or components or combination thereof other than those expressly authorized by statute. For purposes of this section, a statute that does not refer to firearms, ammunition, or components or combination thereof, shall not be construed to provide express authorization.

Nothing in this section shall prohibit a locality from adopting workplace rules relating to terms and conditions of employment of the workforce. Nothing in this section shall prohibit a law-enforcement officer, as defined in § [9.1-101](#) from acting within the scope of his duties.

The provisions of this section applicable to a locality shall also apply to any authority or to a local governmental entity, including a department or agency, but not including any local or regional jail or juvenile detention facility.

B. Any local ordinance, resolution or motion adopted prior to the effective date of this act governing the purchase, possession, transfer, ownership, carrying or transporting of firearms, ammunition, or components or combination thereof, other than those expressly authorized by statute, is invalid.

C. In addition to any other relief provided, the court may award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in an action challenging (i) an ordinance, resolution, or motion as being in conflict with this section or (ii) an administrative action taken in bad faith as being in conflict with this section.

(1987, c. 629, § 15.1-29.15; 1988, c. 392; 1997, cc. [550](#), [587](#); 2002, c. [484](#); 2003, c. [943](#); 2004, cc. [837](#), [923](#); 2009, cc. [735](#), [772](#).)

**AN ORDINANCE AMENDING
CHAPTER 6 OF THE FAIRFAX COUNTY CODE, RELATING TO WEAPONS,
AND APPENDIX J OF THE FAIRFAX COUNTY CODE, DESIGNATING
WHERE FIREARMS AND PNEUMATIC GUNS MAY NOT BE SHOT**

Draft of May 19, 2011

AN ORDINANCE to amend the Fairfax County Code by amending and readopting Sections 6-1-1, 6-1-2, and 6-1-2.1, all relating to the discharge of firearms and pneumatic guns; by amending and readopting Appendix J, relating to areas where firearms and pneumatic guns may not be shot; and by repealing Section 6-1-3 relating to registration statements authorizing the discharge of a gun.

Be it ordained by the Board of Supervisors of Fairfax County:

- 1. That Sections 6-1-1, 6-1-2, and 6-1-2.1 of the Fairfax County Code are amended and readopted as follows:**

Section 6-1-1. - Definitions.

The words and phrases defined in this Section when used in this Chapter shall have the following meanings, unless a different meaning is clearly required by the context:

Chief of Police means the Chief of the Fairfax County Police Department or the designated agent of the Chief.

Firearm means any ~~gun-weapon which-that~~ will, or is designed to, or may be readily converted to, expel a projectile or projectiles by the action of any explosive; provided, that stud nailing guns, rivet guns and similar construction equipment neither designed nor intended as weapons, shall not be deemed firearms.

~~*Gun* means a firearm or pneumatic gun or other similar device designed and intended to expel a projectile through a barrel of any length by means of explosive, expansion or release of compressed gas or compressed air or action of a spring mechanism.~~

~~*Parcel of land Parcel of Land* means any lot or lots, or other contiguous areas of land constituting a combined area of not less than twenty acres where all of the landowners, tenants in possession or agents of such landowners and tenants have joined in a written acknowledgement of the rights of persons to shoot on all of such land. However, for the purposes of Section 6-1-2.1, a parcel of land may include contiguous areas that constitute a combined area of not less than one~~

~~acre.~~

Pneumatic gun means any implement, designed as a gun, that will expel a BB or a pellet by action of pneumatic pressure; it includes a paintball gun that expels by action of pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

Recreational shooting means the discharge of firearms ~~or other guns~~ at fixed or movable artificial targets.

~~Rifle means a gun designed, made and intended to be fired from the shoulder and designed and made to use the energy of an explosive or compressed gas or compressed air or the action of a spring mechanism to expel a single projectile through a rifled or smooth bore barrel for each pull of the trigger.~~

Shotgun means a fire arm designed, made and intended to be fired from the shoulder and designed and made to use the energy of an explosive in a shotgun shell to fire through a smooth bore barrel one or more ball shot for each pull of the trigger.

Starting pistol means any device which is designed or functions to simulate the firing of a weapon by means of a primer or other explosive charge, but which cannot be readily converted for use as a firearm as defined in this Section.

Section 6-1-2. - Hunting or discharge of firearms in certain places prohibited; exceptions.

~~(a) It shall be unlawful for any person to shoot any gun in any areas of the County which are so heavily populated as to make such conduct dangerous. Except as otherwise provided herein, it shall be unlawful to discharge any gun:~~

~~(1) In all areas of the County except those areas which are exempted in accordance with Appendix J to the Fairfax County Code;~~

~~(2) On any lot of real property containing less than twenty acres; and~~

~~(3) On any parcel of land which is not posted with signs giving reasonable notice that guns are in use on that parcel of land and that no trespassing is allowed. Such signs shall be placed where they can reasonably be seen. However, if firearms are in use on only a portion of any parcel of land which meets the acreage and other requirements of the term "parcel of land," as defined by Section 6-1-1, then only that portion of that parcel of land on which firearms are used shall be posted with signs.~~

(a) It shall be unlawful for any person to shoot any firearm in any areas of the County that are so heavily populated as to make such conduct dangerous to the inhabitants thereof, which areas are designated in Appendix J to the Fairfax County Code. Firearms may lawfully be discharged in those areas that are

exempted in Appendix J to the Fairfax County Code so long as the firearms are discharged on a Parcel of Land that is posted with signs giving reasonable notice that firearms are in use on that Parcel of Land and that no trespassing is allowed. Such signs shall be placed where they can reasonably be seen. However, if firearms are in use on only a portion of any Parcel of Land which meets the acreage and other requirements of the term "Parcel of Land," as defined by Section 6-1-1, then only that portion of that Parcel of Land on which firearms are used shall be posted with signs.

(b) It shall be unlawful for any person to hunt with a gun-firearm any bird or game animal on or within 100 yards from any primary or secondary highway. A violation of this Subsection shall be punishable as a Class 3 misdemeanor.

(c) It shall be unlawful for any person to shoot or hunt with a gun-firearm on any public school ground or any public park or on any area within 100 yards of any public school ground or public park. It shall be unlawful for any person who is hunting with a loaded gun-firearm to traverse any public school ground or public park or to be within 100 yards from any such school ground or park. A violation of this Subsection shall be punishable as a Class 4 misdemeanor. This Subsection shall not prohibit either (i) the lawful possession of a firearm when such firearm is carried for purposes of personal safety or (ii) the lawful possession of a firearm on a public highway within 100 yards of any public school ground or public park. Nothing in this Subsection shall apply to: (i) recreational shooting on gun ranges at any public school operated by or with the approval of that school; (ii) recreational shooting on gun ranges at any public park operated by or with the approval of the owner of the park; (iii) shooting of a starting pistol at an athletic event on any public school grounds or public park and which is conducted with the approval granted by the owner of that school or park property; or (iv) lands within a national or state park or forest, or wildlife management area.

(d) It shall be unlawful for any person to hunt with a shotgun loaded with slugs. A violation of this Subsection shall be punishable as a Class 3 misdemeanor.

(e) Except for those persons who are on a ~~parcel of land~~ Parcel of Land that is ~~registered in accordance with Section 6-1-3~~ exempted in Appendix J and who hunt with shotguns loaded with multiple ball shot, it shall be unlawful for any person to hunt with a firearm which has a barrel caliber larger than a nominal 0.224 inches or to hunt with a gun-firearm and ammunition combination having a muzzle energy greater than a .22 caliber rimfire cartridge. A violation of this Subsection shall be punishable as a Class 3 misdemeanor.

(f) It shall be unlawful for any person to discharge any gun-firearm from or across any highway, sidewalk or any public land except on a properly constructed target range.

(g) Notwithstanding the provisions of Subsections (a) through (f) of this Section,

the following acts shall not be violations of this Section:

- ~~(1) Hunting with a shotgun, when such shotgun is loaded entirely with ammunition consisting of multiple ball shot on a parcel of land for which the land owners, tenants in possession or agents of such landowners and tenants have been issued an approved registration pursuant to Section 6-1-3 and when such hunting is carried out in accordance with the terms and conditions of such registration and this Chapter; provided, however, that such parcel of land complies with the requirement to post appropriate signs in accordance with Subsection (a)(3) of this Section. (Reserved.)~~
- ~~(2) Recreational shooting with any gun by any person who has an approved registration from the Chief of Police and who is shooting on a parcel of land in accordance with that registration. (Reserved.)~~
- ~~(3) Shooting or discharge of any gun upon a lawful target, trap or skeet range, or hunting preserve, when such shooting is in accordance with the provisions of any approved registration. (Reserved.)~~
- (4) Shooting or discharge of any gun-firearm by any law enforcement officer acting in the performance of the duties of a law enforcement agency. For the purposes of this Section the term "law enforcement officer" includes any person defined as a law enforcement officer pursuant to Virginia Code § 9.1-101 and any animal control officer acting in the performance of his or her duty.
- (5) Discharge of any gun-firearm in an entirely indoor target range, provided that adequate provisions are made to retain within the structure all projectiles discharged.
- (6) Discharge of any gun-firearm for the purpose of protecting any person from death or great bodily harm.
- (7) Discharge of any firearm or starting pistol loaded with a blank cartridge, or other ammunition, not resulting in the expulsion of a projectile or projectiles.
- ~~(8) Discharge of any gun-firearm pursuant (i) to an approved registration issued by the Chief of Police or (ii) pursuant to a permit issued in accordance with Virginia Code § 29.1-529 and with an approved registration issued by the Chief of Police, if the discharge is on a parcel of land that contains at least five acres and is zoned for agricultural use; or (iii) (ii) pursuant to authorization issued in accordance with 4 VAC 15-40-240 by the Director of the Department of Game and Inland Fisheries.~~
- (9) Shooting or discharge of a gun-firearm by any representative of the Virginia Department of Game and Inland Fisheries in the performance of duty for scientific collection or wildlife management purposes.

Section 6-1-2.1. - Discharge of pneumatic guns in certain places prohibited; exceptions.

~~Notwithstanding the provisions of Section 6-1-2, a person may discharge a pneumatic gun on a parcel of land containing at least one acre of land in an area designated for the discharge of firearms or other guns in accordance with Appendix J to the Fairfax County Code. Provided, however, no person shall discharge any such pneumatic gun within 100 yards of a public school ground or a public park, and no person shall traverse a public school ground, or a public park while in possession of a pneumatic gun. This Section shall not prohibit any act described in Subsections (g)(3), (g)(4), (g)(5), (g)(6), (g)(7), (g)(8), or (g)(9) of Section 6-1-2, and this Section shall not prohibit: (i) the lawful possession of a gun of the type described herein when such gun is carried for purposes of personal safety; (ii) the lawful possession of a gun of the type described herein on a public highway within 100 yards of any public school ground or public park, or (iii) recreational shooting on gun ranges at any public school grounds operated by or with the approval of that school or recreational shooting on gun ranges at any public park operated by or with the approval of the owner of the park. Whenever any minor below the age of 16 uses any pneumatic gun, the minor must be supervised by a parent, guardian, or other adult supervisor approved by the minor's parent or guardian. Any minor using any pneumatic gun shall be responsible for obeying all laws, regulations and restrictions governing such use at all times. Violation of this Section shall constitute a Class 3 misdemeanor.~~

(a) It shall be unlawful for any person to shoot a pneumatic gun in any areas of the County that are so heavily populated as to make such conduct dangerous to the inhabitants thereof, which areas are designated in Appendix J to the Fairfax County Code. Notwithstanding the foregoing, the following acts are not prohibited by this Section:

- (1) Use of pneumatic guns at facilities approved for shooting ranges;
- (2) Use of pneumatic guns on other property where firearms may be discharged;
- (3) Use of pneumatic guns on private property if the person shooting has permission of the owner or legal possessor of the property on which the pneumatic gun is being used and the owner or legal possessor of the property within which the projectile may reasonably be foreseen to pass or to land;
- (4) Shooting or discharge of a pneumatic gun by any law enforcement officer acting in the performance of the duties of a law enforcement agency. For the purposes of this Section the term "law enforcement officer" includes any person defined as a law enforcement officer pursuant to Virginia Code § 9.1-101 and any animal control officer acting in the performance of his or her duty; and

(5) Shooting or discharge of a pneumatic gun by any representative of the Virginia Department of Game and Inland Fisheries in the performance of duty for scientific collection or wildlife management purposes.

(b) Whenever any minor below the age of 16 uses any pneumatic gun, the minor must be supervised by a parent, guardian, or other adult supervisor approved by the minor's parent or guardian. Any minor using any pneumatic gun shall be responsible for obeying all laws, regulations and restrictions governing such use at all times. Violation of this Section shall constitute a Class 3 misdemeanor.

APPENDIX J. - Ordinance to Designate Areas Where Firearms and Pneumatic Guns May Not Be Shot.

—Except as otherwise provided ~~herein in Chapter 6~~, no person shall shoot a firearm or a pneumatic gun an air- or gas-operated weapon in Fairfax County. If a ~~person has registered to do so in accordance with the provisions of Chapter 6 of the Fairfax County Code, and if that person is in full compliance with Chapter 6 of the Fairfax County Code, a then that~~ person may shoot a firearm ~~or an air- or gas-operated weapon~~ in the following areas. In addition, a person may shoot a pneumatic gun in the following areas and as otherwise allowed by Section 6-1-2.1:

(A) That portion of Fairfax County bounded by a line beginning where the boundary between Fairfax County and Loudoun County meet at the Potomac River, then southeast following the Potomac River boundary between Fairfax County, Virginia, and the State of Maryland until where Difficult Run enters the Potomac River, then from the confluence of the Potomac River and Difficult Run southwest to the northwest corner of property identified by Fairfax County Tax Map No. 14-3, 001, Parcel 10, then southwest along the northwestern boundary of properties identified by Fairfax County Tax Map No. 14-3, 001, Parcels 9 and 10, and Tax Map No. 20-1, 001, Parcels 6 and 6A to Georgetown Pike (Route 193), then from the intersection of Georgetown Pike and Towlston Road (State Route 676) southwest along Towlston Road to the intersection of Towlston Road and Leesburg Pike (State Route 7), then northwest along Leesburg Pike to the Loudoun County boundary, then northeast along the Loudoun County boundary to the beginning point at the Potomac River.

(B) That portion of Fairfax County bounded by a line beginning at a point where Sully Road (State Road 28) crosses the boundary between Fairfax County and Loudoun County, then southwest following the Loudoun County boundary to the point where it meets the boundary between Fairfax County and Prince William County, then southeast along the Prince William boundary to the Potomac River, then generally north following the eastern border to Fairfax County to Accotink Creek, then north along Accotink Creek to Richmond Highway (U.S. Route 1), then west along Richmond Highway to Lorton Road (State Route 642), then west

along Lorton Road to Silverbrook Road (State Route 600), then north and then west along Silverbrook Road to the intersection with Ox Road (State Route 123), then northwest along Ox Road to the intersection of Braddock Road (State Route 620), then west along Braddock Road to New Braddock Road, then west along New Braddock Road to the intersection with Centreville Road (State Road 28), then north along Centreville Road and Sully Road to the beginning point at the Loudoun County boundary.

- 2. That Section 6-1-3 is repealed.**
- 3. That this ordinance shall take effect upon adoption.**

GIVEN under my hand this _____ day of _____ 2011.

Nancy Vehrs
Clerk to the Board of Supervisors

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Section 6-1-3. - Registration statement authorizing the discharge of a gun.

(a) The Chief of Police shall issue a registration statement authorizing the discharge of a gun on a parcel of land for a period of one year from the date of issuance to the landowners, tenants in possession or agents of such landowners or tenants of such parcel of land who submit a written request for such registration and who is in compliance with this Chapter. However, if the landowners, tenants in possession or agents of such landowners or tenants of a parcel of land submit a written request to renew a registration statement that has been issued and is in effect, then the renewed registration statement shall extend for a period of two years from the date of issuance of the renewed registration statement.

(b) No registration statement shall be issued unless in the judgment of the Chief of Police the discharge of a gun on any such parcel shall be in compliance with the restrictions provided by this Chapter and by Appendix J to the Fairfax County Code. Any registration statement issued shall describe any provisions deemed necessary by the Chief of Police to assure the same.

(c) Any person who discharges a gun or who hunts with a gun on a parcel of land for which a registration statement has been issued and is in effect shall have on his or her person, while shooting or hunting, the written permission of the landowner or tenant holder of the registration statement to do such shooting or hunting. This Subsection shall not apply to a registration provided solely for the activities described in Subsections (g)(2) and (g)(3) of Section 6-1-2

(d) Any such registration statement shall be revocable by the Chief of Police upon a finding by the Chief that the holder thereof or a person authorized to discharge a gun by such holder has not acted in accordance with this Chapter or Appendix J to the Fairfax County Code or with Virginia Code § 29.1-529, or upon a finding that changed circumstances necessitate revocation in the interests of the safety of persons or property in the area.

(e) Each landowner or tenant to whom a registration statement has been granted shall post his property with signs in accordance with Section 6-1-2(a)(3).

(f) Any action taken hereunder by the Chief of Police in granting, refusing to grant, or revoking a registration statement may be appealed by any person aggrieved to the Board of Supervisors. In the event of any such appeal, the Board shall consider the written statements of such aggrieved person, the registration holder, and the Chief of Police, and the Board shall make a final determination of whether to grant, refuse to grant or to revoke a registration statement.

(1961 Code, § 28-2.1; 2-74-28; 13-82-6; 43-93-6, § 1; 21-94-6; 39-96-6, § 1; 24-04-6.)

ADMINISTRATIVE – 9

Authorization to Advertise a Public Hearing to Consider the Adoption of Article 27, Chapter 4, of the Fairfax County Code to Establish a Local Tax Exemption Program to Allow a Transfer in Title for Previously Exempted Affordable Housing Providers

ISSUE:

Board authorization to advertise a public hearing to consider adopting Article 27, Chapter 4, of the Fairfax County Code in order to allow the continuation of local tax exemptions for affordable housing in cases where the property transfers to a new non-profit entity.

RECOMMENDATION:

The County Executive recommends that the Board advertise a public hearing to consider the attached proposed ordinance adopting Article 27, Chapter 4, of the Fairfax County Code to adopt the limited local tax exemption program for affordable housing.

TIMING:

Board action is requested on June 7, 2011, to provide sufficient time to advertise a public hearing on the proposed ordinance at 5:00 p.m. on Tuesday, June 21, 2011. The local tax exemption ordinance would become effective upon adoption.

BACKGROUND:

Following a presentation to the Human Services Committee of the Board of Supervisors on May 17, 2011, staff was directed to seek authorization to advertise a public hearing so the Board can consider adopting Article 27, Chapter 4, of the Fairfax County Code as presented in Attachment 1. Article 27 provides a local tax exemption program for certain non-profit affordable housing entities under certain circumstances.

This addresses a limitation under present law in that non-profit affordable housing properties currently with tax exempt status will lose their existing tax exemption if the property is conveyed to another non-profit entity. The legal nuance is that the tax exemption does not convey with the property, even though the new entity continues to own and operate the property solely for non-profit affordable housing purposes and otherwise meets the requirements of Virginia Constitution, Article X, § 6(a)(6) and Virginia Code §58.1-3651.

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Adoption of Article 27 will allow the new non-profit entity to likewise benefit from tax exempt status and thus promote continuation of existing affordable housing offered by the private sector. The proposed article will not permit an expansion of new tax exempt properties, but it will help maintain the status quo for affordable housing.

For example, Lutheran Social Services (LSS) of the National Capital Area owns five townhouse condominiums to provide housing and other support to homeless victims of domestic abuse. LSS is already tax exempt under a prior designation of the Virginia General Assembly, but LSS desires to convey these properties to the Northern Virginia Coalition (NOVACO). NOVACO, a non-profit division of LSS, would continue to operate this housing for the same purpose and in the same manner as LSS. However, NOVACO is a separate legal entity and under state law they would not be entitled to a tax exemption unless specifically authorized by the Board of Supervisors.

Similarly, another non-profit entity, the Fellowship Square Foundation (FSF) currently owns and operates apartment units at Lake Anne in Reston for low-income elderly and some disabled residents. FSF has considered the option of refinancing this property with the Department of Housing and Urban Development (HUD). The problem is that HUD desires that financed properties be owned independently by a single-purpose entity which owns that single facility only. To refinance with HUD, FSF would need to transfer ownership to an affiliated corporation, which would be a single purpose entity that would own only that facility. Again, even though the new entity would still be a non-profit organization and own and operate the property for the exact same purpose as FSF, they would lose tax exempt status unless specifically authorized by the Board. The proposed Article 27 would enable the Board to grant this type of exemption.

FISCAL IMPACT:

None. There is no additional fiscal impact as a result of adopting Article 27. In order to qualify, a property must already have tax exempt status. The proposed ordinance simply extends the exemption to the successor non-profit entity, thus continuing the exemption. There would be no net change to General Fund revenue. All such exemption applications would be reviewed by staff and qualifying applicants would be forwarded to the Board for their consideration in granting the exemption.

At the May 17, 2011, meeting of the Board's Human Services Committee, staff was directed to provide additional analysis as may be feasible concerning other non-profit entities. Staff will return with this information for the Board's consideration in future deliberations on local tax exemptions.

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ENCLOSED DOCUMENTS:

Attachment 1: Proposed Ordinance to Adopt Article 27, Chapter 4, Code of the County of Fairfax, Authorizing a Local Tax Exemption Program for Affordable Housing

STAFF:

Patricia D. Harrison, Deputy County Executive

Paula C. Sampson, Director, Department of Housing and Community Development

Kevin C. Greenlief, Director, Department of Tax Administration

Corinne N. Lockett, Assistant County Attorney

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1 ATTACHMENT 1

2
3 **ORDINANCE TO AMEND CHAPTER 4 OF THE FAIRFAX COUNTY CODE TO**
4 **ADD A NEW ARTICLE 27 RELATING TO THE EXEMPTION FROM REAL AND**
5 **PERSONAL PROPERTY TAXES OF NOT-FOR-PROFIT APPLICANTS ON**
6 **PROPERTY ACQUIRED FROM EXISTING TAX EXEMPT ORGANIZATIONS AND**
7 **USED TO PROVIDE AFFORDABLE HOUSING TO LOW AND EXTREMELY LOW**
8 **INCOME CITIZENS¹**

9
10 Draft Version of June 7, 2011 (with drafting notes)

11
12 AN ORDINANCE to amend the Fairfax County Code by adding a new article numbered 27
13 relating to the classification and designation of certain property as being exempt from real and
14 personal property taxes; penalties.

15
16 Be it ordained by the Board of Supervisors of Fairfax County:

17
18 **1. That Article 27 of Chapter 4 of the Fairfax County Code is adopted as follows:**

19
20 **Article 27. Real and Personal Property Tax Exemptions of Property Acquired From**
21 **Existing Tax Exempt Organizations Providing Affordable Housing**

22
23 **Section 4-27-1. Definitions.**

24
25 (a) *General definitions.* The following words and phrases when used in this Article
26 shall, for the purposes of this Article, have the meanings respectively ascribed to them in this
27 Section, except in those instances where the context clearly indicates a different meaning:

28 County means the County of Fairfax, Virginia.

29 Director means Director of the Department of Tax Administration or the deputies or
30 designated agents of the Director.

¹ This proposed ordinance was originally referred to as Article 26 by memorandum to the Board's Human Services Committee dated May 17, 2011. However, Article 26, Chapter 4, is already taken for the County's Ambulance Service Charge. This proposed ordinance has therefore been renumbered as Article 27.

31 Application means the information submitted to the Director pursuant to this article.
32 Affordable Housing For Low Income housing means housing certified by the Director
33 of the Department of Housing and Community Development as having rent restrictions
34 necessary to accommodate residents with gross household income below the median gross
35 household income for the Washington DC Metropolitan Statistical Area (MSA) as published
36 by U.S. Department of Housing and Urban Development (HUD) on an annual basis, adjusted
37 by bedroom size.²

38 Exemption Year means the year that the property tax exemption is approved by the
39 Board of Supervisors. The exemption will be prorated in the first year from the date of
40 approval or the date of acquisition as long as the acquisition date is in the exemption year,
41 whichever is earlier. Approved exemptions shall continue until such time as the ownership or
42 the use of the property changes making the property ineligible for tax relief pursuant to this
43 Article.

44
45

46 **Section 4-27-2. Continuation of Property Tax Exemptions; Change of Legal Ownership.**

47

48 Any organization that wants the Board of Supervisors to consider designating that
49 organization as being exempt from property taxation shall meet those minimum criteria set
50 forth in Section 4-27-3 and shall submit the information required in Section 4-27-4 in the form
51 of an application to the Director.

52 The Director shall prepare such application forms and all information submitted on
53 such forms shall be accurate and complete when submitted to the Director. The Director may
54 require additional information and/or clarifications concerning any such application, and
55 pursuant to Virginia Code §§ 58.1-3110 and 58.1-3111, the Director may summon taxpayers
56 and other persons for the purpose of determining whether property should be exempted or
57 whether taxes should be assessed. The Director is also authorized to conduct periodic audits in

² According to the Fairfax County Department of Housing and Community Development (HCD), a standard definition of Affordable Housing uses a household income threshold of up to 70% of the MSA median income. The affordability definition presented to the Board's Human Services Committee by memo dated May 17, 2011 has been removed from this ordinance proposal in order to reflect the actual rent/income structures for existing tax exempt affordable housing properties. Should the Board consider any future expansion of the exemption program for affordable housing, staff would then recommend implementation of the affordability definition presented on May 17, 2011.

58 the future of all approved exemption applicants to ensure continued compliance with this
59 Article. As part of such audit, the exemption applicant may be required to resubmit any of the
60 documentation as specified in Section 4-27-4 as may be required by the Director. The
61 Department of Housing and Community Development shall provide assistance to the Director
62 as may be necessary.

63

64 If the Director determines that any application or applications are complete and meet
65 the minimum criteria set forth in Section 4-27-3, then the Director shall submit this
66 information to the Board of Supervisors for its consideration at public hearing as required by
67 Virginia Code § 58.1-3651. The Director shall also provide for consideration by the Board of
68 Supervisors an estimate of the applicant's property tax expenditure as a percentage of the
69 applicant's revenue.

70

71

72 **Section 4-27-3. Minimum criteria for property tax exemption by designation of**
73 **the Board of Supervisors.**

74

75 The Board shall not consider any application from any organization under Article 27 of
76 this ordinance unless that organization is qualified for designation pursuant to Virginia
77 Constitution, Article X, § 6(a)(6) and that organization also meets these minimum criteria:

78

79 (1) The property, for which exemption is requested by a new applicant, already was
80 exempt by designation or classification by the Virginia General Assembly on or before January
81 1, 2011, for the sole purpose of providing affordable housing in Fairfax County and still had
82 tax exempt status at the time of sale to the new applicant;

83 (2) The new applicant acquired the property to own, operate and use the property in
84 the same manner and for the same purposes as the former exempt property owner;

85 (3) Notwithstanding, the new applicant shall own, operate and use the property for
86 charitable purposes as Affordable Housing within Fairfax County as defined in Section 4-27-1
87 of this ordinance.

88 (4) The organization (new applicant) seeking tax exemption under this Article is
89 operated on a non-profit basis and has qualified for federal income tax exemption pursuant to
90 26 U.S.C. §§ 501(c)(3) or 501(c)(4).³

91 (5) Except for reasonable salaries and reimbursements paid to its officers and
92 employees for services actually rendered, no part of the income of the organization inures to
93 the benefit of any individual person or any other organization; and,

94 (6) Any exemption considered and approved by the Board of Supervisors shall
95 become effective as defined in Section 4-27-1. However, in the event the exemption applicant
96 owes Fairfax County any delinquent taxes, the Director shall deny the otherwise approved
97 exemption until such time as the delinquency has been paid.

98
99

100 **Section 4-27-4. Application requirements for consideration of property tax exemption by**
101 **designation of the Board of Supervisors.**

102

103 Any application submitted to the Director shall include the following information:

104

105 (1) In furtherance of Section 4-27-3(3), the new applicant must obtain written
106 certification from the Fairfax County Director of the Department of Housing and Community
107 Development that attests to compliance with the Affordable Housing requirements as specified
108 in Section 4-27-1 of this ordinance. The new applicant shall submit rent roll documentation to
109 the Director of the Department of Housing and Community Development in order to
110 substantiate compliance with the Affordable Housing requirement, and shall submit the same
111 for re-verification in the future upon request. Once satisfied that the rental structure complies
112 with the requirements of this Article, the Director of the Department of Housing and
113 Community Development shall provide certification to the new applicant and to the Director of
114 the Department of Tax Administration. An exemption application under this ordinance shall
115 not be deemed complete without this certification;

116 (2) Copies of the current articles of incorporation, charter, and by-laws and other
117 documents establishing the organization and describing its purpose, and a statement showing

³ Sections 501(c)(3) and (4) of the U.S. Internal Revenue Code provide an income tax exemption for certain non-profit charitable organizations and non-profit civic associations.

118 the current officers and the agent of the organization. If the organization is operating under a
119 fictitious name, then the application should include copies of all fictitious name certificates;

120 (3) A statement listing all of the property owned by the organization, and all the
121 property owned by the organization for which exemption is sought. Such list or lists should
122 include (i) the addresses of the real property, (ii) the real property tax map descriptions, (iv) a
123 list of personal property, which shows a description of the personal property, its acquisition
124 cost and its age, and (v) the uses being made of all properties owned by the organization for
125 which exemption is sought;

126 (4) A statement from the immediate previous owner that provides the year in which
127 the Virginia General Assembly granted them exemption by designation or classification;

128 (5) Documentation from appropriate federal authorities showing that the new
129 applicant has been designated by the federal government as exempt from federal income
130 taxation pursuant to 26 U.S.C. §§ 501 (c)(3), or 501(c)(4);

131 (6) A statement of whether the organization holds a current annual alcoholic
132 beverage license for serving alcoholic beverages that has been issued by the Virginia Alcoholic
133 Beverage Control Board to such organization for use on such property, and, if so, then the
134 application shall include a copy of any such alcoholic beverage license and a statement
135 explaining when and under what conditions the organization serves alcoholic beverages;

136 (7) Copies of all income tax returns filed by the organization for the previous
137 calendar year with the Internal Revenue Service of the United States Department of the
138 Treasury, including, without limitation, Form 990, Form 990-EZ, Form 990-PF, and Form 990-
139 T (hereinafter collectively referred to as "Federal Form 990"), together with copies of any
140 attachments, exhibits, schedules, and statements that accompanied all such income tax returns.
141 The Director may require the submission of returns for additional years as he may deem
142 necessary to review. In the event that such applicant was not required to file a Federal Form
143 990 in a prior year, then the applicant shall provide the Director with information that would
144 have been included in a Federal Form 990.

145 (8) For each officer, director, trustee, key employee, employee, or independent
146 contractor whose compensation is listed on any Federal Form 990 filed by the applicant, the
147 application shall include a statement that (i) describes the services provided by each such
148 officer, director, trustee, key employee, employee, or contractor and (ii) explains why such
149 compensation was reasonable. In the event that the applicant was not required to file a Federal

150 Form 990, then the applicant shall provide the Director with comparable information, as may
151 be requested, showing any compensation provided to a director, trustee, key employee,
152 employee, or independent contractor and a statement explaining why such compensation was
153 reasonable.

154 (9) A copy of the most recent annual report for the applicant, and if no such report
155 was prepared, then an explanation of why no annual report was prepared;

156 (10) A copy of the most recent financial audit report for the applicant, and if no such
157 report was prepared, then an explanation of why no financial report was prepared;

158 (11) A statement describing whether the applicant provides services for the common
159 good of the public, with special emphasis on what benefits and services the applicant provides
160 to residents of Fairfax County, Virginia;

161 (12) A statement describing why the requested property tax exemption is necessary
162 to the local operation of the applicant;

163 (13) A statement describing whether a substantial part of the activities of the
164 applicant involves carrying on propaganda or otherwise attempting to influence legislation and
165 whether the applicant participates in, or intervenes in, any political campaign on behalf of any
166 candidate for public office; and,

167 (14) Any other information required by Virginia Code § 58.1-3651 and any other
168 information that may be required by the Director pursuant to Section 4-27-2.

169

170 **2. That this ordinance shall become effective on adoption.**

171

172 Given under my hand this _____ day of _____, 2011

173

174

175

Nancy Vehrs
Clerk to the Board of Supervisors

Board Agenda Item
June 7, 2011

ACTION -1

Approval of Revisions to Chapter 10 of the Personnel Regulations Eliminating the Fire and Rescue Department Sick Leave Bank

ISSUE:

Board approval of revisions to Chapter 10 of the Personnel Regulations removing reference to the Fire and Rescue Department Sick Leave Bank.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the proposed revisions to Chapters 10 of the Personnel Regulations. The Board Personnel and Reorganization Committee reviewed this issue most recently at the March 15, 2011 Committee meeting.

TIMING:

Immediate action to ensure compliance with FOCUS project deadlines.

BACKGROUND:

As was discussed at the March 15, 2011 Personnel and Reorganization Committee, the decision has been made to phase out the Fire and Rescue Sick Leave Bank prior to the January 1, 2012 Go Live date for SAP implementation.

The following factors were considered when deciding to phase the sick leave bank out:

- Sick leave banks are being phased out in many organizations. For example, when FCPS (Fairfax County Public Schools) implemented the Lawson personnel/payroll system, their five sick leave banks were phased out.
- SAP does not support the administration of sick leave banks.
- Short Term Disability plans are gaining prominence and when coupled with a sick leave accrual system can provide salary continuance while also supporting absence management and enhanced productivity. The county will be reviewing this as part of our benefits program strategic plan over the next several years.
- In reviewing the statistics for the other three sick leave programs (advanced, extraordinary and transferred), transferred leave is by far the program most heavily used with over 45,000 hours transferred on average over the past 3 years. So while there may be employees who prefer not to go that route due to confidentiality concerns, usage of the program is significant and employee needs are being met.

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Below is a brief summary of the leave options currently available to meet employees varying needs:

Leave Options for Illness and Injury

- Sick leave
- Advance sick leave
- Extraordinary sick leave
- Worker's compensation and Injury leave
- Donated sick leave
- Donated annual leave
- Compensatory leave
- Annual leave

Other Leave/Schedule Options

These additional options reduce employees' need to use "personal" leave (annual or compensatory) when participating in certain activities.

- Bereavement leave
- Volunteer leave
- Parental leave
- Telework and flex schedules
- Light duty

Staff has worked with Fire and Rescue Department management and employee groups on the logistics and communication of the phase out of this program.

In accordance with the Merit System Ordinance, the proposed revisions will be forwarded to the Civil Service Commission for public hearing. In order to meet FOCUS project deadlines, it was necessary to bring this revision to the Board of Supervisors for action prior to conducting a public hearing. A public hearing will be scheduled following Board action and any comments will be returned to the Board for consideration.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed revisions to Chapter 10 of the Personnel Regulations

STAFF:

Susan Woodruff, Director, Department of Human Resources

CHAPTER 10

Leave

10.1 *Leave Defined*

Leave is any authorized absence during regularly scheduled work hours that has been approved by proper authority. Leave may be authorized with or without pay. Absence without leave is considered unauthorized absence.

10.2 *Leave Policy*

All merit employees are encouraged to take annual leave for vacation purposes of two consecutive weeks each year. During the year careful consideration shall be given to the desire and needs of employees in the granting of shorter periods of annual leave. Department heads or designees shall grant leave in accordance with these rules on the basis of the work requirements in the department, and whenever possible, the personal wishes of the employee.

10.3 *Maintenance of Leave Records*

The Department head or his/her designee shall be responsible for the maintenance of accurate leave records. Such records shall be kept on a form prescribed by the Human Resources Director, who may periodically inspect them to insure that departments are adhering to the provisions of these rules.

10.4 *Procedures for Requesting Leave*

-1 For all leave, with the exception of official holiday, sick and administrative emergency leave, a request indicating the kind of leave, duration and dates of departure and return must be approved prior to the taking of the leave. The request for leave should be submitted to the department head or designee the same number of days prior to beginning the leave as the number of days leave requested. In the case of sick leave, the leave form shall be completed and submitted for approval immediately upon the employee's return to duty.

-2 Unless an absence is substantiated by a leave form approved by the department head or his/her designee, an employee shall not be paid for any absences from scheduled work hours.

10.5 *Unauthorized Absence*

-1 An employee who is absent from duty without approval shall:

- a. Receive no pay for the duration of the absence;
- b. Be subject to disciplinary action, which may include dismissal.

-2 It is recognized that there may be extenuating circumstances for unauthorized absence and due consideration shall be given each case.

-3 Failure of an employee to report for work at the expiration of an authorized leave or to request an extension of such leave shall be considered an absence without leave.

10.6 *Types of Leave*

The following types of leave, and no other, are officially established:

- 1 Annual leave (Section 10.7 - 10.12);
- 2 Sick leave (Section 10.13 - 10.21);
- 3 Extraordinary sick leave (Section 10.15);
- 4 Parental Leave (Section 10.23)
- 5 Leave for injury in line of duty (Section 10.24);

- 6 Bereavement leave (Section 10.25);
- 7 Compensatory leave (Section 10.26 - 10.28);
- 8 Military leave (Section 10.29);
- 9 Civil leave (Section 10.30);
- 10 Volunteer activity leave (Section 10.31);
- 11 Leave without pay (Section 10.32);
- 12 Education leave (Section 10.34);
- 13 Holiday leave (Section 10.35 - 10.36);
- 14 Administrative leave (Section 10.37);
- 15 Leave for inclement weather or other emergencies (Section 10.38).

10.7 Granting Annual Leave

Department heads or designees shall grant annual leave with pay to merit employees in accordance with the following provisions:

- 1 Annual leave shall normally be granted each calendar year unless a department head or designee specifically defers an employee's vacation because of work requirements.
- 2 Annual leave shall not exceed the total amount credited to an employee at the beginning of the pay period in which the absence occurs.

10.8 Crediting of Annual Leave

-1 Annual leave shall be credited as indicated below to all full time merit employees except those designated as senior management in 4.15-4d. Merit employees scheduled to work other than 80 hours per pay period shall have leave credited on a pro-rated basis. Employees who are participants in the Deferred Retirement Option Plan (DROP) will be considered as merit employees for purposes of crediting annual leave.

- a. Less than three years service - four (4) hours per bi-weekly payroll period;
- b. Three (3) years but less than fifteen (15) years - six (6) hours per bi-weekly payroll period;
- c. Fifteen (15) and over years of service - eight (8) hours per bi-weekly payroll period;
- d. Employees reemployed or reinstated within one calendar year of their separation in good standing should have their annual leave computed on the basis of total years service.
- e. Leave computation dates shall be rounded to the nearest day. Excess hours shall be rounded to the next day.

-2 For a pay period in which an employee, except, a senior manager is paid for less than full standard hours, including paid leave, leave shall be credited in the proportion that the number of hours worked has to the number of regular work hours in the pay period.

-3 Employees with less than ten (10) years of service may accumulate annual leave up to 240 hours. Employees with ten (10) or more years of service may accumulate annual leave up to 320 hours.

-4 Annual leave in excess of the limits imposed by this section existing at the end of each calendar year shall be converted to sick leave.

-5 Employees shall not receive dual compensation from the County for annual leave.

-6 Employees designated as senior managers shall receive 208 hours (26 days) of annual leave at the beginning of each leave year. Senior managers appointed after the start of a leave year shall receive annual leave credit on a prorated basis for that year.

10.9 *Debiting Annual Leave*

Annual leave shall be debited as follows:

- 1 The amount of annual leave to be debited shall be computed on the basis of the exact number of days or hours an employee is scheduled to work in the period when leave is taken.
- 2 Annual leave shall be debited in no less than one-tenth hour units.
- 3 Overdrawn annual leave shall be debited in the following order: compensatory leave, leave without pay.

10.10 *Transfer of Annual and Sick Leave*

Annual or sick leave may be transferred from one employee to another employee in the following situations:

- 1 Annual or sick leave may be transferred from one employee to another when the employee-in-need has exhausted his/her sick leave and is facing an absence without pay due to his/her extended illness or that of a family member with the following provisions:
 - a. Annual or sick leave may be transferred to any County employee eligible to receive sick leave.
 - b. Employees transferring sick leave may not transfer more than 80 hours in any calendar year.
 - c. The employee transferring annual or sick leave relinquishes all rights to that leave. Annual or sick leave transferred under this policy cannot be recovered at a later date.
 - d. An employee may not transfer leave to his/her immediate supervisor or reviewing authority for performance evaluations.
 - e. Unused transferred leave may be transferred to another leave recipient or returned to the donor.
 - f. Transferred leave may be granted only to employees who have exhausted their sick leave balance and whose combined annual and compensatory leave balance does not exceed 80 hours (120 hours for 24-hour shift employees).
 - g. This policy does not preclude or in any way limit the right of an employee to apply for advanced or extraordinary sick leave under existing procedures.
 - h. Final approval of leave transfer requests rests with the department head or designee.
 - i. An employee who returns to work before using all received transferred leave may use the balance for subsequent treatment or recuperation from the ailment for which the leave was granted. This balance may be used for up to one year from the date transferred leave was approved.
- 2 Annual leave may be transferred from one employee to another when the employee in need is a member of the National Guard or an organized military reserve of the United States who has volunteered or been ordered to active duty pursuant to an order by the President of the United States or a competent State authority. The transfer of annual leave under this Section is subject to the following conditions:
 - a. Annual leave may be transferred to any merit County employee who is a member of the National Guard or an organized military reserve of the United States.
 - b. The employee transferring annual leave relinquishes all rights to that leave. Annual leave transferred under this policy cannot be recovered at a later date. Once the leave has been used by the employee, it cannot be recovered.
 - c. An employee may not transfer leave to his/her immediate supervisor or reviewing authority for performance evaluations.

- d. Transferred annual leave may only be used when the employee called to active military duty has reduced his/her accrued annual and compensatory leave to a combined balance no greater than 80 (120 hours for 24-hour shift employees) hours.
- e. Final approval of leave transfer requests rests with the department head or designee.

10.11 *Effect of Transfers on Annual Leave Credits*

A merit employee who transfers from one department to another shall have his/her total annual leave credits transferred to the new department.

10.12 *Effect of Separation on Annual Leave Credits*

Upon separation, an employee shall be paid for the unused portion of his/her accrued annual leave, except as modified by the rules governing resignation without sufficient notice.

10.13 *Sick Leave Policy*

Sick leave shall be used when an employee is incapacitated by sickness or injury; for childbirth, placement of a child for adoption or foster care; for medical, dental, or optical diagnosis or treatment; for necessary care and attendance or death of a member of the employee's immediate family or household; exposure to a contagious disease when the attendance at duty jeopardizes the health of others. Sick leave for childbirth and adoption/foster care placement shall comply with the provisions in Section 10.22 of these Regulations.

10.14 *Granting Ordinary Sick Leave*

Department heads or designees shall grant sick leave with pay to merit employees in accordance with the following provisions:

- 1 Ordinary sick leave shall not exceed the total amount credited to an employee at the beginning of the pay period in which the absence occurs;
- 2 Leave without pay may be granted for sickness extending beyond the earned credit;
- 3 For merit employees' annual or compensatory leave credits may be used for sick leave.

10.15 *Granting Advance Sick Leave*

- 1 Advance sick leave, not to exceed 192 hours (288 hours for 24 hour shift employees), may be granted to merit employees qualified to earn ordinary sick leave in cases of serious disability or ailments of the employee, the spouse, minor or disabled child, parent or parent-in-law of an employee when it is to the advantage of the County to do so.
- 2 Advance sick leave may be granted to employees whose combined annual and compensatory leave balance does not exceed 80 hours.
- 3 Advance sick leave shall not normally be advanced to a merit employee qualified to earn ordinary sick leave during his/her first year of service with the County.
- 4 Advance sick leave shall not be approved retroactively to restore hours previously charged to the employee's annual or compensatory leave balance for an ailment or disability.
- 5 When a department head or designee believes that a request for advance sick leave is justified, a personnel action form shall be prepared with the following supporting documentation:
 - a. The circumstances and the need for such leave verified by a physician's statement;
 - b. The time and date when accrued sick leave will be exhausted;
 - c. The number of hours of advance sick leave requested and date to which such leave will extend;

- d. Probable return to duty and prospect for continued employment;
- e. Recommendation of the department head or designee;
- f. Statement notifying employee of the repayment requirement if advance sick leave is approved.

- 6 The Human Resources Director shall consider the information provided and make a recommendation to the County Executive.
- 7 Advance sick leave shall be approved by the County Executive or his/her designee.
- 8 Advance sick leave shall be charged to future accruals of sick leave. An employee may not use regular sick leave until the approved advance sick leave is repaid.
- 9 An employee who returns to work before using all approved advance sick leave may use the balance for subsequent treatment or recuperation from the ailment for which the leave was granted. This balance may be used for up to one year from the date advance sick leave was first used.
- 10 An employee returning to work before using all approved advance sick leave may request an adjustment to his/her leave record to eliminate or reduce the remaining approved advance sick leave.
- 11 When an employee who receives advance sick leave leaves County service for any reason and the advance sick leave has not been repaid, the County will be financially reimbursed for the balance of sick leave remaining, except in the case of full disability or death.

10.16 *Granting Extraordinary Sick Leave*

- 1 When the above provisions do not adequately allow for the illness or injury of a merit employee qualified to earn sick leave, and when the department head or designee believes that it is to the advantage of the County to do so, he/she may request of the County Executive, through the Human Resources Director, that the employee be granted an extraordinary sick leave not to exceed 4 hours (6.0 hours for 24-hour shift employees) for each month of service.
- 2 Extraordinary sick leave shall be recorded on the employee's leave record but shall not be charged to future accrued leave of any kind.

10.17 *Crediting Sick Leave*

- 1 Sick leave shall be credited to all full time merit employees except those designated as senior managers in Section 4.15-4d at 4 hours per 80-hour pay period. Merit employees scheduled to work other than 80-hours per pay period shall have leave credited on a pro-rated basis.
- 2 Unused sick leave may be accumulated without limit.
- 3 Employees reemployed or reinstated within one calendar year of their separation in good standing shall have their unused sick leave reinstated.
- 4 Employees designated as senior managers shall receive 104 hours (13 days) of sick leave at the beginning of each leave year. Senior managers appointed after the start of a leave year shall receive sick leave credit on a prorated basis for that year.
- 5 Employees who are participants in the Deferred Retirement Option Plan (DROP) will be considered as merit employees for purposes of crediting sick leave.

10.18 *Debiting Sick Leave*

Sick leave shall be debited as follows:

- 1 The amount of sick leave to be debited shall be computed on the basis of the exact number of days or hours an employee is scheduled to work in the period when leave is taken.

- 2 Sick leave shall be debited in no less than one-tenth hour units.
- 3 Overdrawn sick leave shall be debited in the following order: annual leave, compensatory leave, leave without pay.

10.19 *Effect of Transfer on Sick Leave Credits*

A merit employee who transfers from one department to another shall have his/her total sick leave credits transferred to the new department.

10.20 *Effect of Separation on Sick Leave Credits*

1. Sick leave credits shall not be paid to an employee upon separation.
2. Upon application for retirement, an employee's sick leave credits can be applied towards membership service credit at the rate of one month of credit for each 172 hours of accrued unused sick leave, and prorated for any fraction of this amount.
3. Employees who are participants in the Deferred Retirement Option Plan may apply all sick leave credits towards membership service credit for retirement, or retain 40 hours as an initial sick leave balance, while the remaining sick leave credits are applied towards membership service credit for retirement.

10.21 *Other Factors Relative to Sick Leave*

- 1 Reporting of sickness.

Employees who are absent from duty for reasons which entitle them to sick leave shall notify their respective supervisors within the time frame established by the Department unless physically unable to do so. Upon return to work the employee shall submit immediately to his/her supervisor an authorization for leave form.

- 2 Medical certificate.

A department head or designee may require a medical statement for sick leave when it occurs before or after a holiday or other scheduled day off, or when it is in excess of two workdays. When an employee has a record of repetitious usage of short amounts of sick leave over an extended period a department head or designee may require a medical certificate for each day of sick leave taken. Employees shall be provided advance notice that a medical certificate will be required for future absences.

- 3 The department head or designee may require an employee returning from sick leave to take a medical examination, or, with the concurrence of the Human Resources Director, on such other occasions that he/she deems it in the best interest of the County. The medical examination shall be given by a medical doctor designated by the Human Resources Director or his designee.

- 4 Investigation of sickness. A department head or designee may investigate the alleged illness of an employee absent on sick leave.

- 5 False or fraudulent use of sick leave. False or fraudulent use of sick leave shall be cause for disciplinary action against the offending employee. Such disciplinary action may include dismissal.

- 6 An employee on annual leave who presents a medical certificate giving the dates of illness may have that portion of his/her annual leave converted to sick leave.

- 7 Conversion of sick leave. Conversion of sick leave to annual leave shall not be permitted.

- 8 State worker's compensation insurance. An employee, who is eligible to receive state worker's compensation payments beyond the year of injury leave, may elect to use accumulated sick leave and/or annual ~~leave~~ ~~leave and/or sick leave bank~~. The use of such leave will be

coordinated with worker's compensation payments so that the total amount received from both sources does not exceed the employee's full wage or salary until such sick and/or annual leave ~~and/or sick leave bank~~ is depleted or until the employee returns to work. Leave hours used will be calculated only on that portion of total compensation over the workers' compensation payment. While using sick and/or annual leave the employee will continue accruing sick and annual leave.

10.22 *Family and Medical Leave*

Eligible employees, as defined by the implementing regulations of the Family and Medical Leave Act, may take job-protected, unpaid leave, or substitute appropriate paid leave, for up to a total of 12 workweeks in any 12 months for the birth of a child, for the placement of child for adoption or foster care, because the employee is needed to care for a family member (child, spouse, parent or parent-in-law) with a serious health condition, because the employee's own serious health condition makes the employee unable to perform the functions of his or her job, or because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, parent or parent-in-law is a covered military member on covered active duty. In addition, eligible employees may take jobprotected, unpaid leave or substitute appropriate paid leave for up to a total of 26 workweeks in a single 12 month period to care for a covered servicemember with a covered serious injury or illness. The terms "covered military member," "covered active duty," and "covered serious injury or illness" shall be defined as set forth in the Family and Medical Leave Act as amended.

Family and medical leave consists of any combination of sick leave, annual leave, compensatory leave and leave without pay. Sick leave used for the purpose of family or medical leave must conform to the requirements in Section 10.13. If parental leave (Section 10.22) is taken for the birth, adoption, or foster care placement of a child, the leave must be applied towards the employee's Family and Medical Leave entitlement if applicable.

-1 Family and medical leave shall be granted to any merit employee for a period of up to twelve work weeks over a twelve-month period. The twelve-month period during which family leave may be taken for the birth of or placement of a child shall expire at the end of the twelve-month period beginning on the date of birth or placement. Servicemember caregiver leave is granted for up to 26 work weeks during a single 12- month period on a per-covered servicemember and per-injury/illness basis. Work week is defined as the hours an employee is regularly scheduled to work in a seven (7) consecutive day period.

-2 The twelve-month period for family and medical leave usage shall commence with the first use of family or medical leave. The single twelve-month period for servicemember caregiver leave shall commence with the first day the eligible employee takes servicemember caregiver leave and ends 12 months after that date regardless of the 12 month period established for prior FMLA qualifying events.

-3 Requests for leave beyond 12/26 work weeks are subject to regular leave policies with approval determined by the department head or designee.

-4 Requests for family and medical leave must be made in writing and submitted 30 calendar days in advance whenever the necessity for such leave is foreseeable.

-5 The mother may take six (6) weeks of sick leave immediately following the birth of her child. Use of additional sick leave requires medical certification. The father may take four (4) weeks of

sick immediately following the birth of his child. Use of additional sick leave requires medical certification.

-6 Mothers and/or fathers may take four (4) weeks of sick leave immediately following placement of a child for adoption or foster care. Use of additional sick leave requires medical certification.

-7 Family leave to include exigency leave may be taken on an intermittent or reduced schedule basis with the approval of the department head or designee. Medical leave may be taken on an intermittent or reduced schedule basis if certified as necessary by the health provider.

-8 At the request of the department head or designee, the employee shall provide certification from a health care provider in connection with a request for medical leave. Additionally, an employee may be required to provide medical documentation concerning the continuing necessity for medical leave and in connection with any issue concerning his/her ability to return to work at the expiration of medical leave.

-9 At the request of the department head or designee, the employee shall provide certification of a qualifying exigency in connection with a request for exigency leave.

-10. At the discretion of the department head or designee, an employee requesting family leave for the birth or adoption of a child may be required to use accrued annual or sick leave prior to use of leave without pay. Employees requesting family or medical leave for all other reasons may be required to use accrued sick, and/or annual leave prior to use of leave without pay.

-11 During the leave period, the County will provide coverage under the health insurance plan which the employee had selected prior to going on leave at the level and under the conditions coverage would have been provided if the employee had not gone on leave.

-12 If the employee fails to return to work for a reason other than the continuation, recurrence, or onset of a serious health condition for him or herself, children, spouse, parents, parents-in-law, or injured family servicemember or other circumstances beyond the control of the employee, the County may recover the employer's contribution to the health insurance premium paid during any period of unpaid leave.

-13 No employee shall be prevented from returning to work prior to the expiration of the 12/26 week period.

-14 Employees shall return to the position vacated or, with the approval of the Human Resources Director, to another position in the same class.

-15 Employees who do not plan to return to work should notify their department no later than at the expiration of the leave. Failure to return to work without giving notice at the expiration of the leave without good cause may result in an unsatisfactory service separation.

-16 This regulation shall be construed as to ensure compliance with the minimum requirements of the Family and Medical Leave Act of 1993.

10.23 Parental Leave

Paid leave granted for the birth, adoption, or foster care placement of a child. Merit employees are provided 80 hours per qualifying event. Merit employees scheduled to work less than 80 hours per pay period shall have parental leave credited on a pro-rated basis. The parental leave must be applied towards the employee's Family and Medical Leave entitlement if applicable. If an employee has already exhausted that entitlement for the qualifying period, the mother or father is still eligible to take the 80 hours of parental leave. Mothers and/or fathers are entitled to take up to 80 hours of paid parental leave (120 hours for 24-hour shift employees) up to 12 months immediately following the birth, adoption, or

foster care placement of a child. Such time will run concurrently with Family Medical Leave (FML) to the extent that FML is available to the employee. In some instances when deemed medically necessary, parental leave may be taken prior to the birth. Merit employees scheduled to work less than 80 hours per pay period shall have parental leave credited on a pro-rated basis. If an employee has already exhausted FML for the qualifying period, the mother or father is still eligible to take the 80 hours of parental leave.

10.24 *Leave for Injury in Line of Duty*

-1 A merit employee who is injured while performing the duties of his/her position, without fault or negligence on his/her part, and who is accepted as compensable under the Virginia Worker's Compensation Act, shall be granted injury leave with pay, as approved by the County Executive or his/her designee. Such eligibility for injury leave with pay begins on the first day of injury and shall expire not later than twelve calendar months from the original injury date. Reinjuries do not extend the period of eligibility for injury leave. Such leave requires a medical certificate from an approved licensed physician authorized by the County to treat worker's compensation claims. This certificate must set forth the nature and extent of the injury and the probable period of disability.

-2 Extensions of injury leave beyond twelve calendar months may be granted by the department head or designee. In no case shall the employee be granted injury leave in excess of 2080 (2912 for 24-hour shift employees) total hours. In evaluating such requests, the following elements shall be considered:

- a. The circumstances in which the injury occurred to include consideration of the nature and extent of the injury;
- b. The nature and extent of treatment providing that the employee has continued under the regular care of the authorized physician requiring an office visit at minimum intervals of at least once every three months; and providing that the medical records clearly substantiate a relationship between the current prescribed treatment and the original injury;
- c. The likelihood of the employee's return to duty;
- d. The employee's past injury, leave and service record;
- e. The employee's compliance with injury leave policies and requirements.

-3 When possible, employees who have been injured but are not totally disabled, will be placed in temporary assignments without loss of pay with duties that fall within the medical restrictions prescribed by the treating physician.

-4 When injury leave is used other leave benefits shall not accrue.

-5 An employee on injury leave is expected to follow medical procedures and complete necessary forms/reports so as to insure that worker's compensation payment will be credited to the appropriate account.

-6 An employee on injury leave is specifically prohibited from engaging in activities that may impair his/her recovery. This includes:

- a. Engaging in strenuous recreational or other physical activities without the approval of the authorized physician.
- b. Being employed or self-employed to perform work of any kind without the prior written approval of the authorized physician and the Human Resources Director.

-7 An employee on injury leave is not required to remain at home, but is required to be available for contact by his/her supervisor and to notify the supervisor of any change of residence during authorized absence.

-8 Failure of an employee on injury leave to follow prescribed procedures or to accept appropriate medical treatment, vocational rehabilitation, or medically appropriate temporary assignments, may result in disallowal of full salary continuation and reversion to straight worker's compensation wages, if eligible, for the time period of noncompliance, with the employee being liable for repayment of the monetary differential.

10.25 Bereavement Leave

Bereavement leave may be used when a death occurs in an employee's immediate family or household. Department heads or designees shall grant bereavement leave with pay to merit employees in accordance with the following provisions:

-1 Full time merit employees shall be eligible to use up to 16 hours of bereavement leave per calendar year. Merit employees scheduled to work less than 80 hours per pay period shall be eligible for bereavement leave on a pro-rated basis.

-2 Bereavement leave may not be carried over from one calendar year to the next.

-3 The amount of bereavement leave to be debited shall be computed on the basis of the exact number of hours an employee is scheduled to work in the period when the leave is taken.

-4 Bereavement leave shall be debited in no less than one-tenth hour units.

-5 Sick leave may be granted for absences extending beyond bereavement leave eligibility in accordance with the sick leave provisions herein.

10.26 Compensatory Leave

-1 Compensatory leave shall be credited to an employee as provided for in the rules governing overtime. Employees who are participants in the Deferred Retirement Option Plan (DROP) will be considered as merit employees for purposes of crediting compensatory leave.

-2 Compensatory time for overtime worked shall be granted at the discretion of the employee at a time convenient to and approved by the department head or designee.

-3 Overdrawn compensatory leave shall be debited in the following order: annual leave, leave without pay.

10.27 Effect of Transfers on Compensatory Leave

An employee who transfers from one department to another shall, if possible, use his/her compensatory leave prior to the effective date of the transfer. If this is not possible, the total number of compensatory leave shall be recorded on the personnel action form and shall be transferred to the new department.

10.28 Effect of Separation on Compensatory Leave

An employee who is separated from service may only be paid for any accrued overtime for which he/she has not been granted compensatory leave in accordance with the provisions of section 4.15-4.

