

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 29, 2013**

**AGENDA**

8:30	<b>Held</b>	Reception – Don Smith Award, Conference Center Reception Area
9:30	<b>Done</b>	Presentations
10:30	<b>Done</b>	Presentation of the Don Smith Award
10:45	<b>Report Adopted</b>	Report on General Assembly Activities
11:00	<b>Done</b>	Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups
11:10	<b>Done</b>	Items Presented by the County Executive

**ADMINISTRATIVE  
ITEMS**

1	<b>Approved</b>	Supplemental Appropriation Resolution AS 13181 for the Fairfax County Economic Development Authority to Accept Grant Funding from the Commonwealth of Virginia–Governor’s Opportunity Fund for Intelsat Corporation
2	<b>Approved</b>	Authorization to Advertise a Public Hearing to Convey Board- Owned Property to a Member of the Public (Braddock District)
3	<b>Approved</b>	Authorization to Advertise a Public Hearing on a Proposed Agreement with the Commissioner of Highways of the Commonwealth of Virginia (Commissioner) Re: Sign Removal in the Public Rights-of-Way
4	<b>Approved</b>	Authorization to Advertise a Public Hearing to Establish the Bonnie Brae Community Parking District (Braddock District)
5	<b>Approved</b>	Authorization to Advertise Public Hearings on Proposed Amendments to Chapter 2 (General Subdivision and Site Plan Information), Chapter 4 (Geotechnical Guidelines), Chapter 6 (Storm Drainage) and Chapter 7 (Streets, Parking and Driveways) of the Public Facilities Manual Re: Testing Procedures for Infiltration Facilities and Minor Editorial Corrections
6	<b>Approved</b>	Streets into the Secondary System (Dranesville, Mason, Mount Vernon, Springfield, and Sully Districts)

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 29, 2013**

**ADMINISTRATIVE  
ITEMS  
(Continued)**

- |   |                 |   |
|---|-----------------|---|
| 7 | <b>Approved</b> | Discontinuance of Portions of Old Springhouse Road (Route 3543) From the Secondary System of State Highways (Providence District) |
| 8 | <b>Approved</b> | Authorization to Advertise Public Hearing on a Proposed Zoning Ordinance Amendment Re: Home Child Care Facilities                 |

**ACTION ITEMS**

- |   |                                |  |
|---|--------------------------------|--|
| 1 | <b>Approved</b>                | Revisions to Chapters 4, 16 and 17 of the Personnel Regulations Clarifying Conflict of Interest Restrictions, Aligning Standards of Conduct with Virginia Code, and Aligning Grievance Submission Schedules with Virginia Code |
| 2 | <b>Approved with Amendment</b> | Endorsement of the FY 2014 Virginia Department of Transportation's Transportation Alternatives Grant Applications  |
| 3 | <b>Approved</b>                | Transfer of Ownership of Virginia Department of Transportation (VDOT) Bus Shelters   |
| 4 | <b>Approved</b>                | Authorization to Sign a Letter of Agreement with the Washington Metropolitan Area Transit Authority (WMATA) Relative to the North Kings Highway Median Improvement Project (Lee District)                                      |
| 5 | <b>Approved</b>                | Authorization to File Comments in Response to the Federal Communications Commission Further Notice of Proposed Rulemaking to Facilitate the Deployment of Text-to-911 and Other Next Generation 911 Applications               |
| 6 | <b>Approved</b>                | Approval of a Resolution Authorizing the Virginia Department of Motor Vehicles To Issue a Fairfax County License Plate   |

**INFORMATION  
ITEMS**

- |       |              |  |
|-------|--------------|--|
| 1     | <b>Noted</b> | Mid County Human Services Center and I-66 Transfer Station Operations Center Receive Awards of Excellence from the National Association of Industrial and Office Properties (Providence and Springfield Districts) |
| 11:20 | <b>Done</b>  | Matters Presented by Board Members   |

**FAIRFAX COUNTY  
BOARD OF SUPERVISORS  
January 29, 2013**

12:10	<b>Done</b>	Closed Session
	<b>PUBLIC HEARINGS</b>	
3:00	<b>Held</b>	Annual Meeting of the Fairfax County Solid Waste Authority
3:00	<b>Approved</b>	Public Hearing on PCA 86-S-083-05 (Branch Banking and Trust Company) to Amend the Proffers for RZ 86-S-083 (Sully District)
3:00	<b>Approved</b>	Public Hearing on SEA 93-Y-032 (Branch Banking and Trust Company) to Amend SE 93-Y-032 (Sully District)
3:30	<b>Approved</b>	Public Hearing on AA 83-S-004-02 Nadine C. Vazquez, Jeffrey O. Waters, Jeremy M. Vazquez and Lee J. Vazquez, Irrevocable Trust (Springfield District)
3:30	<b>Approved</b>	Public Hearing on PCA 92-M-038 (Paolozzi Investments, Inc.) to Amend the Proffers for RZ 92-M-038 (Mason District)
3:30	<b>Approved</b>	Public Hearing on SE 2008-MA-019 (Paolozzi Investments, Inc.) to Permit a Car Wash and Modifications and Waivers (Mason District)
3:30	<b>Approved</b>	Public Hearing on SEA 94-P-040-02 (Gannett Co., Inc.) to Amend SE 94-P-040 (Providence District)
3:30	<b>Approved</b>	Public Hearing on SE 2012-HM-009 (InSite Real Estate Investment Properties, L.L.C) to Permit Child Care Center and Nursery School (Hunter Mill District)
4:00	<b>Public Hearing deferred to 4/9/13 at 3:30 p.m.</b>	Public Hearing on RZ 2010-PR-019 (Kettler Sandburg, LLC) to Rezone from R-1 to PDH-3 (Providence District)
4:00	<b>Public Hearing deferred to 3/19/13 at 3:30 p.m.</b>	Public Hearing on RZ 2012-SU-010 (Northern Virginia Health Investors, LLC) to Rezone from I-5 to PRM (Sully District)
4:00	<b>Approved</b>	Public Hearing to Consider Changes to The Code of the County of Fairfax, Virginia, Chapter 82, Motor Vehicles and Traffic, Article 5, Sections 32 through 32.2 and Chapter 10, Consumer Protection