10.29 Military Leave

- 1 A merit employee who is a member of the National Guard or an organized military reserve of the United States, or is a former member of the Armed Services and has been reactivated by a competent authority shall be allowed military leave under the following circumstances:
- a. Leaves of absence with pay not to exceed fifteen workdays during any one federal fiscal year (October 1 - September 30) to attend federally funded military duty, including duty for training. For the purposes of this section, one 24-hour shift workday shall equate to two military leave workdays. The employee shall report to work in accordance with the following schedule:
 1. If the period of service is less than 31 days, the employee must report back to work not later than the beginning of the next regularly scheduled workday after the military duty, including travel time and an 8-hour rest period, is completed.
 2. If the period of service is more than 30 days but less than 181 days, the employee must report back to work not later than 14 calendar days after completing service.
 3. If the period of service is more than 180 days, the employee must report back to work not later than 90 days after completing service.
 4. If the employee is hospitalized or convalescing from an injury or illness incurred during the period of service, then the time for the employee to report back to work will be extended.
 - a. Leaves of absence without pay for training not covered above. The employee shall report to work the next regularly scheduled workday after the training period, including travel time and an 8-hour rest period, is completed.
- 2 A merit employee who is a member of the Virginia National Guard and who is called to emergency duty by the Governor to combat floods, riots, winter storms, hurricanes or other disasters shall be allowed military leave with pay for each day of such service. A merit employee who is a member of any National Guard organization other than the State of Virginia and who is called to emergency duty by the competent authority of that state may elect to be placed on military leave without pay for each day of such service.
- 3 The employee shall notify his/her supervisor as far in advance as possible when taking military leave. The employee's notice may be either verbal or written. A copy of military orders may be requested, but cannot be required. Failure to notify the County in advance shall not deprive the employee of rights and benefits.
- 4 An employee who leaves the County service in order to join the military forces of the United States or who is inducted into such service has resigned and is not considered to be on military leave. (See Section 9.2-5).
- 5 In the event of any conflict between County regulations and federal or state law, the latter shall take precedence.

10.30 *Civil Leave*

A merit employee shall be given time off without loss of pay when performing jury duty, when subpoenaed or requested to appear before a court, public body or commission except when the employee is a party to the suit, when performing emergency civilian duty in connection with national defense, or for the purpose of voting. Leave for the purpose of voting shall only be granted when the employee's work schedule prohibits voting before or after duty hours or through absentee balloting.

10.31 *Volunteer Activity Leave*

Volunteer activity leave may be used to participate in volunteer activities and initiatives to support the neighborhoods in which employees live and work to include educational and

charitable institutions, religious/faith-based and community service entities. Department heads or designees shall grant volunteer activity leave with pay to merit employees in accordance with the following provisions:

- 1 Full time merit employees shall be eligible to use up to 16 hours of volunteer activity leave per calendar year. Merit employees scheduled to work less than 80 hours per pay period shall be eligible for voluntary activity leave on a pro-rated basis.
- 2 Voluntary activity leave may not be carried over from one calendar year to the next.
- 3 The amount of voluntary activity leave to be debited shall be computed on the basis of the exact number of hours an employee is scheduled to work in the period when the leave is taken.
- 4 Voluntary activity leave shall be debited in no less than one-tenth hour units.

10.32 *Leave Without Pay*

A department head or designee may grant a merit employee a leave without pay for a period not to exceed one year, subject to the following conditions:

- 1 Leave without pay shall be granted only when it is in the interests of the County to do so. The interests of the employee shall be considered when he/she has shown by his/her record to be of more than average value to the County and when it is desirable to return the employee even at some sacrifice.
- 2 At the expiration of a leave without pay, the employee shall be reinstated in the position he/she vacated or in any other vacant position in the same class.
- 3 The employee does not earn leave while on leave without pay.
- 4 Failure on the part of the employee to report promptly at the expiration of a leave without pay may be cause for dismissal.

10.33 *Unauthorized Absence*

- 1 An employee who is absent from duty without approval shall:
 - a. Receive no pay for the duration of the absence;
 - b. Be subject to disciplinary action, which may include dismissal.
- 2 It is recognized that there may be extenuating circumstances for unauthorized absence and due consideration shall be given each case.
- 3 Failure of an employee to report for work at the expiration of an authorized leave or to request an extension of such leave shall be considered an absence without leave.

10.34 *Education Leave*

A merit employee engaged in professional or technical work may be granted a leave of absence with full or partial pay for enrollment in a special institute or course of study of direct benefit to the County service, at the discretion of the department head or designee. Such leave may be granted on the assumption that the employee will remain with the County service for a reasonable period to be recommended by the department head or designee, upon completion of the institute or course of study.

10.35 *Holiday Leave*

- 1 The following holidays are observed by the County and shall be granted to merit employees with pay, unless such employees are required to be on scheduled duty.
 - a. New Year's Day (January 1);

- b. Martin Luther King, Jr.'s Birthday (Third Monday in January);
- c. Washington's Birthday (Third Monday in February);
- d. Memorial Day (Last Monday in May);
- e. Independence Day (July 4);
- f. Labor Day (First Monday in September);
- g. Columbus Day (Second Monday in October);
- h. Veteran's Day;
- j. Thanksgiving Day (Fourth Thursday in November);
- k. Fall Holiday (Friday after Thanksgiving);
- l. Christmas Eve (One-half day on December 24);
- m. Christmas Day (December 25);
- n. Inauguration Day (January 20, every fourth year) when it falls on a business day, Monday through Friday.

-2 The County Executive may also set aside other days as holidays.

10.36 *Granting Holiday Leave*

The granting of holidays observed by the County shall be subject to the following provisions:

-1 Holidays on a weekend.

When a holiday falls on Saturday, it shall be observed on the preceding Friday. When a holiday falls on Sunday, the following Monday shall be observed as the holiday.

-2 Holiday on scheduled workday

a. Holiday on scheduled workday; employee works. Employees who are required to work on a holiday (actual or County observed) shall be compensated for the time worked in accordance with the rules governing hours and overtime. Holiday compensation will be provided on an hour for hour basis for an employee's regular scheduled hours not to include overtime hours. If an employee who would not normally work the holiday, is scheduled to work to meet staffing or other operational needs, the employee is entitled to receive holiday compensation for hours worked not to exceed the number of his/her regularly scheduled hours.

b. Holiday on scheduled workday; employee does not work. Employees who are required to work on a holiday (actual or County observed) but do not work, shall be compensated as follows. Holiday compensation will be provided on an hour for hour basis up to the number of regularly scheduled hours for that day.

-3 Holiday on scheduled day off. Within the policy established in the section on holiday leave, whenever one of the designated holidays falls on an employee's scheduled day off, the employee shall be granted either holiday pay or holiday compensatory time in accordance with the rules governing hours and overtime. To receive holiday compensation on an actual holiday, an employee must be directed by his/her supervisor to work due to staff shortage or other operational necessity.

-4 Holidays for merit part-time employees. Part-time merit employees shall be granted holiday time off with pay on a pro-rated basis regardless of the number of hours scheduled on the day a holiday falls computed at the rate of one-tenth of an hour times the employees bi-weekly scheduled hours.

-5 Holidays during paid leave. A holiday falling within a period of paid leave shall not be counted as a workday in computing the amount of leave debited.

-6 Holiday during unpaid leave. When a holiday falls within a period of leave without pay or immediately preceding or following such leave, the employee shall receive no pay for the holiday. To be eligible for holiday compensation the employee must be in pay status for a full workday on one side of the holiday and a minimum of one-half workday on the other side.

-7 Appointment on a holiday. The appointment of a merit employee shall not be effected on a holiday except when the employee works that day.

10.37 *Administrative Leave*

-1 Administrative leave shall be any paid leave authorized by the County Executive, which is not otherwise classified by these Regulations.

-2 Administrative leave will normally be granted to any full-time or part-time employee.

Exceptions to be justified and made a matter of record by an appointing authority or the County Executive for any of the following reasons:

a. Where an employee is required to appear before a public body, public agency, board or commission during normal working hours on matters relating to County business.

b. For the attendance in an official capacity during normal working hours as a representative of the County at meetings, symposiums, conferences, conventions or hearings.

c. During the investigation of an alleged improper act by an employee which may result in formal disciplinary actions and/or when the retention of the employee on an active duty status may be detrimental to the interests of the County or injurious to the employee, his/her fellow workers or the general public. Administrative Leave for this purpose will not exceed ten business days without prior approval of the County Executive. A memorandum to the Human Resources Director will be submitted by the department head or designee giving details of the Administrative Leave for all situations covered by this paragraph. In lieu of the use of Administrative Leave for situations of this type, a department head or designee may temporarily assign the employee to other duties.

d. For participation in the blood donor program for which purpose up to four hours may be granted, at the discretion of department head or designee, for each recuperative purpose.

e. For the purpose of undergoing a medical examination as may be required by the employee's department head or designee.

f. To recognize long term service to general county employees who earn length of service awards of 20, 25, 30, 35, 40 and 45 years or more shall be eligible for one day's of leave (12 hours for 24 hour shift firefighters) in the year after they have qualified for the length of service award.

g. To recognize outstanding performance such as Outstanding Performance Awards or Team Excellence Awards. The number of hours received for Outstanding Performance Awards or Team Excellence Awards shall be equal to one day of leave (12 hours for 24 hour shift firefighters).

h. For officers of the Employees Advisory Council and employee organizations, which participate in payroll dues deduction to attend conventions and training related to employee relations. Administrative Leave for this purpose shall not exceed 30 workdays (240-hours) per year per employee organization. In the accrual of hours toward the 240-hour limit, one 24-hour shift shall equate to 16 hours of administrative leave. Employees must submit such leave requests as far in advance as possible and provide written

verification upon return to duty of attendance at the convention or employee relations training.

-3 In addition to the provisions of paragraph -2 above, Administrative Leave may be granted to any full-time or part-time employee by the County Executive or his/her designee for any of the following reasons:

- a. Breakdown of essential facility services such as heating, air conditioning, or water or other problems wherein facilities must be closed and employees released early from work or not required to report to work.
- b. Breakdowns of equipment making it impossible to accomplish assigned tasks.

10.38 *Leave for Inclement Weather or Other Emergency*

-1 When extreme inclement weather or other emergencies occur, the County Executive or his/her designee shall have the option to declare one of the following types of leave:

- a. **Unscheduled Leave** - may be declared by the County Executive or his/her designee when it is deemed advisable to provide employees flexibility regarding reporting to work due to inclement weather or other emergency. Unscheduled leave authorizes all employees, except those designated as emergency service personnel, to use their own leave to remain home from work or to leave work early without obtaining prior approval from their supervisor. Employees, however, must notify their supervisors if they opt to stay home on unscheduled leave. Employees may only use annual leave, compensatory leave, or leave without pay for this purpose. Such leave is authorized only for the period of time designated by the County Executive or his/her designee.
- b. **Emergency Administrative Leave** - may be declared by the County Executive or his/her designee when it is determined necessary to close the general County government due to extreme inclement weather or other emergency. Emergency administrative leave authorizes all merit County employees, except those designated as emergency service personnel, to remain home from work or to leave work early without prior approval of the supervisor and without the use of personal leave or leave without pay. Such leave shall be limited to the time periods designated by the County Executive or his/her designee. Employees required to work during a period of such emergency administrative leave shall receive extra compensation in accordance with provisions contained in Chapter 4.

-2 When leave for inclement weather or other emergency is declared, emergency service personnel must report to work. Emergency service personnel are those employees, designated by the department head or designee, who due to the nature of the emergency which has occurred, must report to work to ensure that public health and safety needs or critical departmental requirements are met.

10.39 *Sick Leave Bank*

~~As identified below, various competitive service employees shall be eligible to participate in a sick leave bank when incapacitated by long term sickness or injury. Two separate sick leave banks are authorized for (1) non-supervisory trade, manual and custodial service, provided that at least 270 of these employees agree to participate, (2) personnel in the ranks of Fire Fighter through Deputy Fire Chief, provided at least 300 of these employees agree to participate. Such sick leave banks shall be administered in accordance with the terms stated below:~~

- ~~-1 Membership in the sick leave bank is voluntary on the part of the employee.~~
- ~~-2 An employee may enroll within the first 30 calendar days of employment. An employee who does not enroll when first eligible may do so between any subsequent September 1 to October 1~~

~~period by making application and providing satisfactory evidence of good health to the Human Resources Department. Employees may enroll in the bank by donating 8 hours (12 hours for 24 hour shift firefighters) of sick leave earned during the then current fiscal year.~~

~~-3 A member of the bank will not be able to utilize sick leave bank benefits until his/her own sick leave is exhausted.~~

~~-4 The first 30 consecutive calendar days of illness or disability will not be covered by the bank, but must be covered by the employee's own accumulated sick leave, annual, compensatory or leave without pay, if the employee's sick leave is exhausted.~~

~~-5 A maximum of 45 work days (22.5 days for 24 hour shift firefighters) each fiscal year can be drawn by any one member of the bank. If the fiscal year ends while an employee is using sick leave bank days, he/she may continue using the bank until reaching the maximum without requalifying as required in 10.39 4.~~

~~-6 Participating members must return to work and must meet the requirements of item 4 before becoming eligible to utilize sick leave bank benefits again.~~

~~-7 Members of sick leave bank shall not earn personal leave (sick and annual) for the time charged against the bank.~~

~~-8 Members of the bank will be assessed 8 hours (12 hours for 24 hour shift firefighters) sick leave at such time as the respective bank is so depleted as to warrant same unless they choose not to participate further in the bank. Members who have insufficient sick leave at the time of the assessment will show a negative sick leave balance in the amount of the assessment. Future leave accruals will eliminate the negative balance.~~

~~-9 Members utilizing sick leave days from the bank will not have to replace these days except as a regular contributing member to the bank.~~

~~-10 Upon termination of employment or withdrawal of membership from the bank, a participating employee will not be permitted to withdraw his/her contributed days.~~

ACTION - 2

Approval of Revisions to Chapters 9, 16, and 17 of the Personnel Regulations Updating Exempt Status Definitions and Clarifying Policy Related to Employee Participation in Political Activities

ISSUE:

Board approval of revisions to Chapters 9, 16, and 17 of the Personnel Regulations. Revisions include changes in descriptions of exempt service positions and employees (Chapter 9), and alignment of Fairfax County Personnel Regulations with State law, as it pertains to employees' participation in political activities and corresponding protections under the grievance process. (Chapters 16 and 17).

RECOMMENDATION:

The County Executive recommends that the Board approve the proposed revisions to Chapters 9, 16 and 17 of the Personnel Regulations. The Board Personnel and Reorganization Committee has reviewed these revisions.

TIMING:

Routine.

BACKGROUND:

These revisions to the Fairfax County Personnel Regulations are proposed for purposes of administrative clarification, and to ensure compliance with State law. The following summarizes the revisions:

- *Chapter 9 – Separations*
Descriptions of exempt service positions and employee status' are modified to align with new exempt service status criteria and requirements. (Attachment 1)
- *Chapter 16 – Conduct and Discipline*
A section is added to define restrictions on political activities of employees as it relates to the workplace, their duties and use of authority. (Attachment 2)
- *Chapter 17 – Grievance Procedure*
This change clarifies specific instances whereby employees are eligible to receive binding decisions on grievable complaints, pertinent to political activities. (Attachment 3)

Board Agenda Item
June 7, 2011

Related changes to Article 1, Chapter 3, of the Fairfax County Code are scheduled for a 3:30 p.m. public hearing today.

The Board of Supervisors' Personnel and Reorganization Committee reviewed and supported these changes. In accordance with the Merit System Ordinance, the proposed revisions were forwarded to the Civil Service Commission for public hearing. The public hearing was held on April 11, 2011 and the Commission's comments are included as Attachment 4.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed revisions to Chapter 9 of the Personnel Regulations
Attachment 2: Proposed revisions to Chapter 16 of the Personnel Regulations
Attachment 3: Proposed revisions to Chapter 17 of the Personnel Regulations
Attachment 4: Memorandum from the Civil Service Commission

STAFF:

Susan Woodruff, Director, Department of Human Resources
Peter D. Andreoli, Jr., Deputy County Attorney, Office of the County Attorney

CHAPTER 9 Separations

9.2 *Resignation*

- 1 It is the responsibility of an employee who plans to resign from the competitive service to notify his/her immediate supervisor at least ten business days prior to the last day of work.
- 2 An employee who resigns without sufficient prior notice and thereby, in the opinion of the department head, impairs the effectiveness of the County service shall have his/her separation designated as unsatisfactory service or dismissal according to the rules governing such separations. In addition, for each day less than the required notice given, one day of annual leave may be deducted from the employee's record.
- 3 Employees who resign shall receive payment for all compensatory time and annual leave credit for which they are eligible according to the rules governing such leave, except as provided above.
- 4 An employee who retires from County service may be reemployed in any position for which qualified subject to the following conditions:
 - a. A 30 day break in service between retirement date and reemployment date is required. The only exception to the 30 day break in service requirement is the retiree who agrees, pursuant to the provisions of the retirement ordinances, to waive his/her retirement allowance during the period of his/her reemployment.
 - b. No retiree may be reemployed by the same department head under whom the employee was serving upon retirement unless:
 - a) the retiree agrees to waive his/her annuity while reemployed;
 - b) if the reemployment would qualify him/her for membership in a retirement system other than that from which he/she retired; or
 - c) if the reemployment is in an exempt ~~benefits-eligible limited term or exempt part-time~~ position with maximum hours worked not to exceed 15601,039 per calendar year unless authorized by the County Executive or his/her designee.
 - c. No retiree will be permitted to participate in a second County retirement system.
 - d. The combined total of the retiree's annuity and salary after reemployment may not exceed the cap established by the Board of Supervisors.
- 5 A merit employee who resigns in order to join the military forces of the United States or who is inducted into such service is entitled, upon discharge, to be restored to his/her former position or to a position of like seniority, status and pay in accordance with guidelines set forth in federal law.

9.3 *Reinstatement*

An employee eligible for reinstatement as defined in Chapter 2 may be reinstated in accordance with Chapter 4 to the position or class formerly held; provided that no other employee with merit status in the class to which such person is being returned shall be demoted or laid off in order to make such a reinstatement possible.

9.4 Lay-Offs

-1 Definitions:

- a. **Active Class:** The class to which the employee is assigned when he/she becomes subject to the Reduction-in-Force Procedure. For the purpose of this procedure the active class for employees serving in an acting promotional capacity shall be the employee's class prior to being temporarily promoted. The active class for employees who are serving under a non-competitive underfill agreement shall be the class at which the position is authorized to be filled (i.e., the higher class). The active class for employees who are serving under a competitive underfill agreement shall be the class in which the employee is currently serving (i.e., the lower class).
- b. **Continuous Service:** Employment including merit service with the Fairfax County Public School System, without interruption except for absences on approved leaves, absences to serve in the Armed Forces of the United States or absences of less than one calendar year when followed by reemployment or reinstatement. Service prior to normal or early retirement from a County retirement system shall not be counted.
- c. **Department:** For the purpose of this section, shall include all offices, divisions, and other work units, which are under the control of a single department head.
- d. **Minimum Qualifications:** Qualifications as stated in the official class specification as approved by the County Executive.
- e. **Month:** For the purposes of this section, month shall be defined as 30.4166 days (365 days ÷ 12 months.)
- f. **Probationary Employee:** For the purpose of this section, probationary employee shall be defined as an employee serving the initial probationary period with the County.
- g. **Secondary Class:** A class in which an employee is not actively employed when he/she becomes subject to this procedure which is equal to or lower in grade than the active class and in which the employee has previously been assigned for a period of one year or more during his/her continuous service period with the County. Secondary class includes lower classes within the active class series. Secondary class also includes lower classes within the class series where the employee was previously assigned for a period of one year or more. Secondary class shall not include any class from which the employee was removed for disciplinary or inadequate performance reasons.
- h. **Seniority:** The sum of the employee's continuous service points. An employee shall receive one point for each month of merit employment during the employee's period of continuous service. Credit will be given for partial months. Credit for employment time shall be deducted on a year-for-year basis (12 points) for each pay increase denied or annual performance review with a rating of unsatisfactory (deficient or unacceptable rating for public safety employees or non- public safety employees ratings prior to July 1, 2000) received within the 3 years prior to the date the County Executive invokes the RIF.

-2 Reduction-In-Force

The County Executive may invoke a reduction-in-force procedure (RIF) when he/she determines that there is an excess number of employees under his/her supervision and control, as a result of, for example, the abolishment of a position(s), the lack of funds, or the lack of work. Additionally, when the Human Resources Director approves the abolition of a position held by a non-probationary merit employee in the competitive service, the procedures in this section are applicable. The reduction-in-force procedure shall not be utilized as long as there are

probationary employees in the department and in the active class in which the reduction-in-force is to be implemented. All positions held by exempt ~~benefits-eligible, limited term~~, exempt ~~temporary part time employees~~ as well as other positions held by probationary employees in the affected department shall be examined by the department head to determine if separation of such employees will provide placement opportunities for non-probationary employees in their department affected by the reduction-in-force.

-3 Reduction-In-Force Procedures

- a. The department head or deputy shall recommend the class(es) within a department in which there are an excess number of employees. Final approval of the affected classes and numbers to be reduced rests with the County Executive or his/her designee.
- b. When advised by the County Executive that a reduction-in-force is under consideration, the Human Resources Director is authorized to suspend the filling of any vacant position within the classes of work to be affected by the scheduled reduction-in-force action, as well as all lower graded classes within all class series of which said affected classes are a part and any other class in which placement of a displaced employee may be likely. Notwithstanding any other provisions in this procedure, the County Executive may suspend indefinitely the filling of vacant positions when it is deemed to be in the best interest of the County to do so.
- c. Employees in classes designated as excess shall be subject to the following procedures provided that if there is more than one position available, the Human Resources Director shall designate the position to which the employee shall be assigned:
 - (1) The Human Resources Director shall rank the employees in the departments with excess positions according to seniority, as defined in 9.4-1h, and establish a seniority list for each affected class in each affected department. The least senior employees in an affected class in an affected department shall be subject to the steps listed below, regardless of whether their specific position is to be abolished. Once it is determined which employees are subject to the reduction-in-force procedure based upon their seniority and the number of excess positions, the Human Resources Director shall rank all of them, regardless of department, according to seniority, as defined in 9.4-1h. All employees to be placed shall be processed through each step listed below, starting with those with the most seniority, before progressing on to the next step in the procedure.
 - (2) An employee in a class designated as excess shall be transferred to a vacancy in his/her class in any department. If there are more employees to be placed than vacancies, placement priority shall be determined by seniority. Transfer to such a vacancy shall be mandatory and if refused the employee shall be terminated.
 - (3) An employee in a class designated as excess shall be transferred to a vacancy for which he/she meets the minimum qualifications in another class at the same pay grade in any department. If there are more employees to be placed than vacancies, placement priority shall be determined by seniority. Transfer to such a vacancy is voluntary.
 - (4) If there is no vacancy as specified in 2 above and the employee is not transferred as indicated in 3, an employee in a class designated as excess shall displace a probationary employee in his/her class in another department. Transfer to such a position is mandatory and if refused, the employee shall be terminated. If more than one probationary employee is serving in the class, the employee with the least seniority shall be displaced first. Probationary employees so displaced shall be terminated.

(5) If there are no opportunities as identified in 2 and 4 above, and the employee is not transferred as indicated in 3, the employee shall have an opportunity to transfer to vacancies in his/her or another department in secondary and other classes which are at a lower grade than his/her active class. Transfer to such vacancy shall be voluntary. The employee must meet the minimum qualifications for the vacancy to which he/she desires to transfer. If there are more employees to be placed than vacancies, placement priority shall be determined by seniority.

(6) If there are no opportunities as specified in 2 and 4 above, and the employee does not utilize or is not eligible to utilize the procedures set forth in 3 and 5, an employee in a position designated as excess shall displace a probationary employee in a position in a secondary class in his/her department or another department. The employee must accept the first available displacement opportunity. Displacement opportunities will be available beginning with the secondary class with the highest pay grade and continuing in descending pay grade order. Transfer to such positions shall be voluntary. If more than one probationary employee is serving in the secondary class, the employee with the least seniority shall be displaced first. Probationary employees so displaced shall be terminated.

(7) If placement pursuant to 2 and 4 is not available and the employee does not utilize or is not eligible to utilize the procedures set forth in 3, 5, and 6, then the employee is eligible to bump within secondary classes within his/her department, according to the following procedures:

(a) An employee may not bump in a secondary class wherein the employee has elected not to accept placement under Sections 5 and 6 above.

(b) An employee with more seniority shall be eligible to bump within his/her department in secondary classes as defined in 9.4-1g in which there is presently assigned a person with less seniority. The employee must accept the first available bumping opportunity. Bumping opportunities will be available beginning with the secondary class with the highest pay grade and continuing in descending pay grade order. If more than one bumping opportunity at the same pay grade level is available; the employee displaced shall be the one with the least seniority. Failure to accept a bumping opportunity as defined herein results in lay off of the employee in the position designated as excess.

(c) An employee who is bumped pursuant to this procedure will be eligible to utilize the procedure set forth in this policy.

-4 Transition Period Following Placement

If an employee, displaced by a reduction-in-force and subsequently placed in a new position in accordance with the procedures outlined above, is separated for unsatisfactory performance during the first year following placement in the new position, he/she shall be laid off and entitled to the reemployment, notice and severance pay benefits outlined in this procedure.

-5 Reemployment

An employee who is demoted, who does not successfully complete the one year transition period following a RIF placement due to unsatisfactory performance, or is unable to utilize a transfer or bumping opportunity under these procedures and is laid off shall have his/her name placed on the reemployment list for his/her active classification. All employees on the reemployment list for a specific job class shall be certified for vacancies in that class. The certification list shall include the seniority rating for each employee; however, selection for a specific vacancy shall be at the sole discretion of the department head or deputy. All employees on the reemployment list for a specific job class must be offered reemployment prior to the certification or selection of applicants not on the reemployment list. Employees who return to a position in their active class

under this procedure shall be treated as reinstatements with respect to pay and leave accrual. If an employee is offered and rejects an opportunity for reemployment in the active class, his/her name shall be removed from all reemployment lists. The employee's salary shall not be affected. In addition, at the employee's option, his/her name may be placed on the reemployment lists for secondary classifications as defined in this procedure. Should a vacancy occur in such a secondary class, employees on the reemployment list shall be certified for the vacant position but are not guaranteed placement. Selection for such positions shall be at the discretion of the department head or deputy. If an employee is offered and rejects an opportunity for reemployment in a secondary classification, his/her name shall be removed from only the referenced list. Employees shall remain on reemployment lists created under this procedure for two years or until the employee accepts placement in the active class. In no case, however, shall an employee be eligible for non-competitive appointment to a position higher in pay grade than the position in which the employee was serving at the time of layoff or demotion.

Exempt-~~benefits-eligible~~ ~~limited-term~~ and exempt-~~temporary part-time~~ positions that become available in a class in which there are persons with reemployment rights will be offered to persons with reemployment rights in that classification on the basis of seniority. If an employee accepts an exempt-~~benefits-eligible~~ ~~limited-term~~ or exempt-~~temporary part-time~~ position, he/she will remain eligible for reemployment as described above.

-6 Pay Retention Provisions

An employee who accepts a demotion under this procedure shall continue to receive the salary he/she had been receiving prior to the demotion until the employee accepts another position in the former pay grade or in a pay grade in a higher range of pay than the former pay grade. The employee shall not be entitled to an increase in salary until his/her salary falls below the maximum rate of pay for the new pay grade. The performance pay increase date shall not be affected by the demotion. If the employee is returned to his/her active class, the rate of pay shall not change upon return to the active class.

-7 Notice and Severance Pay

- a. Prior to lay-off, a merit employee shall be given at least 30 calendar days notice. The employee's notice of lay-off shall be accomplished by hand delivery or by mailing by certified mail to the employee's listed address, a written communication notifying him/her of the lay-off.
- b. Severance pay to be paid at the rate of pay at time of lay off will be granted to non-probationary merit employees laid off in accordance with this procedure according to the following formula:

YEARS OF SERVICE WEEKS SEVERANCE PAY

2 to 5	3 weeks pay
6 to 10	4 weeks pay
11 to 15	5 weeks pay
16 or more	6 weeks pay

Unless otherwise specified by the Board of Supervisors, severance pay shall be forfeited by the employee who declines a transfer, reassignment or demotion to another vacant position or who declines a bumping opportunity prior to the effective date of any such separation due to a reduction-in-force. Upon the effective date of the separation, an employee shall be entitled to receive the employee's total severance pay allowance at bi-weekly intervals until the total

severance pay to which the employee is entitled has been exhausted. Employees will not accrue leave or other benefits related to severance pay. Severance payments to an employee shall cease, if not exhausted, upon the reemployment of the employee to a position in the competitive service.

-8 Workforce Composition Review

Due to the transfers, demotions and bumping that occur as a RIF is implemented; it is not possible to ascertain the impact on the workforce composition until the RIF has been completed. At that time, the County Executive shall examine the results of the reduction in force to determine if the County's workforce composition has been significantly altered and if so, shall recommend appropriate future changes to the Affirmative Action Plan.

-9 Miscellaneous

- a. When advised by the County Executive of a reduction-in-force, the Human Resources Director or his/her designee shall prepare a reduction-in-force roster ranking each employee within the affected class(es). This roster shall be open for employee inspection.
- b. Ties in seniority shall be resolved by ranking tied employees on the basis of the last 4 digits of their social security number. The employee ranked first numerically would be considered for lay-off first. Further ties shall be determined by lot.
- c. Lateral transfers under this procedure shall not be mandatory if the number of scheduled hours of the vacant position or the position occupied by a probationary employee to be displaced differ from the number of scheduled hours of the employee's current position.
- d. Notwithstanding any other provision, the Human Resources Director is authorized to review records related to the reduction-in-force procedure and investigate allegations of unfair application of these procedures.

ADDENDUM NUMBER 1 TO CHAPTER 16 STANDARDS OF CONDUCT

All employees, regardless of grade, title or length of county service **are expected to adhere to the following Standards of Conduct**. Violation of the Standards of Conduct is grounds for disciplinary action up to and including dismissal.

Leave and Attendance

Employees are expected to:

Comply with rules and regulations governing hours of work, absences, use of leave.

Employees are prohibited from:

Failing to report to work as scheduled without proper notice to supervisor;

Leaving work without permission; Arriving late for work on a consistent basis.

Personal Behavior and Conduct

Employees are expected to:

Demonstrate professionalism and support the county's commitment to excellent customer service at all times;

Exercise courtesy, respect and tact when dealing with fellow employees and the public regardless of age, race, color, religion, sex, national origin, marital status, disability or sexual orientation or any other factor unrelated to the impartial conduct of county business.

Comply with a proper order of an authorized supervisor.

Employees are prohibited from:

Harassing fellow employees, county vendors, or members of the public on the basis of race, color, religion, sex, [sexual orientation], national origin, age, marital status, disability, genetic information, or any other characteristic now or hereafter protected by federal, state or county law. This prohibition includes, but is not limited to, sexual harassment;

Engaging in rude or unprofessional behavior or disorderly conduct even if the behavior is not expressly forbidden by regulation or law;

Using racial, sexist or ethnic slurs or other language that disparages any person on the basis of age, race, color, religion, sex, national origin, marital status, disability, or sexual orientation;

Being convicted of a crime that is committed on the job or a felony in Virginia of such nature that the public or other employees may be endangered if the employee remains in his or her position or of such nature that reasonably undermines the public trust in the employee's ability to perform his or duties.

Engaging in conduct on or off duty that violates federal or state law, county ordinances or policies when the violation is related to the employee's activity as a county employee or to county business or when it undermines public trust in the county or the employee's ability to perform his or her duties.

Manufacturing, distributing, possessing, using or being under the influence of alcohol or illegal drugs while at work or on county premises with the exception of attendance at events where alcohol is permitted during off duty hours;

Threatening, assaulting, intimidating, or harassing another employee or a member of the public;
Using obscene language toward fellow employees, supervisors, subordinates and/or members of the public;
Abusing supervisory authority through favoritism, harassment, discrimination or mistreatment of employees.

Protection and proper use of County data, property, funds, and records

Employees are expected to:

Use public property, resources, and funds in accordance with established procedures;
Maintain confidentiality with regard to client or customer information in accordance with state and federal law, county ordinance and county policy; Maintain employee confidentiality by preventing the disclosure of personal information to any unauthorized party.

Employees are prohibited from:

Using County data, facilities, equipment, property or employees for other than officially approved activities, except as permitted under County policy or procedure;
Engaging in any action prohibited by county information technology policy or procedure;
Carelessly or willfully causing destruction of county property;
Knowingly falsifying or conspiring to falsify any county record or report whether paper or electronic, (e.g., resume, time and attendance reports, workers' compensation claims, travel and/or expense vouchers).

Driving

Employees are expected to:

Operate all county vehicles in accordance with federal, state and local driving laws;
Operate privately owned vehicles being used in the performance of County business in accordance with state and local driving laws;
Remain aware of status of operator's license and report any suspension or revocation of driving privileges to their supervisor immediately if job duties require the operation of a vehicle for county business.

Employees are prohibited from:

Knowingly operating a vehicle on county business without a valid operator's license;
Possessing, using, or being under the influence of alcohol, illegal drugs, or prescription drugs that might adversely affect one's ability to drive, while driving a county vehicle or while driving a personal vehicle on county business.

Safety

Employees are expected to:

Promote safe and healthy working environment by complying with all appropriate safety and health regulations;
Promptly report safety and health hazards so that they can be corrected before injuries result;
Dress in appropriate attire, uniform or safety equipment as specified by the standards and work rules for the agency and position;
Immediately report workplace violence to your supervisor or appropriate authority.

Employees are prohibited from:

Bringing a gun, knife or other weapon, either concealed or displayed, to work or onto county premises, unless specifically authorized by the appointing authority to do so.

Outside Employment/Conflict of Interest/Political Activities of Employees

Employees are expected to:

Disqualify themselves in any decision where a conflict of interest may be presumed to exist; Obtain permission from their appointing authority prior to engaging in any private business activity, employment or other activity outside of work that conflicts or interferes with full discharge of their official duties or the work they perform as a county employee.

Employees are prohibited from:

Accepting anything of value for performing, or refraining from performing, an official job-related act; or accepting anything of value in order to assist another person in obtaining a county job, promotion, or contract;

Using information obtained in connection with county employment in order to obtain financial gain for the employee or others;

Accepting anything that might tend to influence the manner of performance of county employment or that might be intended to influence the manner in which a county employee performs his or her job;

Having a personal interest in any contract with the county;

Participating in matters related to their employment in which the interests of the county employee, or the interests of the county employee's family members or business associates, might be affected.

Engaging in political activities, as defined in state law and County ordinance, while on duty, in uniform, or on the premises of their employment with the County.¹

Using their official authority to coerce or attempt to coerce a subordinate employee to pay, lend, or contribute anything of value to a political party, candidate, or campaign or to discriminate against any employee or applicant for employment because of that person's political affiliations or participation in permitted political activities or failure to participate in political activities, whether permitted or not.²

Discriminating in the provision of public services, including, but not limited to, fire fighting, emergency medical, or law enforcement services, or responding to requests for such services, on

¹ See Va. Code Ann. § 15.2-1512.2(B) (Supp. 2010).

² Va. Code Ann. § 15.2-1512.2(D).

the basis of the political affiliation or political activities of the person or organization for which such services are provided or requested.³

Suggesting or implying that the County has officially endorsed a political party, candidate, or campaign.⁴

³ Va. Code Ann. § 15.2-1512.2(E).

⁴ Va. Code Ann. § 15.2-1512.2(F).

**ADDENDUM NUMBER 2 TO CHAPTER 16
CODE OF ETHICS FOR THE MERIT SERVICE
OF
FAIRFAX COUNTY, VIRGINIA**

Fairfax County Code of Ethics is intended to inspire a superior level of conduct, sensitivity and sound judgment for all employees.¹ The code is intended to complement, not replace, all professional code of ethics. Employees should be aware of and abide by their respective professional values and requirements. All employees must perform their designated function in a manner that reflects the highest standards of ethical behavior. All employees must uphold their responsibility as trusted public servants. All employees are obligated to respect, honor, and uphold the Constitution, laws and legal regulations, policies and procedures of the United States, the Commonwealth of Virginia, and the County of Fairfax.

The Code of Ethics is supported by six core principles that form the ethical foundation of the organization: Honesty, Public Service, Respect, Responsibility, Stewardship, and Trust.

I. Honesty: Be truthful in all endeavors; be honest and forthright with each other and the general public.

II. Public Service: Ensure all actions taken and decisions made are in the best interest of the general public and enrich and protect quality of life.

III. Respect: Treat all individuals with dignity; be fair and impartial; affirm the value of diversity in the workplace and in Fairfax County; appreciate the uniqueness of each individual; create a work environment that enables all individuals to perform to the best of their abilities.

IV. Responsibility: Take responsibility for actions; work a full day; conduct all workplace actions with impartiality and fairness; report concerns in the workplace, including violations of laws, policies and procedures; seek clarification when in doubt; ensure that all decisions are unbiased.

V. Stewardship: Exercise financial discipline with assets and resources; make accurate, clear and timely disclosures to the public; maintain accurate and complete records; demonstrate commitment to protecting entrusted resources.

VI. Trust: Build regard for one another through teamwork and open communication; develop confidence with the public by fulfilling commitments and delivering on promises.

¹ For the purpose of this document, the term employee includes all persons, volunteers and all elected and appointed officials working on behalf of Fairfax County.

CHAPTER 17

GRIEVANCE PROCEDURE

17.1 Purpose

The purpose of the grievance procedure is to provide a fair, detailed process whereby employees may voice complaints concerning issues related to their employment with the County. The objective is to improve employee-management relations through a prompt and fair method of resolving problems.

17.2 Coverage of Personnel

- 1 All merit employees in the competitive service of the County who have satisfactorily completed their initial probationary period are eligible to file complaints under this procedure.
- 2 Excluded from the grievance procedure are the following:
 - a. Employees in the exempt service, except as specifically provided otherwise in the procedural directives for the administration of the exempt service issued by the County Executive with the approval of the Board of Supervisors pursuant to Fairfax County Code § 3-1-2(c);
 - b. Employees serving their initial probationary periods unless their complaints include allegations of discrimination as defined in Section 17.3-2d [and 17.3-2e](#);
 - c. Sworn police employees who have elected to proceed under the "Law-Enforcement Officers Procedural Guarantee Act." Such employees shall be given written notification of their right to initiate a grievance under the County's Grievance Procedure. They may choose to file the grievance under either procedure, but not both.

17.3 Types of Complaints

- 1 Employee complaints will be classified at the point of grievability determination (see Section 17.5-4) as one of the following:
 - a. Grievable, with a binding decision from a hearing panel of the Civil Service Commission;
 - b. Nongrievable but eligible for a hearing and an advisory decision from

a hearing officer appointed by the Chair of the Civil Service Commission;

c. Nongrievable with no hearing.

-2 Grievable complaints which receive binding decisions from a three-member panel of the Civil Service Commission hearing the appeal include:

a. Dismissals, unsatisfactory service separations, demotions and suspensions;

b. The application of specific County personnel policies, procedures, rules and regulations;

c. Acts of retaliation as a result of utilization of this procedure, the pay for performance appeals procedure, or for participation in the grievance of another county employee;

d. Discrimination against an employee, including a probationary employee, on the basis of race, color, creed, religion, age, disability, national origin, sex, political affiliation, marital status, union affiliation, genetic information, veterans status, or disabled veterans status;

e. Intimidation-Discrimination or retaliation against an employee, including a probationary employee, because of participation in political activities permitted under state law and County ordinances or failure to participate in political activities, whether permitted or not by state law or County ordinance;

f. Acts of retaliation because the employee (i) has complied with any law of the United States or of the Commonwealth, (ii) has reported any violation of such law to a governmental authority, (iii) has sought any change in law before the Congress of the United States or the General Assembly (iv) has reported an incidence of fraud, abuse, or gross mismanagement to the Board of Supervisors Audit Committee, the Auditor to the Board, his/her department head, or to any other federal, state, or County government authority, such as the Commonwealth's Attorney for the County of Fairfax, or the U.S. Attorney for the Eastern District of Virginia.

g. For the purpose of sub-paragraphs (c) and (f) of this section, there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.

-3 Nongrievable complaints eligible to receive advisory decisions from a

hearing officer appointed by the Chair of the Civil Service Commission include:

- a. The physical plant;
- b. The methods and conditions of the specific job;
- c. Relations with fellow employees;
- d. Performance appraisals;
- e. Written reprimands.

17.4 *Nongrievable Complaints*

-1 Complaints that are not grievable under this procedure include:

- a. The establishment and revision of wages or salaries, position classification, employee benefits;
- b. Oral reprimands;
- c. The contents of ordinances, statutes, or established personnel policies, procedures, rules and regulations;
- d. Failure to promote, except where the employee contends that established promotional policies or procedures were not followed or applied fairly;
- e. Discharge, lay-off or suspension from duties because of lack of work or reduction-in-work-force, except where such actions affect an employee who has been reinstated within the previous six months by the Civil Service Commission as the result of the final determination of a grievance. In such cases, the department must show that there was a valid business reason for the action and that the employee was notified of such reason in writing prior to the effective date of the action;
- f. Management of County employees including the right to make personnel appointments in accordance with adopted selection policies and techniques, to establish rules and regulations governing work performance and performance evaluations, to transfer and assign employees within the County, to determine the need for shift operation and rotation of the workweek, to assign overtime, to determine job training and career development, and to determine duties or actions in emergency situations.

- g. Decisions of performance evaluation appeals panel, except in accordance with the provisions of Chapter 12.
- 2 Appeals of position classification are handled in accordance with the criteria set forth in Section 3.6.

17.5 Steps of the Procedure

-1 Step 1: Immediate Supervisor

An employee who has a complaint shall discuss the problem directly with his/her supervisor within twenty (20) business days of the date the employee should have reasonably gained knowledge of the event giving rise to the complaint.

A verbal reply by the Supervisor shall be made to the complaint during the discussion or within five business days following the meeting.

-2 Step 2: Division Supervisor

If the complaint is not resolved after the first step meeting and where there is a division supervisor, the employee may reduce the complaint to writing on "Complaint Form - Second Step." All grievance forms are obtainable from the Department of Human Resources.

The employee shall specify the relief sought through the use of this procedure. The fully completed Complaint Form shall be delivered by the employee to the division supervisor within five (5) business days of the first step meeting or the supervisor's reply, if given at a later date. The division supervisor shall meet with the employee within five business days of receipt of the Complaint Form.

A written reply by the division supervisor shall be made to the complaint within five business days following the meeting.

-3 Step 3: Department Head

If the reply from the second step meeting is not acceptable to the employee, or where no division supervisor exists, the employee may appeal the last response to the department head.

"Complaint Form - Third Step" shall be completed by the employee and delivered to the department head within five business days of receipt of the last response. The department head shall meet with the employee within five business days of receipt of the Complaint Form.

A written reply by the department head shall be made to the complaint within five business days following the meeting.

-4 Step 4: Grievability Determination

- a. When a complaint cannot be satisfactorily resolved pursuant to Steps 1 through 3 above, the employee shall request on the appropriate form a determination concerning the grievability of the complaint within ten business days of receipt of the third step reply.
- b. All requests for grievability determination shall be submitted to the County Executive. The County Executive will determine whether the employee is entitled to access to the grievance procedure and if the complaint is grievable, and if so, based upon the criteria set forth in Section 17.3, establish whether the grievant shall receive a binding or an advisory decision. Grievability and access determinations by the County Executive shall be made within ten business days of receipt of such request.
- c. Decisions regarding grievability and access are appealable only to the Fairfax County Circuit Court. Such appeals shall be made by filing a notice of appeal with the County Executive within ten business days from the date of receipt of the decision. The County Executive, or his/her designee, shall transmit to the Clerk of the Circuit Court a copy of the County Executive's decision, a copy of the notice of appeal, and the exhibits constituting the record of the grievance within ten calendar days of receipt of the notice of appeal. A list of the evidence furnished to the County shall also be provided to the grievant.
- d. The Circuit Court shall have a hearing on the issue of grievability and/or access within thirty (30) days of receipt of the record of the grievance by the Circuit Court Clerk. The Court may affirm, reverse or modify the decision of the County Executive.
- e. The decision of the Circuit Court is final and is not appealable. Procedures governing the review by the Circuit Court are found in Virginia Code §15.2-1507(a)(9).
- f. In no case shall the County or Commonwealth's Attorney be authorized to decide the issue of grievability.

-5 Step 5: Appeal to the Civil Service Commission

- a. If the complaint has been determined to be grievable, with a binding decision

or nongrievable with an advisory decision as provided herein, the employee may file a request for hearing on the appropriate form with the Fairfax County Civil Service Commission. The employee shall file the request within ten business days following the receipt of the determination that the complaint is grievable.

- b. Appeals of complaints that have been determined to be grievable shall be heard by a three-member panel of the Commission (hearing panel or panel) as soon as possible after receipt of the employee's appeal request. Appeals of complaints that have been determined to be non-grievable but entitled to an advisory and non-binding opinion shall be heard by a hearing officer or by the Executive Director of the Commission when the parties are not represented by counsel, as soon as possible after the receipt of the employee's appeal request. The Executive Director of the Commission in scheduling hearings on appeals shall give priority on its docket to dismissal and unsatisfactory service separation cases. The Executive Director of the Commission shall notify the employee and the department head in writing of the time and place of the appeal hearing.
- c. The jurisdiction and authority of the hearing panels of the Civil Service Commission shall be confined exclusively to those complaints previously determined to be grievable as provided herein. While a panel of the Commission hearing the appeal has authority to determine the appropriate application of an existing rule or policy, they do not have the authority to add to, detract from, alter, amend or modify in any way County or department policy or procedure, and its findings shall be consistent with all applicable laws and ordinances.
- d. No member of the Civil Service Commission or an appointed hearing officer shall hear a grievance if he/she has direct involvement with the grievance being heard, or with the complaint or dispute giving rise to the grievance. The following relatives of a participant in the grievance process or a participant's spouse are prohibited from hearing said grievance: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin.

17.6 Remedies

- 1 The panel of the Commission hearing the appeal is empowered to uphold or reverse the action being grieved or, in appropriate circumstances, choose a modified remedy.

- 2 In grievances entitled to a binding decision the following guidelines pertaining to remedial action shall apply:
- a. Dismissals - The panel of the Commission hearing the appeal may deny relief, reinstate the employee while imposing lesser disciplinary actions such as demotion or suspension, or reinstate the employee.
 - b. Disciplinary Demotions pursuant to Personnel Regulation 16.5-5 - The panel of the Commission hearing the appeal may deny relief, impose lesser disciplinary sanctions, or revoke the disciplinary demotion.
 - c. Suspensions - The panel of the Commission hearing the appeal may deny relief, impose a lesser suspension, instruct that a written reprimand be substituted for the suspension, or revoke the disciplinary suspension.
 - d. Unsatisfactory Service Separations - The panel of the Commission hearing the appeal may deny relief; reinstate with a demotion to the employee's previously held class, or in the case where an employee's class is part of a class series, reinstate with a demotion to the next lower class in the series; reinstate with a new probationary period with or without a demotion; or reinstate the employee in the class he was in at time of separation.
 - e. Back Pay and Restoration of Benefits in Appeals of Dismissals, Demotions, Suspensions, and Unsatisfactory Service Separations:
 - i If an employee is reinstated, he/she shall be given back pay for the period of separation contingent upon his/her making full disclosure of all earnings he/she received during separation, which shall be an offset against back pay. In the event the employee fails to provide to the panel of the Commission hearing the appeal such evidence as it deems necessary to determine the amount of the offset, the employee shall forfeit his/her right to back pay.
 - ii In cases of suspension, the employee shall be entitled to back pay for the period of suspension revoked by the panel of the Commission hearing the appeal under the same conditions as sub-section (1).

- iii A lesser sanction in dismissal cases shall include a suspension without pay covering some or all of the period of separation, notwithstanding any other provision of the Personnel Regulations.
- iv In the event that the panel of the Commission hearing the appeal imposes a demotion in lieu of an unsatisfactory service separation or dismissal, back pay may be awarded, at the discretion of the panel of the Commission hearing the appeal, for the period of separation at the rate of pay for the lower level classification.
- v Back pay shall be computed on the basis of the employee's regularly scheduled hours of work and shall not include any overtime that the employee might have earned.
- vi For any period of time that an employee is entitled to receive back pay, he/she shall be given service credit towards retirement and shall be reinstated in the appropriate retirement system with his/her previous plan election, provided that he/she repays into the system all contributions that he/she withdrew on separation. The employer shall ensure that all contributions and deductions attributable to such service are made.
- vii Similarly, for purposes of accruing leave, the employee shall be given credit towards his/her total years of service for any period of time that he/she is entitled to back pay. The employee shall also be credited with any leave that he/she would have accrued during that period.
- viii Upon reinstatement, the employee shall be placed in the health plan that he/she was in at the time of separation with the same options that he/she had previously elected. The effective date of coverage will be the first of the month following reinstatement. A reinstated employee may opt for retroactive coverage in the event that it would be to his or her advantage. The employee must pay his or her share of retroactive coverage premiums. Claims expenses incurred for the retroactive period will be adjusted upon payment of the premium and the employee will be reimbursed for out-of-pocket costs above those he or she will have incurred had the coverage been in effect. The employee may be reimbursed for monies expended by the employee to obtain medical insurance during the period of separation up to the amount of the employer's contribution that would have been incurred had the employee been in service during the period of separation. In no event shall the employee be entitled to reimbursement for medical costs incurred during the period of separation. In the event the

employee elected to continue his or her County health insurance under COBRA during the period of separation, the employee shall be reimbursed the difference between the premium he or she paid under COBRA and what he or she would have paid had he or she continued to be employed during the period of separation. In no event shall the employee be entitled to reimbursement for medical costs during the period of separation, except as provided above.

ix. Upon reinstatement, an employee's salary shall be adjusted to reflect any performance pay increases that would have been received had the employee not been separated. If a performance evaluation existed for the performance year prior to the employee's separation, the performance pay increase shall be determined using the final rating on that performance evaluation. If no performance evaluation existed for the performance year prior to the employee's separation, the employee shall be given a 3.5% pay increase. The performance pay increase date does not change.

f. Promotions - The panel of the Commission hearing the appeal may deny relief, order the promotional procedure redone, order a retroactive promotion, order the grievant promoted immediately if there is an available vacancy or promoted to the next available vacancy.

-3 In cases other than dismissals, unsatisfactory service separations, demotions, suspensions, or performance evaluations, the panel of the Commission hearing the appeal may deny the relief sought by the employee or grant such relief as is necessary to place the employee in the situation he/she would have been in had the Personnel Regulations or policies been properly interpreted and/or applied in the first instance. In no event shall the employee be awarded any damages, nor shall the relief granted by the panel of the Commission hearing the appeal affect the rights of other employees.

-4 Acts of Reprisal and Discrimination - Where the panel of the Commission hearing the appeal determines that any act of reprisal or discrimination as defined in this chapter is the reason for the adverse employment action grieved by the employee, the panel of the Commission hearing the appeal shall have the authority to revoke the adverse employment action. In the event the adverse employment action is one of the actions described in Sections 2 or 3 of this section, the panel of the Commission hearing the appeal may apply the remedial actions provided under those subsections. The panel of the Commission hearing the appeal shall also affirm such adverse employment actions taken to the extent that they were not the result of reprisal or discrimination.

-5 Damages, Attorney's Fee and Costs - The panel of the Commission hearing the

appeal shall have no authority to order the payment of damages of the grievant's or the County's attorney's fees or costs.

- 6 Recommendations - Regardless of whether the panel of the Commission hearing the appeal grants the individual grievant any relief, such panel may make whatever recommendations to the Board of Supervisors or County Executive it deems appropriate.

17.7 Conduct of Grievance Step Meetings

- 1 Personal face-to-face meetings are required at all steps. The employee and the County management may have a representative present at all steps. If the employee is represented by legal counsel, management likewise has the option of being represented by counsel. The parties to the grievance may by mutual agreement waive any or all intermediate steps or meetings, with the exception of the initial complaint, reducing the complaint to writing and the request for grievability determination. Upon written request from the grievant to the Department head, County management shall waive the first and second step grievance meetings in cases of termination, suspension, or demotion. Time spent attending grievance step meetings, Circuit Court hearings or a hearing before a panel of the Civil Service Commission during the grievant's regularly scheduled hours shall be considered work time and the use of personal leave is not required.
- 2 At all steps, appropriate witnesses also may be asked to provide information. Witnesses shall be present only while actually providing testimony.
- 3 In any complaint involving a charge of discrimination, at the request of any party to the grievance, the Director of the Office of Equity Programs, or his/her designee, may attend step meetings.

17.8 Grievant's Expenses

- 1 The grievant must bear any cost involved in employing representation or in preparing or presenting his/her case.

- 2 Whenever possible, grievances will be handled during the regularly scheduled workhours of the parties involved. Civil Service Commission hearings are held during the County's business day whenever possible.
- 3 A panel of the Civil Service Commission has no authority to award legal fees or punitive damages.

17.9 Extension of Time

- 1 The parties to the grievance, by mutual agreement, or the County Executive or his/her designee, upon the request of one of the parties and showing of just cause, may extend any or all of the time periods established in this procedure.

17.10 Compliance with Procedural Requirements of this Procedure

- 1 After the initial filing of a written complaint, failure of either the employee or the respondent to comply with all substantial procedural requirements of the grievance procedure without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five workdays of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the County Executive, or his/her designee.
- 2 The County Executive, or his/her designee, may require a clear written explanation of the basis for just cause extensions or exceptions to any of the substantial procedural requirements. The County Executive, or his/her designee, shall determine all compliance issues.
- 3 Any party aggrieved by the determination of the County Executive or his/her designee on a compliance issue may obtain judicial review of the determination by filing a petition with the Fairfax County Circuit Court within thirty days of the compliance determination.

17.11 Resolution Prior to Hearing

Any grievance shall be considered settled at the completion of any step if all parties are satisfied. In fact, it is expected that the great majority of grievances will be settled at the first or second step. However, nothing in this procedure should be construed as limiting the employee's right to exhaust the remedies provided by this procedure.

17.12 Hearings

- 1 Hearings shall be conducted as described in Addendum 1 to Chapter 17.
- 2 Hearings shall be open to the public. However, upon request of either party, the hearing shall be private. The hearing officer or the panel of the Commission hearing the appeal, by majority vote, may close a hearing to the public if the testimony about to be presented might impugn the personal reputation of a party or witness to said hearing, or if the right to privacy of such party or witness requires that the hearing be closed. Parties and their representatives shall be allowed to attend the hearing at all times. All witnesses shall be excluded from the hearing, except when testifying, at the request of either party.
- 3 Failure of either party without just cause to comply with all substantial procedural requirements at the hearing shall result in a decision in favor of the other party in accordance with the procedures under Pers. Reg. §17.10.
- 4 The decision of the panel of the Commission hearing the appeal shall be announced after the deliberations by that hearing panel at the conclusion of the hearing and shall be filed in writing by the Chairperson of that hearing panel of the Civil Service Commission or by the Hearing Officer with the parties not later than ten business days after the completion of the hearing. Copies of the decision shall be transmitted to the Human Resources Director, the employee, the employee's department head and the County Executive. The Hearing Officer also shall transmit a copy of the advisory decision to the Executive Director of the Civil Service Commission.
- 5 The majority decision of the panel of the Commission hearing the appeal shall be final and binding. Either party may petition the Fairfax County Circuit Court for an order requiring implementation of a binding decision from the panel of the Commission hearing the appeal. Notwithstanding any other provision of this chapter to the contrary, a final decision of a panel of the Civil Service Commission hearing the appeal rendered under this procedure which would result in the reinstatement of any employee of the Sheriff's Department, who had been terminated for cause, may be reviewed by the Fairfax County Circuit Court upon the petition of the County. Such review by the Circuit Court shall be limited to the question of whether the decision of the panel of the Civil Service Commission hearing the appeal was consistent with the provisions of law and written policy.

- 6 The decision of the Hearing Officer shall be advisory to the County Executive.
- 7 All decisions in the grievance procedure shall be consistent with the provisions of law and written policy. Any challenge to the relief granted by the decision of a panel of Civil Service Commission hearing the appeal on the grounds of inconsistency with written policy shall be submitted by either party within five (5) workdays to the County Executive, or his/her designee, who is empowered to decide such questions and to direct reconsideration by the Commission, where appropriate. If the County Executive or his/her designee has a direct involvement in the grievance the decision shall be made by the Commonwealth's Attorney. Notwithstanding the above, after receipt of a decision of a hearing panel of the Civil Service Commission the County Executive or his/her designee, may on his/her own action, within ten business days, remand to the panel of the Commission that heard the appeal for further consideration a decision in which the relief granted appears to be inconsistent with written policy.

17.13 Severability

Should any article, section, subsection, sentence, clause, or phrase of these regulations, procedures and/or addenda, be held unconstitutional or invalid for any reason, such decision or holding shall have no effect on the validity of the remaining portions hereof. It is the intent of the Board of Supervisors to enact or have enacted each section and portion thereof, individually, and each such section shall stand alone, if necessary, and be in force regardless of the determined invalidity of any other section or provision.

ADDENDUM NUMBER 1**PROCEDURE FOR GRIEVANCE HEARINGS AND APPEALS**Preamble

The panel of the Commission hearing the appeal shall not be bound by Statutory or Common Law rules of pleading or evidence. Hearings will be conducted so as to ascertain the rights of the parties accurately and expeditiously.

The Commission

The Commission consists of twelve members who will sit in rotating panels of three to hear grievance appeals. Panels will be randomly assigned to a schedule as needed to conduct appeal hearings. When a hearing is scheduled, the next three Commissioners on the schedule will be contacted to participate in that hearing. If a Commissioner is unable to participate in an assigned hearing, the next available member on the schedule will fill in when the absence of a scheduled panel member cannot be avoided, as no hearing can be conducted by a panel unless all three members designated to hear that appeal are present throughout the hearing. If an appeal is settled or withdrawn prior to the scheduled hearing, the panel members assigned to hear that appeal will be assigned to the next appeal scheduled. The schedule and the assigned panel members are considered confidential. The names of the panel members will not be released prior to a scheduled hearing.

The Commission consists of twelve members who will sit in panels of three to hear grievance appeals. Each of the four panels of three members will meet as needed to conduct appeal hearings. The member and chair of each hearing panel hearing the appeals will rotate on a monthly basis according to a set schedule. Three members of the Commission will be designated as “on call” each quarter to fill in when the absence of a scheduled panel member cannot be avoided as no hearing can be conducted by a panel unless all three members designated to hear that appeal are present throughout the hearing. The members designated as “on call” will rotate each quarter according to a set schedule. Each member of the Commission will receive his or her schedule in advance for a three month period.

Appeals of complaints that have been determined to be grievable shall be heard by a three-member panel of the Commission (hearing panel or panel) as soon as possible after receipt of the employee’s appeal request. Appeals of complaints that have been

determined to be non-grievable but entitled to an advisory and non-binding opinion shall be heard by a hearing officer or, by the Executive Director of the Commission when the parties are not represented by counsel, as soon as possible after receipt of the employee's appeal request.