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*Fairfax County, Virginia*  
**BOARD OF SUPERVISORS**  
**AGENDA**

**Tuesday**  
**January 29, 2013**

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9:30 a.m.

**PRESENTATIONS**

**SPORTS/SCHOOLS**

- CERTIFICATE – To recognize the Chantilly and Lake Braddock Boys Cross Country Teams as state champions and Sean McGorty as the individual state champion. Requested by Supervisor Frey.

**RECOGNITIONS**

- CERTIFICATE – To recognize the Fairfax County Police Department Helicopter Division, K-9 Nero and his handler for their lifesaving efforts. Requested by Supervisor Frey.
- CERTIFICATE – To recognize Robert E. Simon Jr, the Reston Association and its community partners for their vision and community leadership. Requested by Supervisor Hudgins.
- RESOLUTION – To recognize Karen Diviney for her years of service to Fairfax County. Requested by Supervisors Frey and Hyland.
- CERTIFICATE – To recognize Stephanie Abbott for her years of service on the Fairfax County Library Board. Requested by Supervisor Hudgins.

— more —

Board Agenda Item  
January 29, 2013

- CERTIFICATE – To recognize Dominion Virginia Power for its donation of land to the Fairfax County Park Authority to enable a safe, accessible pedestrian access to the Spring Hill Recreation Center. Requested by Supervisor Foust.
- RESOLUTION – To recognize the Greater Reston Chamber of Commerce for its 30th anniversary. Requested by Supervisor Hudgins.

DESIGNATIONS

- PROCLAMATION – To designate February 2013 as African American History Month in Fairfax County. Requested by Chairman Bulova.

STAFF:

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

Board Agenda Item  
January 29, 2013

10:30 a.m.

Presentation of the Don Smith Award

ENCLOSED DOCUMENTS:

None.

PRESENTED BY:

Randy R. Creller, Chairperson, Employee Advisory Council (EAC)

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Board Agenda Item  
January 29, 2013

10:45 a.m.

Report on General Assembly Activities

ENCLOSED DOCUMENTS:

None. Materials to be distributed to the Board of Supervisors on January 29, 2013

PRESENTED BY:

Supervisor Jeff McKay, Chairman, Board of Supervisor's Legislative Committee  
Edward L. Long Jr., County Executive

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Board Agenda Item  
January 29, 2013

11:00 a.m.

Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups

ENCLOSED DOCUMENTS:

Attachment 1: Appointments to be heard January 29, 2013  
(A final list will be distributed at the Board meeting.)

STAFF:

Catherine A. Chianese, Clerk to the Board of Supervisors

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January 29, 2013

**NOTE: A revised list will be distributed immediately prior to the Board meeting.**

**APPOINTMENTS TO BE HEARD JANUARY 29, 2013**  
**(ENCOMPASSING VACANCIES PROJECTED THROUGH JANUARY 31, 2013)**  
(Unless otherwise noted, members are eligible for reappointment)

**A. HEATH ONTHANK MEMORIAL AWARD SELECTION COMMITTEE**  
**(1 year)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Clifford L. Fields (Appointed 1/96-1/03 by Hanley; 1/04-1/08 by Connolly, 2/09- 1/12 by Bulova) Term exp. 1/13	At-Large Chairman's Representative		Bulova	At Large Chairman's
Jane W. Gwinn (Appointed 2/04-1/09 by Bulova; 1/10-1/12 by Cook) Term exp. 1/13	Braddock District Representative		Cook	Braddock
Kerrie Wilson Appointed 1/10-1/12 by Foust) Term exp. 1/13	Dranesville District Representative	<b>Kerrie Wilson</b>	Foust	Dranesville
Ronald Copeland (Appointed 1/05-1/12 by Hudgins) Term exp. 1/13	Hunter Mill District Representative		Hudgins	Hunter Mill
Joseph Blackwell (Appointed 1/06-1/08 by Kauffman, 1/09- 1/12 by McKay) Term exp. 1/13	Lee District Representative		McKay	Lee

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**A. HEATH ONTHANK MEMORIAL AWARD SELECTION COMMITTEE**  
**(1 year)**