A simple majority of the hearing panel will prevail in any decision made by the panel. The panel hearings will be held during the County's normal business hours continuing until all evidence has been heard and arguments made. Upon the conclusion of the evidence and argument, the hearing panel will recess the hearing while it deliberates in closed session and makes its findings. Upon the conclusion of the panel's deliberations, the panel will come out of closed session and resume the hearing to cast the panel members' individual votes, state the findings of the panel, and conclude the hearing. A written decision prepared by the Hearing Officer and signed by the chair of the panel that heard the appeal will be filed with the Executive Director and distributed to the parties within ten days of the conclusion of the hearing.

The Hearing Officer

The Hearing Officer is an independent attorney retained by the Commission to conduct hearings on grievances which receive advisory decisions and to advise the panel of the Commission hearing the appeal concerning legal and procedural matters in cases in which the parties are represented by counsel. The Hearing Officer does not vote on matters before the panel of the Commission hearing the appeal and participates in deliberations only to the extent of advising the panel of the Commission hearing the appeal concerning legal and procedural matters. The Hearing Officer is responsible for conducting hearings in an orderly and expeditious fashion; and makes rules on evidentiary and procedural questions. The rulings are advisory and may be overturned by the panel of the Commission hearing the appeal.

In hearings before the panel of the Commission hearing the appeal in which the parties are not represented by counsel, and at all prehearing conferences, the Executive Director of the Commission shall act as hearing officer.

A. Prehearing Requirements

- A Prehearing Conference will be held by the Prehearing Officer prior to a panel hearing or the Hearing Officer. The following matters will be addressed:
1. Definition of the scope of the case, the specific issues to be presented to the panel of the Commission hearing the appeal, and the specific regulations and/or ordinances allegedly violated.
 2. Stipulations and agreements which will expedite the hearing are greatly encouraged, including but not limited to (1) stipulations of fact; (2) stipulations as to evidence which will be admitted without objection; (3) stipulations with respect to testimony which will be admitted in written form.

3. All exhibits and documents will be exchanged at or before the Prehearing Conference. Documents shall be marked for identification and tabbed for ease of reference. Any exhibit not provided at or before the Prehearing Conference will not be admitted as evidence, absent a showing of good cause. If as a result of the Prehearing Conference there is an outstanding request for the production of documents, such request must be complied with not later than ten business days prior to the date of the hearing. Any objection to the admissibility of a proposed exhibit or document shall be raised at the Prehearing Conference and if not resolved, the issue will be clearly defined by the Prehearing Officer for consideration by the panel of the Commission hearing the appeal or the Hearing Officer.
4. Witness lists will be exchanged at or before the scheduled Prehearing Conference. Any witness not so designated will not be permitted to testify, absent a showing of good cause. If as a result of the Prehearing Conference, there are to be deletions or additions to the witness lists, such changes will be submitted no later than ten business days prior to the date of the hearing. Witness lists shall include the name, address and telephone number of each witness identified and a brief statement of the substance of the expected testimony. If, upon the petition of a party, the County Executive finds that a witness who is listed by a party and who is a County employee has relevant, material, and non-cumulative testimony and that the party seeking to call the witness at the panel hearing has been unable to secure attendance of the witness before the hearing panel despite the party's reasonable and diligent efforts, the County Executive shall order the County employee witness to appear at the hearing to give testimony. Upon such order to appear being issued by the County Executive to a County employee, any County employee so ordered who fails to appear at the hearing may be subject to disciplinary action as provided in Chapter 16.
5. County management shall provide the Commission with copies of the grievance record prior to the hearing. A copy of the grievance record shall be provided to the grievant by County management at the same time but in no event any later than ten days prior to the hearing before the panel of the Commission hearing the appeal.

6. The hearing date(s) will be set at the Prehearing Conference in accordance with the time estimates provided by both parties.

B. Continuances

Requests for continuances shall be in writing with a copy to the opposing party and submitted to the panel of the Commission hearing the appeal and/or Hearing Officer at least five workdays prior to the hearing date. The panel of the Commission hearing the appeal and/or Hearing Officer may grant such requests only where good cause is shown.

C. Hearing Procedure

Hearings on appeals will be heard by the panel of the Commission hearing the appeal or the Hearing Officer in accordance with the following order and procedures:

1. Opening statement by the moving party. (The County shall be considered as the moving party in suspensions, demotions and dismissals. In all other cases, the employee is considered to be the moving party.)
2. Opening statement by the responding party.
3. Presentation of moving party's case by direct examination.
4. Cross-examination.
5. Questions, if any, by members of the hearing panel or the Hearing Officer.
6. Redirect and recross examination.
7. Presentation of responding party's case by direct examination.
8. Cross-examination.
9. Questions, if any, by members of the hearing panel or the Hearing Officer.
10. Redirect and recross examination.
11. Presentation of rebuttal witnesses, if any, by moving party by direct examination may be presented in documentary form. Rebuttal testimony should ordinarily be included in the party's original presentation. However, rebuttal evidence may be permitted where, in the judgment of the panel of the Commission hearing the appeal or the Hearing Officer, it is necessary to the party to rebut new material, which could not reasonably have been anticipated. The panel of the Commission hearing the appeal or the Hearing Officer will judge the necessity of rebuttal testimony on the

basis of a proffer or statement by the party seeking to introduce the rebuttal.

12. Cross-examination, questions, if any, by members of the hearing panel or the Hearing Officer, redirect and recross examination of rebuttal witnesses. If rebuttal evidence is in documentary form, provision shall be made for response by opposing party.
13. Closing statement by moving party. Proposed findings of fact and conclusions of law may be submitted at the party's option or at the request of the panel of the Commission hearing the appeal or the Hearing Officer.
14. Closing statement by responding party. Proposed findings of fact and conclusions of law may be submitted at the party's option or at the request of the panel of the Commission hearing the appeal or the Hearing Officer.
15. The hearing record may be held open upon request of either party or upon the panel of the Commission hearing the appeal or the Hearing Officer's own motion for the receipt of additional exhibits or documentary evidence which in the opinion of the panel of the Commission hearing the appeal or the Hearing Officer are necessary for a full and complete hearing. Any opposing party shall be allowed a period of ten calendar days after such receipt to respond thereto. If the panel of the Commission hearing the appeal or the Hearing Officer finds that additional oral testimony is necessary, a hearing may be recessed for scheduling of such testimony.
16. The panel of the Commission hearing the appeal may alter the foregoing procedures in a hearing if it deems it necessary to afford the parties a full and equal opportunity to all parties for the presentation of their evidence.

D. Record of Hearing

Recorded tapes will serve as the formal record of grievance hearings. Any party to the appeal may obtain a copy upon payment of reproduction and administrative costs.

E. Posthearing Procedures

1. Reopening Hearing

A hearing may be reopened by the panel of the Commission hearing the appeal or the Hearing Officer at any time prior to final decision on the ground of newly discovered evidence or for other good cause shown and if the panel of the Commission hearing the appeal or the Hearing Office finds that reopening the hearing is required for a full and true disclosure of facts or to assure that the parties receive a fair hearing in accordance with the relevant law and regulations. Petitions for reopening shall set forth the specific newly discovered evidence or other good cause, and will be granted only under exceptional circumstances. If a party files a petition for reopening the

hearing, the opposing party shall file a response to said petition within five calendar days of service of the petition.

2. Reconsideration

The Hearing Officer or the panel of the Commission hearing the appeal, upon majority vote, may reconsider a Decision prior to the actual implementation of that decision. The panel of the Commission hearing the appeal or the Hearing Officer will only reconsider on the ground of newly discovered evidence or other good cause shown. Petitions for reopening shall set forth the specific newly discovered evidence or other good cause, and will be granted only under exceptional circumstances. Petitions for reconsideration must be filed with the panel of the Commission hearing the appeal and or the Hearing Officer within five calendar days of receipt of the decision. The opposing party shall file a response to said petition within five calendar days of service of the petition.



County of Fairfax, Virginia

MEMORANDUM

DATE: April 13, 2011

TO: Susan Woodruff, Director
Department of Human Resources

FROM: Sara J. Simmons, Executive Director
Civil Service Commission

SUBJECT: Public Hearing on Proposed Revisions to the Personnel Regulations - Chapters 9, 16 and 17

Following an advertised public hearing held on April 11, 2011, the Civil Service Commission considered the above referenced proposed revisions to the Personnel Regulations. Members of the Commission present at the public hearing included: Rosemarie Annunziata; Ron Copeland; Robert Frye; Tom Garnett; John Harris; Patrick Morrison; Audrey Morton; and Rich Stacy.

Susan Woodruff, Director, Department of Human Resources, gave an overview regarding the proposed changes; Peter Andreoli, Deputy County Attorney, County Attorney's Office responded to questions and provided additional information regarding the Virginia State Code section applicable to the proposed changes.

The Commission received testimony from two speakers: John Niemiec, President of the Fairfax County Professional Firefighters & Paramedics Union/ Local 2068 and Karen Conchar, President of the Fairfax County Government Employees Union/ SEIU. Both expressed concerns regarding the proposed changes to Chapter 16 – Standards of Conduct and political activities of employees. There is a concurrent proposal going to the Board of Supervisors for proposed changes to Chapter 3 of the Fairfax County Code regarding political activities of employees, as defined by the Virginia State Code. Both parties expressed concern that these changes could negatively impact employee rights regarding participation in political activities while on County property. Mr. Andreoli responded that the County is not limiting employee rights but rather is clarifying what county employees are allowed to do regarding political activities as defined by the Virginia State Code. In fact, the opposition to the proposed revisions was directed at the Virginia code since the proposed language tracks the sections of the Code.

Chapter 9

The members of the Civil Service Commission present voted unanimously to approve the proposed recommendations as drafted for Chapter 9.

Chapter 16

By a vote of six to two, the members of the Civil Service Commission present voted to approve the proposed recommendations as drafted for Chapter 16.

Chapter 17

The members of the Civil Service Commission present voted unanimously to approve the proposed recommendations as drafted for Chapter 17.

Susan Woodruff

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The Commission encourages the Department of Human Resources to provide clear communication and information to all employees regarding the changes to Chapter 16 and employee participation in political activities.

If the Commission can be of further assistance, please let me know.

cc: Board of Supervisors
Commissioners, Civil Service Commission
Anthony H. Griffin, County Executive
David Bobzien, County Attorney
Peter Andreoli, Deputy County Attorney
Anita Baker, Chair, Employee Advisory Council
John Niemiec, President, Fairfax County Professional Firefighters & Paramedics Union/ Local 2068
Karen Conchar, President, Fairfax County Government Employees Union/ SEIU

Board Agenda Item
June 7, 2011

ACTION – 3

Approval of the Sale of Fairfax County Economic Development Authority Revenue Bonds
(Wiehle Avenue Metrorail Station Parking Project)

ISSUE:

Board approval of a resolution (Attachment I) to authorize and request the sale of Fairfax County Economic Development Authority Revenue Bonds (Wiehle Avenue Metrorail Station Parking Project) on or about July 14, 2011.

RECOMMENDATION:

The County Executive recommends approval of a Resolution which (i) requests the Fairfax County Economic Development Authority (“EDA”) to issue bonds to finance the public parking project (the “Bonds”) at this time; (ii) approves the form of the First Supplemental Trust Agreement, between EDA and a trustee, which agreement sets forth the terms for issuing the Bonds and the application of the proceeds of the Bonds and the pledging of funds for the payment of the Bonds; and (iii) which also authorizes the execution and delivery of the form of the Notice of Sale, the Preliminary Official Statement that includes County Statistical and financial information and a Continuing Disclosure Agreement and other documents necessary for sale. This resolution delegates to the County Executive or Chief Financial Officer authority to award the bonds to the lowest responsive bidder. Bond Counsel has advised that this form of authorization is acceptable and provides flexibility for changing market conditions.

TIMING:

Board action is requested on June 7, 2011.

BACKGROUND:

On June 1, 2009, the Board approved a Comprehensive Agreement with Comstock Reston Station Holdings, LC and CRS Construction Services, LC (collectively, "Comstock") providing for Comstock to construct on County-owned real estate on Wiehle Avenue in Reston, Virginia, public parking facilities to include 2300 public parking spaces, 10 bus bays, 46 kiss/and/ride spaces and ancillary facilities (the "Project") to serve the new Metrorail station. In order to finance the Project, on January 12, 2010 the Board adopted a Resolution requesting the EDA to issue Bonds to fund Project costs in an amount not to exceed One Hundred Ten Million Dollars (\$110,000,000). The Bonds will fund the cost of the public facilities, costs of issuance and capitalized interest during construction as well as provide a contingency reserve in the event of any unforeseen circumstances that may impact the cost of the Project for which the County is responsible. The Board also approved

Board Agenda Item
June 7, 2011

the forms of the Trust Agreement and the Installment Purchase Contract with the EDA (copies are included for information) that delineated the basic parameters of the bond issue and the County's responsibilities with respect to the payment of debt service to the EDA. Today's action will establish the details of the sale by approval of the forms of the Supplemental Trust Agreement pertaining to the actual issue size and date, and the forms of the Preliminary Official Statement and the Notice of Sale. As this transaction will have similar documentation and credit to other County facility bonds wherein the County pledges, subject to annual appropriation, to make payments sufficient to pay debt service on EDA bonds subject to annual appropriation, the financial advisor has recommended a competitive sale as the best option to complete this transaction in the market. Such bonds usually obtain credit ratings that are one step off the County's general obligation AAA rating.

Pursuant to prior Board action, the County sought a judicial determination of the validity of the Bonds to ensure broad financial market acceptance of the Bonds. A final order was entered by the Fairfax County Circuit Court on April 7, 2010. No appeals were filed. At that time the Board approved the form of the Installment Purchase Agreement and the Trust Agreement to be used for this transaction, copies of which are included for information.

In accordance with the Comprehensive Agreement between the County and Comstock, staff and Comstock continued to negotiate certain details of the design and construction contract. On December 17, 2010, the County endorsed its participation in the contract between Comstock and Davis Construction to design and construct the facility.

In addition, negotiations with the Metropolitan Washington Airports Authority (MWAA) related to the completion of Record of Decision (ROD) improvements have been completed, and the MWAA Board of Directors approved the agreement on May 4, 2011. The agreement requires MWAA to acquire all land for the public roadway improvements, and to reimburse the County for engineering and constructing the ROD improvements in the amount of \$6.7 million. Board approval of this agreement is the subject of another Action Item at the June 7, 2011 meeting.

The Board should be aware that in addition to the usual documents presented for completion of the financing, certain amendments to current documents to cement and ensure the County's ability to complete the project in the event Comstock is not able to do so have been requested by County staff and Comstock's creditors. These amendments, which are largely administrative in nature, will be addressed and discussed in more detail in a separate memorandum.

FISCAL IMPACT:

The cost of the public facilities under the Guaranteed Maximum Price contract is currently estimated at \$87 million which is within the maximum price estimated on January 12, 2010. In addition to the cost of the facility, the Bonds, together with previously appropriated County equity from Fund 124, Commercial and Industrial (C&I) Transportation Tax Fund of

Board Agenda Item
June 7, 2011

approximately \$8.6 million will fund the County's share of the ROD improvements (net of future reimbursement by MWAA), direct County costs and contingency for County directed change orders, the usual costs of issuance, and capitalized interest for up to three years. The total bond issue is expected to be approximately \$104 million. The primary source of funds for the required debt service will be the County's C&I tax supplemented by the anticipated ground rents and net operating income generated by the facility. The debt service on the bonds issued to finance construction, soft costs and capitalized interest based on current market conditions is expected to be approximately \$7.8 million per year commencing in FY 2015. Ground rents at that time are expected to be \$1.1 million rising to approximately \$3.3 million by 2020 and to \$5.3 million by 2034. Net operating income from the garage operations are expected to contribute approximately \$1.9 million per year at current Metrorail system parking rates. The gap to be filled by the C&I tax is therefore approximately \$4.8 million per year to start in FY 2015 reducing thereafter as ground rents increase with full build out.

Estimated incremental tax revenues are conservatively estimated to grow by 2020 to more than \$5 million per year based on current real estate, personal property, sales and business taxes assessed on the full projected build out of 980,000 square feet. The final outcome of incremental taxes is a function of final build out, market conditions, and future tax rates.

ENCLOSED DOCUMENTS:

- Attachment 1: Resolution of Approval
- Attachment 2: First Supplemental Trust Agreement
- Attachment 3: Preliminary Official Statement
- Attachment 4: Appendix A to the POS (County Information)
- Attachment 5: Notice of Sale
- Attachment 6: Continuing Disclosure Agreement
- Attachment 7: Installment Purchase Contract
- Attachment 8: Trust Agreement
- Attachment 9: Bond Sale Schedule

(All attachments (1-9) delivered to the Board under separate cover and are available for review at the Office of the Clerk to the Board

STAFF:

- Susan Datta, Chief Financial Officer
- Robert A. Stalzer, Deputy County Executive
- Tom Biesiadny, Acting Director, Department of Transportation
- Leonard Wales, Financing Advisor

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RESOLUTION REQUESTING THAT THE FAIRFAX COUNTY ECONOMIC DEVELOPMENT AUTHORITY ISSUE ITS REVENUE BONDS (WIEHLE AVENUE METRORAIL STATION PARKING PROJECT) SERIES 2011, APPROVING A FORM OF A FIRST SUPPLEMENTAL TRUST AGREEMENT BETWEEN THE AUTHORITY AND A TRUSTEE, A PRELIMINARY OFFICIAL STATEMENT AND A FINAL OFFICIAL STATEMENT RELATING TO SUCH BONDS, AND A NOTICE CALLING FOR BIDS TO PURCHASE THE BONDS; MAKING A CONTINUING DISCLOSURE UNDERTAKING; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH OTHER DOCUMENTS AND AGREEMENTS RELATING TO SUCH TRANSACTIONS AS MAY BE NECESSARY OR REQUIRED; DELEGATING TO THE COUNTY EXECUTIVE OR THE CHIEF FINANCIAL OFFICER POWER TO DETERMINE CERTAIN DETAILS OF SUCH TRANSACTIONS

WHEREAS, the Board of Supervisors (the “Board”) of Fairfax County, Virginia (the “County”), approved on June 1, 2009, (i) the form of and execution of a Deed of Lease between the County and Comstock Reston Station Holdings, LC (the “Tenant”), to provide for the development, construction, operation, maintenance and enjoyment of a mixed-use transit oriented development of County-owned property (the “Property”) at the site of the north entrance of the Wiehle Avenue Metrorail Station (“Wiehle Avenue Metrorail Station”) to be constructed as part of the extension of the Washington Metropolitan Area Transit Authority’s Metrorail system project in the Dulles Corridor and (ii) the form of and execution of a Development Agreement (the “Development Agreement”) between the County and the CRS Construction Services, LC, an affiliate of the Tenant, which sets forth the agreement for the development of the Property, which includes a public parking facility that, as currently designed, will provide approximately 2,316 public parking spaces, 49 kiss and ride parking spaces, 22 motorcycle spaces, 12 bus bays and 150 bicycle spaces and ancillary facilities to serve the Wiehle Avenue Metrorail Station (the “Wiehle Avenue Metrorail Station Parking Project”); and

WHEREAS, pursuant to the terms of the Development Agreement the County has made a commitment to provide the financing for the Wiehle Avenue Metrorail Station Parking Project (the “Financial Commitment”); and

WHEREAS, on January 12, 2010 the Board passed a resolution (the “2010 Resolution”) in which the Board requested the Fairfax County Economic Development Authority (“EDA”) to issue bonds (the “Bonds”) and make the proceeds available to pay costs of the Wiehle Avenue Metrorail Station Parking Project in order to fulfill the Financial Commitment; and

WHEREAS, pursuant to the 2010 Resolution the Board approved a form of a trust agreement (the “Trust Agreement”) which provides for, among other things, the Bonds to be issued from time to time, in one or more series, bearing interest at fixed or variable interest rates and with federal subsidy payment provisions or tax credit provisions depending upon financial market conditions, in an aggregate principal amount that will provide proceeds in an amount not to exceed \$110,000,000 for costs of the Wiehle Avenue Metrorail Station Parking Project; and

WHEREAS, pursuant to the 2010 Resolution the Board approved a form of an Installment Purchase Contract (the “Installment Purchase Contract”) by the terms of which EDA

will sell to the County EDA's interest in the Wiehle Avenue Metrorail Station Parking Project, and the County will agree to make Basic Payments and Additional Payments (as defined in the Installment Purchase Contract) therefor, on the terms and conditions therein set forth, sufficient to pay the principal of and interest on the Bonds issued by EDA to pay costs of the Wiehle Avenue Metrorail Station Parking Project; and

WHEREAS, pursuant to the 2010 Resolution the Board authorized the initiation of the judicial determination of the validity of the Bonds; and

WHEREAS, on April 7, 2010 the Fairfax County Circuit Court entered a final order validating the Bonds; and

WHEREAS, the County is requesting EDA to consider a resolution authorizing the issuance of the Series 2011 Bonds (defined below) to provide financing for the Wiehle Avenue Metrorail Station Parking Project; and

WHEREAS, the Board has determined to approve the form of a first supplemental trust agreement (the "Supplemental Agreement") between EDA and a trustee, that will set forth details of bonds, to be designated "Fairfax County Economic Development Authority Revenue Bonds (Wiehle Avenue Metrorail Station Parking Project), Series 2011" (the "Series 2011 Bonds"); and

WHEREAS, there has been presented to the Board a proposed form of the notice calling for bids for the purchase of all (but not less than all) of the Series 2011 Bonds (the "Notice of Sale"); and

WHEREAS, there has been presented to the Board a proposed Preliminary Official Statement describing the Series 2011 Bonds, EDA, the County and the Wiehle Avenue Metrorail Station Project (the "Preliminary Official Statement"); and

WHEREAS, the County will undertake primary responsibility for any annual and other reports, notices or disclosures that may be required under Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time and make a continuing disclosure undertaking in the form of the continuing disclosure agreement presented to the Board (the "Continuing Disclosure Agreement"); and

WHEREAS, the Board has duly reviewed and considered the forms of the Supplemental Agreement, the Preliminary Official Statement, the Notice of Sale and the Continuing Disclosure Agreement and has determined that each is in acceptable form; and

WHEREAS, the Board has determined that it is necessary to delegate to the County Executive and the Chief Financial Officer of the County (each a "Delegate") the power to approve the sale of the Series 2011 Bonds and the details of these transactions but subject to the guidelines and standards established hereby; now, therefore,

BE IT RESOLVED by the Board as follows:

SECTION 1. EDA is hereby requested to authorize and issue the Series 2011 Bonds in an aggregate principal amount not to exceed the sum of \$110,000,000 (which includes the underwriting and net bond discounts, closing costs, and issuance expenses), for the purpose of

financing the Wiehle Avenue Metrorail Station Parking Project, as provided in the Trust Agreement and Supplemental Agreement on a date no later than December 31, 2011; such Series 2011 Bonds may be sold in a competitive sale pursuant to bids received electronically via the PARITY Competitive Bidding System or similar electronic based competitive bidding system or through a negotiated sale to one or more underwriters chosen in compliance with County guidelines and regulations. If such Series 2011 Bonds shall be sold in a competitive sale such Series 2011 Bonds are requested to be awarded to the bidder submitting the best bid (determined in accordance with the requirements of the Notice of Sale and the terms set forth in an EDA Board of Commissioners resolution) and the Fairfax County Executive or Chief Financial Officer (each a "Delegate") are hereby authorized to request EDA to award the Bonds to such best bidder. The Series 2011 Bonds may upon the approval of the EDA Chairman, Vice Chairman or other authorized officer and with the consent of the County Executive or the Chief Financial Officer be sold in a negotiated sale to one or more underwriters, subject to the following conditions: (i) the Financial Advisor to Fairfax County shall have recommended that due to financial market conditions such a negotiated sale best serves the interest of the County, (ii) the underwriter(s) of the bonds shall have been chosen pursuant to County guidelines and regulations. In the event of a negotiated sale, the Chairman or Vice Chairman of the Board of Supervisors, the County Executive and the Chief Financial Officer, or such other officer or officers of the County as may be designated by any one of them, is hereby authorized and directed to execute or approve a bond purchase agreement, by and among the underwriters, EDA and the County, setting forth the terms of the sale of the bonds. Such bond purchase agreement shall only be executed (i) if such agreement does not contain any terms contradictory to the terms of this Resolution or the resolution to be approved by the EDA Board of Commissioners resolution relating to the Series 2011 Bonds and (ii) the Financial Advisor to the County shall recommend to the County the execution of such agreement.

SECTION 2. The form of the Supplemental Trust Agreement presented to this meeting, providing details for the custody, investment and disbursement of the proceeds of the Series 2011 Bonds, is hereby approved in such form and containing substantially the terms and provisions therein set forth.

SECTION 3. The form of the Notice of Sale presented to this meeting be and the same hereby is approved, and the distribution, publication and use of the Notice of Sale for purposes of the sale of the Series 2011 Bonds is hereby approved. Alternatively, the Clerk may cause to be distributed a summary of the principal terms of the notice. Bids shall be received electronically via the PARITY Competitive Bidding System.

SECTION 4. The form of the Preliminary Official Statement is hereby approved and deemed "final" for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended. The distribution and use by the winning bidder or underwriters of the Series 2011 Bonds of a final Official Statement relating to the Series 2011 Bonds (the "Official Statement") is hereby approved. The Official Statement shall be completed with the pricing and other information in substantially the form of the Preliminary Official Statement approved this day with such minor changes, insertions and omissions as may be approved by a Delegate.

SECTION 5. The form of the Continuing Disclosure Agreement presented to this meeting be, and the same hereby is, approved, and the Chairman or Vice Chairman of the Board or a Delegate, as appropriate, be, and the same is hereby authorized, directed and empowered to execute and deliver, under seal, in the name and on behalf of the County, the Continuing Disclosure Agreement in such form and containing substantially the terms and provisions therein

contained, with such additions and modifications as shall be approved by the person executing the Continuing Disclosure Agreement, such execution thereof being conclusive evidence of such approval.

SECTION 6. The execution and delivery by a Delegate of the Continuing Disclosure Agreement and any other agreements, documents, closing papers and certificates executed and delivered pursuant to this Resolution shall be conclusive evidence of their approval of the changes, if any, in the forms thereof and of their authority to execute and deliver such agreements, documents, certificates and closing papers on behalf of the Board.

SECTION 7. The members, officers and employees of the Board and the County, EDA and the trustee are hereby authorized and directed to do all acts and things required of them by the provisions of the Series 2011 Bonds, the Trust Agreement, the Supplemental Agreement, the Installment Purchase Contract, the Notice of Sale and the Official Statement for the full, punctual and complete performance of all the terms, covenants, provisions and agreements of the Series 2011 Bonds, the Trust Agreement, the Supplemental Agreement, the Installment Purchase Contract, the Notice of Sale and the Official Statement and also to do all acts and things required of them by the provisions of this Resolution.

SECTION 8. The officers of the Board and the County are authorized to execute one or more certificates evidencing the determinations made or other actions carried out pursuant to the authority granted in this Resolution, and any such certificate shall be conclusive evidence of the actions or determinations as stated therein.

SECTION 9. All actions taken by the Board and the members, officers and employees of the Board in connection with this Resolution, and the authorization, execution and delivery of the agreements, certificates and other documents to be executed by the Board and delivered in connection with this Resolution are hereby ratified and confirmed.

SECTION 10. Any and all resolutions of the Board or portions thereof in conflict with the provisions of this Resolution are hereby repealed to the extent of such conflict. All capitalized terms not defined herein shall have the meanings as set forth in the Trust Agreement.

SECTION 11. This resolution shall take effect immediately upon its adoption.

FAIRFAX COUNTY ECONOMIC DEVELOPMENT AUTHORITY

to

U.S. BANK NATIONAL ASSOCIATION,

Trustee

FIRST SUPPLEMENTAL TRUST AGREEMENT

Dated as of _____, 2011

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FIRST SUPPLEMENTAL TRUST AGREEMENT

This **FIRST SUPPLEMENTAL TRUST AGREEMENT**, dated as of _____, 2011, by and between **FAIRFAX COUNTY ECONOMIC DEVELOPMENT AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “EDA”), and _____, a banking corporation duly organized and existing under the laws of the United States of America, and having a corporate trust office in _____, Virginia, which is authorized under such laws to exercise corporate trust powers and is subject to examination by state authority, trustee under the Trust Agreement hereinafter mentioned (the “Trustee”):

W I T N E S S E T H:

WHEREAS, the EDA has executed and delivered a trust agreement, dated as of _____, 2011 (the “Trust Agreement”), by and between the EDA and the Trustee, for the purpose of fixing and declaring the conditions upon which bonds are to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become holders thereof, and in order to secure the payment of all bonds at any time issued and outstanding thereunder, and the interest thereon, according to their tenor, purport and effect; and

WHEREAS, in accordance with the provisions of Section 208 of Trust Agreement, the EDA by resolution, adopted on January 22, 2010, authorized the issuance in one or more series of Revenue Bonds, bearing interest at fixed or variable interest rates and issued with federal subsidy payment provisions or tax credit provisions, that will provide proceeds in an amount not to exceed \$110,000,000 for financing public parking facility that will provide approximately 2,316 public parking spaces, 49 kiss and ride parking spaces, 22 motorcycle spaces, 12 bus bays and 150 bicycle spaces and ancillary facilities (the “Project”) on public lands within Fairfax County, Virginia (the “County”) to serve the Wiehle Avenue Metrorail Station that is being constructed as part of the extension of Washington Metropolitan Area Transit Authority’s Metrorail System in the Dulles Corridor; and

WHEREAS, in accordance with the provisions of Section 208 of the Trust Agreement, the EDA has by resolution, adopted on _____, 2011 (the “2011 authorizing resolution”) determined to authorize the issuance of the EDA’s Revenue Bonds (Wiehle Avenue Metrorail Station Parking Project) Series 2011 (the “Series 2011 Bonds”) in aggregate principal amount not to exceed _____ to finance a portion of the costs of the Project; and

WHEREAS, Section 1101(e) of the Trust Agreement provides that the EDA may enter into a supplement to the Trust Agreement, in form satisfactory to the Trustee, as shall not be inconsistent with the terms and provisions of the Trust Agreement, to provide for the issuance and to fix the details of the initial series of bonds to be issued under Section 208 of the Trust Agreement; and

WHEREAS, the execution and delivery of this First Supplemental Trust Agreement have been duly authorized by the 2011 authorizing resolution, and the EDA has requested the Trustee to join with it in the execution of this First Supplemental Trust Agreement; and

WHEREAS, all acts, conditions and things required by the Constitution and laws of the Commonwealth of Virginia and by the resolutions of the EDA to happen, exist and be performed

20__
20__
20__
20__
20__

Section 2. Redemption Provisions of the Series 2011 Bonds.

Optional Redemption. The Series 2011 Bonds maturing on or before _____, 20__, are not subject to redemption prior to their stated date of maturity. The Series 2011 Bonds maturing after _____, 20__, are subject to redemption at the option of EDA, as directed by the County, in whole or in part, at any time on or after _____, 20__, at a Redemption Price equal to 100% of the principal amount of the Series 2011 Bonds to be redeemed plus interest accrued thereon to the redemption date.

Extraordinary Optional. The Series 2011 Bonds are subject to extraordinary optional redemption, [in whole only], on any date at a price equal to the principal amount thereof, together with interest thereon accrued to the date of redemption, upon the exercise by the County of its option to prepay the Purchase Price (as defined in the Contract) pursuant to the Contract when the following events occur:

(1) Circumstances Under Which County May Not Repair Damage. In the event that the [Project] or any portion thereof is destroyed by fire or other casualty, the County may within 90 days after such damage or destruction, elect by written notice to the EDA not to repair, reconstruct or restore the [Project], provided that the net proceeds of insurance payable as a result of such damage or destruction together with other moneys held for the payment of or as security for the Series 2011 Bonds and any additional sums paid by the County are sufficient to provide for outstanding principal and interest payments of the Series 2011 Bonds. In such event the County shall, in its notice of election to the EDA, state that such net proceeds and other moneys, if any, shall be applied to defease the lien of this First Supplemental Trust Agreement in accordance with its terms and such net proceeds shall be paid to the EDA for the purpose of such defeasance.

(2) Condemnation. If the County shall determine in accordance with the provisions of the Contract that the utility of the [Project], cannot be maintained, restored or replaced following a taking, the net proceeds payable as a result of such taking shall be paid for the account of the EDA to the Trustee and the County shall pay to the Trustee for the account of the EDA such additional amount as shall be required, together with such net proceeds and all amounts held under the Trust Agreement and this First Supplemental Trust Agreement and available for the purpose, for the payment of the Series 2011 Bonds.

To exercise such option, the County will give written notice to the EDA, and to the Trustee, and shall provide therein a specific direction to the EDA to apply such prepayment to the purchase and cancellation, redemption, or defeasance of Series 2011 Bonds in accordance with their terms. The date provided as to when such prepayment is to occur may not be less than 45 days from the date such notice is mailed, and in case of a redemption of the Series 2011 Bonds in accordance with the provisions of this First Supplemental Trust Agreement shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption.

Upon receipt by the EDA of the Purchase Price from the County, the EDA will release the County from its obligation under the Contract or if such prepayment is only a partial amount of the amount owed under the Contract the County's obligations under the Contract will be reduced as provided therein.

Notice of Redemption. At least 30 but not more than 90 days before the redemption date of any Series 2011 Bonds, whether in whole or in part, the Trustee will cause notice of any such redemption to be mailed by certified mail, return receipt requested, to all holders of Series 2011 Bonds to be redeemed in whole or in part. Any defect in such notice or the failure to mail such notice, shall not affect the validity of the proceedings for the redemption of any other Series 2011 Bonds. While the Series 2011 Bonds are held in the name of DTC or its nominee, such redemption notices will be sent to Cede & Co., not to the beneficial owners of the Series 2011 Bonds.

Any notice of optional redemption of the Series 2011 Bonds may state that it is conditioned upon there being available on the redemption date an amount of money sufficient to pay the Redemption Price plus interest accrued and unpaid to the redemption date, and any conditional notice so given may be rescinded at any time before the payment of the redemption price if any such condition so specified is not satisfied. If a redemption does not occur after a conditional notice is given due to an insufficient amount of funds on deposit by the EDA, the corresponding notice of redemption shall be deemed to be revoked.

If the EDA gives an unconditional notice of redemption, then on the redemption date the Series 2011 Bonds called for redemption will become due and payable. If the EDA gives a conditional notice of redemption and if on the redemption date money to pay the Redemption Price of the affected Series 2011 Bonds shall have been set aside in escrow with the Trustee or a depository (either, a "depository") for the purpose of paying such Series 2011 Bonds, then on the redemption date the Series 2011 Bonds will become due and payable. In either case, if on the redemption date the EDA holds money to pay the Series 2011 Bonds called for redemption, thereafter, no interest will accrue on those Series 2011 Bonds, and a bondholder's only right will be to receive payment of the redemption price upon surrender of those Series 2011 Bonds.

Section 3. Authentication of Series 2011 Bonds. Upon their execution in the form and manner set forth in the Trust Agreement and this First Supplemental Trust Agreement, the Series 2011 Bonds shall be deposited with the Bond Registrar for authentication, and the Bond Registrar is hereby authorized and directed to authenticate and the Trustee shall cause the Bond Registrar to deliver the Series 2011 Bonds for the account of _____ (collectively, the "Underwriter"), at The Depository Trust Company, New York, New York, against payment therefor in accordance with and subject to the provisions of Sections 208 of the Trust Agreement and Section 4 hereof.

Section 4. Sale and Application of Proceeds of the Series 2011 Bonds.

(a) The proceeds of the Series 2011 Bonds in the amount of \$_____, together with \$_____ [provided by the County] shall be deposited by the EDA in accordance with the Contract and the Trust Agreement, simultaneously with the delivery of the Series 2011 Bonds as follows:

(1) with the Trustee, to the credit of the Costs of Issuance Account in the Construction Subfund the amount of \$_____ as set forth in Section 401(c)(1) of the Trust Agreement; and

(2) with the Trustee, to the credit of the Project Construction Cost Account in the Construction Subfund, the amount of \$_____ ; as set forth in Section 401(c)(2) of the Trust Agreement; and

(3) [with the Trustee, to the credit of the County Equity Subfund, the amount of \$_____.]

Section 5. Request of County to Appropriate. The EDA hereby covenants that it shall, through its EDA Representative, request the County annually for each fiscal year following the issuance of the Series 2011 Bonds to budget, appropriate and pay to the Trustee an amount equal to the Basic Payments (as defined in the Contract) payable by the County under the Contract in such fiscal year. EDA also hereby covenants that it shall, through its EDA Representative, request the County annually for each fiscal year following the issuance of the Series 2011 Bonds to budget, appropriate and apply as provided in the Contract, this First Supplemental Trust Agreement and the Trust Agreement an amount equal to the estimated Additional Payments (as defined in the Contract) payable by the County under the Contract in such fiscal year.

Section 6. Tax Covenants. The EDA covenants that it will not take any action which will, or fail to take any action which failure will, cause interest on the Series 2011 Bonds to become includable in the gross income of the recipients thereof for federal income tax purposes pursuant to the provisions of the Internal Revenue Code of 1986, as amended and regulations promulgated thereunder.

(a) As of a date not later than five years after the issue date of the Series 2011 Bonds (the “Initial Installment Computation Date”), and at least once every five years thereafter, the EDA shall cause the Rebate Liability to be computed by a Rebate Analyst and will deliver a copy of the applicable Rebate Liability calculation to the Trustee (the “Rebate Liability Certificate”). Amounts paid for the purpose of funding the Rebate Liability, or otherwise made available therefor, shall be deposited by the Trustee in the Rebate Subfund.

(1) not later than sixty (60) days after each Initial Installment Computation Date, the EDA shall pay, or direct the Trustee to pay from amounts in the Rebate Subfund, to the United States of America at least ninety percent (90%) of the Rebate Liability as set forth in the Rebate Liability Certificate prepared with respect to such installment computation date;

(2) no later than sixty (60) days after the installment computation date that is the fifth anniversary of the Initial Installment Computation Date and no later than sixty (60) days after every fifth anniversary date thereafter until final payment of the applicable Series of Bonds, the EDA shall direct the Trustee to pay from amounts in the Rebate Subfund (such amounts constituting Excess Earnings as consistent with the tax certificate delivered in connection with the issuance of the Series 2011 Bonds (as supplemented and amended from time to time, the “EDA Tax Certificate”), transferred from the Construction Subfund, Reserve Subfund and Revenue Stabilization Subfund and

any of their applicable accounts) to the United States of America not less than the amount, if any, by which ninety percent (90%) of the Rebate Liability set forth in the most recent Rebate Liability Certificate exceeds the aggregate of all such payments theretofore made to the United States of America with respect to the applicable Series of Bonds;

(3) no later than sixty (60) days after final payment of a Series of Bonds, the EDA shall pay, or direct the Trustee to pay from amounts in the Rebate Subfund, to the United States of America the amount, if any, by which 100% of the Rebate Liability set forth in the Rebate Liability Certificate with respect to the date of final payment of the applicable Series of Bonds exceeds the aggregate of all payments theretofore made pursuant to this Section.

(b) The EDA represents that it will instruct the Trustee as to the final application of the amounts in the Rebate Subfund to the make payments to the United States of America of all or a portion of the Rebate Liability on such dates or amounts in order for the EDA to comply with the conditions in this section of the First Supplemental Trust Agreement and the EDA Tax Certificate.

All such payments shall be made by, or at the direction of, an EDA Representative from any legally available source, including moneys in the Rebate Subfund.

Notwithstanding any provision of this Section to the contrary, (i) no such Rebate Liability payment need be made if the EDA receives and delivers to the Trustee an opinion of bond counsel to the effect that such payment (1) is not required under the Code to prevent the Series 2011 Bonds from becoming “arbitrage bonds” within the meaning of Section 148 of the Code, or (2) may or should be calculated and paid on some alternative basis under the Code, and the EDA complies with such alternative basis and (ii) an EDA Representative may direct the Trustee to transfer all or any portion of the moneys held for the credit of the Rebate Subfund to any other Subfund or account under the Trust Agreement to which such a transfer may be made under the terms of the EDA Tax Certificate.

The Trustee shall provide the EDA within ten (10) days after each _____, or other computation date selected by the EDA, and within ten (10) days after the final payment of a Series of Bonds with such reports and information with respect to earnings of amounts held under the Trust Agreement and this First Supplemental Trust Agreement as may be requested by the EDA to comply with the provisions of this Section.

Section 7. Recitals, Statements and Representations made by the EDA, not Trustee. The recitals, statements and representations contained herein shall be taken and construed as made by and on the part of the EDA and not by the Trustee, and the Trustee assumes and shall be under no responsibility for the correctness of the same.

Section 8. First Supplemental Trust Agreement as supplemental agreement. This First Supplemental Trust Agreement is executed and shall be construed as an agreement supplemental to the Trust Agreement and shall form a part thereof, and the Trust Agreement as hereby and heretofore supplemented is hereby ratified, approved and confirmed.

Section 9. EDA, County, Trustee and Bondholders Alone to Have Rights. Nothing in this First Supplemental Trust Agreement expressed or implied is intended or shall be construed to give to any person other than the EDA, the County, the Trustee and the holders of the Series 2011 Bonds issued under the Trust Agreement any legal or equitable right, remedy or claim under or in respect of the Trust Agreement, or this First Supplemental Trust Agreement, or under any covenant, condition or provisions therein or herein or in said Series 2011 Bonds contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the EDA, the County, the Trustee and the holders of said Series 2011 Bonds issued under the Trust Agreement.

Section 10. Trustee to Perform Duties of Bond Registrar. The Trustee accepts and agrees to execute the trusts imposed upon it as Bond Registrar under this First Supplemental Trust Agreement, but only upon the terms and conditions set forth in the Trust Agreement and subject to the provisions of the Trust Agreement, to all of which the parties hereto and the owners of the Series 2011 Bonds agree.

Section 11. Identifying Information. To help the government fight the funding of terrorism and money laundering activities, federal law requires the Trustee to obtain, verify and record information that identifies each person who opens an account. The EDA agrees to provide documentation to verify its formation and existence as a legal entity if requested by the Trustee. The Trustee may also ask to see financial statements, licenses, and identification and authorization documents from the EDA or other relevant documentation.

Section 12. Headings Not Part of Agreement; Certain Definitions. (a) The title of Sections and any wording on the cover of this First Supplemental Trust Agreement are inserted for convenience only and are not a part hereof.

(b) All terms not defined herein shall have the meanings given to them in the Trust Agreement.

Section 13. Covenants to Bind Successors. All the covenants, stipulations, promises and agreements in this First Supplemental Trust Agreement contained made by or on behalf of the EDA or for the Trustee shall inure to and bind their respective successors and assigns.

IN WITNESS WHEREOF, Fairfax County Economic Development Authority has caused this First Supplemental Trust Agreement to be executed by its Chairman and its official seal to be impressed hereon and attested by its Secretary, and _____ has caused this First Supplemental Trust Agreement to be executed in its behalf by an authorized officer, all as of the day and year first above written.

**FAIRFAX COUNTY ECONOMIC
DEVELOPMENT AUTHORITY**

By _____
Chairman

[SEAL]

Attest:

Secretary

_____,
Trustee

By _____
Name:
Title:

FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Disclosure Agreement”) is executed and delivered by Fairfax County, Virginia (the “County”) in connection with the issuance by the Fairfax Economic Development Authority (the “Authority”) of its \$_____ Revenue Bonds (Wiehle Avenue Metrorail Station Parking Project) Series 2011 (the “Series 2011 Bonds”) pursuant to the provisions of resolutions (the “Authorizing Resolutions”) adopted by the Authority on ____, 2010 and _____, 2011 and under a Trust Agreement, dated as of ____, 2011, and as supplemented by a First Supplemental Trust Agreement dated as of ____, 2011 (collectively the “Trust Agreement”), each between the Authority and _____, as trustee (the “Trustee”).

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the County acting on behalf of itself, the Authority, and the Phase I Dulles Rail Transportation Improvement District, for the benefit of the holders of the Series 2011 Bonds and in order to assist the Participating Underwriters (defined below) in complying with the Rule (defined below). Under the Rule, the County is an “obligated person”. The County acknowledges that it is undertaking primary responsibility for any reports, notices or disclosures that may be required under this Disclosure Agreement.

SECTION 2. Definitions. In addition to the definitions set forth in the Trust Agreement, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the County pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Dissemination Agent” shall mean the County, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the County and which has filed with the County a written acceptance of such designation.

“Filing Date” shall have the meaning given to such term in Section 3(a) hereof.

“Fiscal Year” shall mean the twelve month period at the end of which financial position and results of operations are determined. Currently, the County’s Fiscal Year begins July 1 and continues through June 30 of the next calendar year.

“Holder” or “holder” shall mean, for purposes of this Disclosure Agreement, any person who is a record owner or beneficial owner of the Series 2011 Bonds.

“Listed Events” shall mean any of the events listed in subsection (b)(5)(i)(C) of the Rule, which are as follows:

- principal and interest payment delinquencies;
- non-payment related defaults; if material;
- unscheduled draws on debt service reserves reflecting financial difficulties;
- unscheduled draws on credit enhancements reflecting financial difficulties;
- substitution of credit or liquidity providers, or their failure to perform;

adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 570-TEB) or other material notices or determinations with respect to or events affecting the tax status of the Series 2011 Bonds;

modifications to rights of holders, if material;

bond calls, if material, and tender offers;

defeasances;

release, substitution, or sale of property securing repayment of the Series 2011 Bonds, if material;

rating changes;

bankruptcy, insolvency, receivership or similar event of the County;

the consummation of a merger, consolidation, or acquisition involving the County or the sale of all or substantially all of the assets of the County, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating any such actions, other than pursuant to its terms, if material; and

appointment of a successor or additional paying agent or the change of name of a paying agent, if material.

“Participating Underwriters” shall mean any of the original underwriters of the Series 2011 Bonds required to comply with the Rule in connection with the offering of such Series 2011 Bonds.

“Repository” shall mean The Electronic Municipal Market Access (“EMMA”) system administered by the Municipal Securities Rulemaking Board. EMMA is recognized as a National Repository for purposes of the Rule.

“Rule” shall mean Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

SECTION 3. Provision of Annual Reports.

A. The County shall, or shall cause the Dissemination Agent to, provide to the Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. Such Annual Report shall be filed on a date (the “Filing Date”) that is not later than March 31 after the end of any Fiscal Year (commencing with its Fiscal Year ending June 30, 2012). Not later than ten (10) days prior to the Filing Date, the County shall provide the Annual Report to the Dissemination Agent (if applicable). In such case, the Annual Report (i) may be submitted as a single document or as separate documents comprising a package, (ii) may cross-reference other information as provided in Section 4 of this Disclosure Agreement, and (iii) shall include the County’s audited financial statements or, if audited financial statements are not available, such unaudited financial statements as may be required by the Rule. In any event, audited financial statements of the County must be submitted, if and when available, together with or separately from the Annual Report.

B. The annual financial statements of the County shall be prepared on the basis of generally accepted accounting principles and will be audited. Copies of the audited annual financial statements, which may be filed separately from the Annual Report, will be filed with the Repository when they become publicly available.

C. If the County fails to provide an Annual Report to the Repository by the date required in subsection (A) hereto or to file its audited annual financial statements with the Repository when they become publicly available, the County shall send a notice to the Repository in substantially the form attached hereto as Exhibit B.

SECTION 4. Content of Annual Reports. Except as otherwise agreed, any Annual Report required to be filed hereunder shall contain or incorporate by reference, at a minimum, annual financial information relating to the County, including operating data, updating such information relating to the County as described in Exhibit A, all with a view toward assisting the Participating Underwriters in complying with the Rule.

Any or all of such information may be incorporated by reference from other documents, including official statements of securities issues with respect to which the County is an “obligated person” (within the meaning of the Rule), which have been filed with the Repository or the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the Repository. The County shall clearly identify each such other document so incorporated by reference.

SECTION 5. Reporting of Listed Events. The County will provide within 10 business days to the Repository notice of any of the Listed Events.

SECTION 6. Termination of Reporting Obligation. The County’s obligations under this Disclosure Agreement shall terminate upon the earlier to occur of the legal defeasance or final retirement of all the Series 2011 Bonds.

SECTION 7. Dissemination Agent. The County may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the County shall be the Dissemination Agent.

SECTION 8. Amendment. Notwithstanding any other provision of this Disclosure Agreement, the County may amend this Disclosure Agreement, if such amendment is supported by an opinion of independent counsel with expertise in Federal securities laws, to the effect that such amendment is permitted or required by the Rule.

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the County from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the County chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Agreement, the County shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. Any person referred to in Section 11 (other than the County) may take such action as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the County to file its Annual Report or to give notice of a Listed Event. The holders of not less than a majority in aggregate principal amount of Series 2011 Bonds outstanding may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to challenge the adequacy of any information provided pursuant to this Disclosure Agreement, or to enforce any other obligation of the County hereunder. A default under this Disclosure Agreement shall not be deemed an event of default under the Authorizing Resolutions, the Trust Agreement or the Series 2011 Bonds, and the sole remedy under this Disclosure Agreement in the event of any failure of the County to comply herewith shall be an action to compel performance. Nothing in this provision shall be deemed to restrict the rights or remedies of any holder pursuant to the Securities Exchange Act of 1934, the rules and regulations promulgated thereunder, or other applicable laws.

SECTION 11. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the County, the Participating Underwriters, and holders from time to time of the County’s bonds and notes, and shall create no rights in any other person or entity.

Date: May __, 2011

FAIRFAX COUNTY, VIRGINIA

By: _____

CONTENT OF ANNUAL REPORT

Respecting Fairfax County, Virginia

(a) **Financial Information.** Updated information concerning General Fund revenues, expenditures, categories of expenditures, fund balances, assessed value of taxable property, tax rates, major taxpayers, and tax levies and collections.

(b) **Debt Information.** Updated information concerning general obligation bonds indebtedness, including bonds authorized and unissued, bonds outstanding, the ratios of debt to the market value of taxable property, debt per capita, and debt service as a percentage of General Fund disbursements.

(c) **Demographic Information.** Updated demographic information respecting the County, such as its population, public school enrollment and per pupil expenditure.

(d) **Economic Information.** Updated economic information respecting the County such as income, employment, unemployment, building permits and taxable sales data.

(e) **Retirement Plans.** Updated information respecting pension and retirement plans for County employees, including a summary of membership, revenues, expenses and actuarial valuation(s) of such plans.

(f) **Contingent Liabilities.** A summary of material litigation and other material contingent liabilities pending against the County.

In general, the foregoing will include information as of the end of the most recent fiscal year or as of the most recent practicable date. Where information for the fiscal year just ended is provided, it may be preliminary and unaudited. Where information has historically been provided for more than a single period, comparable information will in general be provided for the same number of periods where valid and available. Where comparative demographic or economic information for the County and the United States as a whole is contemporaneously available and, in the judgment of the County, informative, such information may be included. Where, in the judgment of the County, an accompanying narrative is required to make data presented not misleading, such narrative will be provided.

**NOTICE OF FAILURE TO FILE ANNUAL REPORT
[AUDITED ANNUAL FINANCIAL STATEMENTS]**

**Re: FAIRFAX COUNTY ECONOMIC DEVELOPMENT AUTHORITY
REVENUE BONDS
(WIEHLE AVENUE METRORAIL STATION PARKING PROJECT)
SERIES 2011**

CUSIP NOS. ____-____

Dated: _____, 20__

NOTICE IS HEREBY GIVEN that Fairfax County, Virginia has not provided an Annual Report [Audited Annual Financial Statements] as required by Section 3 of the Continuing Disclosure Agreement, which was entered into in connection with the above-named bonds, the proceeds of which were to pay a portion of the principal amount of an outstanding note. [The County anticipates that the Annual Report [Audited Annual Financial Statements] will be filed by _____.]

Dated: _____

FAIRFAX COUNTY, VIRGINIA

By: _____

DRAFT Critical Path Events
Fairfax County Economic Development Authority
Wiehle Avenue Bonds, Series 2011

Apr-11							May-11							Jun-11							Jul-11						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
					1	2	1	2	3	4	5	6	7	5	6	7	8	9	10	11	3	4	5	6	7	8	9
3	4	5	6	7	8	9	8	9	10	11	12	13	14	12	13	14	15	16	17	18	10	11	12	13	14	15	16
10	11	12	13	14	15	16	15	16	17	18	19	20	21	19	20	21	22	23	24	25	17	18	19	20	21	22	23
17	18	19	20	21	22	23	22	23	24	25	26	27	28	26	27	28	29	30	24	25	26	27	28	29	30		
24	25	26	27	28	29	30	29	30	31						31												

Week of	Activity & Event	Responsible Party
April 18 th	Draft Bond Documents distributed <i>Friday, April 22nd</i> – Bond Documents needed for Board Package (Resolution, POS, NOS, First Supplemental, CDA)	SA SA
April 25 th	Comments due on Draft Bond Documents	All
May 9 th	<i>Tuesday, May 10th</i> – Fairfax County Board Meeting	FX
May 30 th	<i>Monday, May 30th</i> – Memorial Day Holiday Information to Rating Agencies	-- PFM
June 6 th	Documents needed for EDA Board Package Rating Agency Calls	SA FX, PFM
June 20 th	<i>Tuesday, June 21st</i> – Fairfax County EDA Board Meeting Receive Bond Ratings Finalize POS & NOS	FX -- SA
June 27 th	<i>Thursday, June 30th</i> – Mail POS & NOS	SA
July 4 th	<i>Monday, July 4th</i> – Independence Day Holiday Pre-Marketing	-- PFM
July 11 th	<i>Thursday, July 14th</i> – Bond Sale	FX, PFM
July 18 th	Finalize and mail Official Statement Finalize Closing Documents	SA All
July 25 th	<i>Thursday, July 28th</i> – Closing	All

Legend:

FX = Fairfax County
SA = Sidley Austin, Bond Counsel
PFM = Public Financial Management, Financial Advisor

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Board Agenda Item
June 7, 2011

ACTION - 4

Approval of the Revised SmarTrip Operations Funding Agreement for the Regional SmarTrip Program

ISSUE:

Board approval of the revised SmarTrip Operations Funding Agreement between the County and the Washington Metropolitan Area Transit Authority (WMATA). The original agreement to accept SmarTrip electronic fare media was approved in August 2003. The revisions include provisions for jurisdictions adding bus garages, parking facilities, and point of sale devices (POS), and the ability to add new technologies or payment cards.

RECOMMENDATION:

The County Executive recommends that the Board approve, in substantial form, the revised SmarTrip Operations Funding Agreement (Attachment I) for the use of SmarTrip at transit facilities and on the transit system in Fairfax County.

TIMING:

Board action is requested on June 7, 2011, so the revisions can be implemented at the beginning of Fiscal Year 2012.

BACKGROUND:

SmarTrip is an electronic fare card that transit riders can use to store value and pay boarding fares on public transit instead of using a paper fare card, paper pass, or cash. A rider can add cash value, passes, and Metrocheks with the card in any participating jurisdiction, and can use the card to board and transfer to and from any participating transit system and/or pay for parking at Metrorail stations. The operating elements of the system include WMATA management and technical support, as well as audit services for the Regional Customer Service Center (RCSC) operation. The total estimated operating expense for the region, including the contract costs, is \$5,964,380 for FY 2012. These costs are addressed in the Operations Funding Agreement which shows the methodology for how these costs will be distributed among regional partners.

The original Operating Funding Agreement (OFA) was signed by the Regional Partners in 2003, but over the years the SmarTrip program has grown and we are now working to

Board Agenda Item
June 7, 2011

align the OFA with actual and planned procedures. The substantive changes are as follows:

1. Expansion of definitions to include several new terms, such as “Smart card” as a general term for SmarTrip and CharmCard.
2. Clarification of the quarterly invoicing and payment schedule.
3. Clarification of the annual budget review and update process.
4. Addition of a third formula of sharing costs based on “number of garages” at a partner.
5. Revision of Clearing and Settlement to reflect WMATA taking the lead with, and clarification on this process.
6. Expansion of the allocation of finds to partners for smartcard loads and purchases, to include Point of Sale devices, and parking transaction devices.
7. Revision of the process to amend the OFA.

All jurisdictions that operate transit systems, such as the FAIRFAX CONNECTOR, and desire to use the SmarTrip card are required to execute the Operations Funding Agreement. The Operations Funding Agreement establishes the RCSC, as well as the formula used to calculate each participant’s settlement portion for the clearinghouse function of the RCSC. The Agreement ensures that each system receives the amount of fare revenue they are entitled to receive, based on revenues and transactions.

FISCAL IMPACT:

The County will be required to pay its share of the annual operating costs for the clearinghouse function, as outlined in the SmarTrip Operations Funding Agreement. This annual cost for the FAIRFAX CONNECTOR is estimated to be \$216,580 for FY 2012 and is included in Fund 100, County Transit Systems.

ENCLOSED DOCUMENTS:

Attachment I: SmarTrip Operations Funding Agreement, Revised June 2011
(Available online at <http://www.fairfaxcounty.gov/connector/riders/smartrip.htm>)

STAFF:

Anthony H. Griffin, County Executive
Robert Stalzer, Deputy County Executive
Tom Biesiadny, Acting Director, Fairfax County Department of Transportation (FCDOT)
Rollo C. Axton, Chief, Transit Services Division; FCDOT
Christin A. Wegener, Section Chief, Transportation, FCDOT
Kris Miller, Connector Fleet Coordinator, FCDOT

Board Agenda Item
June 7, 2011

ACTION - 5

Endorsement of a Break in the Fairfax County Parkway (Route 7100) Limited Access Right-of-Way to Support the Establishment of an Entrance to the National Museum of the U.S. Army on Fort Belvoir (Mount Vernon District)

ISSUE:

Board support is required to establish access to the National Museum of the U.S. Army (NMUSA) from the Fairfax County Parkway (Route 7100), a limited access highway on Fort Belvoir, located just north of the Kingman Road Gate. Board approval is required prior to submission to the Virginia Department of Transportation (VDOT) for review and approval by the Commonwealth Transportation Board (CTB).

RECOMMENDATION:

The County Executive recommends that the Board approve a resolution to support the establishment of access to the National Museum of the U.S. Army from the Fairfax County Parkway.

TIMING:

Board action is requested on June 7, 2011, to allow sufficient time for consideration by the CTB on July 21, 2011.

BACKGROUND:

The Army is planning to build the NMUSA on Fort Belvoir northwest of the intersection of the Fairfax County Parkway and John J. Kingman Road in the Mount Vernon District. The Army is preparing construction plans for NMUSA, and access is planned from the Fairfax County Parkway. Establishment of access at this location and configuration of the improvements has been reviewed by VDOT and Fairfax County DOT. The improvements have been designed to minimize impacts to environmental constraints in the area including a Resource Preservation Area and wildlife corridor. The Army has also completed a conceptual plan for a future grade-separated interchange at Kingman Road that will include a future entrance to the Museum from the Parkway. The future improvements have also been designed to avoid impacts to the environmentally sensitive areas and the existing rail alignment parallel to the Parkway.