Continued

<b><u>Incumbent History</u></b>	<b><u>Requirement</u></b>	<b><u>Nominee</u></b>	<b><u>Supervisor</u></b>	<b><u>District</u></b>
Eileen J. Garnett (Appointed 1/03-1/12 by Gross) Term exp. 1/13	Mason District Representative		Gross	Mason
VACANT (Formerly held by John Byers; appointed 2/09-1/12 by Hyland) Term exp. 1/13 <i>Deceased</i>	Mount Vernon District Representative		Hyland	Mount Vernon
Ernestine Heastie (Appointed 2/04-1/12 by Smyth) Term exp. 1/13	Providence District Representative	<b>Ernestine Heastie</b>	Smyth	Providence
Philip E. Rosenthal (Appointed 1/92-2/08 by McConnell, 1/09- 1/12 by Herrity) Term exp. 1/13	Springfield District Representative		Herrity	Springfield

**ADVISORY SOCIAL SERVICES BOARD**  
**(4 years – limited to 2 full consecutive terms)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Marcus B. Simon; appointed 3/04-9/08 by Connolly) Term exp. 9/12 <i>Not eligible for reappointment</i> <i>Resigned</i>	At-Large Chairman’s Representative		Bulova	At-Large Chairman’s
VACANT (Formerly held by Narayani Siva; appointed 6/09 by Hudgins) Term exp. 9/13 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Gretchen Johnson; appointed 3/08 by Hyland) Term exp. 9/12 <i>Resigned</i>	Mount Vernon District Representative		Hyland	Mount Vernon
VACANT (Formerly held by Sosthenes Klu; Appointed 12/05-9/08 by Frey) Term exp. 9/12 <i>Resigned</i>	Sully District Representative		Frey	Sully

**AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Mark S. Ingrao; appointed 1/03 by Mendelsohn; 5/05 by DuBois) Term exp. 5/09 <i>Resigned</i>	Citizen Representative		By Any Supervisor	At-Large
VACANT (Formerly held by James Francis Carey; appointed 2/95-5/02 by Hanley; 5/06 by Connolly) Term exp. 5/10 <i>Resigned</i>	Lending Institution Representative		By Any Supervisor	At-Large

**AIRPORTS ADVISORY COMMITTEE (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Robert Devery (Appointed 9/09-1/10 by Cook) Term exp. 1/13	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Carl Silvertsen; appointed 6/11 by Foust) Term exp. 1/13 <i>Resigned</i>	Dranesville District Representative	<b>Francine De Ferreire Kemp</b>	Foust	Dranesville
George Page (Appointed 1/05-1/10 by Hudgins) Term exp. 1/13	Hunter Mill Business Representative		Hudgins	Hunter Mill

**AIRPORTS ADVISORY COMMITTEE (3 years)  
continued**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Samuel Thornton (Appointed 2/01-1/07 by Kauffman; 1/10 by McKay) Term exp. 1/13	Lee District Representative		McKay	Lee
VACANT (Formerly held by Barbara Kreykenbohm; appointed 1/09 by Gross) Term exp. 1/11 <i>Resigned</i>	Mason District Representative		Gross	Mason
Robert A. Peter (Appointed 2/09-1/10 by Smyth) Term exp. 1/13	Providence District Representative	<b>Robert A. Peter</b>	Smyth	Providence
David Skiles (Appointed 9/10 by Herrity) Term exp. 1/13	Springfield District Representative		Herrity	Springfield
Viki Kinsman (Appointed 2/07-1/10 by Frey) Term exp. 1/13	Sully District Representative		Frey	Sully

**ALCOHOL SAFETY ACTION PROGRAM LOCAL POLICY BOARD (ASAP)  
(3 years)**

**CONFIRMATION NEEDED:**

- Ms. Laura Sauer as the Fairfax-Falls Church Community Services Board  
Alternate Representative

**ATHLETIC COUNCIL (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Michael Champness (Appointed 2/05&3/07 by DuBois; 3/09 by Foust) Term exp. 3/11	Dranesville District Principal Representative		Foust	Dranesville
Clarke Gray Appointed 1/08-9/10 by Smyth) Term exp. 9/12	Providence District Alternate Representative	<b>Clarke Gray</b>	Smyth	Providence
Christy Winters Scott (Appointed 6/08-7/10 by Hudgins) Term exp. 6/12	Women's Sports Alternate Representative		By Any Supervisor	At-Large

**BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE  
(1 year)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Regina Jordan; appointed 6/04&6/09 by Hudgins) Term exp. 6/10 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
Rachel Rifkind (Appointed 5/09-6/09 by Gross) Term exp. 6/11	Mason District Representative		Gross	Mason

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**BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)  
continued**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by John Byers; appointed 6/09-1/12 by Hyland) Term exp. 6/12 <i>Deceased</i>	Mount Vernon District Representative		Hyland	Mount Vernon
VACANT (Formerly held by Robert McDaniel; appointed 9/10 by Herrity) Term exp. 6/11 <i>Resigned</i>	Springfield District Representative		Herrity	Springfield