The Fairfax County Parkway was originally established as a limited access highway and, as such, VDOT regulations will not permit a break in the limited access line without

Board Agenda Item
June 7, 2011

a resolution from the Board. Other access locations were considered which would have had significant environmental impacts. Once the future Kingman interchange is constructed the NMUSA will have its access relocated within the future interchange.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I: Resolution for Break in Limited Access Control (Fairfax County Parkway)

STAFF:

Robert A. Stalzer, Deputy County Executive

Tom Biesiadny, Acting Director, Fairfax County Department of Transportation (FCDOT)

Eric Teitelman, Chief, Capitol Projects and Operations Division, FCDOT

Mark Canale, Chief, BRAC/Dulles Rail Division, FCDOT

Laura Miller, BRAC Coordinator, Fairfax County

RESOLUTION

**FAIRFAX COUNTY BOARD OF SUPERVISORS
BREAK OF LIMITED ACCESS CONTROL
FAIRFAX COUNTY PARKWAY
MOUNT VERNON DISTRICT**

WHEREAS, following coordination with the Virginia Department of Transportation (VDOT), the National Museum of the USA Army (NMUSA) has requested access from the Fairfax County Parkway limited access roadway; and

WHEREAS, no reasonable alternate route has been identified from other roads near the parcel; and

WHEREAS, it is the intent of the Fairfax County Board of Supervisors to ensure that the proposed break of limited access control be used for National Museum of the U.S. Army only; and

WHEREAS, the Commonwealth Transportation Board (CTB) approves a break in limited access control as a special situation not covered under the General Rules and Regulations of the CTB (24 VAC 20-80) as authorized by the CTB or Commissioner in the department's Land Use Permit Manual (24 VAC 30 – 150);

NOW THEREFORE BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, has determined that to promote the health, safety, and general welfare of the visitors and employees of NMUSA, it is beneficial to approve the break in limited access of the Fairfax County Parkway to provide access to the NMUSA; and

FURTHER BE IT RESOLVED, that Board of Supervisors supports the U.S. Army's request through the VDOT Chief Engineer to allow a break in the limited access highway to be considered by the CTB.

ADOPTED this 7th day of June, 2011

A Copy Teste:

Nancy Vehrs
Clerk to the Board of Supervisors

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Board Agenda Item
June 7, 2011

ACTION – 6

Reston-Wiehle Avenue Metrorail Station Roadway Improvements (Hunter Mill District)

ISSUE:

Board approval of an agreement with the Metropolitan Washington Airports Authority (MWAA) for Fairfax County's construction of certain pedestrian and road improvements at the Reston-Wiehle Avenue Metrorail Station, and MWAA's reimbursement of Fairfax County for a portion of the costs of such work.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the proposed agreement between MWAA and Fairfax County for the County to construct certain roadway and pedestrian improvements on- and off-site at the Reston-Wiehle Avenue Metrorail Station, and for MWAA to reimburse the County for a portion of the costs of such work.

TIMING:

Board action is requested on June 7, 2011, to allow the project to remain on schedule.

BACKGROUND:

The Dulles Corridor Metrorail Project (DCMP) Phase 1 is an extension of Metrorail from just east of the West Falls Church Metrorail Station along the Dulles Connector Road (DCR), through Tysons Corner, onto the Dulles International Airport Access Highway (DIAAH), and terminating in Reston at the Reston-Wiehle Avenue Station, as generally described in the Federal Transit Administration Record of Decision, as amended on November 17, 2006 (the ROD). In 2006, Fairfax County informed the Virginia Department of Rail and Public Transportation and MWAA of the County's intention to seek a public-private partnership to build the required Metrorail parking garage, bus bays, and kiss and ride facilities at the Reston-Wiehle Avenue Metrorail Station and to provide a transit-oriented, mixed use development on the site.

In June 2009, the Board of Supervisors approved the Development Agreement and Ground Lease between the County and Comstock Companies for Comstock to be the County's developer for the Reston-Wiehle Avenue Metrorail Station parking garage, as well as more than one million square feet of commercial, retail, and residential

Board Agenda Item
June 7, 2011

development on the approximately nine acres of County property adjacent to the north side of the Reston-Wiehle Avenue Metrorail Station, located at Wiehle Avenue and Sunset Hills Road in Reston.

County staff have been in discussions with MWAA and have reached agreement on the scope of the Reston-Wiehle Avenue Metrorail Station on-site and off-site roadway and pedestrian improvements that the County, through Comstock's general contractor, will construct as part of implementing the ROD, and on the allocation of the cost of such improvements between MWAA and the County. MWAA will reimburse Fairfax County for majority of the cost of these roadway and pedestrian improvements, up to approximately \$6.73 million. The majority of the remainder of costs not funded by MWAA will be funded by Comstock Companies under their separate Development Agreement and in rough proportion to the benefit of such improvements accruing to the private development. Assuming no cost overruns in excess of the contingencies provided for the proposed budget, the County's share of these costs is estimated to be approximately \$1.7 million.

MWAA also agreed to obtain the easements and other property interests necessary to construct the garage and the related roadway and pedestrian improvements (Garage Easements), as well as certain easements and property interests necessary for the transit-oriented development (TOD Easements). MWAA will pay the costs of acquiring the Garage Easements but not the costs of acquiring the TOD Easements. The County and Comstock have separately agreed to split the costs of the TOD Easements equally; the County's share of these costs is estimated at \$250,000.

Lastly, in connection with the construction of the Reston-Wiehle Avenue Metrorail garage and related transit-oriented development, the County and MWAA agreed to a modification of the design for the pedestrian bridge over the DCR connecting the Metrorail station and the garage. This modification will benefit the overall development by producing an enhanced plaza design, and will be treated as a County-requested betterment based on the DCMP funding agreement between Fairfax County, Loudoun County, and MWAA. The cost to the County of this modification will be approximately \$1.35 million.

MWAA's board approved the form of agreement in May 2011.

Fairfax County has agreed to have all these improvements constructed to coincide with the completion of the Reston-Wiehle Avenue Metrorail Station parking garage which is currently anticipated for approximately September 2013.

Board Agenda Item
June 7, 2011

FISCAL IMPACT:

Regarding the construction of the on-site and off-site roadway and pedestrian improvements, the County will fund its portion of these construction costs from the proceeds of the Economic Development Authority bond issuance for the Reston-Wiehle Avenue Metrorail garage. MWAA will reimburse the County up to approximately \$6.73 million for its portion of these costs, and has also agreed to a contingency to cover a portion of certain cost overruns above \$6.73 million. The County intends to fund its share of the TOD Easement costs from the aforementioned EDA bond proceeds and Commercial and Industrial tax proceeds from Fund 124, County and Regional Transportation Projects, and to fund the \$1.35 million cost of the pedestrian bridge modification as part of the Phase 1 DCMP construction.

ENCLOSED DOCUMENTS:

Attachment I: Wiehle Avenue Station Area Construction Agreement Between the Metropolitan Washington Airports Authority, the County of Fairfax, Virginia, and the County of Loudoun, Virginia

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Acting Director, Fairfax County Department of Transportation (FCDOT)
Mark Canale, FCDOT
Richard Stevens, FCDOT
Andrew Miller, Department of Public Works and Environmental Services (DPWES)
Alan Weiss, Office of the County Attorney
Ryan Wolf, Office of the County Attorney
Hossein Malayeri, DPWES

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**WIEHLE AVENUE STATION AREA CONSTRUCTION AGREEMENT
BETWEEN
THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY,
THE COUNTY OF FAIRFAX, VIRGINIA, AND
THE COUNTY OF LOUDOUN, VIRGINIA**

THIS WIEHLE AVENUE STATION AREA CONSTRUCTION AGREEMENT (this "Agreement") is hereby entered into as of _____, 2011, by and between the Metropolitan Washington Airports Authority (the "Airports Authority") and the County of Fairfax, Virginia ("Fairfax").

RECITALS

WHEREAS, Fairfax and the Airports Authority have entered into that certain Cooperative Agreement Relating to the Construction of Metrorail in the Dulles Airport Corridor, dated as of July 19, 2007 (together with all addenda thereto executed to date, the "Cooperative Agreement"), with respect to the Project (as defined below);

WHEREAS, Fairfax, the County of Loudoun, Virginia ("Loudoun"), and the Airports Authority, have entered into that certain Agreement to Fund the Capital Cost of Construction of Metrorail in the Dulles Corridor, dated as of July 19, 2007 (together with all addenda thereto executed to date, the "Funding Agreement"), also with respect to the Project;

WHEREAS, the Airports Authority executed a Full Funding Grant Agreement ("FFGA") with the Federal Transit Administration ("FTA") on March 10, 2009 that obligates the Airports Authority to comply with the FFGA with respect to the construction of all elements of the Project as contained in the FTA Record of Decision, as amended on November 17, 2006 (collectively, the "ROD");

WHEREAS, Fairfax has entered into that certain Metrostation Facilities Development Agreement (the "Development Agreement") and that certain Deed of Lease (the "Lease"), each dated as of June 1, 2009, each with an affiliate of Comstock Companies (collectively, "Comstock"), to provide for the construction on certain land owned by Fairfax, as depicted on Exhibit A of this agreement (such land, the "Land") of (i) certain elements for the Wiehle Avenue Metrorail Station (as such term is defined in Section 1, below) known as the Metrostation Facilities (as such term is defined in Section 1, below), including without limitation an underground parking garage of approximately 2,300 parking spaces, 45 kiss-and-ride parking spaces, 12 bus bays (including 2 layover bays), and 150 bicycle spaces, as well as (ii) a mixed-use, transit-oriented development;

WHEREAS, Fairfax selected Comstock for such construction work in accordance with applicable Virginia procurement law, including, without limitation the Public-Private Education Facilities and Infrastructure Act of 2002, as amended to date, Va. Code Ann. §§ 56-575.1 et. seq. (Supp. 2010) (the "PPEA");

WHEREAS, the Airports Authority and Fairfax desire that Fairfax shall design and construct or cause the design and construction of certain ROD improvements (as set forth below, collectively, the "Wiehle Avenue Station Area Improvements") and that the Airports Authority shall provide Project funds to Fairfax for such design and construction, all as set forth hereinbelow;

WHEREAS, Mitigation Measure LU-3 of the ROD charges MWAA to assist Fairfax in pursuing joint-development opportunities at the Wiehle Avenue Metrorail Station

WHEREAS, the Airports Authority's obligation to construct certain other portions of the ROD will necessitate it to perform or cause the performance of certain construction work on and/or near the Land;

WHEREAS, Fairfax, through Comstock and, in turn, James G. Davis Construction Corporation (together with its subcontractors, "Davis"), will be causing the construction of the Metrostation Facilities on the Land;

WHEREAS, Fairfax, through Comstock and, in turn, Davis and certain other contractors, will be causing the construction of the Wiehle Avenue Station Area Improvements on and near the Land; and

WHEREAS, Section 1.7 of the Cooperative Agreement charges the Airports Authority and Fairfax and their respective contractors to the extent necessary to coordinate the construction programs being performed by either party;

NOW, THEREFORE, the Airports Authority, Fairfax, and Loudoun agree as follows:

1. Definitions.

a. "Additional Acquisitions" shall have the meaning set forth in Section 2(b) below. The Additional Acquisitions are a subset of the MWAA Property Interest Acquisitions.

b. "Agreement" shall have the meaning set forth in the preamble hereof.

c. "Airports Authority" shall have the meaning set forth in the preamble hereof.

d. "Budget" shall mean the document set forth at Exhibit F hereto.

e. "Comstock" shall have the meaning set forth in the Recitals hereof.

f. "Cooperative Agreement" shall have the meaning set forth in the Recitals hereof.

g. "Davis" shall have the meaning set forth in the Recitals hereof.

- h. "Deadline" shall have the meaning set forth in Section 6(e) below.
- i. "Development Agreement" shall have the meaning set forth in the Recitals hereof.
- j. "DTP" shall have the meaning set forth in Section 5(b) below.
- k. "Fairfax" shall have the meaning set forth in the preamble hereof.
- l. "Fairfax Certificate" shall have the meaning set forth in Section 6(c) below.
- m. "Fairfax Payment" shall have the meaning set forth in Section 4(a) below.
- n. "Fairfax ROD Contract" shall mean that certain construction contract between Davis and Comstock, dated February 25, 2011, and pertaining to construction of certain improvements including some of the Wiehle Avenue Station Area Improvements.
- o. "Federal Requirements" shall have the meaning set forth in Section 6(c) below.
- p. "FFGA" shall have the meaning set forth in the Recitals hereof.
- q. "Final Baseline Schedule" shall have the meaning set forth in Section 3(b) below.
- r. "FTA" shall have the meaning set forth in the Recitals hereof.
- s. "FTA Summary" shall mean that certain Dulles Corridor Metrorail Project document titled "Transportation Effects – Land Use and Station and Facility Access", dated October 29, 2010, a copy of which is attached hereto as part of Exhibit D of this Agreement; provided, however, that FTA may make minor modifications to the FTA Summary pursuant to its final approval thereof.
- t. "Funding Agreement" shall have the meaning set forth in the Recitals hereof.
- u. "GMP" shall mean the construction contract between Davis and Comstock, dated as of December 15, 2010, pertaining to the Metrostation Facilities.
- v. "Hazardous Materials" shall mean materials (i) entitling Davis to an increased payment amount under Article 10.2 of Exhibit A to the Fairfax ROD Contract, and/or (ii) that are regulated by federal, state, and/or local environmental law, regulation, rule, and/or ordinance and would otherwise entitle the contractor under a contract for any scope of the Wiehle Avenue Station Area Improvements not performed by Davis under the Fairfax ROD Contract to an increased payment thereunder, pursuant to the terms of such contract.

w. "Individual Betterment" shall have the meaning ascribed to such term in the Funding Agreement.

x. "Initial Baseline Schedule" shall have the meaning set forth in Section 3(b) below.

y. "Land" shall mean that certain real property owned by Fairfax and depicted on Exhibit A of this Agreement.

z. "Line Item Savings" shall have the meaning set forth in Section 4(c)(ii) below.

aa. "Loudoun" shall have the meaning set forth in the preamble hereof.

bb. "Metrostation Facilities" shall mean those certain station elements for the Wiehle Avenue Metrorail Station (as defined in Section 1 of this Agreement), including, among other things, an underground (or partially underground) parking garage containing 2,300 parking spaces, 45 kiss and ride parking spaces, 12 bus bays (including 2 layover bays), 150 bicycle spaces, internal roadways, entrance pavilions, pedestrian connections, elevators, escalators, and walkways to the station entrance and accommodations for the pedestrian bridge, as such facilities are designed, developed and constructed pursuant to the terms and conditions of the Development Agreement.

cc. "MWAA Property Interest Acquisitions" shall have the meaning set forth in Section 2 below.

dd. "Notice" shall have the meaning set forth in Section 8(a) below.

ee. "Overrun" shall have the meaning set forth in Section 4(b)(i) below.

ff. "Pedestrian Bridge Modification" shall have the meaning set forth in Section 5(a) below.

gg. "Plans" shall mean site plan 2615-SP-007: Reston Station, Road Improvements, dated April 2010; site plan 2615-SP-008: Reston Station, Phase One Garage, dated June 2010; and public improvement plan 2615-PI-004, Reston Station, Sunset Hills Road Improvements, dated June 2010, each as amended.

hh. "PPEA" shall have the meaning set forth in the Recitals hereof.

ii. "Project" shall have the meaning ascribed to such term in the Cooperative Agreement.

jj. "Report Line Item Amount" shall have the meaning set forth in Section 4(b) below.

- kk. "ROD" shall have the meaning set forth in the Recitals.
- ll. "Tier 1A Contingency" shall have the meaning set forth in Section 4(c)(iii) below.
- mm. "Tier 1B Contingency" shall have the meaning set forth in Section 4(c)(iii) below.
- nn. "Tier 1C Contingency" shall have the meaning set forth in Section 4(c)(v)(B)(1) below.
- oo. "Tier 2 Contingency Event" shall have the meaning set forth in Section 4(c)(iv) below.
- pp. "Tier 2 Contingency Payment" shall have the meaning set forth in Section 4(c)(iv) below.
- qq. "Total Capital Contribution" shall have the meaning ascribed to such term in the Funding Agreement.
- rr. "Unavoidable Delay" shall have the meaning set forth in Section 6(f) below.
- ss. "Wiehle Avenue Metrorail Station" shall mean that certain proposed station of the metrorail system serving the Washington, D.C. metropolitan area as controlled and operated by the Washington Metropolitan Area Transit Authority as generally depicted on Exhibit B attached hereto.
- tt. "Wiehle Avenue Station Area Improvements" shall have the meaning set forth in the Recitals hereof and shall consist of the following work as described on the FTA Summary (and as further depicted on the drawing attached hereto as Exhibit D-1, it being acknowledged that the "Dulles Toll Road EB Ramp" SA-3/SA-8 depicted on Exhibit D-1 is not a Wiehle Avenue Station Area Improvement): (i) Mitigation ID SA-2 / Improvement # 1; (ii) Mitigation ID SA-4 / Improvement # 2; (iii) Mitigation ID SA-5 / Improvement # 3; (iv) Mitigation ID TR-2 / Improvement # 5; and (v) Mitigation ID TR-3 / Improvement # 4, subject to minor modifications requested by FTA pursuant to its approval of the FTA Summary.
- uu. "WMATA" shall have the meaning set forth in Section 7(a) below.

2. Airports Authority Acquisition of Certain Property Interests. Pursuant to its obligations under the ROD and the FFGA, the Airports Authority shall acquire or cause to be acquired certain property interests necessary to provide access to the north side of the Wiehle Avenue Metrorail Station (those property interests described in Sections 2(a) and 2(b), collectively, the "MWAA Property Interest Acquisitions");

a. Those property interests identified in red on Exhibit C-1 attached hereto and as more fully described on Exhibit C-2 attached hereto.

b. Those property interests identified in blue on Exhibit C-1 attached hereto and as more fully described on Exhibit C-2 attached hereto (the "Additional Acquisitions"). The Airports Authority and Fairfax agree that the amounts paid by the Airports Authority to third-party property owners to obtain the Additional Acquisitions should be deemed an Individual Betterment (as such term is defined in the Funding Agreement) of Fairfax funded pursuant to the terms of the Funding Agreement. The Airports Authority shall promptly notify Fairfax of the amount of such acquisition costs by sending a copy of the Airports Authority's internal check request form for the Additional Acquisition and Fairfax shall reimburse the Airports Authority within forty-five (45) calendar days of its receipt of the check request form.

3. Construction of the Wiehle Avenue Station Area Improvements.

a. Fairfax shall design and construct or cause the design and construction of the Wiehle Avenue Station Area Improvements, as shown on Exhibit D attached hereto. The Airports Authority acknowledges that there will be only two site plans and one public improvement plan relating to the Wiehle Avenue Station Area Improvements, and no other construction specifications. The Airports Authority shall have the right to approve each of the Plans upon each Plan's filing with the Bonds and Agreements Branch of the Fairfax County Department of Public Works & Environmental Services, such approval to be given or reasonably refused (i) on the basis of conformity of the Wiehle Avenue Station Area Improvements depicted thereon to the applicable "Improvements" as shown on the FTA Summary, attached hereto as Exhibit D, and (ii) within ten (10) business days of Fairfax's submittal of such documents and request for review to the Airports Authority. If the Airports Authority reasonably determines not to so approve any such Plan in accordance with the preceding sentence, it shall specify in detail the reason(s) therefor in a written response to Fairfax within such ten (10) business day period. If the Airports Authority fails to respond with such ten (10) business day period, it shall be deemed to have approved the applicable Plan(s).

b. Attached hereto as Exhibit E is a form of baseline schedule ("Initial Baseline Schedule") listing the current projected completion dates for various tasks associated with the construction of the Wiehle Avenue Metrorail Station, including the Wiehle Avenue Station Area Improvements. By August 1, 2011, Fairfax and the Airports Authority shall agree upon a revised baseline schedule (the "Final Baseline Schedule") with revised task completion dates as of the date of such agreement, to be used solely for purposes of tracking construction pursuant to Section 4(b) below. Notwithstanding anything herein to the contrary, (i) the Initial Baseline Schedule, the Final Baseline Schedule, and any updates thereto shall be used solely for the purposes of evaluating the progress of construction, (ii) the dates listed on the Initial Baseline Schedule, the Final Baseline Schedule, and any updates thereto shall not be Deadlines, as defined in this Agreement, (iii) neither Fairfax nor the Airports Authority shall have any liability to the other or to the other's employees or contractors on the basis of the Initial Baseline Schedule, the Final Baseline Schedule, any updates thereto, or this Section 3(b), and (iv) so long as Fairfax provides an update to the Final Baseline Schedule with its quarter report pursuant to Section 4(b)

below, the Airports Authority shall not withhold payment under Section 4(c) hereof on the basis of the contents of such update to the Final Baseline Schedule.

4. Funding of Wiehle Avenue Station Area Improvements.

a. The parties hereto acknowledge and agree (i) that, for Fairfax's design and construction of the Wiehle Avenue Station Area Improvements, the Airports Authority shall pay to Fairfax the sum of up to \$6,729,351.00, in accordance with and subject to the terms and conditions of this Section 4 (the "Fairfax Payment"), (ii) that the Fairfax Payment relates to Fairfax's design and construction of the Wiehle Avenue Station Area Improvements and not to the MWA Property Interest Acquisitions, and (iii) that the Fairfax Payment does not constitute an amendment to the Funding Agreement.

b. On a quarterly basis – i.e., each January 1, April 1, July 1, and October 1 until the Wiehle Avenue Station Area Improvements are accepted by the Airports Authority pursuant to Section 6 of this Agreement – Fairfax shall provide the Airports Authority with a report summarizing (i) the work completed in the preceding quarter, (ii) the amounts expended in the preceding quarter by Fairfax (and/or Comstock, Davis, or its other contractors or subcontractors) in connection with such work, with such amounts broken down into the same line items (each a "Report Line Item Amount") as set forth on Exhibit F attached hereto and made a part hereof (the "Budget"), it being acknowledged that sub-line items on the Budget (e.g., sub-line items 2(a) through 2(d)) that are not individually broken down into Fairfax / Airports Authority shares in the right-most two columns of the Budget shall be aggregated into a single line item on each invoice, (iii) the aggregate of the Report Line Item Amounts for each Budget line item from the beginning of the work, and (iv) an update to the Final Baseline Schedule, noting any changes in projected milestone completion dates appearing thereon from the prior update.

c. Together with each such report, Fairfax shall provide the Airports Authority with an invoice, substantially in the form of the attached Exhibit G, for the Airports Authority's percentage allocation, as set forth on the Budget, of each Report Line Item Amount listed in such report. Each invoice shall further note whether any portion of any Report Line Item Amount is an Overrun or a Tier 2 Contingency Payment, and whether any completed Budget line item has yielded any Line Item Savings (as such terms are defined herein). Within twenty-one (21) days of its receipt of Fairfax's report and invoice, the Airports Authority shall notify Fairfax whether it has approved or disapproved the report and invoice, provided that (i) any disapproval must be reasonably based upon the incompleteness or other inaccuracy of the deliverables described in subsections (i) through (iv) of Section 4(b) hereof and must specify in detail such incompleteness or inaccuracy, (ii) any such disapproval shall apply only to the portion of the report and invoice in dispute, and (iii) if the Airports Authority fails to respond to Fairfax within such 21-day period, it shall be deemed to have approved the report and invoice. If the Airports Authority reasonably disapproves any portion of a report and invoice in accordance with the terms hereof, the parties shall act expeditiously and in good faith to resolve the dispute as quickly as possible. If the Airports Authority approves, in whole or in part, the report and invoice, then within forty-five (45) calendar days of its initial receipt of such report and invoice,

the Airports Authority shall pay to Fairfax such approved and invoiced portion of the Fairfax Payment; provided, however, that:

(i) With respect to each line item of the Budget, if the aggregate of the Report Line Item Amounts for such line item exceeds the "Total" dollar figure shown for such line item on the Budget, then the amount by which such Report Line Item Amount exceeds such "Total" figure (an "Overrun") shall be payable as set forth in Section 4(c)(iii).

(ii) With respect to each line item of the Budget, if, upon the completion of the work pertaining to a line item of the Budget, the aggregate of the Report Line Item Amounts for such line item equals less than the "Total" dollar figure shown for such line item on the Budget, then the amount by which such "Total" figure exceeds such aggregate Report Line Item Amounts (a "Line Item Savings") shall be credited to the Tier 1C Contingency, as defined in Section 4(c)(v)(B).

(iii) Regarding the first \$700,000.00 of Overruns (the "Tier 1A Contingency"), the Airports Authority shall pay seventy percent (70%) of such Overruns to Fairfax. Regarding the next \$700,000.00 of Overruns (the "Tier 1B Contingency"), the Airports Authority shall pay fifty percent (50%) of such Overruns to Fairfax. The Airports Authority shall have no obligation to pay any portion of Overruns greater than the sum of \$1,400,000.00, except as specifically set forth in Section 4(c)(iv) and Section 4(c)(v)(B).

(iv) If Fairfax encounters an issue related to (A) dry utilities (other than with respect to the tasks and amounts expressly set forth in the Budget); (B) geotechnical issues (including, without limitation, soils lacking the proper load-bearing capacity and/or containing human or archaeological remains); and/or (C) Hazardous Materials (each, a "Tier 2 Contingency Event"), then Fairfax shall use best efforts to notify the Airports Authority within seven (7) calendar days. If Fairfax reasonably believes any such Tier 2 Contingency Event is reasonably likely to cause a schedule delay of at least thirty (30) calendar days or an increase to the Budget of at least \$100,000.00, then contemporaneously with such notice Fairfax shall provide the Airports Authority with a summary of Fairfax's planned response to such Tier 2 Contingency Event and the related cost and schedule implications. In the next report and invoice to the Airports Authority, Fairfax shall include a copy of the change order addressing such Tier 2 Contingency Event. Notwithstanding anything herein to the contrary, the Airports Authority shall pay eighty percent (80%) of the amount of any such Tier 2 Contingency Event change order, up to an additional \$5,000,000.00 (each such payment a "Tier 2 Contingency Payment"), and the amount of such Tier 2 Contingency Payment shall not count toward the dollar figures identified in Section 4(c)(iii) hereof. The Tier 2 Contingency Payments (A) do not include amounts associated with the dry utility line items expressly set forth in the Budget, up to the "Total" for each such line item, and (B) are not included in the Budget and thus may increase the Fairfax Payment amount above \$6,729,351.00, to a maximum of 11,729,351.00.

(v) Within one hundred twenty (120) calendar days following the date that the Wiehle Avenue Station Area Improvements are fully open to public vehicular traffic, Fairfax shall deliver to the Airports Authority an update and reconciliation of the Budget in connection with the reports and invoices approved by the Airports Authority, including the Tier

1A Contingency, the Tier 1B Contingency, the Tier 1C Contingency, and any Tier 2 Contingency Payments.

(A) If the total amount paid by the Airports Authority to Fairfax (other than Tier 2 Contingency Payments, if any) exceeds the Fairfax Payment amount set forth in Section 4(a) above, then Fairfax shall refund the Airports Authority the amount of such excess within forty-five (45) calendar days of its delivery of the reconciliation to the Airports Authority.

(B) If there are both Overruns totaling over \$1,400,000.00 and Line Item Savings, then upon reconciliation the Airports Authority shall pay to Fairfax a portion of such Overruns within forty-five calendar days of its receipt of the reconciliation as follows:

(1) The aggregate amount of Line Item Savings shall collectively constitute the "Tier 1C Contingency", which shall apply to Overruns over \$1,400,000.00 in accordance with this Section 4(c)(v)(B).

(2) If there are Line Item Savings solely with respect to one line item of the Budget, then the Airports Authority shall pay a percentage of Overruns over \$1,400,000.00 (until such additional Overruns equal the amount of the Line Item Savings) equal to the Airports Authority's allocated percentage for such Budget line item.

(a) Example: Budget line item "Site – Util – Dry Util. Relocations" has a Line Item Savings of \$50,000; per the Budget, the Airports Authority's percentage share of these costs is 80%. Upon reconciliation, the Airports Authority would pay 80% of any Overruns over \$1,400,000.00, up to an additional \$40,000.00 (80% of \$50,000.00).

(3) If there are Line Item Savings with respect to multiple line items of the Budget, then the Airports Authority shall pay a weighted percentage of Overruns over \$1,400,000.00 (until such additional Overruns equal the aggregate amount of Line Item Savings).

(a) Example: Budget line item "Site – Util – Dry Util. Relocations" has a Line Item Savings of \$50,000.00 and Budget line item "Site – Util – Storm Water Mgmt Vaults" has a Line Item Savings of \$80,000.00. Per the Budget, the Airports Authority's percentage share of the former is 80% and of the latter is 28%. The Airports Authority's weighted percentage would be 48% $((50,000 \times 80\%) + (80,000 \times 28\%)) / (50,000 + 80,000) = 48\%$. Upon reconciliation, the Airports Authority would pay 48% of any Overruns over \$1,400,000.00, up to an additional \$62,400.00 (48% of \$130,000.00).

(4) Notwithstanding anything herein to the contrary, the Airports Authority shall have no obligation to make any Tier 1C Contingency payment upon reconciliation to the extent that such payment would cause the total of all sums paid by the Airports Authority to Fairfax pursuant to this Section 4 (other than Tier 2 Contingency Payments) to exceed the Fairfax Payment amount listed in Section 4(a) hereof.

d. Solely with respect to this Section 4, the recipients for notices, reports and invoices, and other deliverables shall be as set forth below. Regarding a notice pertaining to a Tier 2 Contingency Event, telephonic or e-mail notice shall be satisfactory.

If to the Airports Authority:

Metropolitan Washington Airports Authority
1593 Spring Hill Road, Suite 300
Vienna, Virginia 22182
Attention: James Van Zee, Deputy Director of Project Development
Telephone: 703-572-0504
E-Mail: james.vanee@dullesmetro.com

If to Fairfax:

Department of Public Works and Environmental Services
Attention: Andrew Miller
12000 Government Center Parkway, Suite 449
Fairfax, Virginia 22035
Telephone: 703-324-2331
E-Mail: andrew.miller@fairfaxcounty.gov

5. Individual Betterment – Pedestrian Bridge Modification.

a. In accordance with Fairfax's letter to the Airports Authority dated April 8, 2010, and attached hereto as Exhibit H, the Airports Authority agrees that it will modify the design and construction scope of the Project to include a modified pedestrian bridge to the north side of the Wiehle Avenue Metrorail Station (the "Pedestrian Bridge Modification").

b. The cost of the Pedestrian Bridge Modification shall be based on the change order amount which the Airports Authority negotiates (subject to the approval of Fairfax, not to be unreasonably withheld, conditioned, or delayed) with Dulles Transit Partners ("DTP"), the Airports Authority's design-builder for this portion of the Project.

c. Within forty-five (45) calendar days of its receipt of an invoice therefor from the Airports Authority, Fairfax shall pay to the Airports Authority the cost of the Pedestrian Bridge Modification as follows; provided, however, that the dates set forth below for the provision of invoices are acknowledged to be approximate:

(i) July 1, 2011 – Payment of design costs actually expended by the Airports Authority;

(ii) January 2, 2012 – Payment of costs relating to the installation of casons actually expended by the Airports Authority;

(iii) January 2, 2013 – Payment of costs relating to the completion of the construction of the pedestrian bridge actually expended by the Airports Authority; and

(iv) July 1, 2013 – Payment of remaining costs, if any, actually expended by the Airports Authority.

Notwithstanding the foregoing, the amount paid by Fairfax pursuant to this Section 5(c) shall not exceed the amount of the change order approved by Fairfax pursuant to Section 5(b).

6. Coordination of Construction.

a. The Airports Authority and Fairfax each agree to use commercially reasonable efforts to (i) consult, cooperate, and coordinate with each other regarding the interaction between the design, engineering, and construction of the Project and the design, engineering, and construction of both the Metrostation Facilities and the Wiehle Avenue Station Area Station Improvements at regular intervals, occurring no less often than once a month, and (ii) to cause all reasonably necessary contractors, including DTP and Comstock, to attend such meetings.

b. Promptly upon the request of Fairfax, but in any event within ten (10) business days of such request, the Airports Authority shall reasonably determine whether (i) the Metrostation Facilities contain (A) at least 2,300 transit-related parking spaces, (B) at least 45 Kiss 'N Ride parking spaces, (C) at least 12 bus bays (including 2 layover bays), and (D) bicycle storage facilities, and (ii) there is pedestrian access through the Metrostation Facilities, together with the related development, between public streets and the portal (i.e., the entry to the aforementioned pedestrian bridge) to the Wiehle Avenue Metrorail Station. If the Airports Authority determines that such conditions have been satisfied, it shall confirm such determination in writing to Fairfax within such 10 business day period. If the Airports Authority reasonably determines that such conditions have not been satisfied, then within such 10 business day period, it shall provide detailed and specific reasons for its determination. If the Airports Authority fails to respond in writing within such 10 business day period, the Airports Authority shall be deemed to have determined that such conditions have been satisfied.

c. (i) Promptly upon the request of Fairfax, but in any event within ten (10) business days of each such request, the Airports Authority shall reasonably determine whether that portion of the Wiehle Avenue Station Area Improvements as denoted on such request has been constructed as generally depicted on Exhibit D. The parties acknowledge and agree that the scope of the Airports Authority's approval rights under this Section 6(c)(i) is to be at a general level – e.g., if Exhibit D calls for the construction of a new turn lane along Wiehle Avenue, the Airports Authority shall, upon Fairfax's request, determine whether such lane has been constructed in generally the location shown on the applicable exhibit. If the Airports Authority determines that such specified improvements have been constructed, it shall confirm such determination in writing to Fairfax within such 10 business day period. If the Airports Authority reasonably determines otherwise, then within such 10 business day period, it shall provide detailed and specific reasons for its determination. If the Airports Authority fails to respond in writing within such 10 business day period, the Airports Authority shall be deemed to

have determined that such conditions have been satisfied. The parties acknowledge and agree that acceptance of the Wiehle Avenue Station Area Improvements into the Virginia Department of Transportation or other state system shall not be a prerequisite for the Airports Authority's approval rights.

(ii) Fairfax shall issue a certificate (the "Fairfax Certificate") to the Airports Authority. The Fairfax Certificate shall consist of a statement by Fairfax that, based on the certifications of its contractors, subcontractors, and consultants, (A) to the extent practicable regarding the utility relocation work, the design and construction of the Wiehle Avenue Station Area Improvements complies with those certain federal laws and regulations as set forth on Exhibit I attached hereto (the "Federal Requirements") other than any Federal Requirements relating to competitive bidding, provided, however, that the Fairfax Certificate shall also state (I) that Fairfax selected Comstock as its developer under the Development Agreement in accordance with applicable Virginia procurement law, including, without limitation, the PPEA, (II) that Davis performed the Fairfax ROD Contract in compliance with the Federal Requirements, and (III) Comstock will competitively bid the remaining Wiehle Avenue Station Area Improvements scope (to the extent practicable regarding the utility relocation work); (B) the Wiehle Avenue Station Area Improvements have been constructed; and (C) the Wiehle Avenue Station Area Improvements have been constructed to Virginia Department of Transportation standards, as depicted on the approved Plans.

d. Each of the Airports Authority and Fairfax agree to promptly report to the other any anticipated failure to meet a deadline, per Section 6(e) below, and/or any other anticipated deviation from any other agreed-upon schedule.

e. Damages

i. Attached hereto as Exhibit J are the "Deadlines" for each of Fairfax and the Airports Authority. If either of Fairfax or the Airports Authority fails to meet a Deadline by the date set forth in Exhibit J, subject to adjustment pursuant to the terms hereof, then, in each such case, the party failing to meet its Deadline shall be liable to the other party for liquidated damages in the amount set forth in Exhibit J for such Deadline, if any.

ii. Each of Fairfax and the Airports Authority acknowledges and agrees (A) that the liquidated damages set forth in this Section 6(e) and Exhibit J are conclusively reasonable and are not in any way punitive and waive any right to challenge them as a penalty, and (B) that such liquidated damages shall be its sole remedy for the other party's failure to meet a Deadline.

f. Notwithstanding anything herein to the contrary, Fairfax and the Airports Authority agree that the Deadlines set forth in Section 6(e) and Exhibit J shall be subject to Unavoidable Delay, as defined herein. For purposes of this Agreement, the following shall constitute "Unavoidable Delay": delays incurred by a party due to strikes, lockouts, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other similar causes beyond the control of the applicable party (but not including such party's

insolvency or financial condition); provided that in each case (i) such party shall have notified the other party reasonably promptly after such party knows of the occurrence of the cause, (ii) the effects of the cause are such that a prudent person in the position of the party asserting delay could not have reasonably prevented, and (iii) such party takes reasonable steps to minimize the impact of such cause upon the deadline in question and keeps the other party reasonably informed, upon request, of the nature of steps so taken and of the progress of the deadline subject to Unavoidable Delay.

g. Notwithstanding anything herein to the contrary, Fairfax and the Airports Authority agree that if any event relating to the design and/or construction of the Wiehle Avenue Station Area Improvements (unless caused by, through, or under Davis or otherwise the responsibility of Davis under the Fairfax ROD Contract) results in an extension of the contract time under the GMP, then all Fairfax Deadlines set forth in Section 6(e) and Exhibit J shall be extended on a day-for-day basis.

7. Other Property Interests.

a. Fairfax agrees to use commercially reasonable efforts to enter into an easement agreement with the Washington Metropolitan Area Transit Authority ("WMATA") and any other necessary parties to allow WMATA to access and maintain the pedestrian bridge to the north side of the Wiehle Avenue Metrorail Station, together with the related piers and foundations. The terms of any such agreement shall be reasonably acceptable to Fairfax, WMATA, and the other necessary parties, if any.

b. If Fairfax requires any permits or other approvals from the Airports Authority in connection with the Wiehle Avenue Station Area Improvements and the Airports Authority property located directly south of the Land, then the parties shall use commercially reasonable efforts to facilitate the granting of such permit or other approval. The Airports Authority shall use its best efforts to respond to such applications as quickly as possible.

8. Notice.

a. Any notices, requests for approval, and other communications under this Agreement (each, a "Notice") shall be in writing and shall be delivered via (i) hand-delivery (with receipt acknowledged), (ii) reputable, national overnight delivery service (with confirmatory receipt therefor), (iii) registered or certified United States mail, postage prepaid, or (iv) facsimile, with a confirmatory to be delivered by duplicate notice in accordance with any of clauses (i) or (ii) above, in each case to the parties as follows:

If to the Airports Authority:

Metropolitan Washington Airports Authority
1593 Spring Hill Road, Suite 300
Vienna, Virginia 22182
Attention: Project Director

With a copy to:

Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, D.C. 20001-6000
Attention: General Counsel

If to Fairfax:

Board of Supervisors of Fairfax County, Virginia
c/o Department of Public Works & Environmental Services
12000 Government Center Parkway, Suite 449
Fairfax, VA 22035
Attention: Andrew G. Miller

With a copy to:

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064
Attention: County Attorney

b. Either party may change such address(es) to which a Notice is to be delivered by furnishing five (5) business days written notice of such change(s) to the other party in accordance with the provisions of this Section 8.

c. Each Notice shall be deemed given (i) if given by hand-delivery or national overnight delivery service or certified or registered mail, on the day actually received or the day delivery was refused, or (ii) if given by facsimile, at the time confirmation of such transmission is received by the sender, provided that a copy of such notice is also sent by a personal delivery or national overnight delivery service not later than the next business day.

9. General Provisions.

a. This Agreement shall terminate at 11:59 p.m. eastern time on December 31, 2015; provided, however, that any payment obligations contained herein that are in dispute as of such date shall survive such termination.

b. Any and all financial commitments of Fairfax described herein that extend past the current fiscal year are subject to appropriation by the Board of Supervisors of Fairfax, County, Virginia.

c. Any and all obligations of the Airports Authority under this Agreement, and any and all liabilities of the Airports Authority that may arise under this Agreement, shall be limited to the Airports Authority's Dulles Corridor Enterprise, and any claim based on any such obligation or liability of the Airports Authority shall be limited to the revenues and assets of the

Dulles Corridor Enterprise. Within its Dulles Corridor Enterprise, the Airports Authority operates, maintains and improves the Dulles Toll Road and undertakes the construction of the Project. No obligation of the Airports Authority under this Agreement, and no liability of the Airports Authority that may arise under this Agreement, shall constitute an obligation or liability of, or give rise to a claim against, the Airports Authority's Aviation Enterprise, or any of the revenues or assets of the Aviation Enterprise. Within its Aviation Enterprise, the Airports Authority operates, maintains, improves and undertakes other activities at or relating to Ronald Reagan Washington National Airport and Washington Dulles International Airport.

d. This Agreement shall not be construed as creating any personal liability on the part of any officer, employee, agent of the parties, nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

e. This Agreement shall be binding upon the parties, their successors, and their assigns.

f. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement.

g. Nothing contained in this agreement creates a contractual relationship between (i) any contractor of Fairfax and the Airports Authority or (ii) any contractor of the Airports Authority and Fairfax. Moreover, nothing contained in this agreement creates a joint venture relationship between Fairfax and the Airports Authority.

[Signatures appear on the following page.]

[Signature Page to the Wiehle Avenue Station Area Construction Agreement]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date herein.

FOR THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY:

Lynn Hampton, President
Metropolitan Washington Airports Authority

DATE:

FOR THE COUNTY OF FAIRFAX, VIRGINIA

Anthony H. Griffin, County Executive
County of Fairfax, Virginia

DATE:

Description of the Land

All that certain lot, piece or parcel of land, with improvements thereon and the appurtenances thereto belonging, lying and being in Fairfax County, Virginia, and more particularly described as follows:

Beginning at a point at the southeast corner of the land of Harold O. Miller, Trustee, said point being in the west right-of-way line of proposed Wiehle Avenue; thence with the said west right-of-way line of proposed Wiehle Avenue, S. 23 degrees 00' 00" W. 691.35 feet to a point in the north right-of-way line of the Dulles Airport Access Highway; thence with the said north right-of-way line of the Dulles Airport Access Highway the following courses and distances: N. 67 degrees 40' 17" W. 410.39 feet to a point; N. 75 degrees 07' 23" W. 311.59 feet to a point; and N. 67 degrees 58' 40" W. 72.83 feet to a point; thence through Parcel 14, N. 19 degrees 03' 47" E. 516.27 feet to a point, said point being a common corner in the south line of the lands of Wexler and Field Gulf Reston, Inc. thence with the south and east lines of the land of Gulf Reston, Inc., S. 70 degrees 56' 13" E. 500.00 feet to a point; and W. 19 degrees 03' 47" E. 192.50 feet to a point in the south line of the land of Harold O. Miller, Trustee, thence with the south line of the Land of Harold O. Miller, Trustee S. 67 degrees 00' 00" E. 341.50 feet to the point of beginning containing 10.8869 acres.

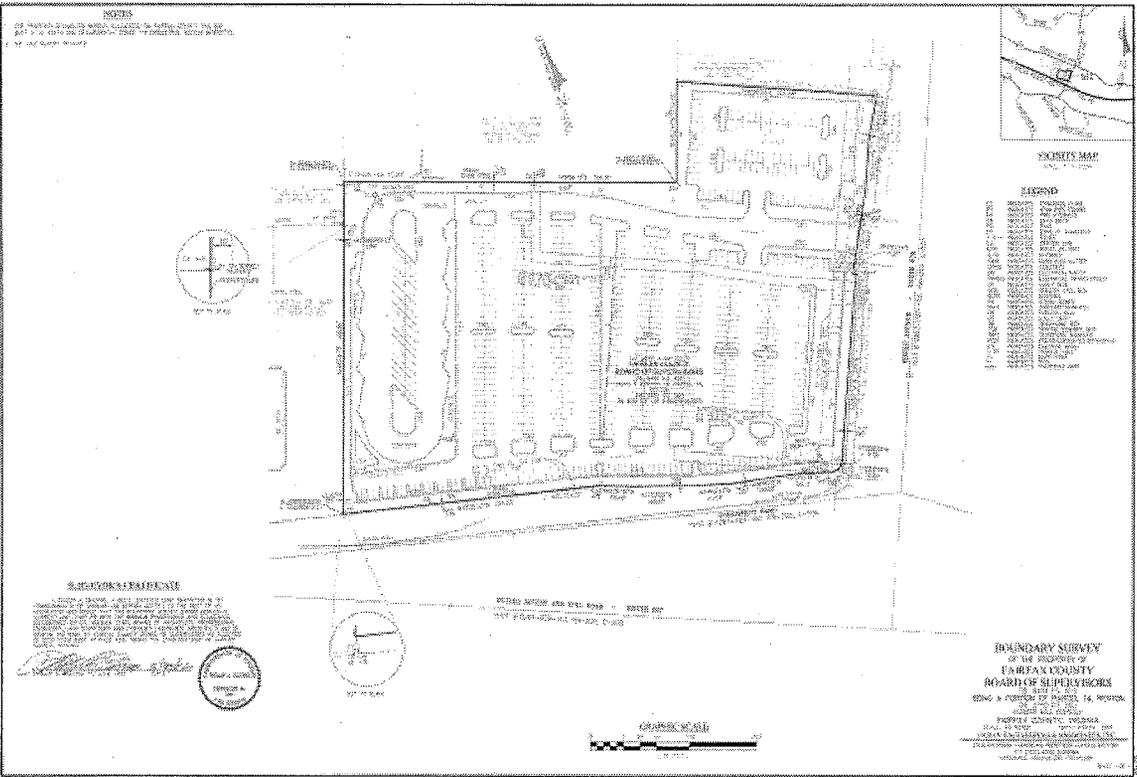
TOGETHER WITH a 40 foot Ingress and Egress Easement more particularly described as follows:

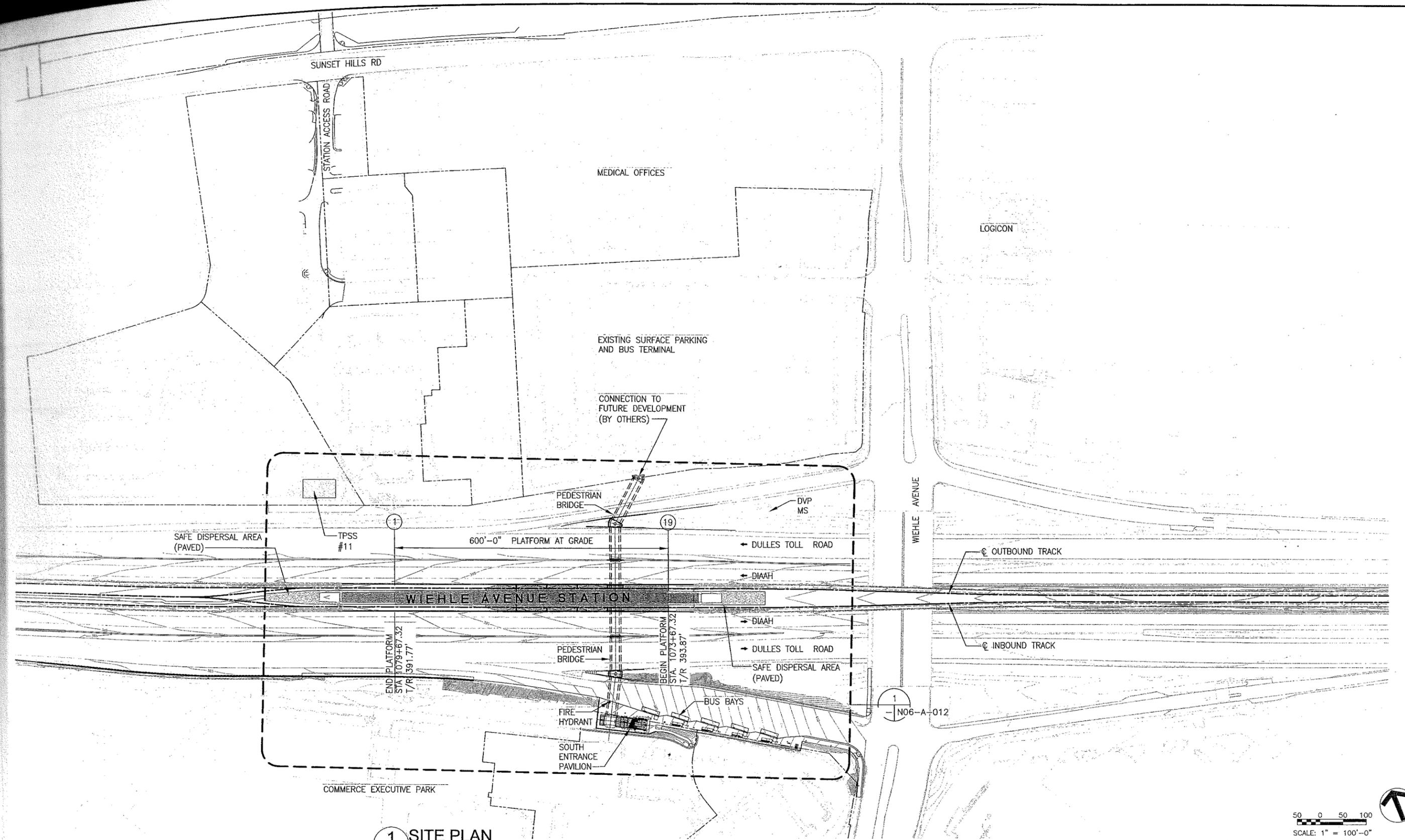
BEGINNING at a point in the south right-of-way line of Sunset Hills Road (Route 675), said point being a northeast corner of the land of Harold O. Miller, Trustee; thence with the south right-of-way line of Sunset Hills Road, S. 80 degrees 05' 27" E. 41.00 feet to a point; thence leaving the south right-of-way line of Sunset Hills Road and running through Parcel 14 of the land of Gulf Reston, Inc. the following courses and distances: with the arc of a curve to the right whose radius is 3850.00 feet and whose chord bearing and chord are S. 22 degrees 44' 58" W. 33.72 feet respectively, an arc distance of 33.71 feet to a point; S. 23 degrees 00' 00" W. 465.45 feet to a point; and N. 67 degrees 00' 00" W. 40.00 feet to a point in the easterly line of the aforementioned 10.8869 acre parcel of the land of Gulf Reston, Inc. (being the proposed westerly right-of-way line of Wiehle Avenue); thence with the easterly lines of the land of Gulf Reston, Inc. and Harold O. Miller, Trustee the following courses and distances: N. 23 degrees 00' 00" E. 465.45 feet to a point; and with the arc of a curve to the left whose radius is 3810.00 feet and whose chord bearing and chord are N. 22 degrees 48' 59" E. 24.42 feet respectively, an arc distance of 24.42 feet to the point of beginning.

Less and Except 42,519 square feet of land, more or less, which was conveyed to the Commonwealth of Virginia in Deed Book 5857 at Page 1297.

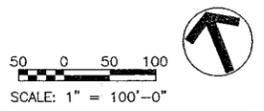
Less and Except that portion of the subject property conveyed to the Commonwealth of Virginia in Deed Book 10493, Page 73.

Tax Map No. 017-4-01-0017A.





1 SITE PLAN
 - N06-A-011 SCALE: 1"=100'



ORIGINATORS	
W. NDI	07-31-07
H. HEMAN-ACKAH	07-31-07
L. GORI	07-31-07
R. A. WERNER	07-31-07

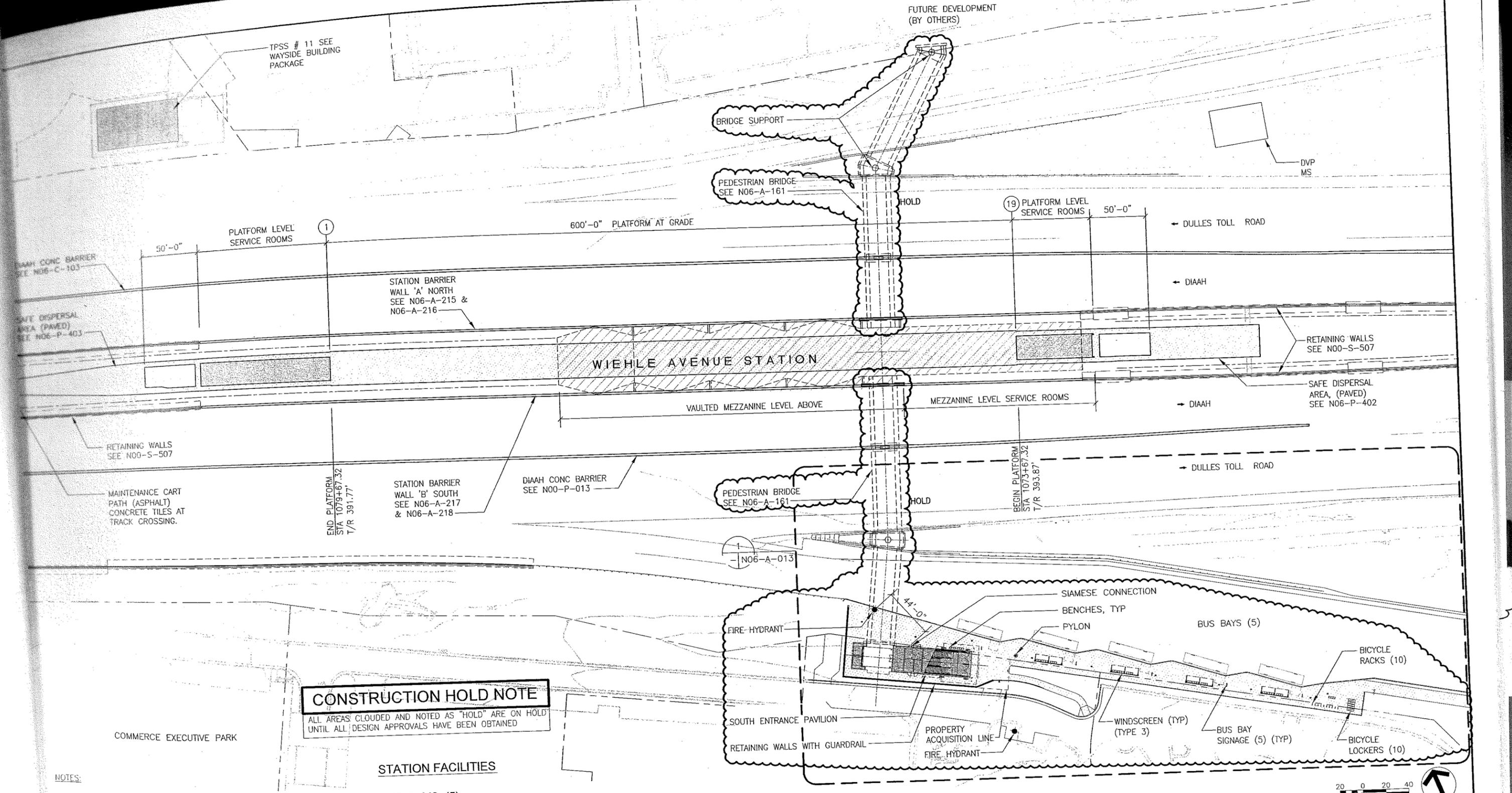
REFERENCE DRAWINGS		REVISIONS						
NUMBER	DESCRIPTION	NO	DATE	DESCRIPTION	ORIG	CHK	SUPV	APPR
N06-A-012	PARTIAL SITE PLAN	0	07-10-09	ISSUED FOR WA PERMIT	WN	MO	LG	RAW
		1	09-28-09	ISSUED FOR FINAL WA AMEP REVIEW	KR	MO	HHA	EVO
		2	03-23-10	ISSUED FOR WA AMEP PERMIT	KR	MO	HHA	EVO
		3	08-13-10	ISSUED FOR CONSTRUCTION	KR	MO	HHA	EVO



METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

DULLES TRANSIT PARTNERS, LLC
 1595 SPRING HILL RD, STE 600
 VIENNA, VA 22182

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY	WMATA GRID	CONTRACT NO.:
DGS PROJECT IDENTIFICATION CODE: 505-08505-274	EXTENSION TO WIEHLE AVENUE WIEHLE AVENUE STATION SITE PLAN	
DULLES CORRIDOR METRO RAIL PROJECT	SCALE: 1"=100'	DRAWING NO.: N06-A-01(183)



CONSTRUCTION HOLD NOTE
 ALL AREAS CLOUDED AND NOTED AS "HOLD" ARE ON HOLD UNTIL ALL DESIGN APPROVALS HAVE BEEN OBTAINED

STATION FACILITIES

BUS BAYS (5)
 SOUTH - 5 REVENUE

KISS & RIDE
 PARK-AND-RIDE, PARKING FACILITY BY OTHERS.

1 PARTIAL SITE PLAN
 SCALE: 1" = 40'-0"

- NOTES:
- SEE LANDSCAPE DRAWINGS FOR SITE FURNITURE, HARDSCAPE PATTERNS AND PLANTING DETAILS.
 - SEE N06-A-801 FOR SITE SIGNAGE AND PYLONS.
 - SEE N06-P-403 FOR ROAD AND PAVEMENT LAYOUT.

ORIGINATORS		REFERENCE DRAWINGS		REVISIONS						
W. NDI	DATE	NUMBER	DESCRIPTION	NO	DATE	DESCRIPTION	ORIG	CHKR	SUPV	APPR
	07-31-07	N00-P-013	DIAAH TYPICAL SECTIONS	0	07-10-09	ISSUED FOR WA PERMIT	WN	MO	LG	RAW
H. HEMAN-ACKAH	07-31-07	N06-A-103	DIAAH WALL CROSS SECTIONS	1	09-28-09	ISSUED FOR FINAL WA AMEP REVIEW	KR	MO	LG	EVO
		N06-A-161	PED BRIDGE-GROUND & BRIDGE PLAN	2	03-23-10	ISSUED FOR WA AMEP PERMIT	KR	MO	HHA	EVO
L. GORI	07-31-07	N06-A-215	STA. BARRIER WALL 'A' INTERIOR ELEV	3	08-31-10	ISSUED FOR CONSTRUCTION	KR	MO	HHA	EVO
		N06-A-217	STA. BARRIER WALL 'B' INTERIOR ELEV				KR	MO	HHA	EVO
R. A. WERNER	07-31-07	N06-P-402	STATION PLAN				KR	MO	HHA	EVO
		N00-S-507	RETAINING WALL-TYP SECTIONS & DETAILS							



METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

DULLES TRANSIT PARTNERS, LLC
 1595 SPRING HILL RD, STE 600
 VIENNA, VA 22182

M metro WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

DGS PROJECT IDENTIFICATION CODE: **505-08505-274**

WMATA GRID

EXTENSION TO WIEHLE AVENUE WIEHLE AVENUE STATION PARTIAL SITE PLAN

SCALE: **1"=40'** DRAWING NO.: **N06-A-012**

CONTRACT NO.:

Revised 04/14/2011

- (1) Easements and Dedications not granted, by permit only
- (2) Entry by License agreement or permit only
- (3) Consolidated with property 15
- (4) Project property owner, no fee required

Fairfax County Map Number	DTP Parcel Number	Property Owner	Alias	Property Location	Associated Base Plan	Plat Required	Right of Way Dedication Required	Access Easement	Sidewalk Easement	Sight Distance Easement	Temporary Construction Easement	Traffic Signal Easements	Retaining Wall Easement	Sanitary Sewer Easement	Storm Sewer Easement	Waterline Easement	Dominion Virginia Power	Washington Gas Easement	Verizon Easement	Comcast/Cox Easement	Other Communication Easements
1	017-4-01-0017	Commonwealth of Virginia (1)	VDOT	northeast of Sunset Hills Road and Wiehle Avenue	2615-SP-007	No	No	No	No	No	No	No	No	No	No	No	(2)	No	(2)	(2)	(2)
2	017-4-01-0017A	Board of Supervisors, Fairfax County	Fairfax County	Subject property	2615-SP-007	Yes	61551	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)
3	017-4-01-0017B	120 Reston Investments, LLC	Kfour	small strip of land between County Property and Kfour #2	2615-SP-007	Yes	No	No	No	No	397	No	No	No	No	No	600	No	No	No	No
4	017-4-01-0020	Reston Investments, LLC	Kfour	southwest quadrant of Sunset Hills Road and Wiehle Avenue	2615-PI-004	Yes	No	No	No	No	634	No	No	No	No	No	No	No	No	No	No
5	017-4-01-0029A	121 Reston Owner Corporation	BAE Systems (Eurotherm)	Sunset Hills Road, west of Comstock	2615-PI-005	Yes	No	No	No	No	857	No	No	No	No	No	No	No	No	No	No
6A	017-4-01-0031	Commonwealth of Virginia (1)	VDOT	Commuter Lot northwest of Sunset Hills Road and Isaac Newton Square	2615-PI-005	No	No	No	No	No	No	No	No	No	No	No	(2)	No	(2)	(2)	(2)
6B	017-4-01-0031	Commonwealth of Virginia (1)	VDOT	Commuter Lot northwest of Sunset Hills Road and Isaac Newton Square	2615-SP-007	No	No	No	No	No	No	No	No	No	No	No	(2)	No	(2)	(2)	(2)
7	017-4-01-0032 (ROD)	Commonwealth of Virginia (1)	VDOT	iter Lot northeast of Sunst Hills Road and Isaac Newton	2615-SP-007	No	No	No	No	No	No	No	No	No	No	No	(2)	No	(2)	(2)	(2)
8	017-4-01-0032 (Other)	Commonwealth of Virginia (1)	VDOT	Commuter Lot northeast of Sunst Hills Road and Isaac Newton Square	2615-PI-004	No	No	No	No	No	No	No	No	No	No	No	No	No	(2)	(2)	(2)
9	017-4-05-0000A	Commonwealth of Virginia (1)	VDOT	Isaac Newton Square between the commuter lots	2615-SP-007	No	No	No	No	No	No	No	No	No	No	No	(2)	(2)	(2)	(2)	(2)
10	017-4-05-0000S6	122 Golf Course Plaza, LLC		north of NVRPA property	2615-PI-005	Yes	No	11646	No	No	3177	No	No	199	No	No	No	No	No	No	No
11	017-4-05-0006S1	K and W, LC (deleted after title search)	Isaac Newton Square	Private Driveway between W&OD Bike Trail	2615-SP-007	Yes	No	No	205	No	216	No	No	No	No	No	No	No	No	No	No
12	017-4-18-0001A	124 Royco Inc.		East of Wiehle at Reston Station Blvd intersection	2615-SP-007	Yes	No	No	No	8	776	3081	No	No	No	No	No	No	No	No	No
13	017-4-18-0001B (ROD)	125 JBG 1831 Wiehle, LLC	JBG	Southeast quadrant Sunset Hills Road and Wiehle Avenue	2615-SP-007	Yes	No	No	No	No	141	41	No	No	No	No	No	No	No	No	No
14	017-4-18-0001B (Other)	125 JBG 1831 Wiehle, LLC	JBG	Southeast quadrant Sunset Hills Road and Wiehle Avenue	2615-PI-004	Yes	2287	No	No	No	2560	237	2525	No	No	No	7802	No	7802	7802	No
15	017-4-19-0004	85 RPB and M, LLC	Veatch	Sunset Hills and Comstock Metro Center Drive	2615-SP-007	Yes	6619	No	No	4765	20904	923	787	No	590	150	949	No	949	949	No
16	017-4-19-0005A	85 RPB and M, LLC	Veatch	Comstock Metro Center Drive and Reston Station Blvd	2615-SP-007	Yes	14662	No	No	(3)	(3)	No	(3)	No	(3)	(3)	(3)	No	(3)	(3)	No
17	017-4-19-0006A	85 RPB and M, LLC	Veatch	north side of Reston Station Blvd	2615-SP-007	Yes	11857	No	No	(3)	(3)	(3)	No	No	No	No	No	No	No	No	No
18	017-4-20	119 Sunset Hills Professional Center		north side of Reston Station Blvd	2615-SP-007	Yes	No	No	No	No	13600	2696	No	160	566	27	No	No	No	No	5000
19	017-4-21	126 Faraday Professional Condo		Sunset Hills road, east of JBG	2615-PI-004	Yes	No	No	No	No	451	No	No	No	No	No	1897	No	1897	1897	No
20	017-4-24-0003 (ROD)	11465 SH I LC	Comstock	Sunset Hills and Comstock Metro Center Drive	2615-SP-007	Yes	10578	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)
21	017-4-24-0003 (Other)	11465 SH I LC	Comstock	Sunset Hills and Comstock Metro Center Drive	2615-PI-005	Yes	No	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)
22	017-4-24-0004A	186 Maximus Properties, LLC	Maximus	Southeast quadrant Comstock Metro Center Drive and Reston Station Blvd	2615-SP-007	Yes	1858	3190	2000	No	15640	No	No	No	No	611	No	No	No	No	No
23	017-4-24-0004B	Section 913, LP	Veatch	south side of Reston Station Blvd	2615-SP-007	Yes	No	No	933	25	20498	25	No	No	No	No	No	No	No	No	No
24	017-4-24-0005	190 Kaiser Foundation Health, Plan of the Mid-ATL ST, Inc	Kaiser	Southwest quadrant Comstock Metro Center Drive and Reston Station Blvd	2615-SP-007	Yes	No	No	No	No	1485	No	No	No	No	No	No	No	No	No	No
25	017-4-30	Fairway Executive Center Condo (Deleted)		northwest of NVRPA property and Isaac Newton Square	2615-SP-007	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
26A	028-3-01-0051	Northern Virginia Regional Park Authority (2)	W&OD Bike Trail	north of Commuter Parking lot, Isaac Newton Square	2615-SP-007	Yes	No	No	303	No	428	No	No	No	No	No	No	No	No	No	No
26B	028-3-01-0051	Northern Virginia Regional Park Authority (2)	W&OD Bike Trail	north of Commuter Parking lot, adjacent to Wiehle Avenue	2615-PI-004	Yes	No	No	No	260	No	No	No	No	No	No	No	No	No	No	No
26C	028-3-01-0051	Northern Virginia Regional Park Authority (2)	W&OD Bike Trail	Sanitary Sewer Outfall, north of Commuter Parking lot	2615-PI-005	Yes	No	No	No	No	600	No	No	1004	No	No	No	No	No	No	No
27	017-4-05-0005	Board of Supervisors, Fairfax County	Fire Dept	Wiehle Ave, north of NVRPA	2615-PI-004	Yes	No	No	No	1116	No	No	No	No	No	No	No	No	No	No	No
28		MWAA (2)	Dulles Toll Road	South of County property	2615-SP-008	No	No	(2)	No	No	(2)	No	No	No	No	No	(2)	No	(2)	No	(2)

EXHIBIT C-2 – APPRAISAL EXHIBITS DEPICTING
MWAA PROPERTY INTEREST ACQUISITIONS

Reston Investments LLC, Parcel 120

Reston Owner Corporation, Parcel 121

Golf Course Plaza, LLC, Parcel 122

Royco, Inc., Parcel 124

JBG/1831 Wiehle, LLC, Comstock Parcel 125

Reston Industrial Venture, Parcel 085

Sunset Hills Professional Center, Parcel 119

Faraday Professional Center Condominium, Parcel 126

MAXIMUS PROPERTIES LLC, Parcel 186

Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Parcel 190

ROPOLITAN WASHINGTON AIRPORTS AUTHORITY



Action Required: No
Action Due Date: N/A

May 19, 2010

Mr. Brian A. Glenn, P.E.
Director, Washington DC Metropolitan Office
Federal Transit Administration
1990 K Street, NW, Suite 510
Washington, DC 20006

Subject: Dulles Corridor Metrorail Project
FTA Record of Decision, Wiehle Avenue Station Area Mitigation Refinements

Letter No.: MWAA-03246

References: E-mail to C.S. Carnaggio from B. Glenn, dated February 18, 2010
MWAA Letter No. MWAA-02650, dated January 12, 2010

Dear Mr. Glenn:

In response to the above referenced e-mail, dated February 18, 2010, please find a revised descriptive comparison table and related attachments.

The revised table includes the requested text and graphic enhancements and provides information on additional property needs for right-of-way and Utility Relocation. Further, as referenced in the table, please find attached a copy of the Traffic Impact Study prepared by Gorove/Slade Associates for Comstock Partners, in accordance with Virginia Department of Transportation (VDOT) Section 527 Standards for Reference. This Study was reviewed and approved by VDOT as evidenced by the attached letters from VDOT. The signed copies of the letters were provided by VDOT directly to Fairfax County.

The Metropolitan Washington Airports Authority (Airports Authority) recognizes that costs that flow through the Dulles Corridor Metrorail Project (Project) for items identified as "Potential Additional Improvements" that are beyond the scope of the Project, will be tracked as Non-Federal costs. Based on the current agreement with Fairfax County, Non-Federal costs related to mitigation refinements that will pass through the Project will be limited to property acquisition costs. The Project is responsible for acquiring the property rights needed and the Joint Development is responsible for the design and construction of the improvements in this area.

Mr. Brian A. Glenn, P.E.
Letter No.: MWAA-03246
May 19, 2010
Page 2

Please contact James Van Zee at 703-572-0504 if there are any questions on this material.

Sincerely,



Charles S. Carnaggio, P.E.
Project Director
Dulles Corridor Metrorail Project

CSC/lmm/ml

Attachments: a/s, except Traffic Impact Study to FTA only

cc: J. Van Zee
P. Nowakowski
F. Holly
R. Whedon
L. Miller
D. Clark
R. Stevens

**Dulles Corridor Metrorail Project
Extension to Wiehle Avenue**

TRANSPORTATION EFFECTS – LAND USE AND STATION AND FACILITY ACCESS

Mitigation ID	Mitigation Commitment	Implementation and Monitoring	Responsible Party	Timing	Incorporated in Wiehle Avenue Station Analysis and Design?	Improvement #¹
LU-1	Continue coordination with Fairfax County, Loudoun County and Town of Herndon to encourage appropriate transit-oriented development at station locations.	Monitor compliance during design and construction.	MWAA	Design and Construction	Yes – The Airports Authority continues to coordinate with each locality on joint development opportunities at each of the stations. For the extension to Wiehle Avenue, this coordination includes consideration, and where feasible/justified, incorporation of modifications to enhance the transit orientation of station entrances into the Project scope.	-
LU-3	Assist Fairfax County in pursuing joint-development opportunities at the Wiehle Avenue station.	Participate in the Fairfax County joint-development solicitation process.	MWAA	Design	Yes - At the Wiehle Avenue station, ongoing direct coordination with the County and the selected private developer continues to occur during the rezoning process for the large transit oriented development being provided as a joint development project. An appropriate balance of auto, bus, pedestrian, and bicycle facility improvements are being coordinated with the Airports Authority	-
SA-2	Wiehle Avenue Station - Construct new left turn lane northbound on Wiehle Avenue	Include in contract drawings.	MWAA	Design	Yes - Additional (2nd) northbound left turn lane on Wiehle Avenue at Reston Station Blvd included in analysis and design. An additional southbound right turn lane, signal modifications, and pedestrian enhancements will also be provided at this intersection.	1 (See Pages 4 and 5)
SA-3	Wiehle Avenue Station - Construct new left turn lane to the eastbound Dulles Toll Road exit ramp at Wiehle Avenue	Include in contract drawings.	MWAA	Design	Yes - Additional exclusive eastbound left turn lane on the Dulles Toll Road exit ramp at Wiehle Avenue included in analysis and to be constructed by Dulles Corridor Metrorail Project (DCMP).	12 (See Pages 12 and 13)
SA-4	Wiehle Avenue Station - Widen eastbound Sunset Hills Road between Wiehle Avenue and Isaac Newton Square and provide new left turn lane.	Include in contract drawings.	MWAA	Design	Yes - A westbound left turn lane on Sunset Hills Road at Isaac Newton Square/Outlet Road included in analysis and design. At Isaac Newton Square an additional southbound turn bay, signal modifications, and pedestrian enhancements will also be provided	2 (See Pages 6 and 7)

**Dulles Corridor Metrorail Project
Extension to Wiehle Avenue**

Mitigation ID	Mitigation Commitment	Implementation and Monitoring	Responsible Party	Timing	Incorporated in Wiehle Avenue Station Analysis and Design?	Improvement # ¹
SA-5	Wiehle Avenue Station - Improve private roadway south of Sunset Hills to VDOT standards.	Include in contract drawings.	MWAA	Design	Yes - the private roads have been designed to public road standards and are consistent with the configurations shown in PE. The improvements have been accepted by VDOT staff as a practical, first stage configuration that can be further improved to VDOT standards with redevelopment of adjacent properties.	3 (See Pages 4 to 7)
SA-6	Wiehle Avenue Station - Construct new entry for bus ingress to the north side station facilities from the westbound Dulles Toll Road entry ramp.	Include in contract drawings.	MWAA	Design	No - Detailed traffic analyses shows acceptable operating conditions without this improvement. The Reston Station Metro Station Access Group (RMAG) prepared a detailed evaluation of feeder bus service to this station and determined limited, if any, bus service would use this ramp Buses to and from the west use the bus bays on the eastbound exit ramp (see SA-8). . Further, the Extension to Route 772 (Phase 2) will “intercept” any bus service west of Wiehle Avenue station..	- (See Pages 14 and 15) -
SA-7	Wiehle Avenue Station - Construct new acceleration lane for bus egress from the station facilities onto the westbound Dulles Toll Road.	Include in contract drawings.	MWAA	Design		
SA-8	Wiehle Avenue Station - Add bus bays on eastbound Dulles Toll Road ramp.	Include in contract drawings.	MWAA	Design	Yes - Five bus bays are being constructed on the south side of the eastbound Dulles Toll Road off ramp by the DCMP.	12 (See Pages 12 and 13)

**Dulles Corridor Metrorail Project
Extension to Wiehle Avenue**

TRANSPORTATION EFFECTS - STATION VICINITY

Mitigation ID	Mitigation Commitment	Implementation and Monitoring	Responsible Party	Timing	Incorporated in Wiehle Avenue Station Analysis and Design?	Improvement #¹
TR-2	Wiehle Avenue Station - Improve right turn lane from eastbound Sunset Hills Road to southbound Wiehle Avenue.	Provide funding for improvement. Monitor VDOT design and construction activities.	MWAA, in cooperation with VDOT	Station Opening	Yes – The eastbound right turning movement is improved by converting an existing through lane to a through-right turn lane by restriping. This provides additional right turn capacity while not increasing the intersection pedestrian walking distance, balancing the needs of both pedestrian station access and vehicular station access. Improvements to the intersection have been optimized to best meet the access needs of the combined transit station and development-related vehicular and pedestrian traffic based on the overall distribution of traffic at the intersection. Additional roadway, signal, and pedestrian enhancements will also be provided at this intersection, which are being defined as part of the rezoning of the site by Fairfax County.	5 (See Pages 10 and 11)
TR-3	Wiehle Avenue Station - Improve right turn lane from westbound Sunrise Valley Drive to northbound Wiehle Avenue.	Provide funding for improvement. Monitor VDOT design and construction activities.	MWAA, in cooperation with VDOT	Station Opening	Yes -The westbound right turn movement will be improved by enhancing pedestrian crossings at this intersection. The intersection will be modified to provide a two phase pedestrian crossing of the northern leg of the intersection by creating a concrete pedestrian island in the north east corner of the intersection. This two phase crossing provides an additional overlap phase for the westbound right turning traffic. This increases westbound right turn capacity and improves the pedestrian crossing at the intersection.	4 (See Pages 8 and 9)

Notes:

1. The Improvement numbers cited refer to referenced numbers in the explanatory text and graphics following this table.

**Dulles Corridor Metrorail Project
Extension to Wiehle Avenue**

Wiehle Avenue and Reston Station Boulevard

Record of Decision Improvements:

SA-2:

1. Widen Wiehle Avenue to accommodate a 2nd left turn bay in the northbound direction. Modify existing traffic signal per VDOT standards to accommodate additional lanes and retune signal timing controller.

SA-5:

3. Extend the existing Park and Ride Entrance from Wiehle Avenue to Sunset Hills Rd (Identified herein as Spine Road).

Potential Additional Transportation Improvements to Enhance Record of Decision Improvements, Provide Multimodal Station Accessibility and Accommodate Commercial Development:

8. Add southbound right turn bay. Restripe southbound approach to include a left turn lane, 4 through lanes and a right turn lane.

Modify existing traffic signal per VDOT standards to accommodate lane restriping and retune signal timing controller.

Provide Pedestrian Enhancements as follows: Extend median to include pedestrian refuge on southbound approach; Extend median as much as possible on northbound approach; Upgrade curb ramps, re-align crosswalks, provide pedestrian countdown signals and high visibility crosswalks on all four approaches where not already in place subject to VDOT approval.

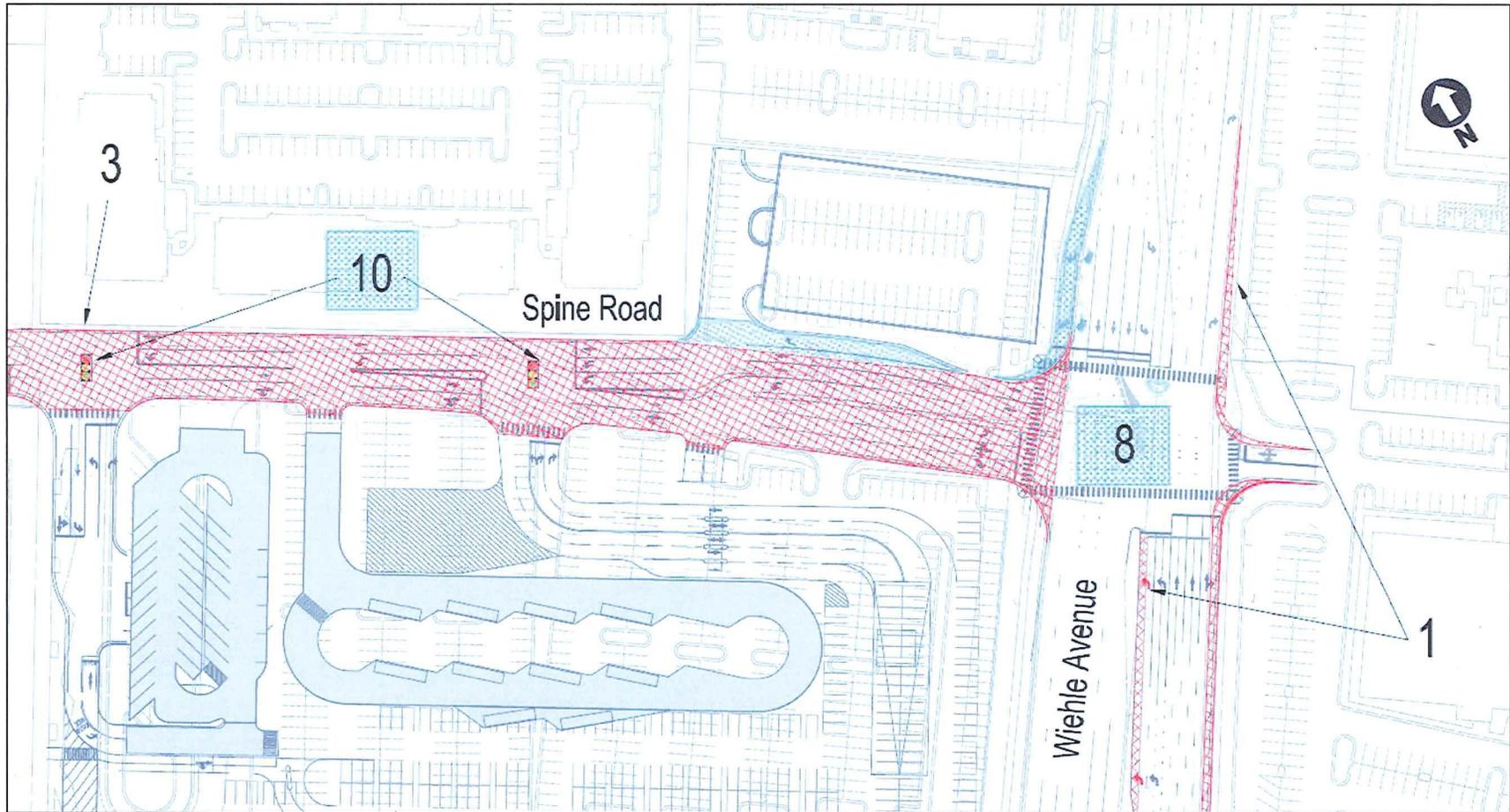
10. Provide Traffic Signalization at the internal site intersections serving the entrances to the commercial parking garage and the roadway on the western boundary of the property. In addition to the traffic signalization, provide pedestrian accommodations including curb ramps, countdown pedestrian heads and high visibility crosswalks consistent with planned streetscape improvements along the projects frontage.

A detailed traffic impact analysis (TIA) dated January 26, 2010 was prepared by Gorove/Slade Associates and was reviewed by Fairfax County Department of Transportation. The study analyzed intersection levels of service for existing, no build, and build alternatives. The study was approved by the Virginia Department of Transportation as part of the Chapter 527 review process on March 24, 2010. Please refer to the TIA for detailed information.

There are only minor additional needs for right-of-way from private interests at this location since most of the property affected by the added right turn lanes is owned by the County of Fairfax. The property interests that are required are limited to easements on a small strip of private property for sidewalk, retaining wall and construction easements are needed. Along the Spine Road, the traffic signals that are part of the Potential Additional Improvements will require signal equipment easements at spots along the north side of the Spine Road for traffic signal equipment such as poles, handboxes, and or cabinets.

There are no significant additional utility relocations related to the Potential Additional Improvements in the northwest quadrant of the intersection.

**Dulles Corridor Metrorail Project
Extension to Wiehle Avenue**



Legend

-  **Record of Decision Improvements**
-  **Potential Additional Transportation Improvements**
(to Enhance Record of Decision Improvements, Provide Multimodal Station Accessibility and Accommodate Commercial Development)

Sunset Hills Road and Isaac Newton Square/Outlet Road

Record of Decision Improvements:

SA-4:

2. Sunset Hills Road and Isaac Newton Square: Widen Sunset Hills Road to the north to accommodate a westbound left turn bay. Modify existing traffic signal per VDOT standards to accommodate additional lanes and retime signal timing controller.

SA-5:

3. Extend the existing Park and Ride Entrance from Wiehle Avenue to Sunset Hills Rd (Identified herein as Spine Road).

Potential Additional Transportation Improvements to Enhance Record of Decision Improvements, Provide Multimodal Station Accessibility and Accommodate Commercial Development::

9. Widen southbound approach to include a left turn lane and through right turn lane.

Modify existing traffic signal per VDOT standards to accommodate additional lanes and retime signal timing controller.

Provide Pedestrian Enhancements as follows: Decrease right turn radius on southbound and westbound approaches subject to VDOT approval. Upgrade curb ramps, re-align crosswalks, provide pedestrian countdown signals and high visibility crosswalks on all four approaches where not already in place subject to VDOT approval.

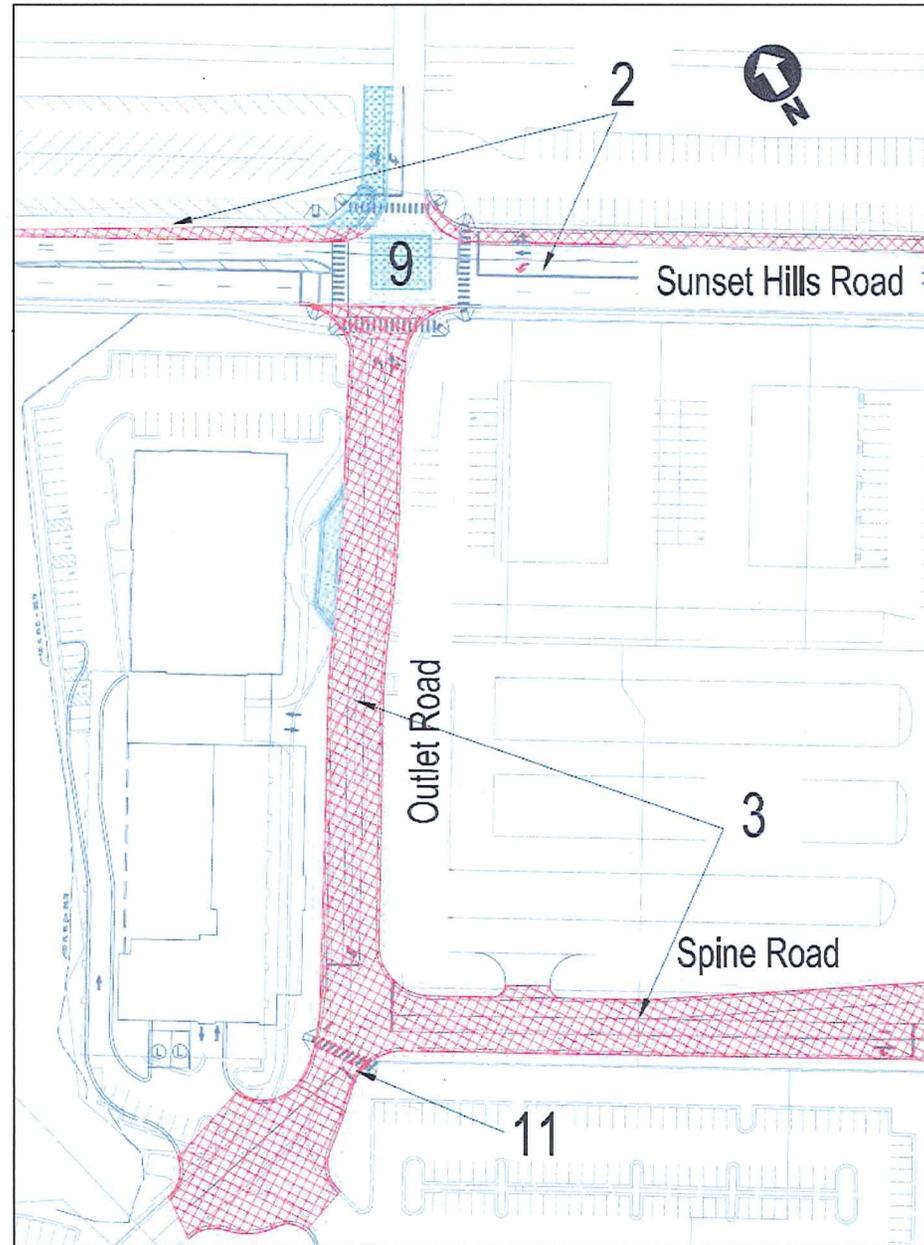
A detailed traffic impact analysis (TIA) dated January 26, 2010 was prepared by Gorove/Slade Associates and was reviewed by Fairfax County Department of Transportation. The study analyzed intersection levels of service for existing, no build, and build alternatives. The study was approved by the Virginia Department of Transportation as part of the Chapter 527 review process on March 24, 2010. Please refer to the TIA for detailed information.

There are minor additional needs for right-of-way from private interests at the Isaac Newton Square leg of the intersection for the additional southbound turn lane. This is because the area of the Potential Additional Improvements is mostly on Virginia-owned property. Relatively small sidewalk and construction easements are needed from the Northern Virginia Regional Park Authority and several private interests just north of the W&OD Trail.

**Dulles Corridor Metrorail Project
Extension to Wiehle Avenue**

Along the Outlet Road, there is no significant additional fee simple right-of-way needed because the proposed improvements are similar to the improvements included in the Record of Decision. The construction of the improvements however will require an additional construction easement and an access easement from that previously identified. It should be noted that a majority of the construction easement and the access easement will be donated as part of the rezoning for the joint development.

Additional utility relocation related to the Potential Additional Improvements is limited to some sanitary sewer work and a communication line.



Legend	
	Record of Decision Improvements
	Potential Additional Transportation Improvements (to Enhance Record of Decision Improvements, Provide Multimodal Station Accessibility and Accommodate Commercial Development)

**Dulles Corridor Metrorail Project
Extension to Wiehle Avenue**

Wiehle Avenue and Sunrise Valley Drive

Record of Decision Improvements:

TR-3:

4. The right turn lane is being improved by modifying the intersection by providing an additional protected phase for this movement. This improvement includes a pedestrian refuge island in the northeast corner of the intersection creating a two stage pedestrian crossing of Wiehle Avenue. Provide pedestrian improvements to the intersection to accommodate new pedestrian travel patterns including ADA ramps and high visibility pedestrian crossing markings. Modify existing traffic signal per VDOT standards to accommodate lane alignment modifications and pedestrian changes and retime signal timing controller.

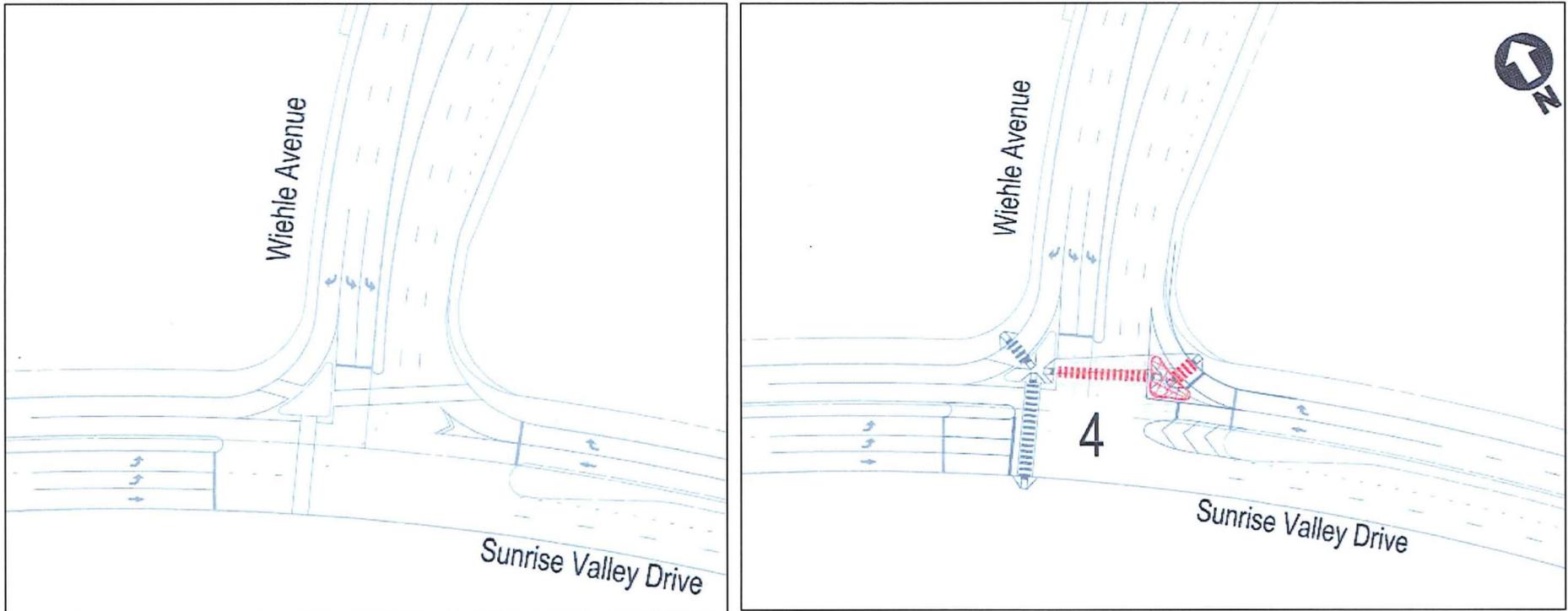
The configuration of a two-phase crossing of Wiehle Avenue for pedestrians enables vehicles making the westbound right turn from Sunrise Valley Drive onto northbound Wiehle Avenue an additional protected phase of green time. Currently, this movement must stop during the eastbound and westbound through phase if pedestrians are crossing Wiehle Avenue.

The addition of a channelized right turn lane would allow pedestrians to cross only a portion of Wiehle Avenue during the eastbound/westbound through phase on Sunrise Valley Drive. The refuge island would provide pedestrians a place to wait to cross the right turn lane during the eastbound left turn phase when this movement is stopped due to vehicular conflicts.

A detailed traffic impact analysis (TIA) dated January 26, 2010 was prepared by Gorove/Slade Associates and was reviewed by Fairfax County Department of Transportation. The study analyzed intersection levels of service for existing, no build, and build alternatives. The study was approved by the Virginia Department of Transportation as part of the Chapter 527 review process on March 24, 2010. Please refer to the TIA for detailed information.

There are no significant additional needs for right-of-way or utility relocation anticipated at this location.

**Dulles Corridor Metrorail Project
Extension to Wiehle Avenue**



Legend

-  **Record of Decision Improvements**
-  **Potential Additional Transportation Improvements**
(to Enhance Record of Decision Improvements, Provide Multimodal Station Accessibility and Accommodate Commercial Development)

Wiehle Avenue and Sunset Hills Road

Record of Decision Improvements:

TR-2:

5. Restripe eastbound approach to include a right turn bay, through right turn lane, through lane and a left turn lane. Modify existing traffic signal per VDOT standards to accommodate lane restriping and retime signal timing controller.

The Record of Decision commits to improving the eastbound right turn lane on Sunset Hills Road to southbound Wiehle Avenue. Based on our analysis, the restriping of the outside eastbound through lane to a through/right turn lane will provide this movement with additional capacity and reduced delay.

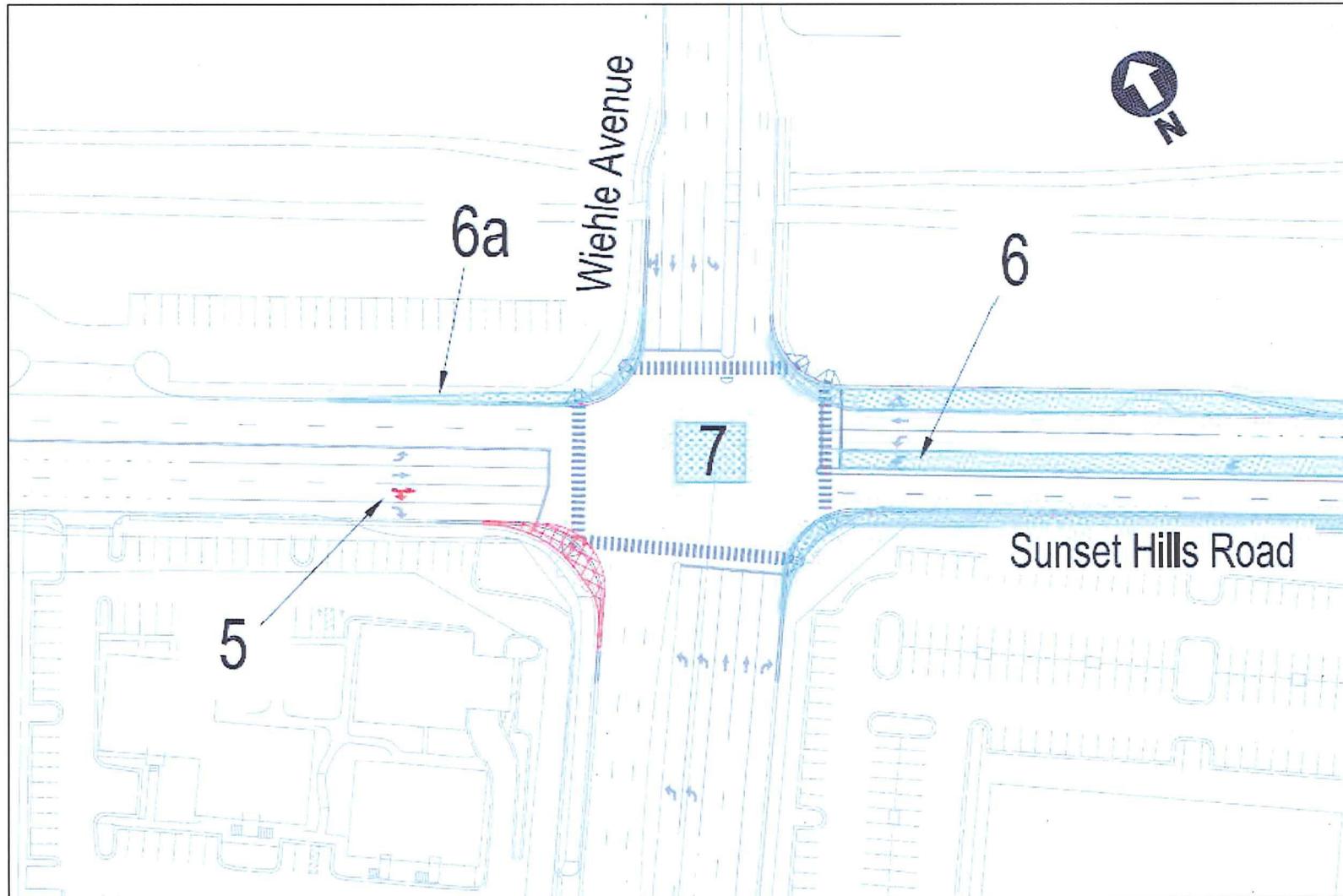
Potential Additional Transportation Improvements to Enhance Record of Decision Improvements, Provide Multimodal Station Accessibility and Accommodate Commercial Development::

6. Widen Sunset Hills Road to accommodate 2nd left turn bay in the westbound direction.
- 6a. Widen westbound receiving lanes on Sunset Hills Road to accept dual lefts from Wiehle Avenue in accordance with current VDOT standards.
7. Modify existing traffic signal per VDOT standards to accommodate lane restriping and retime signal timing controller.
Provide Pedestrian Enhancements as follows: Decrease right turn radius on southbound, northbound and eastbound approaches; Extend median to include pedestrian refuge on southbound approach; Upgrade curb ramps, re-align crosswalks, provide pedestrian countdown signals and high visibility crosswalks on all four approaches where not already in place subject to VDOT approval.

A detailed traffic impact analysis (TIA) dated January 26, 2010 was prepared by Gorove/Slade Associates and was reviewed by Fairfax County Department of Transportation. The study analyzed intersection levels of service for existing, no build, and build alternatives. The study was approved by the Virginia Department of Transportation as part of the Chapter 527 review process on March 24, 2010. Please refer to the TIA for detailed information.

Additional right-of-way related to the Potential Additional Improvements is required due to impacts on the east leg of the Sunset Hills Road/Wiehle Avenue intersection. Right-of-way needs are limited to the along the south side of the road at this location since the land along the north side of the road is VDOT right-of-way. Preliminary design for this location indicates that shift of the curb line to the south can be minimized by shifting much of the overall roadway to the north and use of acceptably narrower lanes. Construction, traffic signal, and various utility easements are also needed for the improvements to the eastern leg of the intersection.

Additional utility relocation related to the Potential Additional Improvements include potential work on storm drainage, a power line, a gas line and various communications lines.



Legend

-  **Record of Decision Improvements**
-  **Potential Additional Transportation Improvements**
 (to Enhance Record of Decision Improvements, Provide Multimodal Station Accessibility and Accommodate Commercial Development)

Wiehle Avenue and Dulles Toll Road Ramp - Eastbound

Record of Decision Improvements:

17

SA-3:

12. The eastbound Dulles Toll Road exit ramp will be widened by the DCMP to accommodate an additional exclusive left turn lane and an exclusive right turn lane for buses exiting the bus lane.

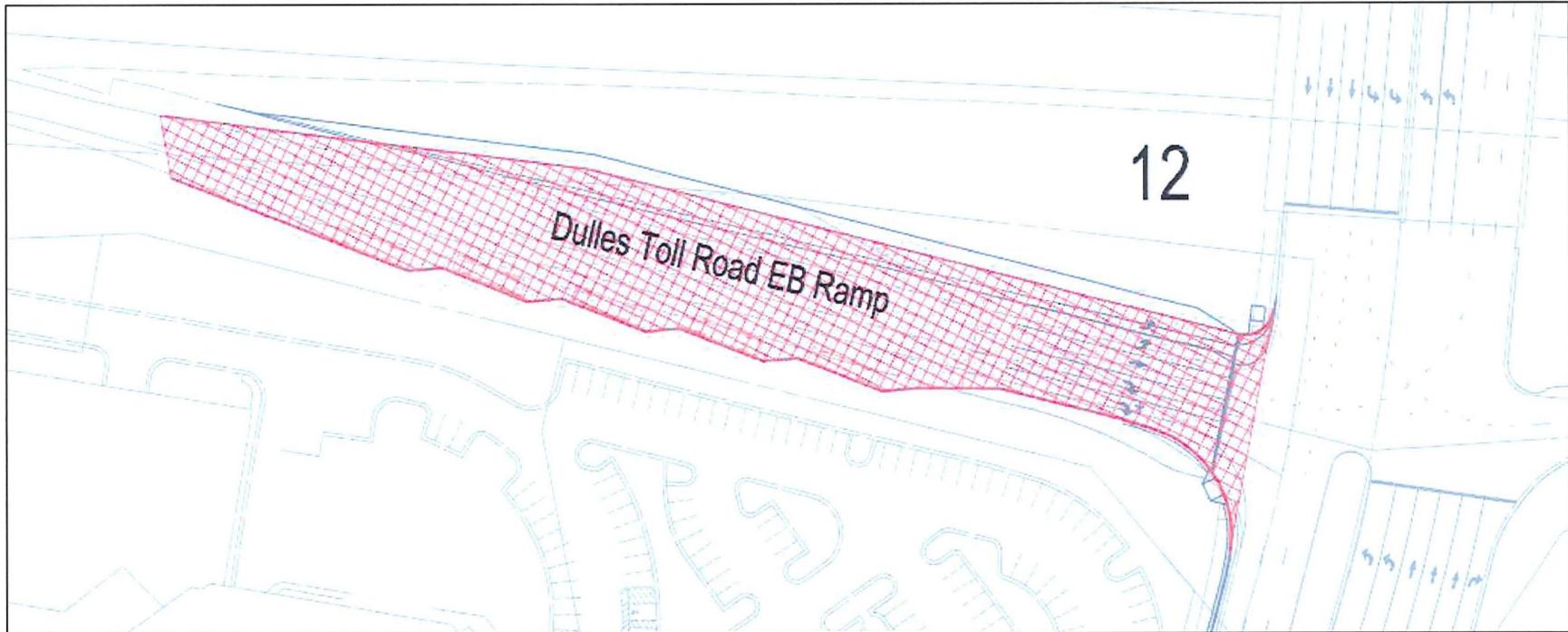
SA-8:

12. The plan on the next page shows the five bus bays to be constructed by the DCMP on the south side of the eastbound Dulles Toll Road exit ramp.

A detailed traffic impact analysis (TIA) dated January 26, 2010 was prepared by Gorove/Slade Associates and was reviewed by Fairfax County Department of Transportation. The study analyzed intersection levels of service for existing, no build, and build alternatives. The study was approved by the Virginia Department of Transportation as part of the Chapter 527 review process on March 24, 2010. Please refer to the TIA for detailed information.

Since there are no Potential Additional Improvements required at this location, there is no additional right-of-way or utility relocation required.

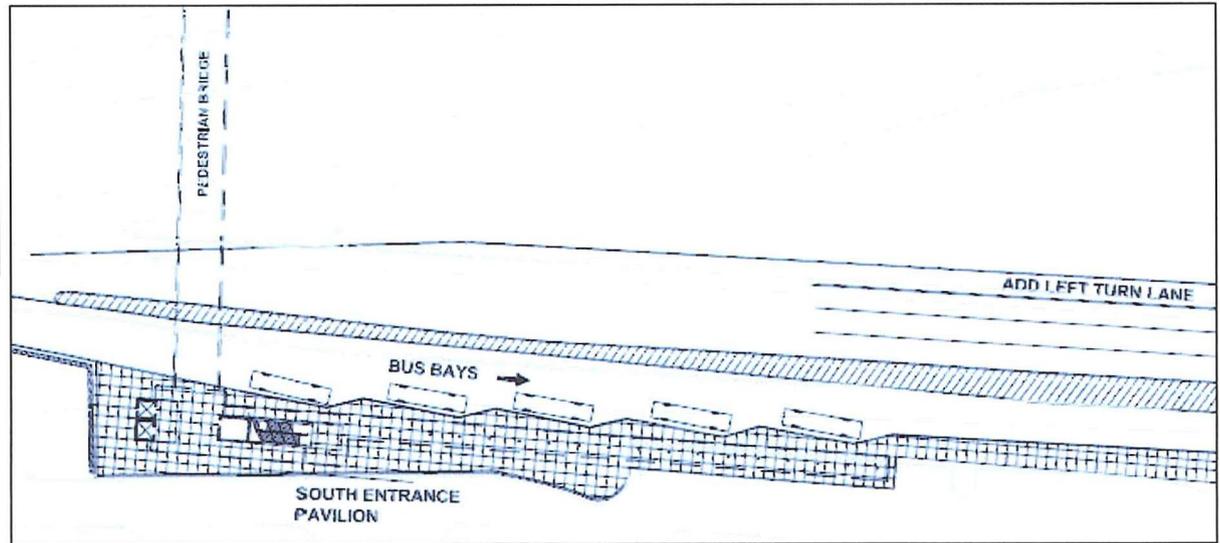
**Dulles Corridor Metrorail Project
Extension to Wiehle Avenue**



*Exclusive bus lane excluded from technical analysis

Legend

- Record of Decision Improvements**
- Potential Additional Transportation Improvements**
(to Enhance Record of Decision Improvements, Provide Multimodal Station Accessibility and Accommodate Commercial Development)



**Dulles Corridor Metrorail Project
Extension to Wiehle Avenue**

Dulles Toll Road Ramp – Westbound

Record of Decision Improvements:

SA-6:

Construct new entry for bus ingress to the north side station facilities from the westbound Dulles Toll Road entry ramp.

SA-7:

Construct new acceleration lane for bus egress from the station facilities onto the westbound Dulles Toll Road.

This improvement is not included in the scope of the joint development or the DCMP as detailed traffic analyses shows acceptable operating conditions without this improvement.

The Reston Station Metro Station Access Group (RMAG) prepared a detailed evaluation of feeder bus service to this station. That analysis determined limited, if any, bus service to and from the west that accesses the north –side Wiehle Avenue station facilities. Buses to and from the west use the bus bays on the eastbound exit ramp (see SA-8). Further, the Extension to Route 772 (Phase 2) will “intercept” any bus service west of Wiehle Avenue station. Detailed traffic analyses shows acceptable operating conditions without this improvement. As a result, Fairfax County directed that the bus ingress/egress ramp not be included in the joint development configuration. This direction was provided by the County during early coordination meetings with the Proposers that defined the scope of the transit-related requirements.

The table below notes the number of buses that arrive at the station from the south and/or east. These buses would have utilized the westbound Dulles Toll Road ramp access, but will instead arrive via Reston Station Boulevard. As noted above, there is no demand for outbound buses traveling to the west on the Dulles Toll Road. As shown below, in Phase 1 approximately 20 and 24 buses will arrive from the south and/or east during the AM and PM peak hours, respectively. However, this number will be reduced by approximately 30% during the AM peak and 42% during the PM peak in Phase 2, once the rail is extended to the west. The shift of bus traffic to the intersection of Wiehle Avenue and Reston Station Boulevard will result in a negligible change in the levels of service at that intersection.

Bus Routing from South/East of Wiehle Avenue Station:

	Existing		Phase 1		Phase 2	
	AM Peak	PM Peak	AM Peak	PM Peak	AM Peak	PM Peak
Ingress	8	12	20	24	14	14
Egress	0	0	0	0	0	0

Based on proposed bus routing from the RMAG study and the Fairfax County Transit Development Plan for Fairfax Connector service.

**Dulles Corridor Metrorail Project
Extension to Wiehle Avenue**

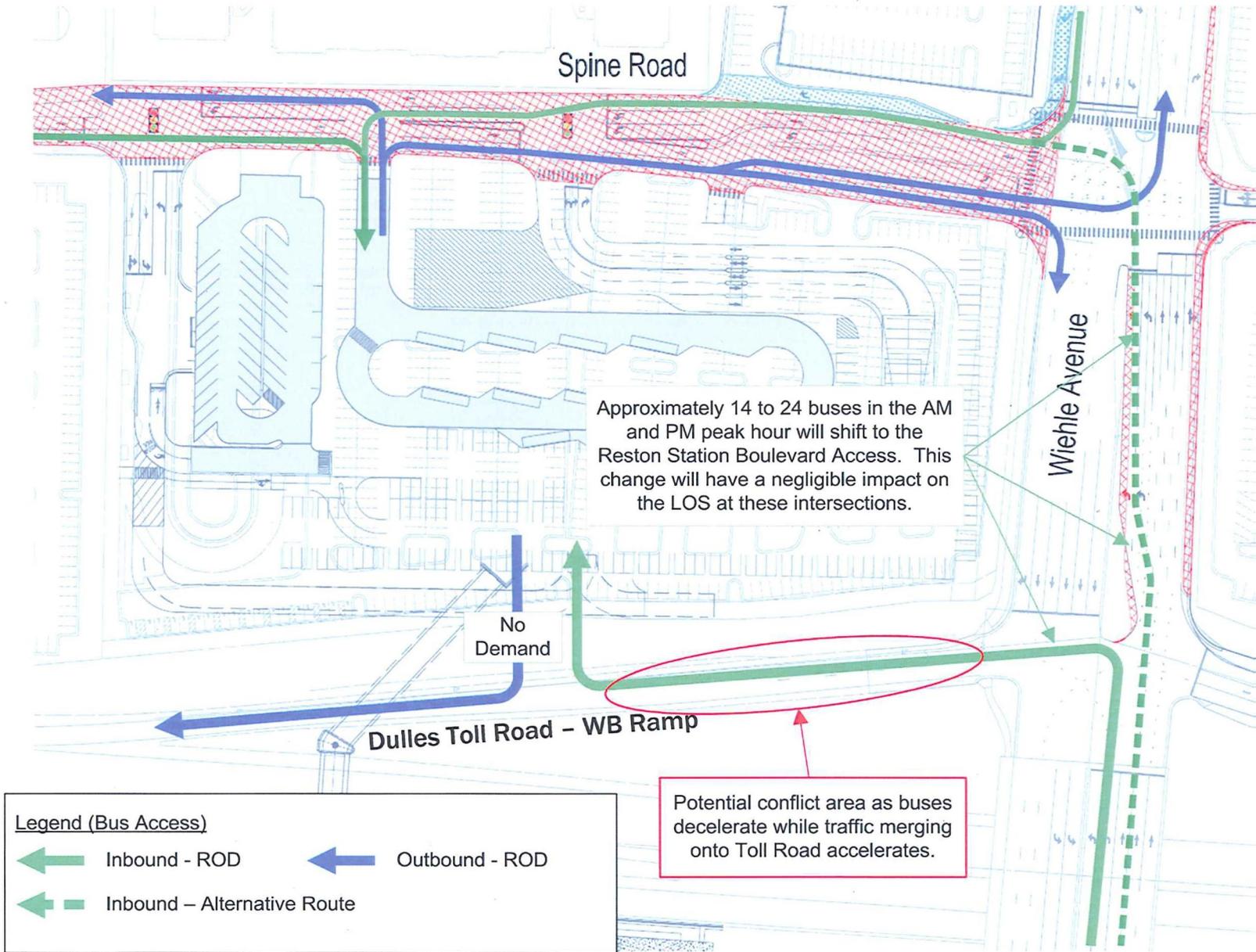


EXHIBIT D-1

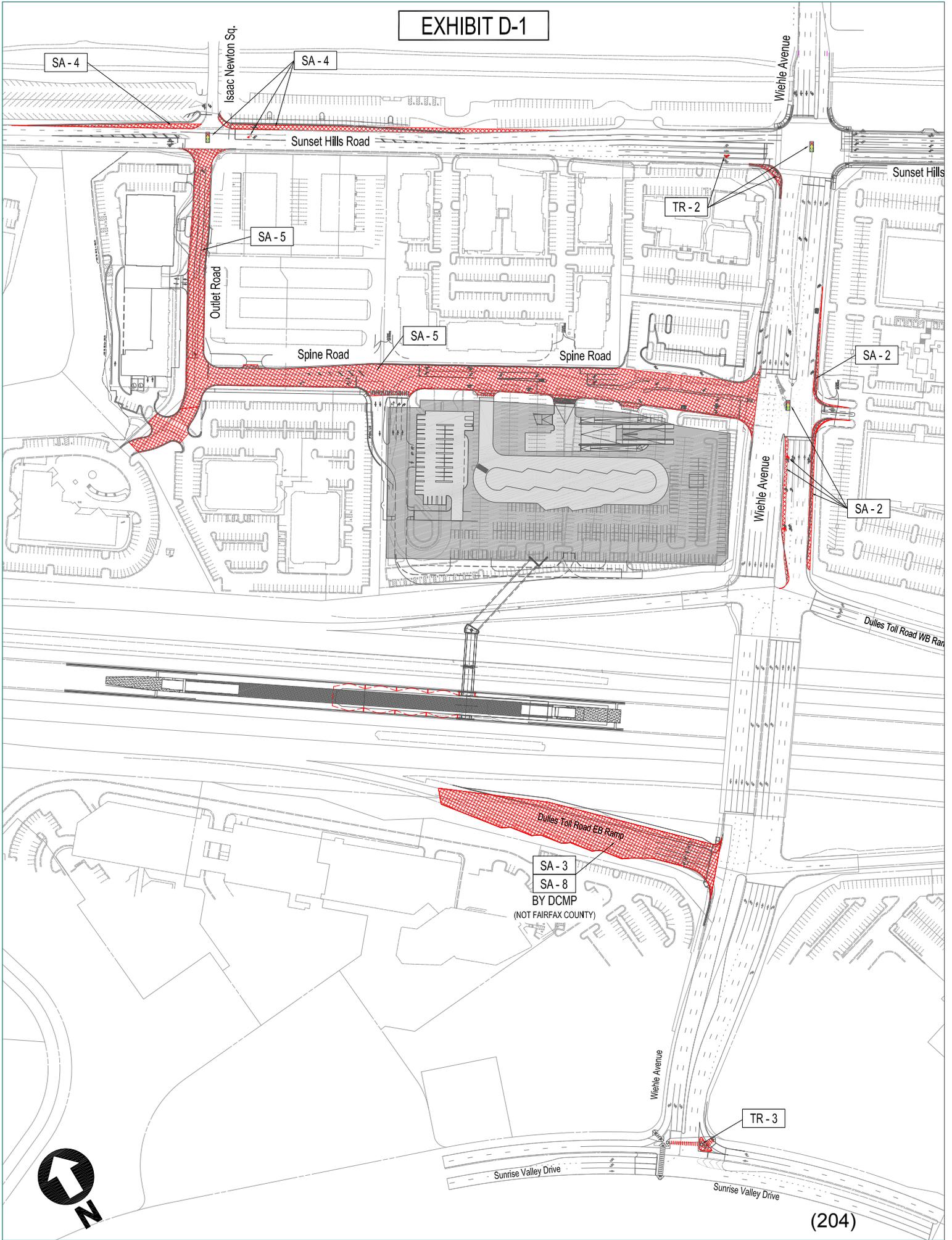


EXHIBIT F

ID #	Description	Split		Total	non-MWAA Requirement	MWAA Requirement
		Other	MWAA			
LAND COSTS						
1	Land - Geotechnical Borings	20%	80%	25,000	5,000	20,000
SITE COSTS						
2	Site - Util - Dry Util. Relocations	20%	80%	225,000	45,000	180,000
2a	Electrical transformer relocation @ CMCD	20%	80%	100,000		
2b	Relocate fiber & cable north side of Sunset Hills	20%	80%	75,000		
2c	Fiber & cable north side of Reston Station Blvd.			0		
2d	Relocate fiber & cable east side of Wiehle Road	20%	80%	50,000		
3	Site - Util - Storm Water Mgmt Vaults (Vaults 1 and 2) ^A	72%	28%	1,324,852	953,893	370,958
4	Site - Util - Signals ^B	51%	49%	1,243,200	635,670	607,530
4a	Wiehle Ave and Reston Station Blvd	50%	50%	282,450		
4b	Reston Station Blvd and Commerical Entrance	100%	0%	150,675		
4c	Reston Station Blvd and County Entrance	100%	0%	150,675		
4d	Sunset Hills Rd and Comstock Metro Center Dr	10%	90%	282,450		
4e	Sunset Hills Rd and Wiehle Ave	50%	50%	282,450		
4f	Pedestrian signalization and area of refuge, 1 ea.	25%	75%	94,500		
5	Site - Util - Street Lighting (Allowance)	20%	80%	485,000	97,000	388,000
5a	New RF-2 streetlights including conduit, handholes & mast arms , 16 each @ \$20,000 (8 along south edge of RSB, 4 along west edge of CMCD, 4 at intx of Wiehle and RSB)	10%	90%	320,000		
5b	New RF-2 streetlights including conduit, handholes & mast arms , 2 each @ \$20,000 (2 along the north edge of RSB)	100%	0%	40,000		
5c	New RF-2 streetlights including conduit, handholes & mast arms , double headed 5 each @ \$25,000 (along north edge of Sunset Hills Road)	10%	90%	125,000		
6	Site - Util - Signage (lump sum)	20%	80%	50,000	10,000	40,000
7	Site - Bond Release	20%	80%	100,000	20,000	80,000
SOFT COSTS						
8	Soft - Eng - Civil					
8a	Soft - Eng - Civil - ROD Site Plan	20%	80%	250,000	50,000	200,000
8b	Soft - Eng - Civil - PI Plans	80%	20%	120,000	96,000	24,000
8c	Soft - Eng - Civil - CA ^C	27%	73%	50,000	13,500	36,500
9	Soft - Eng - Reimb. Costs ^C	27%	73%	40,000	10,800	29,200
10	Soft - Consult - Pkng/Traffic					
10a	Soft - Consult - Signal Design	51%	49%	101,000	51,643	49,357
10b	Soft - Consult - MOT Design	42%	58%	15,000	6,300	8,700
10c	Soft - Consult - Wayfinding Signage	20%	80%	20,000	4,000	16,000
10d	Soft - Consult - DTP Mtgs / FTA Exhibits	20%	80%	29,000	5,800	23,200
11	Soft - Consult - Dry Utilities	20%	80%	100,000	20,000	80,000
12	Soft - Consult - Reimb Costs	20%	80%	25,000	5,000	20,000
13	Soft - Ins/Bond					
14	Soft - Bond Premiums (NO PREMIUM FOR COUNTY)	20%	80%	22,500	22,500	0
15	Soft - Insp/Test - Matl Insp	20%	80%	130,000	26,000	104,000
16	Soft - Permits	20%	80%	100,000	20,000	80,000
17	Soft - Legal - Contract	20%	80%	30,000	6,000	24,000
HARD COSTS						
18	Hard - Genl Contr - Davis LS Price (not including SWM Vault #2, which is listed above)	20%	80%	3,906,095	781,219	3,124,876
19	Hard - Genl Contr - Davis Alternate 1: Sunset Hills Rd & Wiehle Ave Improvements	95%	5%	612,178	581,569	30,609
20	Hard - Genl Contr - Sunrise Valley & Wiehle Ave	10%	90%	ABOVE	0	0
OVERHEAD/ADMIN COSTS						
21	O/H - Payroll	30%	70%	30,000	9,000	21,000
22	O/H - Construction Management Consultant (KCM)	30%	70%	50,000	15,000	35,000
23	O/H - Development Fee (5%)	30%	70%	316,316	94,895	221,421
24	O/H - Fairfax County WPFO ^D	0%	100%	75,000	0	75,000
	Subtotal			9,475,141	3,585,789	5,889,351
CONTINGENCY						
25	Contingency - Tier 1A	30%	70%	700,000	210,000	490,000
26	Contingency - Tier 1B	50%	50%	700,000	350,000	350,000
27	Contingency - Tier 1C					
	TBD					
	TBD					
	TBD					
	Subtotal			\$10,875,141	\$4,145,789	\$6,729,351

CONTINGENCY - Tier 2

Dry Utilities ^{E,F}	20%	80%
Geotechnical Issues ^F	20%	80%
Hazardous Materials Issues ^F	20%	80%

NOTES:

- A. ROD area to the two vaults (combined) is 28%
- B. Sharing split calculated as weighted average using 50/50, 10/90 and 100/0 percentages of respective cost
- C. Sharing split calculated as follows: Comstock hard construction cost / County hard construction cost (\$972,179 / \$3,546,094)
- D. WPFO is 2 staff spending 56 weeks @ 8hrs/wk during construction, plus 52 weeks @ 2hrs/wk for bond release. (@ \$58/hr avg) Plus 2 sta at 80hrs/each during design.
- E. The Tier 2 contingency for Dry Utilities can only be used after the Dry Utility funding (\$225,000) has been deplete
- F. Fairfax County shall notify MWAA within 7 days, and prior to remedy, if a Tier 2 Contingency issue is identified

EXHIBIT G

Invoice for Quarter ending on <date here>

ID #	Description	MWAA Requirement A	Previously Billed B	Current Billing C	Total Billed D = B + C	Amount Remaining E = A - D	Percent Billed F = D / A
LAND COSTS							
<u>1</u>	Land - Geotechnical Borings	20,000					
SITE COSTS							
<u>2</u>	Site - Util - Dry Util. Relocations	180,000					
<u>3</u>	Site - Util - Storm Water Mgmt Vaults (Vaults 1 and 2)	370,958					
<u>4</u>	Site - Util - Signals	607,530					
<u>5</u>	Site - Util - Street Lighting (Allowance)	388,000					
<u>6</u>	Site - Util - Signage (lump sum)	40,000					
<u>7</u>	Site - Bond Release	80,000					
SOFT COSTS							
<u>8a</u>	Soft - Eng - Civil - ROD Site Plan	200,000					
<u>8b</u>	Soft - Eng - Civil - PI Plans	24,000					
<u>8c</u>	Soft - Eng - Civil - Construction Administration (CA)	36,500					
<u>9</u>	Soft - Eng - Reimb. Costs	29,200					
<u>10a</u>	Soft - Consult - Signal Design	49,357					
<u>10b</u>	Soft - Consult - MOT Design	8,700					
<u>10c</u>	Soft - Consult - Wayfinding Signage	16,000					
<u>10d</u>	Soft - Consult - DTP Mtgs / FTA Exhibits	23,200					
<u>11</u>	Soft - Consult - Dry Utilities	80,000					
<u>12</u>	Soft - Consult - Reimb Costs	20,000					
<u>13</u>	Soft - Ins/Bond	0					
<u>14</u>	Soft - Bond Premiums (NO PREMIUM FOR COUNTY)	0					
<u>15</u>	Soft - Insp/Test - Matl Insp	104,000					
<u>16</u>	Soft - Permits	80,000					
<u>17</u>	Soft - Legal - Contract	24,000					
HARD COSTS							
<u>18</u>	Hard - Genl Contr - Davis LS Price (not including SWM Vault #2, which is listed above)	3,124,876					
<u>19</u>	Hard - Genl Contr - Davis Alternate 1 Sunset Hills Rd & Wiehle Ave Improvements (see SWM Vault #2 included above)	30,609					
<u>20</u>	Hard - Genl Contr - Sunrise Valley & Wiehle Ave	0					
OVERHEAD/ADMIN COSTS							
<u>21</u>	O/H - Payroll	21,000					
<u>22</u>	O/H - Construction Management Consultant (KCM)	35,000					
<u>23</u>	O/H - Development Fee (5%)	221,421					
<u>24</u>	O/H - Fairfax County WPFO	75,000					
CONTINGENCY							
<u>25</u>	Contingency - Tier 1A	490,000					
<u>26</u>	Contingency - Tier 1B	350,000					
<u>27</u>	Contingency - Tier 1C						
<u>27a</u>	TBD						
<u>27b</u>	TBD						
<u>27c</u>	TBD						
Total		6,729,351	0	0	0	0	0

<u>28a</u>	Contingency - Tier 2 - Dry Utilities						
<u>28b</u>	Contingency - Tier 2 - Geotechnical Issues						
<u>28c</u>	Contingency - Tier 2 - Hazardous Materials Issues						
Total		0	0	0	0	0	0

Grand Total 6,729,351 0 0 0 0 0



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

April 8, 2010

Mr. Sam Carnaggio
Dulles Rail Project Director
MWAA
1593 Spring Hill Road
Suite 300
Vienna, VA 22182

Re: Wiehle Avenue

Dear Mr. Carnaggio:

On numerous occasions, MWAA has asked Fairfax County to provide the go ahead for design modifications to the Wiehle Avenue north side pedestrian bridge to accommodate the County's Transit Oriented Development project. Specifically, MWAA staff was concerned about the final location of the pedestrian bridge and the bridge clearance above the DTR westbound entry ramp.