**BOARD OF EQUALIZATION OF REAL ESTATE ASSESSMENTS (BOE)  
(2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Yvonne Demory (Appointed 1/07-12/10 by Hudgins) Term exp. 12/12	Professional #5 Representative		By Any Supervisor	At-Large
Patricia Flavin(Rehill) (Appointed 12/10 by Hyland) Term exp. 12/12	Professional #6 Representative		By Any Supervisor	At-Large

**CHESAPEAKE BAY PRESERVATION ORDINANCE  
EXCEPTION REVIEW COMMITTEE (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Christina Terpak- Malm; appointed 12/3-9/07 by Frey) Term exp. 9/11 <i>Resigned</i>	Sully District Representative		Frey	Sully

**CHILD CARE ADVISORY COUNCIL (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Tammy K. Derenak; appointed 7/02-9/05 by Kauffman; 2/08- 9/11 by McKay) Term exp. 9/13 <i>Resigned</i>	Lee District Representative		McKay	Lee
VACANT (Formerly held by Karen Hecker; appointed 10/03-9/09 by Hyland) Term exp. 9/11 <i>Resigned</i>	Mount Vernon District Representative		Hyland	Mt. Vernon
VACANT (Formerly held by Joan C. Holtz; appointed 5/09 by Smyth) Term exp. 9/11 <i>Resigned</i>	Providence District Representative		Smyth	Providence

**CITIZEN CORPS COUNCIL, FAIRFAX COUNTY  
(2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Jean Zettler (appointed 11/08-5/10 by Smyth) Term exp. 5/12	Providence District Representative		Smyth	Providence

**COMMISSION FOR WOMEN (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Catherine A. Baum; appointed 11/10 & 10/12 by Hudgins) Term exp. 10/15 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Kari Wright Warren; Appointed 9/10 by Hyland) Term exp. 10/13 <i>Resigned</i>	Mount Vernon District Representative		Hyland	Mount Vernon

**COMMISSION ON ORGAN AND TISSUE DONATION AND TRANSPLANTATION  
(4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Nancy Susco (Appointed 4/11 by Bulova) Term exp. 1/13	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Howard LeRoy Kelley (Appointed 2/01-1/09 by Hudgins) Term exp. 1/13	At-Large Representative		By Any Supervisor	At-Large
Lilian Heizer (Appointed 4/08 by Connolly; 2/09 by Bulova) Term exp. 1/13	At-Large Minority Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Benjamin Gibson; appointed 4/11 by McKay) Term exp. 1/15 <i>Resigned</i>	Lee District Representative		McKay	Lee
VACANT (Formerly held by Carrie Lord Maglich; appointed 12/10-1/11 by Hyland) Term exp. 1/15 <i>Resigned</i>	Mount Vernon District Representative		Hyland	Mount Vernon
David Hess-Linkous (Appointed 7/11 by Smyth) Term exp. 1/13	Providence District Representative		Smyth	Providence
Rosaline Gold (Appointed 12/05 by Gross; 1/10 by Hudgins) Term exp. 1/13	Religious Community Representative		By Any Supervisor	At-Large

**COMMUNITY POLICY AND MANAGEMENT TEAM,  
FAIRFAX-FALLS CHURCH  
(2 years)**

**CONFIRMATIONS NEEDED:**

- Ms. Staci Jones Alexander as the Parent #1 Representative
- Ms. Cristy Gallagher as the Parent #2 Representative

**CONSUMER PROTECTION COMMISSION (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by George Bounacos; appointed 8/09 by Frey) Term exp. 7/12 <i>Resigned</i>	Fairfax County Resident #7 Representative		By Any Supervisor	At-Large

**CRIMINAL JUSTICE ADVISORY BOARD (CJAB) (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly Held by Theo L. Vaughan; appointed 12/09 by Cook) Term exp. 11/12 <i>Resigned</i>	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Rose Miles Robinson; appointed 7/06-2/09 by Hudgins) Term exp. 2/12 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill

**CRIMINAL JUSTICE ADVISORY BOARD (CJAB) (3 years)  
continued**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Andrew Hunter (Appointed 4/04-2/09 by Gross) Term exp. 2/12	Mason District Representative		Gross	Mason
Glen Robinson (Appointed 11/09 by Smyth) Term exp. 8/12	Providence District Representative		Smyth	Providence
VACANT (Formerly held by Michael Birch; appointed 1/08-4/10 by Frey) Term exp. 4/13 <i>Resigned</i>	Sully District Representative		Frey	Sully

**CONFIRMATIONS NEEDED:**

- Mr. Colin McDonald as the General District Court Representative
- Captain Derek DeGeare as the Sheriff’s Office Representative
- Captain John Schneider as the Sheriff’s Office Alternate Representative
- Mr. Muata Langley as the OAR Representative