Based on the two attachments provide to the County by Comstock Companies and their consultants, there is sufficient clearance between the bridge and the DTR entry ramp to meet VDOT standards. The attachments also define the approximate location of the pedestrian bridge within the tolerances requested by MWAA staff.

Based on this information, Fairfax County requests that MWAA initiate the design changes to accommodate the relocated pedestrian bridge to the north side of the Wiehle Avenue Station.

Sincerely,

Richard F. Stevens
Dulles Rail Project Manager

cc: Anthony Griffin – County Executive
Catherine Hudgins – Supervisor, Hunter Mill District
Katharine Ichter – Director, FCDOT
Larry Miller – MWAA/PMSS

Attachments a/s



PLANNERS
ENGINEERS
LANDSCAPE
ARCHITECTS
LAND
SURVEYORS

Lawrence Bergner
CRS Construction Services
11465 Sunset Hills Road, Suite 230
Reston, Virginia 20190

March 12, 2010

Re: Reston Station North Bridge
Clearance to Toll Road Ramp

Dear Larry,

This letter is provided to inform your team that Urban, Ltd. has prepared an exhibit to support our current design based on the current DCS design provided on 2/16/10 to depict that the minimum clearance for the Route 267 westbound ramp has the VDOT minimum clearance of 17.50 feet at it's closest point to the ramp. The exhibit demonstrates that there is actually 17.92' clear measured at the shoulder edge. It assumes 3' of bridge thickness from wearing surface to the bottom of structure and equipment.

In addition, the exhibit shows that there is 15.61' clear for the top of curb of the fire lane for the Reston Station onsite garage where the County minimum requirement is 15' from the travel lane with the same assumptions.

Please note that this exhibit and measurements are provided in both MWAA (NAVD 88) and Reston Station (NAVD 29) datum based on aerial topography. Once this bridge location is finalized, we anticipate conducting a field survey of the exact crossing to verify the ramp grades and clearance in both datums. In addition, the coordinates for the center point of the Bridge Landing point on the station plaza will also be verified upon our final receipt of the final garage plans prepared by DCS Architects. The coordinates will be provided in Reston Station datum (NAD 27) and WMATA Grid Coordinates. Also note that the horizontal location is within ± 3 feet of the final location.

Please let me know if there is anything further that you may need at your earliest convenience.

Sincerely,
Urban, Ltd.

Eric S. Siegel, P.E.
Principal

Attachments.

Exhibit 2.3.15
FEDERAL REQUIREMENTS

Contractor understands that the Project is financed in part with assistance provided by the Federal Transit Administration (“FTA”) and that a condition to such assistance is the application of certain Laws, Regulations and Ordinances to the Contract and Contractor (“Federal Requirements”). Contractor agrees that the Contract Price includes Contractor’s compliance with all Federal Requirements in effect as of the Effective Date unless FTA issues a written determination to the contrary, and that Contractor will, pursuant to Article 10 of the Contract, comply with any Changes in Law relative to Federal Requirements.

This Exhibit 2.3.15 is intended to identify certain specific Federal Requirements, with the understanding that what is identified in this Exhibit 2.3.15 is not to be deemed all-inclusive. Contractor agrees that it shall comply with all laws, regulations and ordinances applicable to the performance of the work, whether or not they are specifically mentioned in these Federal Requirements, and, through flow-down provisions in Subcontracts, require Subcontractors to comply with such Federal Requirements to the extent mandated by the applicable Federal Requirement. Unless otherwise stated in a provision below, Contractor shall flow-down, and require all Subcontractors to flow-down, all provisions of these Federal Requirements to all Subcontractors at each tier.

1. Fly America

Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall flow-down the requirements of this Section 1 to all Subcontracts that may involve international air transportation.

2. Cargo Preference - Use of United States-Flag Vessels Requirements

Pursuant to 46 U.S.C. §55305 and 46 C.F.R. Part 381, Contractor agrees:

(a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

(b) To furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to Owner (through Contractor in the case of a Subcontractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20230, marked with appropriate identification of the Project.

3. Buy America

Contractor agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and subsequent amendments to those regulations that may be promulgated.

4. Seismic Safety Requirements

Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 CFR Part 41, and will certify to compliance to the extent required by the regulation. Contractor also agrees to ensure that all Work is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

5. Energy Conservation Requirements

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency and to comply with the Energy Policy and Conservation Act.

6. Clean Water Requirements

(a) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 *et seq.* Contractor agrees to report each violation to Owner and understands and agrees that Owner will,

in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) Contractor shall flow-down the requirements of this Section 6 to all Subcontracts exceeding \$100,000.

7. Lobbying

(a) **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65.** Contractor and all Subcontractors at each tier who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." The language for the certification is set forth in Section 7(b) below. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are to be forwarded from tier-to-tier up to Owner.

(b) **Certification for Contracts, Grants, Loans and Cooperative Agreements.**
The certification referenced in Paragraph 7(a) above is as follows:

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this

Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including Subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C.A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

8. Access to and Retention of Records

(a) Contractor agrees to permit, the U.S. Secretary of Transportation, the FTA, the Comptroller General of the United States, or their duly authorized representatives, to inspect all Work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor pertaining to the Project.

(b) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) Contractor agrees to maintain all books, records, accounts and reports required under this Contract, consistent with 49 CFR §18.36, for a period of not less than three (3) years

after the date of final payment under the Contract or termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case Contractor agrees to maintain same until the U.S. Secretary of Transportation, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

(d) Contractor agrees to include this Section 8 in each Subcontract at each tier. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

9. FTA Requirements and the Grant Agreement

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Grant Agreement, as they may be amended or promulgated from time-to-time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

10. Clean Air

(a) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* Contractor agrees to report each violation to Owner and understands and agrees that Owner will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) Contractor agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11. Recycled Products and Recovered Materials

Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

12. Davis-Bacon and Copeland Anti-Kickback Acts

Contractor agrees to comply with the Davis-Bacon Act, 40 U.S.C. § 3141 *et seq.*, as supplemented by Department of Labor Regulations (29 CFR Part 5, "Labor Standards Provisions

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Applicable to Contracts Governing Federally Financed and Assisted Construction”) and the Copeland Anti-Kickback Act (18 U.S.C. § 374 and 40 U.S.C. § 3145) as supplemented by Department of Labor Regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States”). The clause at 29 CFR § 5.5(b) is restated and incorporated below, conformed to designate “Owner” in its capacity as the Project owner under the Contract:

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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(ii)(A) Owner shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. Owner shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR § 5.2(n) (4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR § 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Owner agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by Owner to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise Owner or will notify Owner within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and Owner do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), Owner shall refer the questions, including the views of all interested parties and the recommendation of Owner, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise Owner or will notify Owner within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) Owner shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. Owner shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Owner agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by Owner to the Administrator of the Wage and Hour Division, Employment Standards

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Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise Owner or will notify Owner within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and Owner do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), Owner shall refer the questions, including the views of all interested parties and the recommendation of Owner, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise Owner or will notify Owner within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, Owner may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the

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site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Owner for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. Contractor is responsible for the submission of copies of payrolls by all Subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Contractor or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in

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his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must

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be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) **Compliance with Copeland Act requirements** - Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. § 374 and 40 U.S.C. § 3145) as supplemented by the Department of Labor requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - Contractor or Subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR §5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in 29 CFR §5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR §5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR §5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Owner, the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this Contract, Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

13. Contract Work Hours and Safety Standards

Contractor shall comply with the Contract Work Hours and Safety Standard Act, 40 U.S.C. § 3701 et seq. The clause at 29 CFR 5.5(b) pertaining to Contract Work Hours and Safety Standard Act is restated and incorporated below, conformed to designate "Owner" in its capacity as the Project owner under the Contract:

(a) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of

forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (a) of this section Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) **Withholding for unpaid wages and liquidated damages** - Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) **Subcontracts** - Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (a) through (d) of this Section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

14. Employee Protections

(a) **Activities Not Involving Construction** - Contractor agrees to comply, and assures the compliance of each Subcontractor at each tier of the Project, with the employee protection requirements for non-construction employees of the Contract Work Hours and Safety

Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

(b) **Activities Involving Commerce** - Contractor agrees that the provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, apply to employees performing Project work involving commerce.

15. No Government Obligation to Third Parties

Owner and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to Owner, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

16. Program Fraud and False or Fraudulent Statements and Related Acts

(a) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the Project. Upon execution of the underlying contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

(b) Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. App. 1607a(h) on Contractor, to the extent the Federal Government deems appropriate.

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17. Debarment and Suspension

(a) Contractor agrees to comply, and assures the compliance of each Subcontractor at each tier, with 49 U.S.C. § 5325(j), Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," within 49 C.F.R. Part 29.

(b) The Contract is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. Contractor is required to comply with 49 CFR 29, Subpart C.

18. Privacy Act

The following requirements apply to Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(a) Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

19. Civil Rights Requirements

Contractor agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to the following requirements:

(a) Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations, including U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil

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Rights Act," 49 C.F.R. Part 21, and any other implementing requirements FTA may issue, except to the extent FTA determines otherwise in writing.

(b) Equal Employment Opportunity: The following equal employment opportunity requirements apply to the Contract:

(1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, Contractor agrees to comply with all applicable equal opportunity requirements of U. S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor shall comply with the following regulations and any subsequent amendments thereto:

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- (i) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (ii) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (iv) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (v) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (vi) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-119;
- (vii) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (viii) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (ix) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (x) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (xi) Any implementing requirements FTA may issue.

(4) Equal Employment Opportunity Requirements for Construction Activities. With respect to activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," Contractor agrees to comply and assures the compliance of each third party contractor and each subrecipient or Subcontractor at each tier of the Project, all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," at 42 U.S.C. § 2000(e) note, and also with any Federal Laws, Ordinances and Regulations affecting construction undertaken as part of the Project.

(5) Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. Contractor agrees to comply with the confidentiality and any other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-2, 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

(6) Access to Services for Persons with Limited English Proficiency. Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Guidance to Contractors on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 et seq., January 22, 2001.

(7) Other Nondiscrimination Statutes. Contractor agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to the Project.

20. Rights In Data and Patent Rights

(a) Rights in Data

(1) The term "subject data" used in this Section 20 means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type

documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the Contract to which this Exhibit has been added:

(a) Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)(1) and (2)(b)(2) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, if Contractor performs experimental, developmental, or research work required by the Contract, it agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data

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developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this Clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Contractor agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(b) Patent Rights. The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), Contractor agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) Contractor also agrees to include the requirements of this clause in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

21. Transit Employee Protective Provisions

To the extent that FTA determines that transit operations are involved, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter.

22. Environmental Requirements

Contractor recognizes that many federal and state Laws, Regulations and Ordinances imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major federal Laws, Regulations and Ordinances that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* and applicable sections of 29 U.S.C.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.* Contractor also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, regulations, guidelines, standards, orders, directives, or other requirements that may affect the Project. Thus, Contractor agrees to comply, and assures the compliance of each of its Subcontractors, with any such Federal requirements as the Federal Government may now or in the future promulgate. Listed below are environmental requirements of particular concern to FTA and Contractor. Contractor agrees that those laws and regulations may not constitute Contractor's entire obligation to meet all Federal environmental and resource conservation requirements.

(a) Environmental Protection. Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*, Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations imposing requirements for compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

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(b) Air Quality. Contractor agrees to comply with all applicable regulations, standards, orders, and requirements implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* In addition:

(1) Contractor agrees to comply with the applicable requirements of the U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for the Project, Contractor agrees to implement each air quality mitigation or control measure incorporated in the Project. Contractor further agrees that any Project identified in an applicable State Implementation Plan as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the State Implementation Plan.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Accordingly, Contractor agrees to comply with the following U.S. EPA regulations to the extent they are applicable to the Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

(3) Contractor agrees to comply with the notification of violating facility requirements of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

(c) Use of Public Lands. Contractor agrees that it will not use in the Project any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and will not use in the Project any land from a historic site of national, State, or local significance unless the Federal Government makes the findings required by 49 U.S.C. §303.

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(d) Wild and Scenic Rivers. Contractor agrees to comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§1271 *et seq.* relating to protecting components of the national wild and scenic rivers system.

(e) Coastal Zone Management. Contractor agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 *et seq.*

(f) Wetlands. Contractor agrees to comply with the protections for wetlands in accordance with Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note.

(g) Floodplains. Contractor agrees to comply with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management" 42 U.S.C. § 4321 note.

(h) Endangered Species. Contractor agrees to comply with the protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 *et seq.*

(i) Historic Preservation. Contractor agrees to foster compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a *et seq.* as follows:

(1) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, Contractor agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA and Owner of any affected properties.

(2) Contractor agrees to comply with all Federal requirements to avoid or mitigate adverse effects on those historic properties.

(j) Environmental Justice. Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note.

(k) Mitigation of Adverse Environmental Effects. Should the Project cause or result in adverse environmental effects, Contractor agrees to take all reasonable measures to minimize those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622. Contractor agrees to comply with all environmental mitigation measures identified as commitments in applicable environmental documents (*i.e.*, environmental assessments, environmental impact statements, memoranda of agreement, and documents required by 49 U.S.C. § 303) and with any conditions imposed by the Federal Government in a finding of no significant impact or record of decision. Contractor agrees that those mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. Contractor also agrees that any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement as soon as agreement with the Federal Government is reached. Contractor understands and agrees that those mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

23. Disadvantaged Business Enterprises

(a) The Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract and shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Contract. Contractor agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

(1) Contractor agrees and assures that it will comply with U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) Contractor agrees and assures that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any Subcontract supported with Federal assistance derived from U.S. DOT or FTA or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. Contractor agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subcontracts supported with Federal assistance derived from U.S. DOT. Implementation of this DBE program is a legal obligation, and failure by Contractor to carry out these requirements is a material

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breach of the Contract, which may result in the termination of this Contract or such other remedy as Owner deems appropriate. Each Subcontract Contractor signs with a Subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)). Upon notification by U.S. DOT to Contractor of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

(b) Contractor agrees to make good faith efforts to meet a DBE participation goal of 6%. Contractor shall document DBE participation or, as applicable, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. In accordance with the forms set forth in the DBE Subcontracting Plan, Contractor shall provide Owner with the following information, as well as any other information required by such Plan:

1. The names and addresses of DBE firms that will participate in the Contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of Contractor's commitment to use a DBE Subcontractor whose participation it submits to meet the Contract goal;
5. Written confirmation from the DBE that it is participating in the Contract as provided in Contractor's commitment; and
6. If the Contract goal is not met, evidence of good faith efforts to do so.

(c) Contractor is required to pay its Subcontractors performing work related to the Contract for satisfactory performance of that work no later than 30 days after Contractor's receipt of payment for that work from Owner. In addition, Contractor is required to return any retainage payments to those Subcontractors within 30 days after the Subcontractor's work related to this contract is satisfactorily completed.

(d) Contractor must promptly notify Owner, whenever a DBE Subcontractor performing work related to the Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Owner.

24. Seat Belt Use

In accordance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," 23 U.S.C. § 402 note, Contractor is encouraged to adopt on-the-job seat belt use policies

and programs for its employees that operate company-owned, rented, or personally-operated vehicles and include this provision in its subcontracts.

25. Substance Abuse

(a) Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Virginia, or Owner, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. Contractor agrees further to certify annually its compliance with Part 655 before March 15 and to submit the Management Information System (MIS) reports before March 15 to Owner. To certify compliance Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

(b) To the extent applicable, Contractor agrees to comply with the following Federal substance abuse regulations:

(1) Drug-Free Workplace. U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq.*

(2) Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

26. Protection of Sensitive Security Information

To the extent applicable, Contractor agrees to comply with section 101(e) of the Aviation and Transportation Security Act, 49 U.S.C. § 40119(b), with U.S. Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520, and with any other implementing regulations, requirements, or guidelines that the Federal Government may issue.

27. Access for Individuals with Disabilities

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Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities.

EXHIBIT J – DEADLINES & LIQUIDATED DAMAGES

Fairfax Deadlines

- **Bridge Site Preparation** – Preparation of site, at current grade and including utility relocation, for DTP's installation of bridge piles and pile caps by October 1, 2011.
- **Garage Wall Construction for Bridge Pier Work** – Construction of garage wall to a sufficient height – the ceiling of the G2 level of the garage – to allow DTP to commence work on the pedestrian bridge pier by August 1, 2012.
- If Fairfax fails to cause either the Bridge Site Preparation or the Garage Wall Construction for Bridge Pier Work by the applicable date set forth above, then Fairfax shall be liable to the Airports Authority for liquidated damages in the amount of \$1,000.00 per day until such Deadline is met.

Fairfax shall use commercially reasonable efforts to substantially complete the Metrostation Facilities and the Wiehle Avenue Station Area Improvements by that date which is twenty-seven (27) months following the issuance of a notice to proceed under the GMP. Notwithstanding the foregoing, the parties hereby agree that Fairfax shall not be liable for any liquidated damages if the Metrostation Facilities and/or the Wiehle Avenue Station Area Improvements are not substantially completed by such date.

MWAA Deadlines

- **MWAA Property Interest Acquisitions – Metrostation Facilities & Fairfax ROD Contract Site Plans**
 - The Airports Authority shall obtain the MWAA Property Interest Acquisitions necessary for site plans 2615-SP-007 and 2615-SP-008 as indicated on Exhibit C-1 hereto by November 15, 2011; provided, however, that the Airports Authority shall not be liable for liquidated damages until, and only for the period of time after, December 31, 2011. A certificate of taking shall be sufficient evidence of the obtaining of such MWAA Property Interest Acquisitions.
 - If Fairfax requests a change to an approved final appraisal plat, then such November 15, 2011, and December 31, 2011, Deadlines shall be extended by the same number of days that are between March 31, 2011, and the date of such Fairfax request. A change to an approved final appraisal plat due to negotiations with a third-party landowner (or other rights-holder) shall not cause such an extension.
 - If the Airports Authority fails to timely obtain these MWAA Property Interest Acquisitions as set forth above, then the Airports Authority shall be liable to Fairfax for liquidated damages in the amount of \$2,500.00 per day until the Airports Authority has obtained such MWAA Property Interest Acquisitions.

- Notwithstanding the foregoing, if the Airports Authority fails to timely obtain these MWAA Property Interest Acquisitions but such failure is not the sole reason that Fairfax and/or Comstock is unable to obtain a building permit for the Metrostation Facilities, then the Airports Authority shall have no liability for liquidated damages for such failure until such failure is the sole reason that Fairfax and/or Comstock is unable to obtain a building permit for the Metrostation Facilities.
- **MWAA Property Interest Acquisitions – Public Improvement Plans**
 - The Airports Authority shall obtain all other MWAA Property Interest Acquisitions, necessary for public improvement plans 2615-PI-004 and 2615-PI-005 as indicated on Exhibit C-1 hereto, by November 15, 2011; provided, however, that the Airports Authority shall not be liable for liquidated damages until, and only for the period of time after, December 31, 2011. A certificate of taking shall be sufficient evidence of the obtaining of such MWAA Property Interest Acquisitions.
 - If Fairfax requests a change to an approved final appraisal plat, then such November 15, 2011, and December 31, 2011, Deadlines shall be extended by the same number of days that are between March 31, 2011, and the date of such Fairfax request. A change to an approved final appraisal plat due to negotiations with a third-party landowner (or other rights-holder) shall not cause such an extension.
 - If the Airports Authority fails to timely obtain these MWAA Property Interest Acquisitions as set forth above, then the Airports Authority shall be liable to Fairfax for liquidated damages in the amount of \$2,500.00 per day until the Airports Authority has obtained such MWAA Property Interest Acquisition.
 - Notwithstanding the foregoing, if the Airports Authority fails to timely obtain these MWAA Property Interest Acquisitions but such failure is not the sole reason that Fairfax and/or Comstock is unable to obtain a permit for commencing the work shown on 2615-PI-004 and public improvement plan 2615-PI-005, Reston Station, Sunset Hills Road Improvements, dated June 2010, as amended, then the Airports Authority shall have no liability for liquidated damages for such failure until such failure is the sole reason that Fairfax and/or Comstock is unable to commence such work.
- **NOTE:** The joint use easements and dry utility easements described on Exhibit C-1, while necessary to complete the Wiehle Avenue Station Area Improvements, are not necessary to obtain building permits for any of the Plans. While the Airports Authority shall acquire such property interests, these acquisitions shall not be subject to Deadlines set forth above (nor shall Fairfax-requested changes to the approved final appraisal plat for any such property interests cause an extension of any Deadline).

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INFORMATION – 1

Minor Schedule Changes to FAIRFAX CONNECTOR Routes to be Implemented in June 2011

This is to notify the Board that the Fairfax County Department of Transportation (FCDOT) intends to make minor schedule and/or routing changes to several FAIRFAX CONNECTOR routes as outlined below:

- Routes 631/632 (Springfield District): Revised Routes 631 and 632 to use the open High Occupancy Vehicle (HOV) ramps on all trips in the late evening on weekdays.
- Routes 621/623 (Springfield District): Revised Route 621, 6:50PM trip leaving from the Vienna Metrorail Station to be a Route 623 “short-trip” on weekdays.
- Routes 321/322 (Mason and Lee District): Revised Route 322, 6:33AM trip to leave the Franconia-Springfield Metrorail Station at 5:34AM on Saturdays and Sundays. The Saturday and Sunday schedules will be adjusted, so they are identical.
- Route 555 (Hunter Mill District): Modify the weekday schedule to include three additional trips (5:30AM, 8:40AM and 9:15AM) and adjusted one trip (8:02AM to 8:07AM).

BACKGROUND:

In February 2011, at the request of the Fairfax County Board of Supervisors, the Virginia Department of Transportation (VDOT) made the decision to open the HOV ramps along I-66 at Monument Drive and Stringfellow Road to westbound traffic during non-peak hours. To take advantage of this opportunity for travel time savings, trips after 6:45PM on Routes 631 and 632 will be modified, so that they utilize the Stringfellow HOV ramp to access the Stringfellow Road Park-and-Ride Lot. In addition, the 6:50PM Route 621 trip is being changed to a Route 623 trip to provide travel time savings to customers by using the Monument Drive HOV ramp.

Modifications are being made to the Saturday and Sunday schedules of Routes 321 and 322, resulting in shifting the first Route 321 trip 59 minutes earlier to 5:34AM. The adjustments allow for a more efficient use of resources and result in a savings that will be used with the South County BRAC service plan in September 2011.

Board Agenda Item
June 7, 2011

Due to customer demand at the new Sunset Hills Interim Park-and-Ride Lot (Sunset Hills), three morning trips are being added to the schedule of Route 555 to provide more frequent service between Sunset Hills and the West Falls Church Metrorail Station. In addition, the public schedules for the RIBS 1, 2 & 3 will be modified to show that they no longer serve the Reston East Park-and-Ride Lot which closed in April 2011.

Unless otherwise directed by the Board, the Department of Transportation will implement these service changes in June 2011.

FISCAL IMPACT:

The additional trips on the Route 555 will have an FY 2011 operating cost of \$2,500 based on a partial year implementation and an annual operating cost of \$73,300. The transfer from Fund 124, County and Regional Transportation Projects to Fund 100, County Transit Systems, is sufficient to fund the new service on Route 555. The remaining schedule adjustments, as noted above, will have no fiscal impact.

ENCLOSED DOCUMENTS:

None

STAFF:

Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Acting Director, Fairfax County Department of Transportation (FCDOT)
Rollo Axton, Chief, Transit Services Division, FCDOT
Christin Wegener, Transit Services Division, FCDOT
Paul Mounier, Transit Services Division, FCDOT

Board Agenda Item
June 7, 2011

INFORMATION - 2

Contract Award – Pohick Stream Valley Trail, Burke VRE Trail (Braddock District)

Six (6) sealed bids for the construction of one prefabricated steel pedestrian bridge crossing, 5100 ft of 8 ft wide asphalt and concrete trail and related improvements in the Pohick Stream Valley Park, in Project 4YP201, Pedestrian Task Force Recommendations, in Fund 304 Transportation Improvements, were received and opened on April 8, 2011, as detailed in Attachment 1.

This project is included in the FY 2012-FY 2016 Approved Capital Improvement Program.

The lowest responsive and responsible bidder is Avon Corporation of Springfield, Virginia. Their total bid of \$814,834 is \$103,202, or 11.2% below the Engineer's pre-bid estimate of \$918,036. The second lowest bid of \$867,325 is \$52,491 or 6.4% above the low bidder. The highest bid of \$1,203,975 is \$389,141 or 48% above the low bid. The Fairfax County Park Authority analyzed the bids received on the referenced project. The items that varied substantially from the Engineer's Estimate included: 1) stone and asphalt (\$68,439 lower than Engineer's Estimate); and 2) signs, railings and bollards (\$36,598 lower than Engineer's Estimate).

Avon Corporation has satisfactorily completed several County projects, holds an active Virginia Class A Contractors License and is considered a responsible contractor. The Department of Tax Administration has verified that Avon Corporation has the appropriate Fairfax County Business, Professional and Occupational License (BPOL). Avon Corporation is a small business firm.

On May 25, 2011, the Fairfax County Park Authority Board approved the contract award. The work is to be completed within 270 calendar days of the Notice to Proceed.

Unless otherwise directed by the Board of Supervisors, the Fairfax County Park Authority will proceed to award this contract to Avon Corporation in the amount of \$814,834.

Board Agenda Item
June 7, 2011

FISCAL IMPACT:

Funding in the amount of \$977,801 is necessary to award this contract and to fund the associated contingency, administrative costs and other project related costs. Funding in the amount of \$1,017,861 is available in Project 4YP201, Pedestrian Task Force Recommendations, in Fund 304, Transportation Improvements.

ENCLOSED DOCUMENTS:

Attachment 1: Bid Results (List of Bidders)

Attachment 2: Scope of Work

Attachment 3: Location Map

STAFF:

Robert A. Stalzer, Deputy County Executive

John W. Dargle, Jr., Director, Fairfax County Park Authority



Attachment 1

BID RESULTS

Project Name: Pohick Stream Valley Trail Burke VRE Trail (Project #4YP201/PB001)

Project Includes: Minor site demolition and clearing, erosion and sediment controls, earthwork, grading, asphalt and concrete paving, cast in place concrete, steel pedestrian bridge installation, rip rap, fencing, pavement striping, signs, seeding and mulching, and related work

Project Manager: Tom McFarland

Bid Opening Date/Time: April 8, 2011 at 2:00 p.m.

ALTERNATES

Contractor Name (Bidder)	Base Bid Price	Days to Complete Project	1	2	Total
Planning and Development Division Estimate	\$800,000.00- \$1,000,000.00	270 Calendar Days			
Avon Corporation* 5241A Rolling Road Springfield, VA 22151	\$741,236.00		\$73,598.00		\$814,834.00
Jeffrey Stack, Inc. PO Box 280 Jersey, VA 22481	\$1,123,975.00		\$80,000.00		\$1,203,975.00
AND Contractors, Inc. 43808 Beaver Meadow Road Sterling, VA 20166	\$902,284.10		\$74,761.00		\$977,045.10
The Francis Lee Companies, LLC** 1101 Pennsylvania Ave NW, Suite 600 Washington, DC 20004	\$757,300.00		\$80,750.00		\$838,050.00
Environmental Quality Resources, LLC*** 1405 Benson Court, Suite C Arbutus, MD 21227	\$825,000.00		\$42,325.00		\$867,325.00
Fort Myer Construction Corporation 2237 33rd Street, NE Washington, DC 20018=1594	\$904,473.25		\$110,000.00		\$1,014,473.25

* apparent lowest bidder

** second apparent lowest bidder

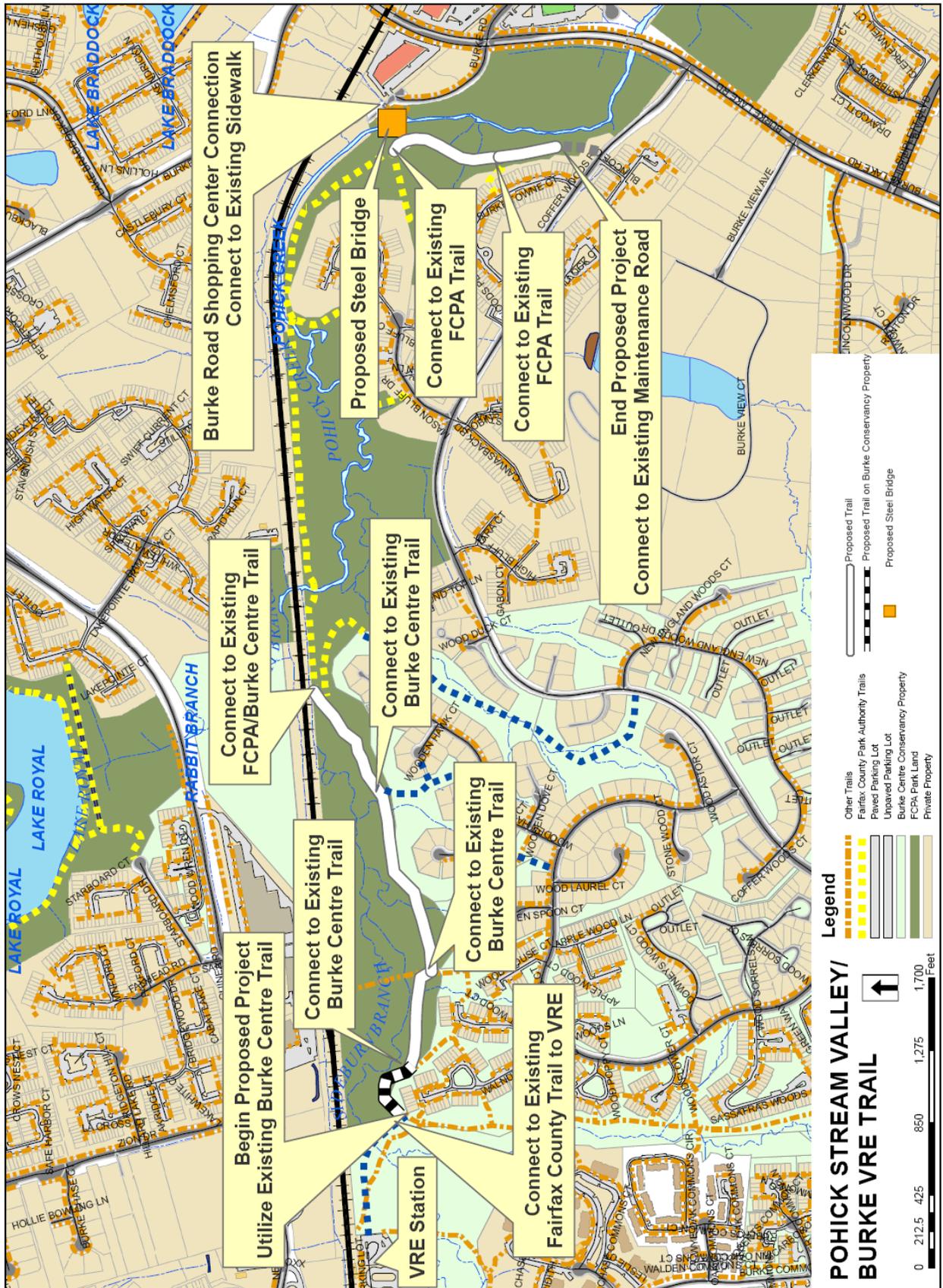
*** third apparent lowest bidder

SCOPE OF WORK

Pohick Stream Valley Trail – Burke VRE Trail

- Install erosion and sedimentation controls and perform clearing and rough grading as required.
- Construct approximately 5100 linear feet of 8' wide asphalt and concrete trail.
- Install one (1) 60' prefabricated steel pedestrian bridge over Pohick Creek.
- Install signs and site furniture as indicated on the plans.
- Install one (1) pedestrian crossing of Burke Road.
- Install tree and shrub plantings as per the provided Landscaping Plan.

Burke VRE Trail – Location Map



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Board Agenda Item
June 7, 2011

INFORMATION – 3

Contract Award – Seven Corners Transit Center (Mason District)

Four sealed bids were received and opened on April 19, 2011, for the construction of Seven Corners Transit Center, Project 26007G, in Fund 102, Federal/State Grant Fund and Project T0SCTC in Fund 124, County and Regional Transportation Projects. On November 21, 2005, the Board of Supervisors approved \$800,000 in Congestion Mitigation Air Quality (CMAQ) grants through the Virginia Department of Transportation and \$200,000 for the required Local Cash Match. Based on updated project estimates and a project redesign to incorporate input from shop owners, these funds are being supplemented with \$230,000 in commercial and industrial real estate tax funding, providing a Total Project Estimate of \$1,230,000. This project provides for construction of a bus transfer station in the northwest quadrant of the Seven Corners Center parking lot, between Thorne Road and Patrick Henry Drive in Falls Church. The project includes three bus bays with six bus shelters, a bus layover area, and bicycle facilities. This project is included in the FY 2012 - FY 2016 Approved Capital Improvement Program.

The lowest responsive and responsible bidder is Finley Asphalt and Sealing Inc. The firm's bid of \$766,372.21 is \$48,081.96 or 6.7% higher than the Engineer's Estimate of \$718,290.25. The second lowest bid of \$769,526.60 is \$3,154.39 or 0.4% above the low bid. The highest bid of \$966,103.00 is \$199,730.79 or 26.1% above the low bid.

Finley Asphalt and Sealing Inc. has satisfactorily completed several County projects and is considered a responsible contractor. The Department of Tax Administration has verified that Finley Asphalt and Sealing Inc. has the appropriate Fairfax County Business, Professional and Occupational License.

This bid may be withdrawn after June 18, 2011.

Unless otherwise directed by the Board of Supervisors, the Department of Public Works and Environmental Services will proceed to award this contract to Finley Asphalt and Sealing Inc. in the amount of \$766,372.21.

Board Agenda Item
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FISCAL IMPACT:

Funding in the amount of \$968,808 is necessary to award this contract and fund the associated contingency and other project costs including design adjustments, testing, contract administration, and inspection. Funding in the amount of \$1,032,454 is currently available in two Seven Corners Transit Center projects for the associated costs: \$802,454 in Project 26007G, Fund 102, Federal/State Grant Fund, and \$230,000 in commercial and industrial real estate funding, in Project T0SCTC, Fund 124, County and Regional Transportation Projects.

ENCLOSED DOCUMENTS:

Attachment 1 – Order of Bidders

STAFF:

Robert A. Stalzer, Deputy County Executive

James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)

Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

DEPARTMENT OF PUBLIC WORKS
& ENVIRONMENTAL SERVICES
CONSTRUCTION MANAGEMENT DIVISION

COUNTY OF FAIRFAX
VIRGINIA

DATE OF BID OPENING: April 19, 2011
NO AWARD OF CONTRACT YET MADE

SEVEN CORNERS TRANSIT CENTER

CONTRACT NO. CN11102079

PROJECT NO. 26007G (06000)

ORDER OF BIDDERS

- | | | |
|----|-------------------------------------|--------------|
| 1 | Finley Asphalt and Sealing Inc..... | \$766,372.21 |
| | 9105 Industry Drive | |
| | Manassas, VA 20111 | |
| 2. | Jeffrey Stack, Inc..... | \$769,526.60 |
| | P. O. Box 280 | |
| | Jersey, VA 22481 | |
| 3 | Ashburn Contracting Corp..... | \$843,278.25 |
| | 20666 Coppersmith Drive | |
| | Ashburn, VA 20147 | |
| 4 | Tavares Concrete Co., Inc..... | \$966,103.00 |
| | 8000 Cinder Bed Road | |
| | Lorton, VA 22079 | |

ENGINEER'S ESTIMATE \$718,290.25

Contract Time: 150 Calendar Days

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Board Agenda Item
June 7, 2011

INFORMATION - 4

Planning Commission Action on Application 2232-D10-24, Fairfax County Department of Public Works and Environmental Services (Dranesville District)

On Thursday, May 26, 2011, the Planning Commission voted unanimously (Commissioners de la Fe and Murphy absent from the meeting) to approve 2232-D10-24.

The Commission noted in its discussion that the application met the criteria of character, location and extent, and therefore was in conformance with Section 15.2-2232 of the Code of Virginia.

Application 2232-D10-24 sought approval to renovate and expand the existing McLean District Police Station and Government Center. The existing building will be entirely renovated and approximately 17,600 square feet of new construction will be added to three sides of the existing structure, for a total of 39,200 square feet. The site is located at 1437 Balls Hill Road in McLean. (Tax Map 30-1 ((1)) 33).

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim excerpts from 5/26/11 Commission meeting

Attachment 2: Vicinity map

STAFF:

Robert A. Stalzer, Deputy County Executive

Fred R. Selden, Acting Director, Department of Planning and Zoning (DPZ)

Chris Caperton, Chief, Public Facilities Branch, Planning Division, DPZ

Christopher Smith, Project Manager, Planning & Design Division, DPWES

Barbara J. Lipka, Executive Director, Planning Commission Office

2232-D10-24 – FAIRFAX COUNTY DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES (McLean District Police Station and Government Center)

Decision Only During Commission Matters
(Public Hearing held on May 5, 2011)

Commissioner Donahue: Thank you, Mr. Chairman. Mr. Chairman, on May 5th the Planning Commission conducted a public hearing on 2232-D10-24 for the planned renovation and expansion of the McLean District Police Station and Government Center. And we asked for a deferral of the decision only for two or three weeks in hopes that we might be able to find some additional public parking, which I believe we have, and I want to thank Chris Smith and Teresa Lepe, in particular, for their efforts in that regard. We may still have some questions. We're going to move this tonight, but we may have some questions in the future with respect - - respect to it being - - becoming constricted sometime in the future, but we're just going to have to deal with that sometime in the future. I do want to thank all staff members, and this is Mr. Smith and Ms. Lepe, Chris Caperton. Leanna O'Donnell did, I think, a very good job with the green building aspect. This application has been supported by the McLean Citizens Association. So, Mr. Chairman, I concur with the staff's conclusion that the proposal - - that the proposal by the Fairfax County Department of Public Works and Environmental Services, as amended, to renovate and expand the McLean District Police Station and Government Center, located at 1437 Balls Hill Road, McLean, satisfies the criteria of location, character, and extent as specified in *Virginia Code* Section 15.2-2232, as amended. And therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION FIND THE SUBJECT APPLICATION 2232-D10-24, AS AMENDED, SUBSTANTIALLY IN ACCORD WITH THE PROVISIONS OF THE ADOPTED COMPREHENSIVE PLAN.

Commissioners Migliaccio and Sargeant: Second.

Vice Chairman Alcorn: Seconded by Commissioners Migliaccio and Sargeant. Any discussion on that motion? All those in favor of the motion as articulated by Commissioner Donahue, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries. Thank you very much.

//

(The motion carried unanimously with Commissioners de la Fe and Murphy absent from the meeting.)

KAD

PLANNING DETERMINATION

Section 15.2-2232 of the Code of Virginia



Number: 2232-D10-24

District: Dranesville

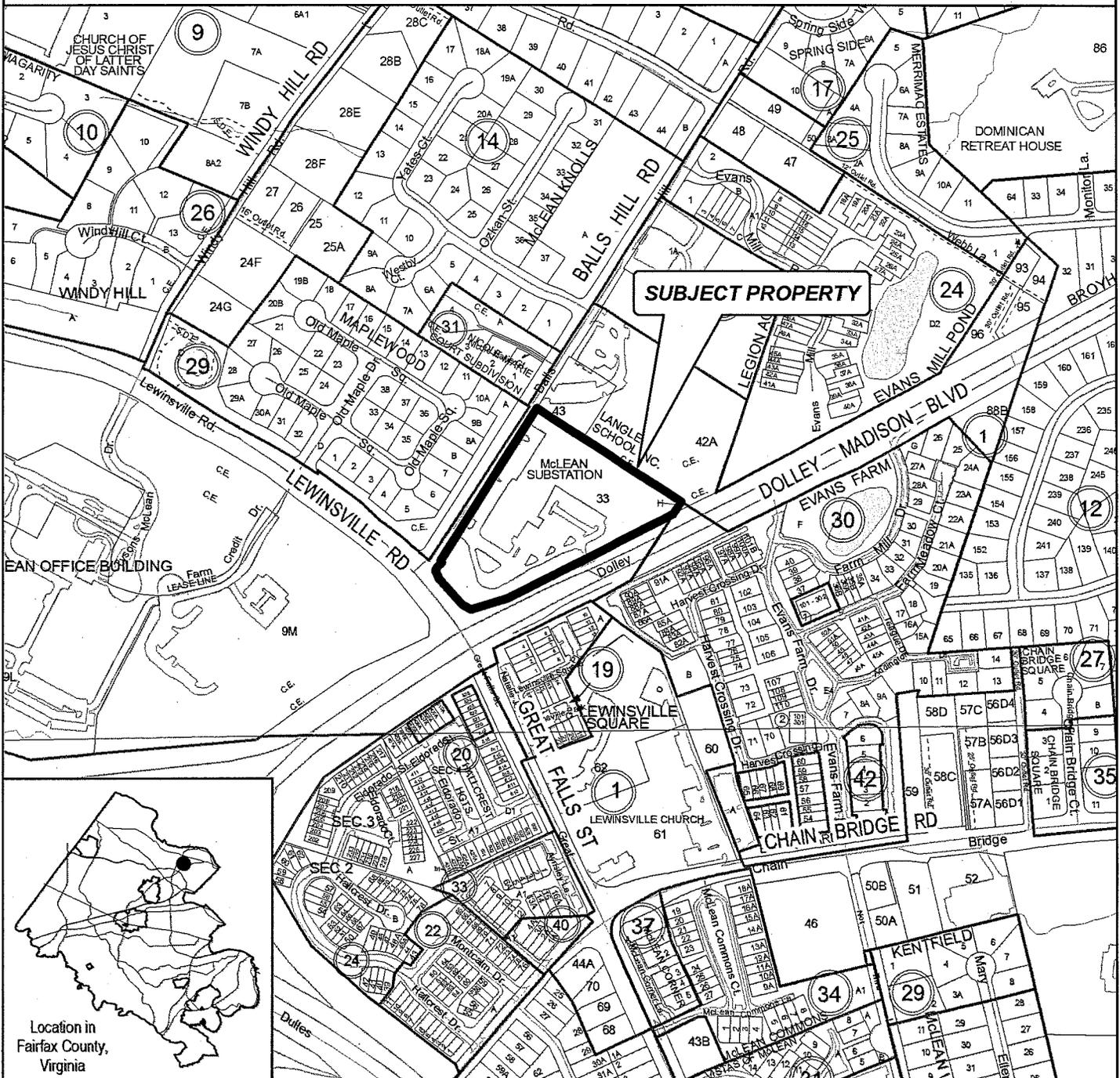
Acreage: 6.37 Ac.

Subject Property: 30-1 ((1)) 33

Planned Use: Public Facilities, Gov't. & Institutional

Applicant: Fairfax County Department of Public Works and Environmental Services

Proposed Use: Expansion of McLean District Police Station and Government Center (Dranesville District)



500 FEET

PREPARED BY THE DEPARTMENT OF PLANNING AND ZONING
USING FAIRFAX COUNTY GIS



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Board Agenda Item
June 7, 2011

10:45 a.m.

Matters Presented by Board Members

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Board Agenda Item
June 7, 2011

11:35 a.m.

CLOSED SESSION:

- (a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).
- (b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).
- (c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).
 - 1. *New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility v. The Fairfax County Board of Supervisors*, Case No. 10-2381 (United States Court of Appeals for the Fourth Circuit) (Mount Vernon District)
 - 2. *Carolyn McKay Sydnor v. Fairfax County, Virginia*, Civil Action No. 1:10-cv-934 (E.D. Va.)
 - 3. *Vienna Metro, LLC v. Board of Supervisors of Fairfax County, Virginia*, Case No. CL-2011-0006322 (Fx. Co. Cir. Ct.) (Providence District)
 - 4. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. George W. Garber and Mary L. Garber*, Case No. CL-2010-0015516 (Fx. Co. Cir. Ct.) (Hunter Mill District)
 - 5. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Carolyn Jones*, Case No. CL-2009-0011791 (Fx. Co. Cir. Ct.) (Lee District)
 - 6. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Toetie Jones*, Case No. CL-2010-0010295 (Fx. Co. Cir. Ct.) (Braddock District)

7. *Eileen M. McLane, Fairfax County Zoning Administrator v. John Y.C. Wang and Wan Shi Wang, Trustees of the Living Trust of John Y.C. Wang and Wan Shi Wang, Case No. CL-2009-0016276 (Fx. Co. Cir. Ct.) (Mount Vernon District)*
8. *Eileen M. McLane, Fairfax County Zoning Administrator v. Idalia Cruz and Nelzar Gallo, Case No. CL-2010-0014776 (Fx. Co. Cir. Ct.) (Hunter Mill District)*
9. *Eileen M. McLane, Fairfax County Zoning Administrator v. Abbas Y. Abutaa, a.k.a. Yousef Abutaa, Hamid R. Hosseinian, Hossein Goal, and Donna L. Goal, Case No. CL-2010-0016245 (Fx. Co. Cir. Ct.) (Mason District)*
10. *Eileen M. McLane, Fairfax County Zoning Administrator v. Dennis N. Brill, Case No. CL-2011-0000268 (Fx. Co. Cir. Ct.) (Lee District)*
11. *Eileen M. McLane, Fairfax County Zoning Administrator v. David Charles Jones, Gabrielle Clara Jones, and Catherine C. Mitchell, Case No. CL-2011-0003538 (Fx. Co. Cir. Ct.) (Lee District)*
12. *Eileen M. McLane, Fairfax County Zoning Administrator v. Judy D. Watson, Case No. CL-2011-0002019 (Fx. Co. Cir. Ct.) (Lee District)*
13. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Jorge Alberto Broide, Case No. CL-2010-0017885 (Fx. Co. Cir. Ct.) (Providence District)*
14. *Gary Pisner v. Board of Supervisors of Fairfax County, Fairfax County Enhanced Code Enforcement Strike Team, and Fairfax County Department of Housing and Community Development, Case No. CL-2010-0004076 (Fx. Co. Cir. Ct.) (Springfield District)*
15. *Eileen M. McLane, Fairfax County Zoning Administrator v. Eric D. Smith, Kevin D. Smith, and Michelle C. Smith, Case No. CL-2010-0014667 (Fx. Co. Cir. Ct.) (Hunter Mill District)*
16. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Cuong Van Luu and Ly Cam Le, Case No. CL-2011-0006716 (Fx. Co. Cir. Ct.) (Mount Vernon District)*

17. *Eileen M. McLane, Fairfax County Zoning Administrator v. Jorge F. Landivar and Patricia J. Landivar*, Case No. CL-2011-0006715 (Fx. Co. Cir. Ct.) (Dranesville District)
18. *Eileen M. McLane, Fairfax County Zoning Administrator v. L Parkway, LC*, Case No. CL-2011-0006976 (Fx. Co. Cir. Ct.) (Dranesville District)
19. *Eileen M. McLane, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Isabel Vasquez and Calixto M. Alfaro*, Case No. CL-2011-0006974 (Fx. Co. Cir. Ct.) (Mount Vernon District)
20. *Eileen M. McLane, Fairfax County Zoning Administrator v. Noel J. Gueugneau*, Case No. CL-2011-0006975 (Fx. Co. Cir. Ct.) (Mason District)
21. *Eileen M. McLane, Fairfax County Zoning Administrator v. Jae Hyung Cho and Chung Hee Cho*, Case No. CL-2011-0006991 (Fx. Co. Cir. Ct.) (Mount Vernon District)
22. *Eileen M. McLane, Fairfax County Zoning Administrator v. Grace Lee*, Case No. CL-2011-0007214 (Fx. Co. Cir. Ct.) (Dranesville District)
23. *Eileen M. McLane, Fairfax County Zoning Administrator v. Pierre Doose Eicher and Pamela J. Eicher*, Case No. CL-2011-0007369 (Fx. Co. Cir. Ct.) (Providence District)
24. *Eileen M. McLane, Fairfax County Zoning Administrator v. Miriam Yvette Sullivan*, Case Nos. 2011-0009792 and 2011-0009793 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
25. *Eileen M. McLane, Fairfax County Zoning Administrator v. Donald S. Evans*, Case Nos. 2011-0011614 and 2011-0011615 (Fx. Co. Gen. Dist. Ct.) (Lee District)
26. *Eileen M. McLane, Fairfax County Zoning Administrator v. Bachtuyet Nguyen, a.k.a. Bachtuyet Thi Nguyen and Anh T. Nguyen*, Case Nos. GV11011796 and GV11011797 (Fx. Co. Gen. Dist. Ct.) (Mason District)
27. *Eileen M. McLane, Fairfax County Zoning Administrator v. Long Phi Van and Trang Thi Nguyen*, Case Nos. GV110011794 and GV11011795 (Fx. Co. Gen. Dist. Ct.) (Mason District)

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Page 4

28. *Eileen M. McLane, Fairfax County Zoning Administrator v. Zahir Ahmed, Case Nos. GV11011613 and GV11011612 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)*

Board Agenda Item
June 7, 2011

3:00 p.m.

Public Hearing on SE 2008-MA-011 (Washington Baptist University, Inc.) to Permit a University and Modifications and Waivers in a CRD, Located on Approximately 50,225 Square Feet Zoned C-3, HC, SC and CRD, Mason District

The application property is located at 4300 and 4302 Evergreen Lane, Tax Map 71-2 ((2)) 13; 71-2 ((30)) (1) 101-104, 201, 202 and 204.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, May 26, 2011, the Planning Commission voted unanimously (Commissioners de la Fe and Murphy absent from the meeting) to recommend that the Board of Supervisors approve SE 2008-MA-011, subject to the Development Conditions found in Appendix 1 of the staff report dated May 5, 2011.

ENCLOSED DOCUMENTS:

Attachment 1 - Verbatim

Staff Report previously furnished and available online at
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4349004.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Suzianne Zottl, Staff Coordinator, Zoning Evaluation Division, DPZ

SE 2008-MA-011 – WASHINGTON BAPTIST UNIVERSITY, INC.

After Close of the Public Hearing

Vice Chairman Alcorn: Without objection, close the public hearing; recognize Commissioner Hall.

Commissioner Hall: Thank you, Mr. Chairman. This case - - this application enjoys the support of the Mason District Land Use Committee. The applicant has been before us several times. There's - - for such a simple and straight-forward application, for reasons I'm not necessarily understanding, it - - it has taken on a life of its own. Bottom line is no changes to the facility, maybe some striping in the parking lot, maybe a little asphalt, but that's it. And with that, I RECOMMEND APPROVAL OF SE 2008-MA-011, SUBJECT TO THE DEVELOPMENT CONDITIONS FOUND IN APPENDIX 1 OF THE STAFF REPORT DATED MAY 5, 2011.

Vice Chairman Alcorn: Is there a second to that motion?

Commissioner Lawrence: Second.

Vice Chairman Alcorn: Seconded by Commissioner Lawrence. Any discussion? All those in favor of recommending approval to the Board of Supervisors of SE 2008-MA-011, subject to the development conditions contained in the staff report dated May 5, 2011, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries. Thank you very much.

//

(The motion carried unanimously with Commissioners de la Fe and Murphy absent from the meeting.)

KAD

Board Agenda Item
May 24, 2011

3:30 p.m.

Public Hearing on RZ 2010-LE-013 (WPPI Springfield HS, LLC) to Rezone from C-6, CRD, HC and SC to PDC, CRD, HC and SC to Permit Commercial Development with an Overall Floor Area Ratio (FAR) of 1.68 and Approval of the Conceptual Development Plan, Located on Approximately 1.63 Acres, Lee District

The application property is located in the northwest quadrant of the intersection of Old Keene Mill Road and Amherst Avenue, Tax Map 80-4 ((9)) 4, 5 and 6.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, February 24, 2011, the Planning Commission unanimously voted (Commissioners Hall, Harsel, and Murphy absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2010-LE-013 and the associated Conceptual Development Plan, subject to the execution of proffers consistent with those dated February 11, 2011, with corrections to the sheet numbers referenced in Proffer 8C;
- Approval of an increase in maximum FAR from 1.5 to 1.68, pursuant to Par. 3 of Sect. 6-208 of the Zoning Ordinance;
- Modification of the off-street loading space requirement;
- Approval of a 20% parking reduction;
- Modification of the 20-foot minimum rear yard requirement to permit a minimum rear yard of 8 feet along the eastern boundary; and
- Modification of the front yard 45-degree bulk plane requirements to permit a front yard bulk plane of 4 degrees.