**ENVIRONMENTAL QUALITY ADVISORY COUNCIL (EQAC) (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Stella Koch (Appointed 10/96-12/00 by Hanley; 1/04 by Connolly; 1/07-1/10 by Bulova) Term exp. 1/13	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Robert McLaren (Appointed 12/98-1/95 by Alexander; 1/98-1/07 by Kauffman; 1/10 by McKay) Term exp. 1/13	At-Large #1 Representative		By Any Supervisor	At-Large
Linda Burchfiel (Appointed 6/08 by Connolly; 1/10 by Bulova) Term exp. 1/13	At-Large #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Patricia Greenberg; appointed 1/11 by Hudgins) Term exp. 1/12 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Hunter Mill
Larry J. Zaragoza (Appointed 2/08-1/10 by Hyland) Term exp. 1/13	Mount Vernon District Representative		Hyland	Mount Vernon
VACANT (Formerly held by Marie Flanagan; appointed 1/10 by Smyth) Term exp. 1/13 <i>Resigned</i>	Providence District Representative		Smyth	Providence

**FAIRFAX AREA DISABILITY SERVICES BOARD**

**(3 years- limited to 2 full consecutive terms per MOU, after initial term)**

[NOTE: Persons may be reappointed after being off for 3 years. State Code requires that membership in the local disabilities board include at least 30 percent representation by individuals with physical, visual or hearing disabilities or their family members. For this 15-member board, the minimum number of representation would be 5.

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Barbara Lawrence (Appointed 2/09-11/09 by McKay) Term exp. 11/12	Lee District Representative		McKay	Lee
Ann Pimley (Appointed 9/03&11/06 by Frey) Term exp. 11/09 <i>Not eligible for reappointment (need 3 year lapse)</i>	Sully District Representative		Frey	Sully

**FAIRFAX COUNTY CONVENTION AND VISITORS CORPORATION  
BOARD OF DIRECTORS**

**(3 years)**

[Note: Established by Board on 6/21/04 for the general administration and proper operation of the Fairfax County Convention and Visitors Corporation.]

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by James C. Rees; appointed 7/04-6/10 by Hyland) Term exp. 6/13 <i>Resigned</i>	Mount Vernon District Representative	<b>Curtis Viebranz</b>	Hyland	Mount Vernon

**FAIRFAX-FALLS CHURCH COMMUNITY SERVICES BOARD**

(3 years – limited to 3 full terms)

[NOTE: In accordance with *Virginia Code* Section 37.2-502, "**prior to making any appointment, the appointing authority shall disclose and make available to the public the names of those persons being considered for appointment.** The appointing authority shall also make information on the candidates available to the public, if such information is available to the appointing authority." **Members can be reappointed after 3 year break from initial 3 full terms. VA Code 37.2-502]**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Karen Margensey; appointed 10/11 by Bulova) Term exp. 6/14 <i>Resigned</i>	At-Large #3 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Mattie Palmore; appointed 1/06-6/10 by Hyland) Term exp. 6/13 <i>Resigned</i>	Mount Vernon District Representative		Hyland	Mount Vernon
VACANT (Formerly held by Lisa Lynne Kania; appointed 10/11 by Frey) Term exp. 6/13 <i>Resigned</i>	Sully District Representative		Frey	Sully

**FAIRFAX COMMUNITY LONG TERM CARE COORDINATING COUNCIL**  
(2 years)

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
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**CONFIRMATION NEEDED:**

- Ms. Melanie Rochon Bush as a Long Term Care Provider
- Ms. Patricia Huff Velander as a Long Term Care Provider

**HEALTH SYSTEMS AGENCY BOARD**  
**(3 years - limited to 2 full terms, may be reappointed after 1 year lapse)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by David Braun; appointed 10/06-6/09 by Smyth) Term exp. 6/12 <i>Resigned</i>	Consumer #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Carol Ann Coryell; appointed 6/05-6/08 by Frey) Term exp. 6/11 <i>Resigned</i>	Consumer #6 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Samuel Jones; appointed 12/09 by Gross) Term exp. 6/12 <i>Resigned</i>	Provider #1 Representative		By Any Supervisor	At-Large

**HUMAN RIGHTS COMMISSION (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Victor Dunbar (Appointed 9/91 by Richards; 9/94 by Davis; 7/97-9/03 by Hanley; 9/06 by Connolly; 9/09 by Bulova) Term exp. 9/12	At-Large #3 Representative		By Any Supervisor	At-Large

**HUMAN SERVICES COUNCIL (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by John Byers; appointed 6/07-7/08 by Hyland) Term exp. 7/12 <i>Deceased</i>	Mount Vernon District #1 Representative		Hyland	Mount Vernon

**INFORMATION TECHNOLOGY POLICY ADVISORY COMMITTEE (ITPAC)  
(3 years)**

**CONFIRMATION NEEDED:**

- Mr. Robert Lehman as the Fairfax County Chamber of Commerce Representative
- Mr. Luke Chung as the School Board Representative

**JUVENILE AND DOMESTIC RELATIONS COURT CITIZENS ADVISORY COUNCIL  
(2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Michael McClanahan (Appointed 12/05-1/07 by Connolly; 2/09-5/11 by Bulova) Term exp. 1/13	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Patricia Smith-Solan (Appointed 1/08-1/11 by Hudgins) Term exp. 1/13	Hunter Mill District Representative		Hudgins	Hunter Mill
Joleane Dutzman (Appointed 1/10-1/11 by Hyland) Term exp. 1/13	Mount Vernon District Representative		Hyland	Mount Vernon
Caroline Kerns (Appointed 2/02-1/11 by Frey) Term exp. 1/13	Sully District Representative		Frey	Sully

**NORTHERN VIRGINIA COMMUNITY COLLEGE BOARD  
(4 years – limited to 2 full terms)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Patrick Walters; appointed 5/06-7/10 by Connolly) Term exp. 6/14 <i>Resigned</i>	Fairfax County #2 Representative		By Any Supervisor	At-Large

**OVERSIGHT COMMITTEE ON DRINKING AND DRIVING  
(3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Adam Parnes; appointed 9/03-6/12 by Hudgins) Term exp. 6/15 <i>Resigned</i>	Hunter Mill District Representative		Hudgins	Braddock
VACANT (Formerly held by Ronald Miner; appointed 8/02-6/11 by Frey) Term exp. 6/14 <i>Resigned</i>	Sully District Representative		Frey	Sully

**PARK AUTHORITY (4 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Janyce Hedetniemi; appointed 1/12-12/12 by Bulova) Term exp. 12/16 <i>Resigned</i>	At-Large Chairman's Representative		Bulova	At-Large Chairman's
VACANT (Formerly held by Marie Reinsdorf; appointed 4/08 by Connolly; 12/11 by Bulova) Term exp. 12/15 <i>Resigned</i>	At-Large #1 Representative		By Any Supervisor	At-Large
Kevin Fay (Appointed 1/03-12/04 by DuBois; 12/08 by Foust) Term exp. 12/12	Dranesville District Representative	<b>Kevin Fay</b>	Foust	Dranesville

**POLICE OFFICERS RETIREMENT SYSTEM BOARD OF TRUSTEES (4 years)**

**CONFIRMATION NEEDED:**

- Captain Edward O’Carroll as the Staff Police Representative

**ROAD VIEWERS BOARD (1 year)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Stephen E. Still; appointed 6/06-12/11 by Smyth) Term exp. 12/12 <i>Resigned</i>	At-Large #4 Representative		By Any Supervisor	At-Large

**SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Joe Brooks; appointed 10/08-1/12 by Smyth) Term exp. 12/14 <i>Resigned</i>	Providence District Representative		Smyth	Providence

**SOUTHGATE COMMUNITY CENTER ADVISORY COUNCIL (2 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Lawrence Bussey; appointed 3/05-3/09 by Hudgins) Term exp. 3/11 <i>Resigned</i>	Fairfax County #2 Representative		By Any Supervisor	At-Large

**TENANT LANDLORD COMMISSION (3 years)**

[NOTE: Per County Code Section 12-2-1, each member of this commission must be a County resident. Tenant Members: shall be a person who, prior to the time of his/her appointment, and throughout his/her term, shall be the lessee of and reside in a dwelling unit. Landlord Members: shall be a person who owns and leases, or serves as a manager for four (4) or more leased dwelling units in Fairfax County or is employed by a real estate management firm that manages more than four (4) rental units. Citizen Members: shall be anyone who is neither a lessee nor lessor of any dwelling unit in Fairfax County.]

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Kevin Denton; appointed 4/10&1/11 by Smyth) Term exp. 1/14 <i>Resigned</i>	Tenant Member #3 Representative		By Any Supervisor	At-Large

**TREE COMMISSION (3 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Andrew J. Bernick; appointed 1/10 by McKay) Term exp. 10/12 <i>Resigned</i>	Lee District Representative		McKay	Lee
VACANT (Formerly held by Marie Flanagan; appointed 12/09 by Smyth) Term exp. 10/11 <i>Resigned</i>	Providence District Representative		Smyth	Providence

**TRESPASS TOWING ADVISORY BOARD (3 years)**

[NOTE: Advisory board created effective 7/1/06 to advise the Board of Supervisors with regard to the appropriate provisions of Va. Code Section 46.2-1233.2 and Fairfax County Code 82.5-32.]

**Membership:** Members shall be Fairfax County residents. A towing representative shall be defined as a person who, prior to the time of his or her appointment, and throughout his or her term, shall be an operator of a towing business in Fairfax County.

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
VACANT (Formerly held by Ronald P. Miner; appointed 6/06 by Connolly; 9/09 by Bulova) Term exp. 9/12 <i>Resigned</i>	Citizen Alternate Representative		By Any Supervisor	At-Large

**UPPER OCCOQUAN SEWAGE AUTHORITY (UOSA)  
(4 years)**

**CONFIRMATIONS NEEDED:**

- Mr. John W. di Zerega as the Fairfax County #2 Representative
- Mr. Randy Bartlett as the Fairfax County Alternate #2 Representative

**WETLANDS BOARD (5 years)**

<u>Incumbent History</u>	<u>Requirement</u>	<u>Nominee</u>	<u>Supervisor</u>	<u>District</u>
Glenda Booth (Appointed 4/88-12/08 by Hyland) Term exp. 12/12	Mount Vernon District #1 Representative		Hyland	Mount Vernon

Board Agenda Item  
January 29, 2013

11:10 a.m.