In a related action, the Planning Commission voted unanimously (Commissioners Hall, Harsel, and Murphy absent from the meeting) to approve FDP 2010-LE-013, subject to the Board's approval of RZ 2010-LE-013 and the Conceptual Development Plan.

ENCLOSED DOCUMENTS:

Attachment 1 - Verbatim

Staff Report previously furnished and available online at
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4341564.PDF>

Board Agenda Item
May 24, 2011

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
St. Clair Williams, Staff Coordinator, Zoning Evaluation Division, DPZ

Planning Commission Meeting
February 24, 2011
Verbatim Excerpt

RZ/FDP 2010-LE-013 – WPPI SPRINGFIELD HS, LLC

After the Close of the Public Hearing

Vice Chairman Alcorn: I'll close the public hearing; recognize Commissioner Migliaccio.

Commissioner Migliaccio: Thank you, Mr. Chairman. What we have tonight is a fairly straightforward case. It is a request to take a vacant piece of commercial land from the C-6 District to a PDC District in order to allow for a proposed 120,000 square foot hotel. This location is in the Springfield CRD nearby to what was the old mixing bowl. The applicant has met with the community on multiple occasions from the start to make this a better project and I think they have succeeded. The application has the support of the Lee District Land Use Committee and staff's recommendation for approval. I concur. Therefore, Mr. Chairman, I have a series of motions to make.

Vice Chairman Alcorn: Yes, you do.

Commissioner Migliaccio: And I apologize.

Vice Chairman Alcorn: Not a problem.

Commissioner Migliaccio: First, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2010-LE-013, SUBJECT TO THE PROFFERS CONSISTENT WITH THOSE DATED FEBRUARY 11TH, 2011.

Commissioner Flanagan: Second.

Vice Chairman Alcorn: Does he need to reference the CDP in that motion as well?

Mr. Williams: The FDP?

Commissioner Migliaccio: That's the next one.

Vice Chairman Alcorn: The CDP.

Commissioner Migliaccio: Oh, CDP. I'm sorry.

Vice Chairman Alcorn: Okay, and so, would your motion also include the associated Conceptual Development Plan, Commissioner?

Commissioner Migliaccio: Yes.

Vice Chairman Alcorn: Okay. That motion's been made. Is there a second?

Commissioner Flanagan: Second.

Vice Chairman Alcorn: Seconded by Commissioner Flanagan. Any discussion on that motion?
Commissioner Hart.

Commissioner Hart: Thank you, Mr. Chairman. I'm sorry, got my light here. The – just, I would request, as a FRIENDLY AMENDMENT, that that be SUBJECT TO STRAIGHTENING OUT THIS PAGE NUMBER business in – wherever that is – [PROFFER] 8C, AS TO WHICH PAGES WE'RE TALKING ABOUT. IT'S NOT 14, 15, 16; IT'S SOMETHING ELSE. Straighten that out before we get to the Board.

Commissioner Migliaccio: I accept that as a friendly amendment.

Commissioner Hart: Thanks.

Vice Chairman Alcorn: Okay, any other discussion on the motion? All those in favor of recommending approval of RZ 2010-LE-013 and the associated Conceptual Development Plan, subject to the proffers consistent with those dated February 11th, 2011, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries. Commissioner Migliaccio.

Commissioner Migliaccio: Thank you. I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2010-LE-013, SUBJECT TO THE BOARD OF SUPERVISORS' APPROVAL OF RZ-2010-LE-013.

Commissioner Flanagan: Second.

Commissioner de la Fe: – and the Conceptual Development Plan.

Vice Chairman Alcorn: – and the Conceptual Development Plan?

Commissioner Migliaccio: Yes.

Commissioner Sargeant: Second.

Vice Chairman Alcorn: Okay, so moved. Seconded by Commissioners Flanagan and Sargeant. Is there a discussion of that motion? All those in favor of recommending approval - - I'm sorry - -

all those in favor of approving FDP 2010-LE-013, subject to the Board of Supervisors' approval of the rezoning and the CDP, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries. Commissioner Migliaccio.

Commissioner Migliaccio: Thank you. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF AN INCREASE IN MAXIMUM FAR FROM 1.5 TO 1.68, PURSUANT TO PARAGRAPH 3 OF SECTION 6-2 - - 208 OF THE ZONING ORDINANCE.

Commissioners Flanagan and Sargeant: Second.

Vice Chairman Alcorn: Seconded by Commissioners Flanagan and Sargeant. Any discussion of that motion? All those in favor of recommending approval of an increase in maximum FAR from 1.5 to 1.68, pursuant to Paragraph 3 of Section 6-208 of the Zoning Ordinance, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries. Commissioner Migliaccio.

Commissioner Migliaccio: Thank you. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE MODIFICATION OF THE OFF-STREET LOADING SPACE REQUIREMENT.

Commissioners Flanagan and Sargeant: Second.

Vice Chairman Alcorn: Seconded by Commissioners Sargeant and Flanagan. Any discussion of that motion? All those in favor of recommending approval of the modification of the off-street loading space requirement, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries. Commissioner Migliaccio.

Commissioner Migliaccio: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE 20 PERCENT PARKING REDUCTION.

Commissioners Flanagan and Sargeant: Second.

Vice Chairman Alcorn: Seconded by Commissioners Flanagan and Sargeant. Any discussion of that motion? All those in favor of recommending approval of the 20 percent parking reduction, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries. Commissioner Migliaccio.

Commissioner Migliaccio: Thank you. Just two more. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE MODIFICATION OF THE 20-FOOT MINIMUM REAR YARD REQUIREMENT TO PERMIT A MINIMUM REAR YARD OF EIGHT FEET ALONG THE EASTERN BOUNDARY.

Commissioners Flanagan and Sargeant: Second.

Vice Chairman Alcorn: Seconded by Commissioners Flanagan and Sargeant. Any discussion of that tongue-twister motion? All those in favor of approving the motion as articulated by Commissioner Migliaccio, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries. And finally, Commissioner Migliaccio.

Commissioner Migliaccio: Yes, finally, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE MODIFICATION OF THE FRONT YARD 45-DEGREE BULK PLANE REQUIREMENTS TO PERMIT A FRONT YARD BULK PLANE OF FOUR DEGREES.

Commissioners Flanagan and Sargeant: Second.

Vice Chairman Alcorn: Seconded by Commissioners Flanagan and Sargeant. Any discussion of that motion? All those in favor of recommending approval of the modification of the front yard 45-degree bulk plane requirements to permit a front yard bulk plane of four degrees, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries as well.

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(The motions carried unanimously with Commissioners Hall, Harsel, and Murphy absent from the meeting.)

JN

Board Agenda Item
June 7, 2011

3:30 p.m.

Public Hearing on RZ 2011-SU-003 (Lylab Holdings, LLC) to Rezone from R-1 and WS to PDH-8 and WS to Permit Residential Development at a Density of 8 Dwelling Units Per Acre (du/ac), Approval of the Conceptual Development Plan and Waiver of the Minimum District Size and Open Space Requirements, Located on Approximately 21,914 Square Feet, Sully District

The application property is located in the northwest quadrant of the intersection of Elmwood St. and Dallas St. Tax Map 44-2 ((2)) 21.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing was held on Thursday, May 26, 2011 and the Commission deferred its decision to Thursday, June 2, 2011. The Planning Commission recommendation will be forwarded to the Board of Supervisors subsequent to that date.

ENCLOSED DOCUMENTS:

Staff Report previously furnished and available online at
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4349581.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Bob Katai, Staff Coordinator, Zoning Evaluation Division, DPZ

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Board Agenda Item
June 7, 2011

3:30 p.m.

Public Hearing on RZ 2010-SU-015 (Lylab Holdings, LLC) to Rezone from R-1 and WS to PDH-8 and WS to Permit Residential Development at a Density of 8 Dwelling Units Per Acre (du/ac), Approval of the Conceptual Development Plan and Waiver of the Minimum District Size and Open Space Requirements, Located on Approx. 21,806 Square Feet, Sully District

The application property is located on the south side of Dallas St. approximately 500 feet east of its intersection with Walney Rd. Tax Map 44-2 ((2)) 7.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, May 26, 2011, the Planning Commission voted unanimously (Commissioners de la Fe and Murphy absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2010-SU-015, subject to the executed proffers dated May 12, 2011; and
- Waiver of the minimum district size of 2 acres for the PDH District.

The Planning Commission voted 9-0-1 (Commissioner Harsel abstaining; Commissioners de la Fe and Murphy absent from the meeting) to recommend that the Board approve the requested waiver of the minimum open space requirement for the PDH-8 District.

The Commission voted unanimously (Commissioners de la Fe and Murphy absent from the meeting) to approve FDP 2010-SU-015, subject to the Development Conditions contained in Appendix 2 of the staff report and subject also to Board approve of RZ 2010-SU-015.

ENCLOSED DOCUMENTS:

Attachment 1 - Verbatim

Staff Report previously furnished and available online at
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4349583.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Bob Katai, Staff Coordinator, Zoning Evaluation Division, DPZ

RZ 2010-SU-015 – LYLAB HOLDINGS, LLC (Rockland Village)
FDP 2010-SU-015 – LYLAB HOLDINGS, LLC (Rockland Village)

RZ 2011-SU-003 – LYLAB HOLDINGS, LLC (Rockland Village)
FDP 2011-SU-003 – LYLAB HOLDINGS, LLC (Rockland Village)

After Close of the Public Hearing

Vice Chairman Alcorn: I will close the public hearing and recognize Commissioner Litzenberger.

Commissioner Litzenberger: Thank you, Mr. Chairman. Since there are two applications, one is noncontroversial so I'm going to move for approval on that. On that controversial one, which is Lot 21, which is SU-003, I'm going to move for a deferral so I want - - whenever I get a petition I want to check that out. And, first I want to thank Mr. Blevins and I want to thank his wife, Kathy Ilkhani, who's - - who did all the great graphics that you saw tonight. It really made it easy to understand. And I want to thank Ms. Silisty for coming out and all the hard work she's done for 10 years for the neighborhood. We really do appreciate it. So, first I want to move to approve this - - the one that's noncontroversial. So, Mr. Chairman, there are four motions for that one. I MOVE THE PLANNING COMMISSION RECOMMEND APPROVAL OF RZ 2010-SU-015, SUBJECT TO THE EXECUTED PROFFERS DATED MAY 12, 2011.

Commissioner Flanagan: Second.

Vice Chairman Alcorn: Seconded by Commissioner Flanagan. Any discussion of that motion? All those in favor of recommending approval of RZ 2010-SU-015, subject to the execution of the proffers dated - - what was the date?

Commissioner Litzenberger: May 12th.

Vice Chairman Alcorn: May 12, 2011, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries. Commissioner Litzenberger.

Commissioner Litzenberger: Thank you, sir. I MOVE THE PLANNING COMMISSION RECOMMEND APPROVAL OF [sic] FDP 2010-SU-015, SUBJECT TO THE DEVELOPMENT CONDITIONS CONTAINED IN APPENDIX 2.

Commissioner Flanagan: Second.

Vice Chairman Alcorn: In that case - - Seconded by Commissioner Flanagan. I believe it's - - we would be approving the FDP. Correct?

Commissioner Litzenberger: Yes.

Vice Chairman Alcorn: Okay. So, to APPROVE THE FDP. That motion's been seconded by Commissioner Flanagan. Any discussion? All those in favor of approving FDP 2010-SU-015, subject to the development conditions, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All those opposed? That motion carries. Commissioner Litzenberger.

Commissioner Litzenberger: Thank you. I MOVE THE PLANNING COMMISSION RECOMMEND APPROVAL OF A WAIVER OF THE MINIMUM DISTRICT SIZE OF TWO ACRES FOR THE PDH DISTRICT.

Commissioner Flanagan: Second.

Vice Chairman Alcorn: Seconded by Commissioner Flanagan. Any discussion on that motion? All those in favor, say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries.

Commissioner Litzenberger: Lastly, I MOVE THE PLANNING COMMISSION RECOMMEND APPROVAL OF A WAIVER OF THE MINIMUM OPEN SPACE REQUIREMENT FOR THE PDH-8 DISTRICT.

Commissioner Flanagan: Second.

Vice Chairman Alcorn: Seconded by Commissioner Flanagan. Any discussion on that motion? All those in favor of the motion, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries.

Commissioner Harsel: I abstain.

Vice Chairman Alcorn: And Commissioner Harsel abstains.

Commissioner Litzenberger: Okay. Moving on to the other rezoning, which is 003, I MOVE THE PLANNING COMMISSION DEFER THE DECISION ONLY FOR RZ/FDP 2011-SU-003 TO A DATE CERTAIN OF NEXT THURSDAY, WHICH IS JUNE 2, 2011.

Commissioners Flanagan and Hall: Second.

Vice Chairman Alcorn: That motion is seconded by Commissioners Flanagan and Hall. Any discussion on that motion? All those in favor of deferring decision only on RZ and FDP 2011-SU-003 to a date certain of June 2, 2011, with the record remaining open for written comment, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries.

Commissioner Litzenberger: Thank you, Mr. Chairman.

Vice Chairman Alcorn: All right. Thank you. Thanks everyone for coming out tonight; appreciate it.

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(The first through third motions carried unanimously with Commissioners de la Fe and Murphy absent from the meeting.)

(The fourth motion carried by a vote of 9-0-1 with Commissioner Harsel abstaining; Commissioners de la Fe and Murphy absent from the meeting.)

(The fifth motion carried unanimously with Commissioners de la Fe and Murphy absent from the meeting.)

KAD

Board Agenda Item
June 7, 2011

3:30 p.m.

Public Hearing on PCA 92-P-001-07 (Cityline Partners LLC) to Amend the Proffers for RZ 92-P-001 Previously Approved for Commercial Development to Permit Site Modifications with an Overall Floor Area Ratio of .65, Located on Approximately 15.95 Acres Zoned C-3 and HC, Providence District

and

Public Hearing on SE 2010-PR-023 (Cityline Partners LLC) to Permit an Increase in Building Height from 90 feet to 225 feet, Located on Approximately 2.94 Acres Zoned C-3 and HC Providence District

PCA 92-P-001-07 is located on the S. side of Dolley Madison Blvd., on both E. and W. side of Colshire Dr. Tax Map 30-3 ((28)) C1, 4B and 4C

RZ 2010-SU-015 is located at 7598 Colshire Dr. Tax Map 30-3 ((28)) 4C.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing will be held on Thursday, June 2, 2011. The Commission's recommendations will be forwarded to the Board of Supervisors subsequent to that date.

ENCLOSED DOCUMENTS:

Staff Report previously furnished and available online at <http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4350157.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Suzanne Lin, Staff Coordinator, Zoning Evaluation Division, DPZ

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Board Agenda Item
June 7, 2011

3:30 p.m.

Public Hearing on RZ 2010-LE-020 (FB Property, LLC (A Virginia Limited Liability Company)) to Rezone from C-8 and R-1 to PDC to Permit Commercial Development (Hotel) with an Overall Floor Area Ratio of 0.70 and Approval of the Conceptual Development Plan and a Waiver of the 75 Foot Required Setback from an Interstate Highway, Located on Approximately 4.54 Acres, Lee District

The application property is located in the northwest quadrant of the intersection of Loisdale Rd. and Newington Rd. Tax Map 99-1 ((1)) 5A and 6.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, May 5, 2011, the Planning Commission voted unanimously (Commissioner Sargeant recused) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2010-LE-020 and the associated Conceptual Development Plan, subject to the execution of proffers consistent with those dated May 5, 2011, modified as follows:
 - In the third bullet of i(b) under Proffer 6g, change the word “provide” to “provided”;
 - In the second bullet under Proffer 7d, revise the second sentence to read: “However, if the Applicant provides documentation demonstrating, to the satisfaction of the EDRB of DPZ, that USGBC completion of the review of the LEED Certification application has been delayed through no fault of the Applicant and/or the Applicant’s contractors or subcontractors, this proffered time frame shall be extended for one (1) year, and no release of escrowed funds shall be made to the Applicant or to Fairfax County during the extension unless the Applicant provides documentation from the USGBC to ERDB within this time frame that the LEED Certification has been obtained.”
 - Add the following sentence to the end of Proffer 9d: “Such landscaping shall include, pursuant to VDOT’s approval and as permitted by site conditions, planting trees.”
 - At the end of the last sentence of Proffer 11, add the words “the main gate of” before the words “Fort Belvoir”;
 - In Proffer 13a, capitalize the words “Zoning Ordinance” and, in the same proffer, before the word “and” add the following words: “including future amendments”.

Board Agenda Item
June 7, 2011

- Modification of the loading space requirement;
- Modification of the trail requirement along the Loisdale Road property frontage to that shown on the CDP/FDP;
- Modification of the peripheral parking lot landscaping requirement to that shown on the CDP/FDP; and
- Modification of the transitional screening and barrier requirements along the eastern perimeter of the site to that shown on the CDP/FDP.

The Commission voted 10-0-1 (Commissioner Harsel abstaining; Commissioner Sargeant recused) to recommend that the Board of Supervisors modify the 75-foot minimum required distance for a commercial building from an interstate right-of-way to that shown on the CDP/FDP.

The Commission voted 8-1-2 (Commissioner Harsel opposed; Commissioners Hall and Lawrence abstaining; Commissioner Sargeant recused) to recommend that the Board approve a deviation from the tree preservation target requirement set forth in Chapter 122 (Tree Conservation Ordinance) of the Fairfax County Code.

In a related action, the Planning Commission voted unanimously (Commissioner Sargeant recused) to approve FDP 2010-LE-020, subject to Board approval of RZ 2010-LE-020 and the Conceptual Development Plan.

The Planning Commission unanimously voted (Commissioner Sargeant recused) to recommend that the Board of Supervisors send a written request to VDOT urging that they retain the existing access for a southbound left turn into the service station and fast food restaurant (located at Tax Map 99-1 ((1)) 4 and 5D) until such time as all access options to southbound and northbound Loisdale Road are evaluated by VDOT.

ENCLOSED DOCUMENTS:

Attachment 1 - Verbatim

Staff Report previously furnished and available online at
<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4348108.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Erin Grayson, Staff Coordinator, Zoning Evaluation Division, DPZ

RZ/FDP 2010-LE-020 – FB PROPERTY, LLC

After the Close of the Public Hearing

Chairman Murphy: Public hearing is closed; recognize Mr. Migliaccio.

Commissioner Migliaccio: Thank you, Mr. Chairman. Tonight, we heard from an applicant who wishes to rezone four and a half acres from C-8 and R-1 to PDC in order to build a high quality hotel. Currently on the site there is a vacant hotel, the Hunter Motel. This application will bring a high quality, full service hotel to the area that - to help service the growth expected from BRAC. It will be LEED certified. It will greatly improve the stormwater situation on-site. It will provide money for our park system. The Lee District Land Use Committee supports the application. The neighboring business owners now, with the current proffers, support the application. Therefore, Mr. Chairman, I have a few motions to make this evening.

Chairman Murphy: All right.

Commissioner Migliaccio: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2010-LE-020 AND THE ASSOCIATED CDP, SUBJECT TO THE PROFFERS CONSISTENT WITH THOSE DATED MAY 5TH, 2011.

Commissioner Donahue: Second.

Chairman Murphy: Seconded by Mr. Donahue. Is there a discussion of the motion?

Commissioners Hart and Lawrence: Mr. Chairman?

Chairman Murphy: Mr. Hart, then Mr. Lawrence.

Commissioner Hart: Subject to staff cleaning up a couple of the proffers that Ms. Coyle had addressed at the beginning –

Commissioner Migliaccio: Correct. Thank you, Mr. Hart.

Commissioner Hart: – before it gets to the Board

Commissioner Migliaccio: Correct.

Chairman Murphy: Mr. Lawrence.

Commissioner Lawrence: Same comment.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors to approve RZ 2010-LE-020, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Migliaccio.

Commissioner Migliaccio: I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2010-LE-020, SUBJECT TO THE BOARD OF SUPERVISORS' APPROVAL OF RZ 2010-LE-020 AND THE CDP.

Commissioner Donahue: Second.

Chairman Murphy: Seconded by Mr. Donahue. Is there a discussion? All those in favor of the motion to approve FDP 2010-LE-020, subject to the Board's approval of the rezoning and Conceptual Development Plan, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Migliaccio: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF THE 75-FOOT MINIMUM REQUIRED DISTANCE FOR A COMMERCIAL BUILDING FROM INTERSTATE HIGHWAY RIGHTS-OF-WAY TO THAT SHOWN ON THE CDP/FDP.

Commissioner Donahue: Second.

Chairman Murphy: Seconded by Mr. Donahue. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Commissioner Harsel: Abstain.

Chairman Murphy: Opposed? Motion carries. Ms. Harsel abstains.

Commissioner Migliaccio: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF THE LOADING SPACE REQUIREMENT.

Commissioner Donahue: Second.

Chairman Murphy: Seconded by Mr. Donahue. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Migliaccio: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF THE TRAIL REQUIREMENT ALONG THE LOISDALE ROAD PROPERTY FRONTAGE TO THAT SHOWN ON THE CDP/FDP.

Commissioner Donahue: Second.

Chairman Murphy: Seconded by Mr. Donahue. Is there a discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Migliaccio: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF THE PERIPHERAL PARKING LOT LANDSCAPING REQUIREMENT TO THAT SHOWN ON THE CDP/FDP.

Commissioner Donahue: Second.

Chairman Murphy: Seconded by Mr. Donahue. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. What? Did you say something?

Commissioner Hall: I said aye.

Chairman Murphy: Oh, she said aye.

Commissioner Hall: Aye; Aye aye.

Chairman Murphy: She wanted to mitigate that "aye."

Commissioner Hall: I did.

Commissioner Migliaccio: Thank you, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF THE TRANSITIONAL SCREENING AND BARRIER REQUIREMENT ALONG THE EASTERN PERIMETER OF THE SITE TO THAT SHOWN ON THE CDP/FDP.

Commissioner Donahue: Second.

Chairman Murphy: Seconded by Mr. Donahue. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Migliaccio: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A DEVIATION FROM THE TREE PRESERVATION TARGET REQUIREMENT OF chapter 1- - CHAPTER 122 OF THE COUNTY CODE IN THE PFM.

Commissioner Donahue: Second.

Chairman Murphy: Seconded by Mr. Donahue. Is there a discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Harsel: No.

Chairman Murphy: Ms. Harsel votes no.

Commissioners Hall: I abstain.

Chairman Murphy: Ms. Hall abstains.

Commissioner Lawrence: Abstain.

Commissioners: Mr. Lawrence –

Chairman Murphy: Mr. Lawrence abstains.

Commissioner Migliaccio: And Mr. Chairman, I have one final motion that impacts directly the business owners in Mount Vernon. And I'd like Mr. Flanagan to handle this one, please.

Chairman Murphy: All right, Mr. Flanagan.

Commissioner Flanagan: Yes, this evening, earlier I think you all received an email from Mr. Budnik

-

Chairman Murphy: Yes.

Commissioner Flanagan: - indicating that - that we had had a very good, productive meeting with the applicant and the staff in both Lee District and Mount Vernon. And we came up with the modifications to the proffers that were presented this evening. And the one motion that it took to get the - us to that particular point is the following motion here, which is that I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD OF SUPERVISORS SEND A WRITTEN REQUEST TO VDOT URGING VDOT TO RETAIN THE EXISTING ACCESS FOR A SOUTHBOUND LEFT TURN INTO THE SERVICE STATION AND FAST FOOD RESTAURANT, LOCATED AT TAX MAP 99-1((01))-4 AND -5D, OPEN UNTIL SUCH TIME AS ALL ACCESS OPTIONS TO SOUTHBOUND AND NORTHBOUND LOISDALE ROAD ARE EVALUATED BY VDOT.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

//

(Motions 1, 2, 4, 5, 6, 7, and 9 carried unanimously with Commissioner Sargeant recusing himself.)

(Motion 3 carried by a vote of 10-0-1, with Commissioner Harsel abstaining; Commissioner Sargeant recusing himself.)

(Motion 8 carried by a vote of 8-1-2, with Commissioner Harsel opposed; Commissioners Hall and Lawrence abstaining; Commissioner Sargeant recusing himself.)

JN

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Board Agenda Item
June 7, 2011

3:30 p.m.

Public Hearing on Proposed Revisions to Sections 3-1-2, 3-1-19, 3-1-24, 3-2-57, and 3-3-57 of Chapter 3 of The Code of Fairfax County

ISSUE:

Board adoption of the proposed revisions to Sections 3-1-2, 3-1-19, 3-1-24, 3-2-57 and 3-3-57 of Chapter 3, Code of Fairfax County. The proposed revisions amend the definition of a subset of positions in the County's exempt service, clarify language regarding employee participation in political activities that aligns with Virginia Code Section 15.2-1512.2, articulate employees' rights to express matters of public concern to elected officials which aligns with Virginia Code Section 15.2-1512.4, and make elected public officials ineligible to participate in the Deferred Retirement Option Program.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the proposed revisions to Chapter 3 of the County Code.

TIMING:

Board action is requested on June 7, 2011. The public hearing was authorized on May 10, 2011.

BACKGROUND:

These revisions to the Code of Fairfax County are proposed for purposes of administrative and policy clarification and to ensure compliance with State law. The following summarizes the proposed changes:

- *Section 3-1-2 – County service and divisions thereof.*
This change amends the definition of a subset of positions in the County's exempt service, including terms, conditions and status titles, in order to conform to relevant federal statutes and regulations. (Attachment 1)
- *Section 3-1-19 – Protection of legitimate political activity of employees; restrictions.*
This change specifies and clarifies language pertinent to employee participation in protected political activities and ensures alignment between the Fairfax County

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Code and Virginia Code Section 15.2-1512.2. Specifically, employees cannot be retaliated against because of participation in political activities permitted under state law and county ordinance. Complaints of such retaliation will be grievable and eligible for a binding decision from the Civil Service Commission.
(Attachment 1)

- *Section 3-1-24 – Right of employees to contact elected officials.*
This proposed addition specifies and clarifies language pertinent to employees' rights to express matters of public concern to elected officials. This addition ensures alignment between Fairfax County Code and Virginia Code Section 15.2-1512.4. (Attachment 1)
- *Sections 3-2-57 and 3-3-57– Deferred Retirement Option Program (DROP) Participation Exclusion*
The proposed revisions would make elected public officials ineligible to participate in the DROP program. Elected public official is defined as a member of the Board of Supervisors, the Sheriff, the Commonwealth's Attorney or the Clerk of the Fairfax County Circuit Court.

At the March 15, 2011 Board Personnel and Reorganization Committee meeting, the President of IAFF Local 2068 provided information that raised several concerns about the proposed revisions related to political activity of employees. Staff discussed the concerns raised in the fact sheet distributed at the meeting by the IAFF with the recommended IAFF contact and with subsequent changes (new language added to the proposed 3-1-19 and the new section 3-1-24); staff believes that the concerns have been addressed.

FISCAL IMPACT:

There is no actuarial cost and no fiscal impact associated with these changes.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed revisions to Chapter 3 of the Fairfax County Code,
Attachment 2: Letter from Fiona Liston, Cheiron, to Robert Mears
Removal of Elected Officials from DROP participation dated April 21, 2011

STAFF:

Susan Woodruff, Director, Department of Human Resources
Robert L. Mears, Executive Director, Fairfax County Retirement Systems
Peter D. Andreoli, Jr., Deputy County Attorney, Office of the County Attorney

Section 3-1-2. County service and divisions thereof.

(a) The County service shall be divided into an exempt service and a competitive service. Exempt employees shall not be appointed to positions in the competitive service except through the competitive process specified in this Article and in Personnel Regulations. A member of the exempt service may become a member of the competitive service only through appointment to a position in the competitive service through the competitive selection process specified in this Article and in the Personnel Regulations. Thus, service in the exempt service shall not by itself permit an employee to become a member of the competitive service.

(b) The following employees shall constitute the exempt service.

(1) The County Executive, County Attorney, deputy county executives, assistant county executive, executive assistants to the County Executive, department heads appointed after July, 1987 and office staffs of members of the Board of Supervisors.

(2) Employees who are engaged under contracts.

(3) Employees appointed under the provisions of the procedural directives governing the exempt service with hours limited ~~tenure not to~~ 1560 in one calendar year if employed in an exempt-benefits-eligible position, exceed 24 consecutive biweekly pay periods or with hours worked not to exceed 1,039,900 in one calendar year if employed in an exempt-temporary position.

(4) Employees administered pursuant to an agreement executed in accordance with § 3-1-(c)(2) of this Article, provided that they are designated exempt in such an agreement.

(5) Assistant registrars and all election officials employed by the Electoral Board.

(6) Employees who are providing services pursuant to requirements contracts such as fee class instructors.

(c) The County Executive shall issue procedural directives, with the approval of the Board of Supervisors, for administration of the exempt service. Only such provisions of this Article and of Personnel Regulations, which specifically state that they are applicable to exempt employees, or which are made applicable through procedural directives provided herein, shall apply to the exempt service.

(d) All other employees to whom this Article applies are in the competitive service, except as otherwise provided by state law or regulation. They shall be appointed, promoted, demoted, transferred or dismissed solely on the basis of merit and fitness in accordance with the provisions of this Article and Personnel Regulations. (7-87-3; 32-89-3; 10-92-3; 26-98-3; 35-05-3.)

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Section 3-1-19. - Protection of legitimate political activity of employees; restrictions.¹

(a) For the purposes of this Section:

(1) "Political campaign" means activities engaged in for the purposes of promoting a political issue, for influencing the outcome of an election for local or state or federal office, or for influencing the out come of a referendum or a special election.

(2) "Political candidate" means any person who has made known his or her intention to seek, or campaign for, local or state or federal office in a general, primary, or state election.

(3) "Political party" means any party organization or group having as its purpose the promotion of political candidates or political campaigns.

(4) "Political activities" includes, but is not limited to, voting, registering to vote; soliciting votes or endorsements on behalf of a political candidate or

¹ This footnote in the current text reads as follows: "Chapter 15 of The Hatch Act (5 U.S.C. §§ 1501 et seq.) imposes additional restrictions on partisan political activities of County employees "whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal Agency." It is not clear from the text of the Code whether the current footnotes in the Code were enacted as part of the Ordinance, or whether they are editorial in nature. In this draft the footnotes are for reference purposes only and are not intended at this point to be a part of the text of a proposed ordinance amendment.

political campaign; expressing opinions, privately or publicly, on political subjects and candidates; displaying a political picture, sign, sticker, badge, or button; participating in the activities of, or contributing financially to, a political party, candidate, or campaign or an organization that supports a political candidate or campaign; attending or participating in a political convention, caucus, rally, or other political gathering; initiating, circulating or signing a political petition; engaging in fund-raising activities for any political party, candidate or campaign; acting as a recorder, watcher, challenger, or similar officer at the polls on behalf of a political party, candidate or campaign; or becoming a political candidate.

(5) "Employee" means any person in the competitive or exempt service of the County, including, but not limited to, firefighters, emergency medical technicians, police officers, and deputies, appointees, and employees of the Commonwealth's Attorney, the Clerk of the Circuit Court, and the Sheriff.²

~~(a)~~(b)

All employees ~~of the County~~ shall be protected against any unwarranted infringement of their rights as American citizens to vote as they choose, to express their opinions ~~in private~~, and to join any legitimate political organization whose purposes are not inconsistent with their loyalty to the United States. It is the intent of this Section to grant employees the full latitude to participate in

² The definitions provided in new paragraph (a) (1), (2) and (3) are taken from Va. Code Ann. § 15.2-1512.2(A), with the addition of the word "federal" before "office" in sub-paragraphs (a)(1) and (2). The definition provided in new paragraph (a)(4) is taken from Va. Code Ann. § 15.2-1512.2(C). The definition provided in new paragraph (a)(5) is derived from Va. Code Ann. § 15.2-1512.2(B).

political activities provided by state statute, subject to all of the restrictions placed on such participation by state law, including, but not limited to, Va. Code Ann. § 15.2-1512.2, in a manner that is consistent with the proper and efficient performance of their duties as employees.³

(1) To this end, all employees may participate in political activities while they are off duty, out of uniform, and not on the premises of their employment with the County.

(2) It is prohibited for any employee to engage in political activities while on duty, in uniform, or on the premises of their employment with the County; provided, however, employees may attend or participate in a candidate forum or debate sponsored by a non-partisan organization held on County premises; and provided further that employees who are not on duty and not in uniform may engage in political activities on County-owned or leased premises under the same circumstances and subject to the same terms and conditions that apply to members of the general public.⁴

~~(b)~~(c)

³ The purpose of enacting a revised Section 3-1-19 is to ensure that any restrictions imposed by the Board of Supervisors complies with Va. Code Ann. § 15.2-1512.2 (Supp. 2010)

⁴ Va. Code Ann. § 15.2-1512.2(B) prohibits all localities (counties, cities, and towns) from prohibiting any employee of the locality, including firefighters, emergency medical technicians, or law enforcement officers within its employment, or deputies, appointees, and employees of local constitutional officers from participating in political activities while those employees are off duty, out of uniform and not on the premises of their employment with the locality. While the statute defines "political activities," it does not define "premises of their employment with the locality."

It shall be unlawful for any person official in the service of the County or of a constitutional officer to reward or to discriminate against any applicant for a position as an employee in the competitive service or any merit system employee because of his or her political affiliations or political activities as permitted by this Section, except as such affiliation or activity may be established by law as disqualification for employment by the County or by the constitutional officer.

~~(e)~~(d)

The County Executive is hereby authorized and directed to acquaint ~~County~~ employees with the provisions of this Article protecting them against intimidation, coercion and discrimination on account of such legitimate political activities. The County Executive is also hereby authorized to promulgate such procedural directives as he or she deems appropriate to administer the provisions of this Section.

~~(d)~~(e)

Any ~~County~~ employee who has access to the grievance procedure and who feels that he or she has been ~~intimidated~~ discriminated or retaliated against in violation of the provisions of this ~~Article~~ Section because of his or her participation or failure to participate in political activities shall be entitled to file a grievance concerning such action under the County's grievance procedure ~~an appeal thereon~~ pursuant to ~~Section 3-1-13(d) of this Article.~~⁵

⁵ The section cross-referenced in the current text makes it clear that only a merit employee may grieve such action. *See also* Pers. Reg. § 17.3-2(d) and (e). The language is amended for the sake of clarity. The Board of Supervisors may extend the right to file a grievance on these grounds to probationary merit employees if it desires to do so. Va. Code Ann. § 15.2-1507(A)(3)(b) and (A)(5)(c) (Supp. 2010); *see also* Pers. Reg. § 17.2-2(b) (probationary

~~(e)~~**(f)**

The appointing authority, the County Executive, and the Human Resources Director shall give no consideration to any endorsements or recommendations from any national, state or local political party or officer thereof in making appointments, promotions or dismissals or in any other personnel action.

~~(f)~~

~~Any officer or employee in the competitive service of the County who accepts an appointment to or becomes a candidate for election to any federal, local or state public office shall resign his or her position unless, prior to accepting the appointment or becoming a candidate, the officer or employee shall:~~

~~(1)~~

~~Obtain an advisory opinion from the Commonwealth's Attorney stating that his or her off duty candidacy or acceptance of the appointment and continued status as a County Officer or employee would not constitute a violation of the Virginia State and Local Government Conflict of Interests Act, Va. Ann. Code § 2.1-639.1 et seq.; and~~

~~(2)~~

~~Obtain an opinion from the officer or employee's appointing authority which states that the employee's off duty candidacy or acceptance of the appointment will not have an adverse impact on the employee's~~

employees in their initial probationary period may grieve complaints of discrimination although otherwise without access to the grievance procedure). The accompanying changes to the Personnel Regulations does so.

~~performance of County duties, and that such off-duty candidacy or appointment will not have an adverse impact on the ability of the employee's co-workers to perform their public duties. Before rendering such opinion, the appointing authority shall confer with the employee's immediate supervisors and the County Executive.~~

~~(g)~~

~~Any County officer or employee who desires to become a candidate for public elective office but is unable to obtain the opinions described above may be permitted, in the discretion of the appointing authority, to be absent from his or her duties as a County officer or employee by being placed on leave, without pay, during the period of such candidacy. Any County officer or employee who is elected or appointed to a public office as described herein and is unable to obtain the opinions described above shall resign his or her County position before assuming office.~~

~~(h)(g)~~

~~No person holding a position in the competitive service shall be required by any person or organization to make any contribution to the campaign funds of any political party or any candidate for public office. No officer or employee of the County shall knowingly solicit or take part in soliciting any assessment, subscription or contribution for any political organization, namely one which sponsors and works actively for the election of candidates to public office, or for any political candidate from any employee in the competitive service.~~

Employees are prohibited from using their official authority to coerce or attempt to coerce a subordinate employee to pay, lend, or contribute anything of value to a political party, candidate, or campaign, or to discriminate against any employee or applicant for employment because of that person's political affiliations or political activities, except as such affiliation or activity may be established by law as disqualification for employment.⁶

(h)

Employees are prohibited from discriminating in the provision of public services, including, but not limited to fire fighting, emergency medical, or law enforcement services, or responding to requests for such services on the basis of the political affiliations or political activities of the person or organization for which such services are provided or requested.⁷

(i)

Employees are prohibited from suggesting or implying that any county, city, or town has officially endorsed a political party, candidate, or campaign.⁸

~~(i)~~ (j)

~~Except as specified in subsection (h) above, nothing in this Article shall limit the right of any County officer or employee to take part in the management of any political party or other group which sponsors candidates for election to local, state~~

⁶ See Va. Code Ann. § 15.2-1512.2(D).

⁷ See Va. Code Ann. § 15.2-1512.2(E).

⁸ See Va. Code Ann. § 15.2-1512.2(F)

~~or national public office, provided that such activity is not conducted during the employee's working hours or at the employee's place of work; or to limit any officer or employee's rights as a citizen to express his or her opinion or to vote.~~

If an employee violates a provision of this Section, the employee shall be subject to disciplinary action, up to and including dismissal. It shall be unlawful for a person other than an employee to violate any provision of this Section.⁹

(k)

It shall be an affirmative defense to a criminal charge or a disciplinary action under this Section that, prior to engaging in the activity giving rise to the criminal charge or disciplinary action, the officer or employee or person who is not an employee had requested and received from the County Executive a determination that his or her participation in the proposed activity under the facts and circumstances described in his or her request did not fall under any of the prohibitions of this Section. Such determination is a defense only to the extent that the officer or employee fully and completely disclosed all material facts and circumstances in his or her request for determination. Requests for such a determination shall be in writing. The County Executive shall render his or her determination in writing no sooner than (10) days after receipt of the request and

⁹ For the effect of being declared unlawful, *see* Fairfax County Code §§ 1-1-12 and 1-2-14. Employees are subject to disciplinary action. Persons who are not employees are not. Violations of the Code include aiding and abetting of violations. Fairfax County Code § 1-1-10.

after obtaining the opinion of the County Attorney. Such determinations shall be kept on file in the office of the Clerk of the Board of Supervisors.¹⁰

¹⁰ This procedure described in this paragraph is similar to Fairfax County Code § 3-9-4 under the so-called "Revolving Door" ordinance.

(1)

Nothing in this Section shall be construed as relieving an employee from complying with the provisions of any applicable federal law, including, but not limited to, the Hatch Act, 5 U.S.C. §§ 1501, et seq.

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Section 3-1-24. – Right of employees to contact elected officials.¹¹

(a) For the purposes of this Section, "matters of public concern" mean matters of interest to the community as a whole, whether for social, political, or other reasons, and shall include discussions that disclose any (1) evidence of corruption, impropriety or other malfeasance on the part of government officials, (2) violations of law, or (3) incidence of fraud, abuse, or gross mismanagement.

(b) Nothing in this Article shall be construed to prohibit or otherwise restrict the rights of any employee in the County service to express opinions to federal, state, or local elected officials on matters of public concern, nor shall any such employee be subjected to any acts of retaliation because the employee has expressed such opinions.¹²

(c) Nothing in this Section shall be construed as prohibiting the County from designating and limiting who may speak on its behalf or on behalf of its departments.

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¹¹ See Va. Code Ann. § 15.2-1512.4 (Supp. 2010) (right of local government employees to contact state and local elected officials). Note: the statute addresses only state or local elected officials and does not address federal elected officials. In this draft, the footnotes are for reference purposes only and are not intended at this point to be a part of the text of a proposed ordinance amendment.

¹² *Id;* see also Fairfax County Code § 3-1-21(e) ("whistleblower" protection), Pers. Reg. § 1.9-3 (same), and Pers. Reg. § 17.3-2(f) ("whistleblower" right to grieve).

Section 3-2-57. - Deferred Retirement Option Program.

Effective July 1, 2005, there is hereby established a Deferred Retirement Option Program ("DROP") for eligible members of this System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

(a)

Definitions.

(1)

DROP period means the three-year period immediately following the commencement of the member's participation in the DROP.

(2)

Eligible member means any member who has reached, or will reach within 60 days, his or her normal retirement date as defined in § 3-2-1(n), other than a member who is an elected public official.

(3)

For purposes of this Section, *elected public official* means a member of the Board of Supervisors, the Sheriff, the Commonwealth's Attorney, or the Clerk of Court.

(b)

Election to participate.

(1)

An eligible member may participate in the DROP only once.

An eligible member who desires to participate in the DROP

must file an application with the Retirement Administration

Agency not less than 60 days prior to the date of the

commencement of the member's participation in the DROP. In

the case of employees who seek to commence their DROP

period between July 1, 2005, and August 1, 2005, the Board of

Trustees shall have the authority to waive the requirement that

their application be made at least 60 days prior to the

commencement of the member's participation in the DROP.

(2)

A member's election to participate in the DROP is irrevocable,

with the exception that a member who elects to participate in

the DROP may revoke that election prior to the commencement

of his or her DROP period; once revoked, a member may not

then elect to participate in the DROP for a period of at least 12

months from the date of his or her revocation.

(3)

At the time of an eligible member's election to participate in the

DROP, he or she must make an election in writing pursuant to

§ 3-2-32(c) as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse after the member's death.

(4)

An eligible member who elects to participate in the DROP will agree to do so for a period of three years.

(5)

An eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her accrued sick leave to creditable service or to convert all but 40 hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.

(c)

Continued employment.

(1)

A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County in the

position he or she held before the effective date of his or her election to participate in the DROP program. Thereafter, the participating DROP member will perform the services of that position or any other position to which he or she is promoted or transferred.

(2)

A participating DROP member will continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member will receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case will a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.

(3)

A participating DROP member will continue to remain eligible for health and life insurance benefits provided by the County to its employees and will remain eligible to participate in the County's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance benefit will be the same deductions that would have

been taken had the participating DROP member been an active County employee, not the deductions that would be taken from the retirement benefits and allowances of a retiree.

(4)

All County personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member will remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period will not be included in the computation of the member's average final compensation. A participating DROP member is also subject to the County's disciplinary policies and regulations.

(5)

If a participating DROP member's continued employment with Fairfax County is interrupted by military service, there will be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement benefits and allowances will continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of

the DROP period, the member's DROP account balance will be paid to the member whether or not he or she has returned to his or her former County position, and the member will begin to receive his or her normal retirement benefits.

(6)

Except as otherwise set forth herein, a participating DROP member's continued service will be deemed to be normal service retirement and will not count as creditable service with the System.

(7)

Upon commencement of a participating DROP member's DROP period, the County will cease to withhold contributions to the System from the participating DROP member's salary.

(8)

The salary received by a participating DROP member during his or her DROP period will not be included by the County in the base that is used to determine the amount of the County's employer contributions to the System.

(d)

DROP account.

(1)

Upon commencement of the member's participation in the DROP, the member's service retirement allowance pursuant to § 3-2-32(a)(2) and the additional retirement allowance pursuant to § 3-2-32(a)(3) will be paid into the member's DROP account.

The initial amount credited to a member's DROP account will be computed based on his or her average final compensation as of the date of the commencement of the DROP period.

(2)

The initial monthly amount will be increased each July 1 based upon the annual cost of living adjustment provided to retirees pursuant to § 3-2-44. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement benefits and allowances if he or she were retired will also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.

(3)

The participating DROP member's DROP account will be credited with interest at an annual rate of five percent, compounded monthly. Interest will not be pro-rated for any period less than a full month.

(4)

Contributions by the County and the participating DROP member into the System for the participating DROP member will cease.

(5)

Amounts credited to a participating DROP member's DROP account will not constitute annual additions under 26 U.S.C. § 415.

(6)

A participating DROP member's DROP account will not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance will remain part of the assets of the System.

(e)

Cessation of County employment.

(1)

At the conclusion of a participating DROP member's DROP period, the member's County employment will automatically cease. The participating DROP member shall then begin to receive normal service retirement benefits and allowances computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or

her creditable service at the time of the commencement of the DROP period, plus cost of living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least 60 days prior to the conclusion of a participating DROP member's DROP period, the member must make one of the following elections concerning payment of his or her DROP account balance:

(A)

The member may receive payment of his or her DROP account balance as a lump sum.

(B)

The member may elect to roll over his or her DROP account balance into a qualified retirement plan, such as an IRA.

(C)

The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she

must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.

(D)

The member may elect to use his or her DROP account balance to increase his or her monthly retirement benefits and allowances. The amount of the increase will be determined based on the actuarial equivalent of the member's DROP account balance.

(E)

The member may divide his or her DROP account balance in half, and may then elect to use 50% of his or her DROP account balance to increase his or her monthly retirement benefits and allowances, and to receive the remainder in any manner listed in paragraphs (A), (B) and (C) above.

In the event that the participating DROP member does not make the election required by this section, DROP account balance will be used to increase his or her monthly retirement benefits and allowances. The amount of the increase will be determined based on the actuarial equivalent of the member's DROP account balance.

(2)

A participating DROP member may terminate his or her County employment at any time, in which case the effective

date of the member's termination of his or her County employment shall be treated as the end of the DROP period for the provisions of this section.

(3)

In the event that the employment of a participating DROP member is terminated by the County during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.

(f)

Death or disability during DROP period.

(1)

If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of § 3-2-32(c), the participating DROP member's surviving spouse will receive

payment of the participating DROP member's DROP account balance and will begin to receive benefits and allowances pursuant to the joint and last survivor option election of the participating DROP member.

(2)

If a participating DROP member becomes disabled during the DROP period, the participating DROP member will receive:

(A)

In the case that a participating DROP member suffers a disability that would be considered an ordinary disability as defined in [§ 3-2-33](#) and [3-2-35](#) the effective date of the member's disability will be treated as the end of the participating DROP member's DROP period.

(B)

In the case that a participating DROP member suffers a service-connected disability as set forth in [§ 3-2-36](#), the participating DROP member may elect either (i) to receive the service-connected disability retirement benefits and allowances to which he or she would otherwise be entitled or (ii) to receive the normal service retirement benefits and allowances to which he or she would be entitled plus his or her DROP account

balance. An election to receive service-connected disability retirement benefits and allowances or severe service-connected disability retirement benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.

(g)

Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board of Trustees is also authorized to adopt rule and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (20-05-3; 40-08-3; 41-08-3; 27-10-3.)

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Section 3-3-57. - Deferred Retirement Option Program.

Effective October 1, 2003, there is hereby established a Deferred Retirement Option Program ("DROP") for eligible members of this System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

(a)

Definitions.

(1)

DROP period means the three-year period immediately following the commencement of the member's participation in the DROP.

(2)

Eligible member means any member who is, or will become within 60 days, eligible for normal service retirement benefits as those are defined in § 3-3-32(a), other than a member who is an elected public official.

(3)

For purposes of this Section, *elected public official* means a member of the Board of Supervisors, the Sheriff, Commonwealth's Attorney, or the Clerk of Court.

(b)

Election to participate.

(1)

An eligible member may participate in the DROP only once.

An eligible member who desires to participate in the DROP

must file an application with the Retirement Administration

Agency not less than 60 days prior to the date of the

commencement of the member's participation in the DROP. In

the case of employees who seek to commence their DROP

period between October 1, 2003 and November 20, 2003, the

Board of Trustees shall have the authority to waive the

requirement that their application be made at least 60 days prior

to the commencement of the member's participation in the

DROP.

(2)

A member's election to participate in the DROP is irrevocable,

with the exception that a member who elects to participate in

the DROP may revoke that election prior to the commencement

of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least 12 months from the date of his or her revocation.

(3)

At the time of an eligible member's election to participate in the DROP, he or she must make an election in writing pursuant to [§ 3-3-33\(c\)](#) as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse after the member's death.

(4)

An eligible member who elects to participate in the DROP will agree to do so for a period of three years.

(5)

An eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her accrued sick leave to creditable service or to convert all but 40 hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.

(c)

Continued employment.

(1)

A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County in the position he or she held before the effective date of his or her election to participate in the DROP program. Thereafter, the participating DROP member will perform the services of that position or any other position to which he or she is promoted or transferred.

(2)

A participating DROP member will continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member will receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case will a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.

(3)

A participating DROP member will continue to remain eligible for health and life insurance benefits provided by the County to its employees and will remain eligible to participate in the County's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance benefit will be the same deductions that would have been taken had the participating DROP member been an active County employee, not the deductions that would be taken from the retirement benefits and allowances of a retiree.

(4)

All County personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member will remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period will not be included in the computation of the member's average final compensation. A participating DROP member is also subject to the County's disciplinary policies and regulations.

(5)

If a participating DROP member's continued employment with Fairfax County is interrupted by military service, there will be no interruption of the member's participation in the DROP.

During the period of the participating DROP member's military service, the member's retirement benefits and allowances will continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance will be paid to the member whether or not he or she has returned to his or her former County position, and the member will begin to receive his or her normal retirement benefits.

(6)

Except as otherwise set forth herein, a participating DROP member's continued service will be deemed to be normal service retirement and will not count as creditable service with the System.

(7)

Upon commencement of a participating DROP member's DROP period, the County will cease to withhold contributions to the System from the participating DROP member's salary.

(8)

The salary received by a participating DROP member during his or her DROP period will not be included by the County in the base that is used to determine the amount of the County's employer contributions to the System.

(d)

DROP account.

(1)

Upon commencement of the member's participation in the DROP, the member's service retirement allowance pursuant to [§ 3-3-33\(a\)](#) and the additional retirement allowance pursuant to [§ 3-3-56](#) will be paid into the member's DROP account. The initial amount credited to a member's DROP account will be computed based on his or her average final compensation as of the date of the commencement of the DROP period.

(2)

The initial monthly amount will be increased each July 1 based upon the annual cost of living adjustment provided to retirees pursuant to [§ 3-3-45](#). Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement benefits and allowances if he or she were retired will also result in

adjustments to the monthly amount credited to a participating DROP member's DROP account.

(3)

The participating DROP member's DROP account will be credited with interest at an annual rate of 5%, compounded monthly. Interest will not be pro-rated for any period less than a full month.

(4)

Contributions by the County and the participating DROP member into the System for the participating DROP member will cease.

(5)

Amounts credited to a participating DROP member's DROP account will not constitute annual additions under 26 U.S.C. § 415.

(6)

A participating DROP member's DROP account will not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance will remain part of the assets of the System.

(e)

Cessation of County employment.

(1)

At the conclusion of a participating DROP member's DROP period, the member's County employment will automatically cease. The participating DROP member shall then begin to receive normal service retirement benefits and allowances computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost of living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least 60 days prior to the conclusion of a participating DROP member's DROP period, the member must make one of the following elections concerning payment of his or her DROP account balance:

(A)

The member may receive payment of his or her DROP account balance as a lump sum.

(B)

The member may elect to roll over his or her DROP account balance into a qualified retirement plan, such as an IRA.

(C)

The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.

(D)

The member may elect to use his or her DROP account balance to increase his or her monthly retirement benefits and allowances. The amount of the increase will be determined based on the actuarial equivalent of the member's DROP account balance.

(E)

The member may divide his or her DROP account balance in half, and may then elect to use 50% of his or her DROP account balance to increase his or her monthly retirement benefits and allowances, and to

receive the remainder in any manner listed in

paragraphs (A), (B) and (C) above.

In the event that the participating DROP member does not make the election required by this section, the member will receive payment of his or her DROP account balance as a lump sum.

(2)

A participating DROP member may terminate his or her

County employment at any time, in which case the effective

date of the member's termination of his or her County

employment shall be treated as the end of the DROP period for

the provisions of this section.

(3)

In the event that the employment of a participating DROP member is terminated by the County during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.

(f)

Death or disability during DROP period .

(1)

(A)

If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of [§ 3-3-33\(c\)](#), the participating DROP member's surviving spouse will

receive payment of the participating DROP member's DROP account balance and will begin to receive benefits and allowances pursuant to the joint and last survivor option election of the participating DROP member.

(B)

If a participating DROP member dies during the DROP period, and the participating DROP member's death is a service-connected accidental death as set forth in § 3-3-38, the member's beneficiary shall receive the benefits provided for in § 3-3-38(a)(1); if there is no designated beneficiary on record with the System, payment of these amounts shall be to the member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of § 3-3-33(c), the participating DROP member's surviving spouse will receive the benefits provided for in § 3-3-38(a)(1)(B) and the participating DROP member's DROP account balance, and will begin to receive benefits and allowances pursuant to the joint and last survivor election of the participating DROP member.

(2)

If a participating DROP member becomes disabled during the DROP period, the participating DROP member will receive:

(A)

In the case that a participating DROP member suffers a disability that would be considered an ordinary disability as defined in § 3-3-35, the effective date of the member's disability will be treated as the end of the participating DROP member's DROP period.

(B)

In the case that a participating DROP member suffers a service-connected disability as set forth in § 3-3-36 or a severe service-connected disability as set forth in § 3-3-37.2, the participating DROP member may elect either (i) to receive the service-connected disability retirement benefits and allowances or the severe service-connected disability retirement benefits and allowances to which he or she would otherwise be entitled or (ii) to receive the normal service retirement benefits and allowances to which he or she would be entitled plus his or her DROP account balance. An election to receive service-

connected disability retirement benefits and allowances
or severe service- connected disability retirement
benefits shall constitute a waiver of the member's right
to receive any amounts credited to his or her DROP
account balance.

(g)

Execution of documents and adoption of rules and regulations. The
County Executive is authorized to execute all documents necessary or
appropriate to operate the DROP including, but not limited to, the
establishment of a trust within which the participating DROP members'
DROP accounts shall be held and administered. The Board of Trustees
is also authorized to adopt rule and regulations governing the DROP.
Any documents executed by the County Executive shall be approved
for form by the County Attorney prior to execution. (36-03-3; 41-08-3;
27-10-3.)

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Classic Values, Innovative Advice

April 21, 2011

Mr. Robert Mears
Executive Director
Fairfax County Retirement Systems
10680 Main Street, Suite 280
Fairfax, Virginia 22030-3812

Re: *Removal of Elected Officials from DROP participation*

Dear Bob:

As requested, we are writing to provide an actuarial cost estimate on the proposal to preclude elected officials from participating in the DROP program for both the Uniformed and Employees' Retirement Systems. We have determined that excluding the currently active 12 elected officials from DROP eligibility would have a negligible impact on the County's contribution to the ERS. Similarly, this proposed ordinance change would have no impact on the URS liability or contribution rate.

This analysis was prepared as of July 1, 2010, using the same actuarial assumptions and methods as described in our July 1, 2010 actuarial valuation reports. The employee data used in this analysis was that provided for the 2010 valuation. The results are applicable only for the 2012 Fiscal Year.

Please call if you have any questions or comments.

Sincerely,
Cheiron

A handwritten signature in black ink that reads 'Fiona E. Liston'.

Fiona E. Liston, FSA
Consulting Actuary



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Board Agenda Item
June 7, 2011

4:00 p.m.

Public Hearing to Consider Proposed Amendments to the Public Facilities Manual Re:
Design of Public Streets and Sidewalks

ISSUE:

Board adoption of proposed amendments to Chapters 7 and 8 of the Public Facilities Manual (PFM) of Fairfax County, Virginia. The proposed amendments address the new State Secondary Street Acceptance Requirements and Appendix B(1) Subdivision Street Design Guide of the Virginia Department of Transportation (VDOT) Road Design Manual, and emergency access and operations requirements.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing was held on Thursday, May 5, 2011. The Commission's decision was deferred to May 26, 2011 and then to June 2, 2011. The Commission's recommendation will be forwarded to the Board of Supervisors subsequent to that date.

RECOMMENDATION:

The County Executive recommends that the Board adopt the proposed amendments to the PFM as set forth in the Staff Report, dated March 29, 2011, and that the amendments become effective 12:01 a.m. on June 8, 2011.

These amendments have been coordinated with the Fairfax County Department of Transportation, Fairfax County Fire and Rescue Department, and the Office of the County Attorney. In addition, the proposed PFM amendments have been recommended for approval by the Engineering Standards Review Committee (ESRC), except for the minimum street widths for streets with parking on both sides. A letter from the ESRC to the Board is provided as Attachment B of the Staff Report (Attachment 1). The proposed minimum street widths for streets with parking on both sides have been recommended by the Fire Marshal.

TIMING:

The Board is requested to take action on June 7, 2011. On March 29, 2011, the Board authorized advertising of the public hearings. The Planning Commission held a public hearing on May 5, 2011, and deferred decision to May 26, 2011.

BACKGROUND:

SECONDARY STREET ACCEPTANCE REQUIREMENTS

The 2007 Virginia General Assembly added § 33.1-70.3 to the Code of Virginia, which requires that the Commonwealth Transportation Board (CTB) develop secondary street acceptance requirements. These new requirements, called the Secondary Street Acceptance Requirements (SSAR), must be met before secondary streets constructed by developers, localities and entities other than VDOT will be accepted into the state highway system for maintenance. The SSAR (24 VAC 30-92) replaces and supersedes the old Subdivision Street Requirements (24 VAC 30-91). The Fairfax County Department of Transportation provided comments, on the Board's behalf, to VDOT on the SSAR prior to their adoption in 2008. The SSAR became effective on March 9, 2009.

Section 33.1-70.3 of the Code of Virginia provides that the new regulations shall include provisions that the CTB deems necessary and appropriate to achieve the safe and efficient operation of the state's transportation network and include the following:

- Requirements to ensure the connectivity of road and pedestrian networks with the existing and future transportation network;
- Provisions to minimize stormwater runoff and impervious surface area; and
- Provisions for performance bonding of new secondary streets and associated cost recovery fees.

The major elements of the SSAR that are different from the old Subdivision Street Requirements are described below:

Connectivity Requirements

The SSAR increases the number of access points to adjacent properties or developments. It is expected that increased connectivity will result in more effective use of the transportation infrastructure. In general, increasing the connectivity of a street network will provide for more alternative routes, instead of forcing all traffic in a subdivision to one entrance or exit onto an arterial street. The SSAR establishes three area types in the Commonwealth: compact, suburban, and rural. The connectivity requirements in the SSAR are based on area type. Currently, Fairfax County is located entirely within a compact area type according to U.S. decennial census data.

Under the connectivity requirements for all area types, the street layout for a development must provide sufficient connections in multiple directions and to multiple

properties. In addition, development in compact and suburban area types must meet a certain level of connectivity, which is measured using a connectivity index. The connectivity indices for compact and suburban area types are 1.6 and 1.4, respectively. The proposed PFM amendments reference the connectivity requirements in the SSAR rather than restating them.

A listing of the connectivity requirements is included in the Staff Report.

Pedestrian Accommodation Requirements

The SSAR provides pedestrian accommodation (e.g. sidewalks) requirements based on the median lot size or the floor to area ratio (FAR) of the development, proximity to public schools, the adjoining developments' pedestrian network, and the functional classification of the street. The PFM amendments are aligned with the requirements of the SSAR, except regarding proximity to schools. The County's current requirements are more stringent than the SSAR so it is proposed that these requirements remain unchanged.

A listing of the requirements for pedestrian accommodation is included in the Staff Report.

The SSAR indicates that sidewalks and trails that are located entirely within the VDOT right-of-way and constructed to VDOT standards will be maintained by VDOT. Currently, VDOT will accept a 10-foot wide asphalt trail for maintenance. However, VDOT may consider accepting an 8-foot wide trail under rare instances where bicycle traffic is expected to be low, pedestrian use is expected to be occasional, there will be safe and frequent passing opportunities, and the path will not be subject to maintenance loading conditions that would cause pavement damage. The County continues to discuss this requirement with VDOT in connection with the County's pedestrian and bicycle initiatives. If narrower or alternative surface trails are constructed to conform to the Comprehensive Plan, they must be maintained by an entity other than VDOT.

Stormwater Management

The SSAR allows stormwater facilities to be placed in the right-of-way. However, VDOT will not maintain the facility and an agreement must be executed between the locality and VDOT regarding maintenance responsibility. This may provide some leeway in the future regarding the design of low impact development facilities such as bioretention, vegetated swales and tree box filters provided an agreement can be developed that does not place an undue burden on the County. Acceptable facilities must be included in VDOT's Drainage Manual, the Department of Conservation and Recreation's

Board Agenda Item
June 7, 2011

Stormwater Handbook, or supplemental directives. Currently, a limited number of stormwater management facility designs are included in these documents. However, the state is in the process of revising the Stormwater Handbook and the revisions may include additional low impact development facilities.

Performance Bonding and Cost Recovery Fees

The revisions to the performance bonding process do not affect the County's current land development process. However, the proposed regulations have established a new cost recovery fee structure and increased costs will be incurred on County projects and private developments that include public roads or public road improvements.

APPENDIX B(1) - SUBDIVISION STREET DESIGN GUIDE OF THE VDOT ROAD DESIGN MANUAL

VDOT revised the Road Design Manual to address the new requirements in the SSAR. The new design standards are provided in Appendix B(1) of the VDOT Road Design Manual. The proposed amendments to the PFM reference the VDOT manual for design standards rather than restating the standards. This is important because, unlike the SSAR, changes to the Road Design Manual are not required to go through a public hearing process and may be revised more frequently than regulations. In fact, the VDOT Road Design Manual has been revised at least every 6 months. These amendments would allow the PFM to remain current with the VDOT manual in order to facilitate VDOT acceptance of streets that are constructed through the land development process. Situations where the County design standards are purposely different from the state standards will remain in the PFM.

To date, the majority of VDOT revisions has been related to transportation engineering standards that are usually based on recommendations from nationally recognized organizations such as the American Association of State Highway and Transportation Officials (AASHTO) and the Federal Highway Administration (FHWA). The majority of the revisions has been acceptable to the County. In the unusual instance where the County would desire a stricter standard than VDOT, an amendment to the PFM would have to be adopted in order to deviate from the state standards.

For example, some of the street widths established in the state design standards differ from the statewide fire prevention code that calls for an unobstructed width of no less than 20 feet on fire apparatus access roads, which include public streets that provide access for fire apparatus from a fire station to a building. In addition, the VDOT Road Design Manual provides for different minimum street widths based on no parking allowed, parking allowed on one side of the street and parking on both sides of the

street. In general, for streets where no parking is allowed on one or both sides of the street, it would be difficult to continually enforce those parking restrictions. In addition, restricted parking would be inconvenient for residents when accommodating guests or extra cars in the household. Consequently, the amendment requires a minimum street width of no less than 36 feet wide on secondary streets to accommodate parking on both sides of the street and the unobstructed width of 20 feet. In order to accommodate context-sensitive solutions, the amendment allows for narrower streets or restricted parking conditions that are approved by the Board through a zoning action, and urban road design standards that have been established through memoranda of understanding between VDOT and the County for specific areas such as Tysons Corner. Attachment 3 provides a comparison of the minimum streets widths currently applied in the County, those permitted by VDOT that allow parking on both sides of the street, and those proposed in this amendment.

Where possible, the proposed amendments refer to the SSAR, VDOT Road Design Manual or other relevant state manuals rather than restating requirements or design standards for sight distance, grade, right-of-way width, and geometric design. The proposed amendments include revisions to the text of Chapter 7 of the PFM as well as Plates 1-7, 2-7 and 3-7, and their metric counterparts. Revisions to the text of Chapter 8 of the PFM reflect the pedestrian accommodation requirements established in the SSAR, except that the County pedestrian accommodations requirements regarding proximity to schools remain unchanged.

ESRC RECOMMENDATIONS

The ESRC does not recommend approval of provisions of the proposed amendments related to street width. A letter to the Board from the ESRC is included as Attachment B of the staff report (Attachment 1). The ESRC believes that there should be uniformity between the County's public street standards and VDOT's street standards, and that adopting wider street widths runs counter to the County's environmental initiatives.

Staff agrees that County standards should align with VDOT standards wherever possible. However, some of VDOT's minimum street widths appear to be too narrow to accommodate emergency access and operations and public safety is of paramount importance. Although staff recognizes that narrower streets encourage slower speeds, which is safer for pedestrians, and minimize impervious area, which is better from an environmental perspective, emergency access and operations should not be compromised.

The letter from the ESRC mentions that in many single-family detached developments there may not be a lot of on-street parking; therefore narrower streets would be

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acceptable. Unless the development is signed as having restricted parking and that parking restriction is enforced, there can be no assurance that parked vehicles will not obstruct emergency access and operations. Should parking restrictions on public streets become widespread, it would put a strain on police resources. Therefore, this approach is not recommended by staff.

Staff presented the issues regarding minimum street widths to the Board at the Development Process Committee meeting on November 23, 2010.

ADDITIONAL OUTREACH.

On March 29, 2011, the Board authorized staff to advertise the PFM amendment, but requested that additional outreach to committees and citizen groups be conducted.

The Office of Public Affairs posted a Newswire on April 11, 2011, regarding the PFM amendment, and an email was sent to each Board member's office notifying them of the Newswire posting. The email suggested that the information could be added to any district newsletters and requested contact information for any additional organizations the Board members would want to be informed directly about the PFM amendment.

In addition to the Newswire and the email, staff made presentations on the PFM amendment to the Tree Commission, the Trails and Sidewalks Committee, the Transportation Advisory Commission and the Sully District Council Land Use and Transportation Committee. A Letter to Industry was distributed via email on April 6, 2011, announcing the proposed amendment and public hearing schedule. The Environmental Quality Advisory Council was also informed at their April 13 meeting, and has forwarded a letter to the Board regarding the amendment.

REGULATORY IMPACT:

The proposed PFM amendments will assist designers in complying with current VDOT standards and will facilitate VDOT acceptance of streets that are constructed through the land development process.

FISCAL IMPACT:

The adoption of this amendment will not require additional County staff for site inspection or plan review. Consequently, there are no changes to the County land development fee structure proposed with these regulations.

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Although some grandfathering provisions were included with adoption of the SSAR (see Attachment 2), developers, including the County, will bear the cost of increased VDOT fees, and engineering and construction costs on projects that are not grandfathered and include public streets. The new state requirements may cause an increase in the cost of engineering for subdivision developments that include public streets because there will be more intersections due to increased connectivity and more complex estimates of traffic volumes. In addition, because of the new state requirements, the developer will bear the cost of constructing sidewalks in more locations. However, the burden of maintaining the sidewalk will be placed on VDOT rather than the County if it is built in accordance with VDOT standards and wholly contained within the right-of-way. The County requirement for a wider minimum street width will increase the cost of construction in some situations.

During the public comment period for the SSAR, several land development companies commented that the new requirements would raise housing costs, but did not provide specifics.

ENCLOSED DOCUMENTS:

Attachment 1 - Staff Report Dated March 29, 2011 – Available on line at:
http://www.fairfaxcounty.gov/dpwes/publications/pfm/streets_sidewalks.pdf
Attachment 2 - VDOT SSAR Grandfathering Provisions
Attachment 3 – Minimum Street Width Comparison

STAFF:

James Patteson, Director, Department of Public Works and Environmental Services (DPWES)
Michelle Brickner, Director, Land Development Services, DPWES

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SSAR Grandfathering July 2009

1. Section 24VAC30-92-20 Subsection B. of the SSAR Code provides the basis for determining grandfathering.
2. Rezoning cases approved by the locality prior to March 9, 2009 are automatically grandfathered from the SSAR provisions if they included a proffered layout containing the same information normally associated with a Conceptual Sketch. Subsequent plans based on this approval can be reviewed under the old SSR if changing the plan to meet the new SSAR would require a refiling of the rezoning application. If only area designations and potential access points are provided, future plans must meet the new SSAR requirements.
3. Rezoning cases which are not approved by the locality by March 9, 2009 can only be considered for review under the old SSR if:
 - A. The initial submission was made to the locality or VDOT prior to July 1, 2009.
 - B. The application included a proffered layout containing the same information normally associated with a Conceptual Sketch.
 - C. The locality requests in writing or electronic format that VDOT review the rezoning under the old SSR rather than the new SSAR.
4. Conceptual Sketches, Preliminary Plats, Subdivision Plans, Site Plans, and Record Plats approved by VDOT prior to July 1, 2009 are automatically grandfathered from the SSAR provisions. As long as these approvals remain valid, subsequent submittals based on these plans can be reviewed under the old SSR.
5. Any other plans which are not approved by VDOT prior to July 1, 2009 can only be considered for review under the old SSR if:
 - A. The initial submission of any plan for the project was made to the locality or VDOT prior to July 1, 2009.
 - B. The submission prior to July 1, 2009 included the same information normally associated with a Conceptual Sketch.
 - C. The locality requests in writing or electronic format that VDOT review the plan under the old SSR rather than the new SSAR.
6. Subsequent plan submissions to VDOT for projects which have been grandfathered and remain in affect, can be reviewed under the old SSR.
7. Any initial submissions of any plan type for a new project submitted to VDOT after July 1, 2009 must be reviewed under the new SSAR requirements.
8. Note that there are special grandfathering provisions in the regulations pertaining to situations when the Area Type has been changed.

Ditch-Section Streets

ADT	Current County PFM Requirements (assumes no parking)			New VDOT Standards (parking both sides, narrower widths allowed if parking restricted)			Proposed County PFM Requirements (parking on both sides)		
	Pvmt. Width	Gravel Shoulder	Total Width	Pvmt. Width	Gravel Shoulder	Total Width	Pvmt. Width	Gravel Shoulder	Total Width
One-way ≤400	18'	2'-4'	22'-26'	29'	2'	33'	29'	3.5'	36'
Two-way ≤400	18'	2'-4'	22'-26'	29'	3.5'	36'	29'	3.5'	36'
401-2000*	20'-22'	5'-6'	30'-34'	29'	3.5'	36'-40'	29'	3.5'	36'-40'
2001-4000	24'	8'	40'	36'**	2'	38'-40'	36'**	2'	38'-40'
4001-5500	24	8'-10'	40'-44'	40'	8'-11'	56'-62'	40'	8'-11'	56'-62'

*Street must meet standards for 2001-4000 ADT if only one point of access (New VDOT standards and proposed PFM requirements).

**Minimum streets can be reduced by 2 feet if approved by VDOT (for both ditch-section and curb and gutter streets in the new VDOT standards, but only for the ditch-section streets in the proposed PFM requirements).

Curb and Gutter Streets

ADT	Current County PFM Requirements (assumes parking on both sides)	New VDOT Standards (parking both sides, narrower widths allowed if parking restricted)	Proposed County PFM Requirements (parking on both sides)
One-way ≤400	22'	29'	36'
Two-way ≤400	26'-28'	29'	36'
401-2000*	36'	29'	36'
2001-4000	36'-40'	36'**	36'
4001-5500	40'	40'	40'

Widths are curb face to curb face.

*Street must meet standards for 2001-4000 ADT if only one point of access (New VDOT standards and proposed PFM requirements).

**Minimum streets can be reduced by 2 feet if approved by VDOT (for both ditch-section and curb and gutter streets in the new VDOT standards, but only for the ditch-section streets in the proposed PFM requirements).

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Board Agenda Item
June 7, 2011

4:00 p.m.

Public Hearing on a Proposed Amendment to the Public Facilities Manual (PFM) RE: Editorial and Formatting Changes, Elimination of Metric System Units and Plates, and a PFM Reprint

ISSUE:

Proposed amendment and reprint of the PFM that incorporates editing and formatting changes to certain PFM provisions, and eliminates the metric system units and plates.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, May 26, 2011, the Planning Commission voted 9-0-1 (Commissioner Harsel abstaining; Commissioners de la Fe and Murphy absent from the meeting) to recommend that the Board of Supervisors adopt the proposed amendments and reprint of the Public Facilities Manual, as set forth in the staff report dated April 26, 2011, including any needed changes to the names of groups within Land Development Services, Department of Public Works & Environmental Services, and that the amendment become effective at 12:01 a.m. on June 8, 2011.

RECOMMENDATION:

The County Executive recommends that the Board adopt the proposed amendments as set forth in the Staff Report.

TIMING:

On April 26, 2011, the Board authorized the advertising of public hearings. If approved, these amendments will become effective at 12:01 a.m. on June 8, 2011.

BACKGROUND:

The PFM sets forth the requirements governing the design of public facilities for new development. Since the last reprint in 2001, thirty-eight PFM amendments have been adopted by the Board consisting of text changes to most of the PFM chapters and over fifty-six new plates. Currently, when an amendment is adopted, it is distributed in hard copy to purchasers of the PFM, posted on the Department of Public Works and Environmental Services' web site, and the on-line version of the PFM is updated to incorporate the adopted amendment. In addition, an announcement of the amendment adoption is distributed electronically through the DPWES *Land Development News and*

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Letters to Industry e-mail list. Periodic supplements to the PFM with replacement pages are not distributed as is currently done with the Zoning Ordinance and the County Code. As a result, in order to use the hard copy manual, the user must annotate it with cross references to the amendments as they are adopted. In the future, periodic supplements will be created to address this issue.

The design community is not using metric measurements in plan submissions and VDOT no longer publishes metric design standards. Removing the metric measurements and plates is recommended by the Engineering Standards Review Committee and the Engineering and Surveying Institute's Fairfax Committee, and aligns with the Federal Highway's Administration's current policy that the use of metric measurements is optional for federal projects. The use of metric plans may be allowed on a case-by-case basis for submission of new plans based on previously approved metric plans.

Because the on-line manual is easily accessible and kept current, it's used regularly by designers and the public, in lieu of the hard copy manual, to find the most current PFM requirements. The on-line PFM is one of the most visited DPWES web pages. To facilitate use of the on-line PFM, the PFM is being reformatted to make it easier to read and to accommodate amendments and supplements on a periodic basis. Some examples of proposed formatting changes include: converting from newspaper style columns to single line text, increasing the font size from 10 to 12 point, using consistent terms and table layouts, and adding a searchable table of contents.

PROPOSED AMENDMENTS:

The proposed revisions to the PFM include editing and formatting changes, elimination of the metric system units and plates, and a PFM Reprint. The Reprint includes all amendments that have been adopted by the Board of Supervisors to date.

To keep the PFM current, supplements to the PFM are being planned on a periodic basis. In the future, copies of the updated PFM, amendments and supplements will be provided on-line and distributed electronically through the DPWES *Land Development News and Letters to Industry* e-mail list. By fully accommodating users on-line, the proposed Reprint gives the County an opportunity to end the mail-out subscription service. Ending the subscription service will reduce printing and mailing costs, and will contribute to streamlining the amendment process.

REGULATORY IMPACT:

No regulations are being revised with this amendment. The impacts associated with the proposed PFM Reprint are:

Board Agenda Item
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- Updates and keeps the PFM current by incorporating the adopted amendments and accommodating future amendments and supplements on a periodic basis. In addition, metric measurements and plates are being removed from the PFM to align with industry standards.
- Facilitates use of the PFM by making editorial and formatting changes to make the PFM easier to read and the on-line version searchable. In the future, copies of the PFM, amendments and supplements will be available on-line and through the DPWES "Land Development News and Letters to Industry" e-mail list.

FISCAL IMPACT:

Ending the mail-out subscription service eliminates the cost associated with printing and mailing the amendments. This cost is typically in the range of \$600-\$4,400, depending on the size of the amendment. In addition, a hard copy of the reformatted book that incorporates the amendments will cost less to print than a copy of the current book plus individual copies of the amendments. A hard copy of the proposed Reprint (w/o a binder and tabs) will cost approximately \$37 versus \$75 for the current PFM and subscription service.

ENCLOSED DOCUMENTS:

Attachment 1 – Staff Report and PFM Reprint (Available online at <http://www.fairfaxcounty.gov/dpwes/publications/pfm/reprint.htm>)
Attachment 2 – Planning Commission Verbatim

STAFF:

Robert A. Stalzer, Deputy County Executive
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)
Michelle A. Brickner, Deputy Director, DPWES

PUBLIC FACILITIES MANUAL (PFM) AMENDMENT (EDITING AND FORMATTING CHANGES, ELIMINATION OF THE METRIC SYSTEM UNITS AND PLATES, AND A PFM REPRINT)

After Close of the Public Hearing

Vice Chairman Alcorn: Close the public hearing; recognize Commissioner Sargeant.

Commissioner Sargeant: Thank you, Mr. Chairman. First of all, let me thank Jan Leavitt for excellent work making this as concise as possible and also thank the staff for removing the requirement of metric measurements. None of us will have to figure out that out anymore. So therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION OF THE PROPOSED AMENDMENTS AND REPRINT OF THE PUBLIC FACILITIES MANUAL (PFM), AS SET FORTH IN THE STAFF REPORT DATED APRIL 26, 2011, INCLUDING ANY NEEDED CHANGES TO THE NAMES OF GROUPS WITHIN LAND DEVELOPMENT SERVICES, DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES, AND THAT THE AMENDMENT SHALL BECOME EFFECTIVE AT 12:01 A.M. ON JUNE 8, 2011.

Commissioners Lawrence and Hall: Second.

Vice Chairman Alcorn: Seconded by Commissioners Lawrence and Hall. Any discussion on that motion? All those in favor of recommending approval of the PFM Amendment relating to editing and formatting changes, elimination of metro system units and plates, and a PFM reprint, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion - -

Commissioner Harsel: I'm going to abstain because I heard but I wasn't here.

Vice Chairman Alcorn: - - carries with Commissioner Harsel abstaining, not in attendance at the public hearing. A very brief public hearing, I would say.

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(The motion carried by a vote of 9-0-1 with Commissioner Harsel abstaining; Commissioners de la Fe and Murphy absent from the meeting.)

KAD

Board Agenda Item
June 7, 2011

4:00 p.m.

Public Hearing on Adoption of a New County Soils Map and Proposed Amendments to Chapter 107 (Problem Soils) of The Code of the County of Fairfax and the Public Facilities Manual Re: New Soil Survey

ISSUE:

Board adoption of a new County Soils Map, proposed amendments to Chapter 107 (Problem Soils) of *The Code of the County of Fairfax, Virginia* (County Code), and Chapter 4 (Geotechnical Guidelines), Chapter 6 (Storm Drainage), and Chapter 11 (Erosion and Sediment Control) of the Public Facilities Manual (PFM). The proposed amendments are necessary to align the County Code and PFM with the new Soil Survey for Fairfax County.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, May 26, 2011, the Planning Commission voted unanimously (Commissioners de la Fe and Murphy absent from the meeting) to recommend that the Board of Supervisors adopt the new County Soils Map and proposed amendments to Chapter 107 (Problem Soils) of the Fairfax County Code and the Public Facilities Manual, as set forth in the staff report dated April 26, 2011, with the exception that the metric units and plates be deleted to be consistent with the Public Facilities Manual reprint, and that the amendments become effective at 12:01 a.m. on June 8, 2011.

RECOMMENDATION:

The County Executive recommends that the Board adopt the new County Soils Map and the proposed amendments to Chapter 107 (Problem Soils) of the County Code and PFM as set forth in the Staff Report dated April 26, 2011.

The proposed amendments have been prepared by the Department of Public Works and Environmental Services and coordinated with the Office of the County Attorney. The proposed amendments to the PFM have been recommended for approval by the Engineering Standards Review Committee.

TIMING:

On April 26, 2011, the Board authorized the advertising of public hearings. If approved, these amendments will become effective at 12:01 a.m. on June 8, 2011.

BACKGROUND:

The original Soil Survey of Fairfax County was published in May 1963, by the United States Department of Agriculture (USDA) Soil Conservation Service [now the Natural Resources Conservation Service (NRCS)] in cooperation with the Virginia Agricultural Experiment Station (Virginia Tech) and Fairfax County. The survey was based on field work that was completed in 1955. Approximately 60 percent of the County was mapped at that time. The Soil Science Office mapped some previously unmapped tracts of land for re-zonings, building permits and special studies. The Soil Science Office published its last survey update in 1990, and about 40,000 acres of unmapped land remained. The Soil Science Office was closed in 1996.

Intense growth and development drastically changed the landscape of Fairfax County between the 1963 soil survey and the commencement of the NRCS soil survey in 2002. The County needed a new soil survey that would account for the changes and map the previously unsurveyed 40,000 acres. As a result of the lack of information on several parcels of land, especially in the eastern part of the County, the County requested NRCS to complete the mapping of these areas.

The survey was conducted by NRCS in collaboration with Fairfax County and the Northern Virginia Soil and Water Conservation District (NVSWCD). Field surveying was performed by NRCS and NVSWCD soil scientists. The mapping and data collection have gone through quality control and assurance processes and were scanned and digitized by NRCS.

There is a significant increase in the amount and type of information available about soils in the County. Because of the advances and refinements in soil science, certain soils are renamed and there are a few newly-created names. The survey is certified to USDA National Cooperative Soil Survey standards and incorporated into the USDA's National Soil Information System database. The updated soil survey was published in its entirety (maps, descriptions, interpretations and tables) by NRCS in 2008 and is available on the USDA's Web Soil Survey website and Soil Data Mart website.

The information from the updated soil survey has been integrated into the County's GIS system. The soils mapping has been transferred onto the County's real property identification maps to create the County Soils Map, which is available to the general public on the County's website through the Digital Map Viewer.

The soil problem classes were reformulated in accordance with NRCS standards and applied to all soil types in the new survey. The new problem classes more closely resemble those employed in Loudoun and Prince William counties so as to cause less

confusion for private industry. One major difference is that the disturbed soils, which are mapped only in Fairfax, have their own separate problem class. The differences between the updated survey and earlier surveys are summarized below:

1. The entire County has been surveyed and mapped to national standards at a scale of 1"=1,000'.
2. The soil maps are accessible online through both the County website, and the NRCS website. The descriptions, properties and technical data can be accessed online through the NRCS website.
3. Several soil names have changed for consistency with the national naming standards.
4. The soil maps connect at the borders with soil maps from surrounding counties.
5. Previously, only small tracts of land were identified as "made land" or "cut or fill." The new survey identifies large tracts of land that have been developed or altered. They are identified as "Disturbed soils" or "Urban Land." Specifically, disturbed soils are soils that have been mixed, graded, compacted or altered. Urban land encompasses any large area completely covered by impervious surfaces such as asphalt, concrete or rooftop.

The proposed amendments are necessary to align the County Code and PFM with the new soil survey and the new soil problem classes. The amendments include a new County Soils Map revisions to Chapter 107 (Problem Soils) of the County Code, and Chapters 4 (Geotechnical Guide lines), 6 (Storm Drainage), and 11 (Erosion and Sediment Control) of the PFM.

PROPOSED AMENDMENTS:

Details of the proposed amendments are discussed in the Staff Report.

FISCAL IMPACT:

Funds for this project were allocated in prior years beginning in FY 2002. The new County soils map will eliminate the need for owners of properties and developers with unmapped soils on the old soil map to hire private consultants to prepare maps for their properties for obtaining a permit or plan submission purposes.

REGULATORY IMPACT:

The entire county has been surveyed and mapped to national standards and incorporated into the USDA's National Soil Information System database. There is a

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significant increase in the amount and type of information available about soils in the County. The soils mapping is available on both the County's and the USDA's Web Soil Survey websites. The description, properties, and technical data can be accessed online through the USDA's Soil Data Mart website. This will eliminate the need for owners of properties with unmapped soils on the old soil map to hire private consultants to prepare maps for their properties for obtaining a permit or plan submission purposes.

ENCLOSED DOCUMENTS:

Attachment 1 – Staff Report dated April 26, 2011 (available online at <http://www.fairfaxcounty.gov/dpwes/publications/pfm/soilsmap.pdf>)

Attachment 2 – New County Soils Map available through the County's Digital Map Viewer at <http://www.fairfaxcounty.gov/gisapps/pdfViewer/default.htm>

Attachment 3 – Planning Commission Verbatim

STAFF:

James Patteson, Director, Department of Public Works and Environmental Services (DPWES)
Michelle Brickner, Deputy Director, DPWES

COUNTY CODE AND PUBLIC FACILITIES MANUAL AMENDMENTS (NEW SOIL SURVEY)

After Close of the Public Hearing

Vice Chairman Alcorn: Close the public hearing; recognize Commissioner Hart.

Commissioner Hart: Thank you, Mr. Chairman. First, let me thank staff, particularly B.J. Sistani and Dan Schwartz for their fine work on this case. This is a straightforward Amendment which has staff's support with which I concur. Therefore, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION OF THE NEW COUNTY SOILS MAP AND PROPOSED AMENDMENTS TO CHAPTER 107, PROBLEM SOILS, OF THE CODE OF THE COUNTY OF FAIRFAX AND THE PUBLIC FACILITIES MANUAL, AS SET FORTH IN THE STAFF REPORT DATED APRIL 26, 2011, WITH THE EXCEPTION THAT THE METRIC UNITS AND PLATES BE DELETED TO BE CONSISTENT WITH THE PUBLIC FACILITIES MANUAL REPRINT, AND THAT THE AMENDMENTS SHALL BECOME EFFECTIVE AT 12:01 A.M. ON JUNE 8, 2011.

Commissioners Flanagan, Lawrence, and Litzenberger: Second.

Vice Chairman Alcorn: Seconded by Commissioners Flanagan, Lawrence, and Litzenberger. Any discussion on that motion? All those in favor of the motion as articulated by Commissioner Hart to recommend approval of amendments to the County Code and Public Facilities Manual concerning new Soils Survey, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries. Thank you very much.

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(The motion carried unanimously with Commissioners de la Fe and Murphy absent from the meeting.)

KAD

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Board Agenda Item
June 7, 2011

4:30 p.m.

Public Hearing on Proposed Plan Amendment ST11-IV-LP1, Village of Accotink, Located on Richmond Highway (U.S. Route 1) at the Juncture of Backlick Road, East of Fairfax County Parkway (Mount Vernon District)

ISSUE:

Plan Amendment ST11-IV-LP1 involves the Village of Accotink, an approximately 27-acre area in the LP4 Fort Belvoir Community Planning Sector, Lower Potomac Planning District. The subject area is currently planned for residential use at densities ranging from 2-3 dwelling units per acre (du/ac) up to 16-20 du/ac, and commercial use for certain parcels along Richmond Highway. The Plan amendment was authorized by the Board of Supervisors on January 25, 2011 and directs staff to consider new Comprehensive Plan guidance to support redevelopment in the Village of Accotink.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission public hearing was held on Wednesday, May 11, 2011. On Thursday, May 26, 2011, the Planning Commission voted 8-0-2 (Commissioners Alcorn and Hall abstaining; Commissioners de la Fe and Murphy absent from the meeting) to recommend that the Board of Supervisors adopt the Planning Commission's Recommended Text for ST11-IV-LP1, as shown in the handout dated May 24, 2011 (Attachment 3).

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors adopt the Planning Commission's proposed text as shown in Attachment 3 dated May 24, 2011. The recommendation adds an option for redevelopment to create a focal point at Richmond Highway and Backlick Road through the addition of residential use at a density up to 40 du/ac with ground floor retail in Land Bays B and C. A limited amount of office use in Land Bay B is also appropriate in place of an equal amount of residential use. Residential density is recommended to taper to the north. Development surrounding the Accotink United Methodist Church should appear compatible in terms of scale, height, and visual impact. Two structures in the study area are recommended to be further documented and evaluated for inclusion in the Fairfax County Inventory of Historic Sites. Plan guidance addressing urban design, pedestrian connectivity, transportation, heritage resources, parks and recreation, and environmental considerations is also recommended. To address cut-through traffic, the proposed text recommends that a cul-de-sac on Backlick Road at a point between Richmond Highway and the Backlick/Beulah Road split be considered.

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TIMING:

Planning Commission public hearing – May 11, 2011
Planning Commission decision only – May 26, 2011
Board of Supervisors' public hearing – June 7, 2011

BACKGROUND:

As directed by the Board of Supervisors, the Plan Amendment evaluates the suitability of a mix of uses with a residential emphasis that is generally focused near the Richmond Highway and Backlick Road intersection. This concept should consider residential densities up to 40 du/ac with reduced densities tapering to the north. New recommendations addressing parcel consolidation, improved pedestrian connectivity and circulation, neighborhood retail uses that reflect a pedestrian scale, urban design, low impact development and stormwater management, transportation improvements, and heritage resources should also be considered. The Board also directed staff to consider a survey that assesses the Village of Accotink's eligibility for inclusion in a historic overlay district.

The staff analysis and recommendations for ST11-IV-LP1 are found in Attachment 1. The Planning Commission verbatim is found in Attachment 2 and the Planning Commission's recommended text is found in Attachment 3.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Staff Report for ST11-IV-LP1 (Available online at:
<http://www.fairfaxcounty.gov/dpz/comprehensiveplan/amendments/st11-iv-lp1.pdf>)
Attachment 2 – Planning Commission Verbatim
Attachment 3 – Planning Commission Recommended Text

STAFF:

Fred R. Selden, Acting Director, Department of Planning and Zoning (DPZ)
Marianne R. Gardner, Chief, Policy and Plan Development Branch, Planning Division (PD), DPZ
Leonard Wolfenstein, Chief, Transportation Planning Section, Fairfax County
Department of Transportation (FCDOT)
Thomas W. Burke, Senior Transportation Planner, Transportation Planning Section, FCDOT
Jennifer C. Lai, Planner II, Policy and Plan Development Branch, PD, DPZ
Linda Cornish Blank, Historic Preservation Planner, PD, DPZ
Laurie Turkawski, Historian, PD, DPZ

ST11-IV-LP1 – COMPREHENSIVE PLAN AMENDMENT (Village of Accotink Special Study) (Mount Vernon District)

Decision Only During Commission Matters
(Public Hearing held on May 11, 2011)

Commissioner Flanagan: Yes. Thank you, Mr. Chairman. On the 11th of this month we had a public hearing on an Out-of-Turn Plan Amendment that was requested by Supervisor Hyland. Just as a way of background a little bit on this, the widening of Richmond Highway at the entrance to - - one of the main entrances to Fort Belvoir, Tulley Gate, is going to demolish basically all of the commercial buildings on the other - - at the Village of Accotink that are on Richmond Highway, and so consequence, this seems to be timely - - a good time for the entire community to be replanned. So, that has - - that's what the Out-of-Turn Plan Amendment is going to address this evening. As a result of the public hearing, we had testimony from the residents of the community that they hadn't been consulted and there were a couple of requests on the part of the Land Use Committee of the South County Federation and the Mount Vernon Council that also needed to be addressed so I ask that the decision on that be deferred to this evening in order to get any time to consult and work out those concerns. And I'm happy to report that that has now occurred. And so consequently, I MOVE this evening THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS ADOPT THE PLANNING COMMISSION'S RECOMMENDATION, AS FOUND IN AN HANDOUT DATED MAY 26, 2011 [sic]. The handout contains proposed Plan text that was revised since the May 11 public hearing, and the following changes are recommended. Number One, the building heights limited to a maximum of 60 feet along Richmond Highway with height tapering toward the north to foster a transition to the adjoining single-family residences, which area - - some of which are historic. Two, move Lots 28 and 29 from Land Bay C to Land Bay D by changing to a land bay not recommended for redevelopment. The houses - - house on Lot 29, which is recommended for further evaluation for possible inclusion in the Fairfax Inventory of Historic Sites will be afforded protection. That's the reason why I'm doing that. Item Three, add text to allow for the evaluation and analysis of a cul-de-sac. If the cul-de-sac is found to be feasible after studying its impact to traffic operations, it would be located somewhere between Richmond Highway and the Beulah Road split. The cul-de-sac concept has been - - has received strong community support as a way to prevent cut-through traffic. In fact the meeting that I had with the community of the last Friday; they were unanimous in signing a petition requesting that the cul-de-sac be provided in - - at the end of what is now called Backlick Road. They've even requested that the road revert to its original name, Accotink Road, but I'm not including that in the motion tonight because I think that's probably a better part of the eventual rezoning application that will follow on this change in the Comprehensive Plan. And Item Number Four, for Land Bay G change the optional use from office to residential at five to eight dwelling units per acre. The residential use ensures better compatibility with the Accotink United Methodist Church and the surrounding residences. The one landowner who has - - the largest landowners

in the area has agreed to this. I mean he likes this new approach and so consequently, I don't have any opposition to that from any of the Land Use Committees or from the community. And for Land Bay - - for Item Number Five, move the office potential recommended for Land Bay G to Land Bay B. In other words, the 16,000 square feet of office could take the place of an equal amount of residential square footage within that Land Bay, and the office use should be located above ground-floor retail. That's basically within the development up - - the new development that will be built up on Richmond Highway. Item Number Six, the change that I'm recommending is to include specific text that addresses archeological resources. We heard at the public hearing from Sallie Lyons, who recommended this very strongly, and since then there's been a detailed study recommending the same thing so the community - - and the community is in favor of this as well. The proposed text notes that the scope of work should be developed for on-site archeological surveys and proposes additional guidance to steps that should be taken if architectural - - archeological resources are found. Once again, this is one of the two oldest settlements in Fairfax County. The other being Old Colchester down on the Occoquan, and it's a - - it was a previous Indian community of sometime back so this - - one of the things I think they're going to bump into as they start doing the archeological search. Number Seven Item that I'm recommending is, include the safe bicycle connectivity and movement under Circulation and Access, adding that language in there about bicycle as a - - that should be addressed in any rezoning. And then lastly, Item Number Eight, to delete EarthCraft from the Green Buildings recommendation to be consistent with current Policy Plan and revisions under consideration. And that was raised by Commissioner Hart at the last - - at the public hearing, and I recommend that we do as he recommended. So with that now, Mr. Chairman, I - -

Vice Chairman Alcorn: Yes. Let's - - let's - - why don't you restate the motion you - -

Commissioner Flanagan: Okay.

Vice Chairman Alcorn: Yes.

Commissioner Flanagan: Yes. I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS ADOPT THE PLANNING COMMISSION RECOMMENDATION, AS FOUND IN THE HANDOUT DATED MAY 26, 2011 [sic].

Commissioner Litzenberger: Second.

Vice Chairman Alcorn: For - - and this is for which case - - for which?

Commissioner Flanagan: That's for ST11-IV-LP1.

Vice Chairman Alcorn: Thank you. The motion's been made.

Commissioner Litzenberger: Second.

Vice Chairman Alcorn: Seconded by Commissioner Litzenberger. Any discussion?

Commissioner Sargeant: Mr. Chairman?

Vice Chairman Alcorn: Mr. Sargeant.

Commissioner Sargeant: Okay. I'm assuming it's this document, which is dated MAY 24TH. I just want to make sure we're all on the same page.

Commissioner Flanagan: That one. The - - everything that's highlighted in yellow are the changes that I just discussed.

Commissioner Sargeant: Okay. I second.

Vice Chairman Alcorn: Okay. Seconded also by Commissioner Sargeant. Any - - any additional discussion?

Commissioner Hart: Mr. Chairman?

Vice Chairman Alcorn: Commissioner Hall and then Mr. Hart.

Commissioner Hall: Thank you, Mr. Chairman. I was not - - Mr. Chairman, I was not present for the public hearing. I will be abstaining.

Vice Chairman Alcorn: As will I. Commissioner Hart.

Commissioner Hart: Thank you, Mr. Chairman. I wanted to ask a question before we were on the verbatim, but I guess we're on the verbatim.

Vice Chairman Alcorn: We're on the verbatim.

Commissioner Hart: In the - - the - - the last yellow paragraph on page 7, in the first sentence, is the word "architectural" intentional? I mean the rest of that paragraph was about archaeological, I mean maybe it is architectural, I just want to - -

Commissioner Sargeant: I think - - I believe it is archaeological.

Commissioner Hart: Well, that's why I asked. Because I thought you said "archaeological" but then that one place it says "architectural."

Commissioner Flanagan: No, it is definitely "archeological."

Commissioner Hart: It's - -

Marianne Gardner, Planning Division, Department of Planning and Zoning: Mr. Chairman? If I may - -

Commissioner Flanagan: Staff.

Ms. Gardner: clarify.

Commissioner Hart: Ms. Gardner is saying something.

Vice Chairman Alcorn: Yes, please.

Ms. Gardner: Thank you. I'm Marianne Gardner with DPZ.

Vice Chairman Alcorn: Oh, there you are.

Ms. Gardner: Hi. The - - we did mean it to be "architectural" because it's talking about which department would get consulted for the different actions. We'd like to be consulted in there are architectural surveys, but the staff from Cultural Resource Management and Protection Services would be consulted on archeological work.

Vice Chairman Alcorn: Okay.

Commissioner Hart: Yes. That's - - that's fine. I just - - I want to make sure that was the right word.

Vice Chairman Alcorn: Okay. Any additional discussion? All those in favor of the motion as articulated by Commissioner Flanagan, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries.

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(The motion carried by a vote of 8-0-2 with Commissioners Alcorn and Hall abstaining; Commissioners de la Fe and Murphy absent from the meeting.)

KAD

Planning Commission Recommended Text
5/24/11

Proposed Plan Text – Village of Accotink Plan Amendment (ST11-IV-LP1)

Additions are shown underlined and deletions are shown with ~~strikethrough~~.

REPLACE: Fairfax County Comprehensive Plan, 2011 Edition, Area IV. Lower Potomac Planning District, Amended through 10-19-2010. LP4-Fort Belvoir Community Planning Sector, page 121:

RECOMMENDATIONS

Land Use

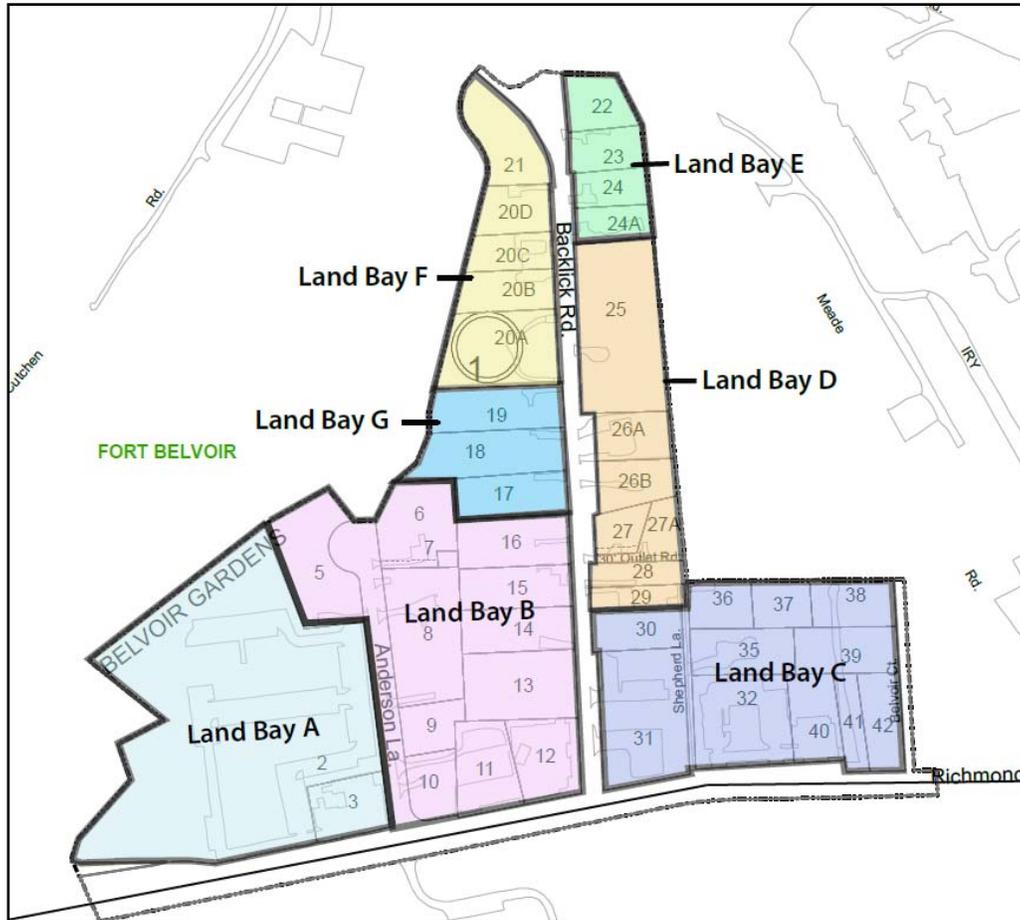
5. ~~The non-military area known as the Village of Accotink is planned to generally maintain its current uses and densities/intensities as follows:~~
- A. ~~Neighborhood-serving commercial use is planned along Route 1 (Tax Map 109-1((1))3, 11, 12, 32 and 40). There should be no expansion or intensification of the existing commercial uses.~~
 - B. ~~Residential use at 2-3 dwelling units per acre is planned generally along Backlick Road as shown on the Plan map.~~
 - C. ~~Residential use at 5-8 dwelling units per acre is planned generally east of Shepherd Lane (Tax Map 109-1((1))35, 36, 37, 38 and 39) provided that the development achieves good design, substantial parcel consolidation, and buffering and screening along any portion of the property line adjacent to an existing commercial use or single-family detached dwelling unit.~~
 - D. ~~Residential use at 12-16 dwelling units per acre is planned along Route 1 and east of Shepherd Lane (Tax Map 109-1((1))41 and 42). Affordable housing at 16-20 dwelling units per acre is planned east and west of Anderson Lane (Tax Map 109-1((1))1, 2, 8, 9 and 10) and along Route 1 west of Shepherd Lane (Tax Map 109-1((1))31). These planned land uses generally reflect existing uses and densities, except for the area adjacent to Anderson Lane to the east (Tax Map 109-1((1))8, 9 and 10) which contains single-family dwelling units. Parcels 8, 9 and 10 may be redeveloped at 16-20 dwelling units per acre, if the development provides good design, substantial parcel consolidation and buffering and screening between any property line which is adjacent to an existing commercial use or a single-family detached dwelling unit.~~
 - E. ~~The Methodist Church in the Village of Accotink and environs is a local landmark and should be considered for inclusion in an historic district. Any future development or redevelopment in the area should be compatible with the church in terms of design, mass, scale, height, color, type of material and visual impact.~~
 - F. ~~Protective landscape buffer treatment should be utilized in those cases where commercial development could alter the residential character within the Village of Accotink.~~

Planning Commission Recommended Text
5/24/11

5. The non-military area of Fort Belvoir known as the Village of Accotink is planned as follows:

<u>Land Bay</u>	<u>Base</u>		<u>Option</u>	
	<u>RESIDENTIAL USE</u> (dwelling units per acre)	<u>NON-RESIDENTIAL USE</u> (square feet)	<u>RESIDENTIAL USE</u>	<u>NON-RESIDENTIAL USE</u>
<u>A</u>	<u>20-30 du/ac</u>	<u>Retail: 109-1 ((1)) 3</u>	<u>N/A</u>	<u>N/A</u>
<u>B</u>	<u>2-3 du/ac</u> <u>16-20 du/ac: (109-1((1)) 8,</u> <u>9, 10)</u>	<u>Retail: 109-1 ((1))</u> <u>11, 12</u>	<u>30-40 du/ac</u>	<u>25,000 sf retail;</u> <u>16,000 sf office as an</u> <u>alternative to an</u> <u>equivalent amount of</u> <u>residential square feet</u>
<u>C</u>	<u>2-3 du/ac: 109-1 ((1)) 28,</u> <u>29,30</u> <u>5-8 du/ac: 109-1 ((1)) 35,</u> <u>36, 37 38, 39,41, 42</u> <u>16-20 du/ac: 109-1 ((1)) 31</u>	<u>Retail: 109-1 ((1))</u> <u>32, 40</u>	<u>16-20 du/ac</u>	<u>30,000 sf retail (.1 FAR)</u>
<u>D</u>	<u>2-3 du/ac</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u>E</u>	<u>2-3 du/ac</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u>F</u>	<u>2-3 du/ac</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u>G</u>	<u>2-3 du/ac</u>	<u>N/A</u>	<u>5-8 du/ac</u>	<u>N/A</u> <u>16,000 sf office (.2 FAR)</u>

Planning Commission Recommended Text
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Base Recommendation

Residential and neighborhood-serving retail uses are recommended for the Village of Accotink as shown on the Comprehensive Plan Map. The retail uses are not intended to be expanded or intensified. Residential densities range from 2-3 du/ac to 20-30 du/ac. Development of new residential use should provide appropriate consolidation, buffering and screening. Compliance with County ordinances and policies regarding workforce and affordable housing should be addressed.

The house at 9121 Backlick Road (parcel 109-1 ((1)) 29) and the lodge hall at 9012 Backlick Road (parcel 109-1 ((1)) 21) are recommended to be documented and evaluated for inclusion in the Fairfax County Inventory of Historic Sites. See the Heritage Resources section for further guidance. The Accotink United Methodist Church (Accotink UMC) is a local landmark as identified on the Fairfax County Inventory of Historic Sites, and should be preserved and protected. Development adjacent to and across from Accotink UMC should be compatible with the church in terms of scale, height, and visual impact.

Option for Redevelopment

As an option, redevelopment of a portion of the Village of Accotink is recommended to create a walkable community that provides a mix of residential use, neighborhood-serving retail uses, and limited office use linked through open spaces and sidewalks. A mix of multi-family residential units with integrated support retail is envisioned to be located near the intersection of Richmond Highway and Backlick Road, tapering to lower intensity uses to the north. In total, residential use should

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comprise at least 70 percent of the entire village. A limited amount of office use is also appropriate. Redevelopment should be phased, and full consolidation of all parcels within each land bay is encouraged with each phase of development. If complete consolidation is not achieved, the redevelopment design should demonstrate how these parcels can be integrated at the option level. In the interim, unconsolidated parcels should provide interparcel vehicular and pedestrian access.

Land Bays B and C: Land Bay B is planned for residential use at a density of 30-40 du/ac with approximately 25,000 square feet of ground floor retail use. In place of an equal amount of residential square feet, office use up to 16,000 square feet located above ground floor retail may be appropriate. Land Bay C is planned for residential use at 16-20 du/ac with approximately 30,000 of ground floor retail use. ~~Mid-rise residential buildings with ground floor retail should be focused near Backlick Road and Richmond Highway.~~ Buffering and screening should be utilized along property lines that are adjacent to the existing cell tower.

In both land bays, the retail component should be of a neighborhood-serving character. Residential buildings should provide convenient access to open space, recreational space, and community-serving retail uses. Building height may be a maximum of 60 feet along Richmond Highway provided the height of structures within the land bay is tapered to create a satisfactory transition to adjoining single family residences. Affordable and workforce housing should be provided through compliance with the Affordable Dwelling Unit Ordinance and other relevant County policies. ~~See the Heritage Resource section for guidance related to parcels 109-1((1)) 21 and 109-1((1)) 29.~~

~~New retail use is intended to be of a community serving character and should be oriented to the intersection of Backlick Road and Richmond Highway. These uses should have frontage on Richmond Highway and/or Backlick Road and be located in the ground floor of residential buildings.~~ Ground floor commercial uses should have direct public access and display windows oriented toward pedestrian walkways, and where appropriate, to vehicular drives and/or streets. Storefront windows along the facades should reflect a pedestrian scale. Blank walls of buildings, loading areas, or rear-facades should be treated in such a way that does not detract from the pedestrian experience. Consideration should be given to accommodate entranceways, sidewalk cafes, or other urban design amenities. ~~Retail use up to approximately 55,000 square feet is suitable in Land Bays B and C.~~

In order to foster walkability, single-use, free-standing commercial structures should be avoided. Similarly, drive-through uses are discouraged. In the case where free-standing structures and drive-through uses are beneficial in the short run as interim improvements, the structures should be of an appropriate character and scale. These uses should comply with the Guidelines for Interim Improvement of Commercial Establishments and other applicable County policies. The consolidation guidance in paragraph one under the Option for Redevelopment should be met.

Land Bay G: If the land bay is consolidated, residential use at a density of 5-8 du/ac may be appropriate. ~~low rise office building(s) up to 2 stories at an intensity up to .20 FAR, or up to 16,000 square feet, may be appropriate. If office development is adjacent to residential use, buffering and screening should be utilized. To the extent possible, building(s) should be oriented to Backlick Road, and have minimal setbacks from the sidewalk. Parking should be located to the rear of the building away from Backlick Road. The scale, height, and visual impact of development should be compatible with Accotink UMC.~~

Urban Design

High quality site design, architecture, landscaping, and lighting should contribute to the visual appeal of the area. With regard to landscaping, the use of native plant species that are common to Fairfax County are strongly encouraged. Buildings should be oriented to and aligned with the street on which they are

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located. Structures along Backlick Road should have minimal setbacks from the sidewalk to maintain the character of the area and create a walkable environment. Architectural design features such as variations of window and building details should be encouraged. To achieve a compatible transition from higher-density, mid-rise mixed-use development to low-density single family houses and/or institutional uses, buffering and screening should be utilized in the form of landscaping and/or through building design. Redevelopment adjacent to single-family detached and/or attached residential units should be compatible in terms of height, scale, and visual impact.

Surface parking should be limited to on-street or loading spaces. Underground parking is preferred; if structured parking is utilized, it should be consolidated into structures that are integrated into the streetscape in order to avoid adverse visual impacts to pedestrian or vehicular corridors and unconsolidated parcels. Façade treatments of parking structures should add visual interest to the streetscape. ~~To the extent possible, taller buildings should be stepped back from the sidewalk~~ Measures should be incorporated ~~to avoid a canyon-like appearance of structures.~~

Where appropriate, public art, historical markers, and/or interpretive signage should be installed to commemorate the history of the Village of Accotink and provide a public education opportunity as endorsed in the Heritage Resources section of the Policy Plan.

Circulation and Access

Pedestrian connections are necessary within parcels and between development projects to create a pleasant environment. A walkable environment along Backlick Road and Richmond Highway should be created; this can be achieved through the inclusion of trees, street furniture, appropriate landscaping, wide sidewalks, and minimal buildings setbacks from the sidewalk and/or property line. A pedestrian circulation system should interconnect interior sections of developments with destinations at the edges along ~~Backlick Road and~~ Richmond Highway. On the edges of properties, wide sidewalks should be provided to allow for safe and more active pedestrian movement. Each phase of development should include a circulation plan to integrate pedestrian and bicycle movement through the site and between areas exterior to the development. Safe pedestrian and bicycle movement should be complemented through a system of walkways and crossings where possible. Individual vehicular access points onto Richmond Highway should be discouraged.

Transportation

Transportation demand management strategies should be implemented to mitigate adverse impacts on the adjacent roadway network and provided with each phase during the development review process. A traffic operational analysis of the intersection of Backlick Road and Richmond Highway is recommended prior to any action being taken to redevelop the study area.

The Transportation Plan Map recommends widening Richmond Highway to six lanes, adding a transitway on Richmond Highway, and including bicycle/pedestrian amenities. Coordination with Fairfax County and the Virginia Department of Transportation (VDOT) is needed to ensure that adequate right-of-way is provided to implement projects associated with the widening and other improvements, including placement of utilities. Redevelopment of the study area should accommodate transit operations. Safe and logical access and connectivity should be considered if transit service is expanded in the future.

A cul-de-sac located along Backlick Road at some point between the new development at Richmond Highway and the Beulah Road split may be appropriate to manage through traffic and should be analyzed. Resulting impacts to traffic operations due to the cul-de-sac at the intersections of Richmond Highway with the Fairfax County Parkway and Backlick/Pohick Road, in particular, should be

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evaluated. If a cul-de-sac is supported, ways to employ the cul-de-sac as a community focal point should be considered while respecting the historic context of the area and individual properties. A provision should be made for continuous access for emergency vehicles. Consultation with VDOT, Fort Belvoir, and other appropriate agencies should be undertaken during the study process.

Parks and Open Space

The option for redevelopment will generate the need for approximately 3 acres of additional parkland within the Village of Accotink. Playgrounds, basketball courts, an off-leash dog park, or other facilities should be included in the development plans for Land Bays B and C, and should be supported by a connected pedestrian network. The provision of publicly accessible outdoor spaces that are connected to park and recreation opportunities, such as fountains or other focal points of interest is recommended. If trails are proposed within the site, they should be constructed outside of the floodplain. Use of plant species native and common to Fairfax County is strongly encouraged. If on-site recreational needs cannot be accommodated, contributions to constructing a master planned park facility and/or replacing or improving aging park facilities at nearby parks is recommended.

Environment

Measures to preserve the existing Resource Protection Area (RPA) and Environmental Quality Corridor (EQC) in accordance with applicable County and state policy and guidelines are encouraged. A portion of existing development in Land Bay A encroaches in the RPA. Restoration and reforestation of the RPA is encouraged to the greatest extent possible.

Low-Impact Development (LID) measures should be incorporated into stormwater management controls to reduce runoff and improve surface waters over existing conditions. Innovative measures and controls should be used to mitigate the impact of development on water quality and quantity. Redevelopment should also include other sustainable practices in accordance with the Environment section of the Policy Plan.

Commitment to LEED certification or equivalent for non-residential development is strongly encouraged. For residential development, ENERGY STAR[®] Qualified Homes, Earthcraft or an equivalent residential rating system is recommended. “

REVISE: Fairfax County Comprehensive Plan, 2011 Edition, Area IV, Lower Potomac Planning District, Amended through 10-19-2010. LP4-Fort Belvoir Community Planning Sector, 122:

Heritage Resources

Part of the Pohick Church Historic Overlay District lies within this sector. The provisions of the Pohick Church Historic Overlay District (Appendix 1, A1-100 of the Zoning Ordinance) limit development to single-family residential, local-serving commercial and tourist-oriented uses. All improvements shall be designed to be compatible with the scale and appearance of the church complex. All development must be reviewed by the Architectural Review Board.

The remains of the Belvoir site, which is located in the southern region of Fort Belvoir near the Potomac River, continue to reflect an important element of local heritage and should be protected.

Pohick Church, Mount Air and Woodlawn Historic Overlay Districts abut Fort Belvoir. Protection of these historic resources should be considered in any redevelopment of the Fort Belvoir property.

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Part of the Mount Air Historic Overlay District Lies within this sector. Regulations for this district are discussed in sector S6 of the Springfield Planning District.

Part of the Woodlawn Historic Overlay District lies within this sector. Regulations for this district are discussed in sector MV8 of the Mount Vernon Planning District.

Any development or ground disturbance in this sector, both on private and public land, should be preceded by heritage resource studies, and alternatives should be explored for the avoidance, preservation or recovery of significant heritage resources that are found. In those areas where significant heritage resources have been recorded, an effort should be made to preserve them. If preservation is not feasible, then, in accordance with countywide objectives and policies as cited in the Heritage Resources section of the Policy Plan, the threatened resource should be thoroughly recorded and in the case of archaeological resources, the artifacts recovered.

Accotink United Methodist Church (Accotink UMC) and cemetery (Parcel 109-1 ((1)) 25) have noted historical significance and are listed on the Fairfax County Inventory of Historic Sites. They should be preserved and protected. Development adjacent to and across from Accotink UMC should be compatible with the church in terms of scale, height, and visual impact. The lodge hall at 9012 Backlick Road (Parcel 109-1 ((1)) 21) and a house at 9121 Backlick Road (Parcel 109-1 ((1)) 29) are recommended to be documented and evaluated for inclusion in the Fairfax County Inventory of Historic Sites. ~~The house at 9121 Backlick Road should be included in the full consolidation of Land Bay C, an area that is recommended for redevelopment.~~ If the house at 9121 Backlick Road is determined eligible for listing on the inventory, restoration and reuse of the house should be explored ~~as a part of any redevelopment plan for the land bay.~~ ~~As an alternative, consideration should be given to move the house to another site if it is eligible for listing on the inventory.~~ Where appropriate, public art, historical markers, and/or interpretive signage should be installed to commemorate the history of the Village of Accotink and provide a public education opportunity as endorsed in the Heritage Resources section of the Policy Plan.

Prior to any zoning action, the Department of Planning and Zoning should be consulted as to what architectural surveys are necessary to document any on-site cultural resources. There are known or predicted archaeological resources in this area related to Native American and historic occupation or use. There is a high potential that such resources may remain undisturbed. Staff from the Cultural Resource Management and Protection Section of the Park Authority should be consulted to develop a scope of work for any on-site archaeological surveys prior to any development or ground disturbing activity. Should archaeological resources be discovered that are potentially eligible for inclusion in the National Register, further archaeological testing should occur to evaluate these resources as to their eligibility. If such resources are found to be eligible, mitigation measures should be developed that may include avoidance or data recovery excavation and interpretation.”

NOTE: The Comprehensive Plan Map will change for parcel 109-1 ((1)) 2 from 16-20 du/ac to 20-30 du/ac. Parcels 109-1 ((1)) 41 and 42 will change from 12-16 du/ac to 5-8 du/ac.

NOTE 2 (revised May 4, 2011): The Comprehensive Plan Map will change for parcels 109-1 ((1)) 41 and 42 from 12-16 du/ac to 5-8 du/ac.

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