Items Presented by the County Executive

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ADMINISTRATIVE – 1

Supplemental Appropriation Resolution AS 13181 for the Fairfax County Economic Development Authority to Accept Grant Funding from the Commonwealth of Virginia – Governor’s Opportunity Fund for Intelsat Corporation

ISSUE:

Board of Supervisors’ approval of Supplemental Appropriation Resolution AS 13181 for the Fairfax County Economic Development Authority (FCEDA) to accept grant funding in the amount of \$1,300,000 from the Commonwealth of Virginia as part of the Governor’s Opportunity Fund (GOF) for the Intelsat Corporation. This grant will assist the County with the headquarters relocation of Intelsat Corporation. No local cash match is required. However, Fairfax County will provide transportation improvements in Tysons in the Providence District.

RECOMMENDATION:

The County Executive recommends that the Board approve Supplemental Appropriation Resolution AS 13181 for the FCEDA to accept the grant funding in the amount of \$1,300,000 to convey to Intelsat Corporation as the state portion of the grant. No local cash match will be required. Fairfax County will provide transportation improvements in Tysons in the Providence District. The transportation improvements identified for the GOF match (i.e., the Jones Branch Connector) are already planned and funded within the Fairfax County Department of Transportation, and will not require any additional County expenditure.

TIMING:

Board approval is requested on January 29, 2013.

BACKGROUND:

Fairfax County competed with other jurisdictions for the relocation of the Intelsat Corporation headquarters. As part of the negotiations, the Commonwealth of Virginia supported the relocation of the corporation to Fairfax County with a Governor’s Opportunity Fund grant. The grant is a Performance Grant and a performance agreement has been executed to ensure that, on behalf of Fairfax County and the Commonwealth of Virginia, the projected growth occurs.

As part of the Governor's Opportunity Fund grant, Fairfax County must provide a "local match" which will be in the form of road improvements relevant to the firm's new location in Tysons. Road improvements in Tysons were identified to provide the match.

In addition, as stated in the Performance Agreement, the Commonwealth will provide the following incentives. Please note that these funds do not pass through the County nor do they require a County match.

- Estimated funding of \$75,000 from the Virginia Jobs Investment Program (VJIP);
- Estimated funding of \$75,000 from the Virginia Community College System (VCCS), non-credit training.

FISCAL IMPACT:

Funding in the amount of \$1,300,000 will be provided to Fairfax County to be made available to Intelsat Corporation for the costs of the tenant build-out of the new headquarters facility in Tysons as permitted by Section 2.2-115(C) of the Virginia Code and as permitted by the current GOF statute. A schedule of GOF payments has been set forth in the Performance Agreement and three phases, with metrics, have been agreed upon. The first payment of the GOF grant will be \$1,000,000 for the company to apply towards the cost of the new headquarters build-out. The remaining \$300,000 of the total \$1,300,000 GOF grant will be dispersed over a five year period, as part of Phases II and III, based on the company's achievement of the agreed upon employment metrics.

There is no local cash match required. However, Fairfax County must provide road improvements relevant to the firm's new location. These improvements have already been identified, planned, and funded within the Fairfax County Department of Transportation. This action does not increase the expenditure level of the Federal-State Grant Fund, as funds are held in reserve for unanticipated grant awards.

If Intelsat Corporation does not achieve its performance metrics as described in the Performance Agreement executed between Fairfax County and Intelsat Corporation, then Intelsat is responsible for paying that portion of the grant that it did not achieve, back to Fairfax County. Fairfax County, in turn, will then refund to the Commonwealth of Virginia, the funds it received from Intelsat. Fairfax County will not be held responsible for the financial shortfalls associated with performance metrics not met. The FCEDA will monitor the performance metrics and will provide to the Office of the County Executive, information annually on the number of jobs and capital investment achieved during that time.

Board Agenda Item  
January 29, 2013

CREATION OF NEW POSITIONS:

No County positions will be created by this grant.

ENCLOSED DOCUMENTS:

Attachment 1: Supplemental Appropriation Resolution AS 13181

Attachment 2: Intelsat Corporation Performance Agreement

Attachment 3: Notification of GOF award from the Commonwealth of Virginia

STAFF:

Robert Stalzer, Deputy County Executive

Gerald L. Gordon, President, FCEDA

Catherine Riley, Vice President, FCEDA

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**SUPPLEMENTAL APPROPRIATION RESOLUTION AS 13181**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax Virginia on January 29, 2013, at which a quorum was present and voting, the following resolution was adopted:

**BE IT RESOLVED** by the Board of Supervisors of Fairfax County, Virginia, that in addition to appropriations made previously for FY 2013, the following supplemental appropriation is authorized and the Fiscal Planning Resolution is amended accordingly:

Appropriate to:

Fund:	500-C50000, Federal-State Grant Fund (formerly Fund 102, Federal/State Grant Fund)	
Agency:	G1616, Economic Development Authority	\$1,300,000
Grant:	1160002, Intelsat Corporation - Governor's Opportunity Fund	

Reduce Appropriation to:

Agency:	G8787, Unclassified Administrative Expenses	\$1,300,000
Fund:	500-C50000, Federal-State Grant Fund (formerly Fund 102, Federal/State Grant Fund)	

Source of Funds: Virginia Economic Development Partnership, \$1,300,000

A Copy - Teste:

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Catherine A. Chianese  
Clerk to the Board of Supervisors

## GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND

## PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered as of the 20<sup>th</sup> day of November, 2012, by and between the **COUNTY OF FAIRFAX, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **INTELSAT CORPORATION** (the "Company"), a Delaware corporation authorized to transact business in the Commonwealth.

## WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$1,300,000 from the Governor's Development Opportunity Fund (a "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to relocate its U.S. corporate headquarters from the District of Columbia to an office facility to be constructed in the Locality at 7900 Tysons One Place in Tysons Corner (the "Facility") (as further identified by Fairfax County Tax Map No. 029-4-01-0035-A), thereby making or causing to be made a significant Capital Investment, as hereinafter defined, and creating and retaining a significant number of New Jobs, as hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Company, with the expectation that the Company will meet certain criteria relating to Capital Investment and New Jobs, as well as the creation of certain internships;

WHEREAS, the Locality and the Company desire to set forth their understanding and agreement as to the payout of the GOF Grant, the use of the GOF Grant proceeds, the obligations of the Company regarding Capital Investment and New Job creation and the creation of certain internships, the obligation of the Locality to provide a local match for the GOF Grant, and the obligation of the Company to repay all or part of the GOF Grant under certain circumstances;

WHEREAS, it is anticipated that the construction, equipping and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$24,800,000, of which approximately \$8,000,000 will be invested in furniture, fixtures and equipment, and approximately \$16,800,000 will be invested in the construction of that portion of the Facility to be leased by the Company;

WHEREAS, it is anticipated that the construction, equipping and operation of the Facility will further present opportunities to create and retain at least 432 New Jobs at the Facility; and

WHEREAS, the Locality has determined that the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the GOF Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

**Section 1. Definitions.**

For the purposes of this Agreement, the following terms shall have the following definitions:

“Average Annual Wage” means the average salary for all New Jobs, as determined by dividing total payroll (W-2 compensation) for New Jobs by the total of New Jobs.

“Capital Investment” means a capital expenditure by or on behalf of the Company in real property, tangible personal property, or both, at the Facility, excluding the purchase of land or existing real property improvements. A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of the Company” if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for the Company’s interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as “Capital Investment.” The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements by or on behalf of the Company will qualify as Capital Investment. The Capital Investment must be in addition to the capital improvements at the Facility site as of November 1, 2012.

“Maintain” means that the New Jobs created pursuant to the GOF Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes and (iii) other temporary work stoppages.

“New Job” means permanent full-time employment for a position of an indefinite duration by the Company, its affiliates or its subsidiaries, at the Facility for which the Company’s standard fringe benefits are paid by the Company for the employee, and for which the Company pays an Average Annual Wage of at least \$138,688. Each New Job must be for a position that requires a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

“Performance Date” means December 31, 2017. The Performance Date may not be extended.

“Phase I Installment” means the \$1,000,000 first installment of the GOF Grant to be paid to the Company in accordance with Section 3(a).

“Phase I Targets” means the Company’s obligations to make or cause to be made Capital Investments at the Facility of at least \$24,800,000 and to create and Maintain at least 432 New Jobs at the Facility, all as of the Performance Date.

“Phase II Installment” means the second installment of the GOF Grant in an amount not to exceed \$250,000 to be paid to the Company in accordance with Section 3(b).

“Phase III Installment” means the third installment of the GOF Grant in an amount not to exceed \$50,000 to be paid to the Company in accordance with Section 3(c).

“Virginia Code” means the Code of Virginia of 1950, as amended.

“Virginia Resident” means any Resident, as defined in Section 58.1-302 of the Virginia Code, as amended or supplemented. In pertinent part, that definition includes natural persons domiciled in Virginia, and every other person who, for an aggregate of more than 183 days of the year, maintains his or her place of abode within Virginia, whether domiciled in Virginia or not.

## **Section 2. Targets; Qualification for GOF Grant.**

The Company agrees that at all times from its move into the Facility through the Performance Date, it will operate the Facility and maintain its U.S. corporate headquarters at the Facility.

As for the Phase I Targets, the Company agrees to make or cause to be made a Capital Investment at the Facility of at least \$24,800,000, and to create and Maintain at least 432 New Jobs at the Facility, all as of the Performance Date. In the event of a failure to meet these Phase I Targets, the Company’s sole obligation shall be to make repayments as specified in Section 5 of this Agreement.

Under certain circumstances described in Section 3(b), the Company may qualify for some or all of the Phase II Installment of the GOF Grant if more than 161 of the New Jobs are held by Virginia Residents. Under certain circumstances described in Section 3(c), the Company may qualify for some or all of the Phase III Installment of the GOF Grant to the extent that the Company has provided stipends to Virginia Residents attending Virginia higher educational institutions who have been offered internships at the Facility in the period from the date of this Agreement through the Performance Date.

The prevailing average wage in the Locality is \$77,265. The Locality is not a high-unemployment locality, having an unemployment rate for 2011, which is the last year for which such data is available, of 4.3% as compared to the 2011 statewide unemployment rate of 6.2%. The Locality is not a high-poverty locality, with a poverty rate for 2010 which is the last year for which such data is available, of 5.9% as compared to the 2010 statewide poverty rate of 11.1%.

The Locality hereby strongly encourages the Company to ensure that at least thirty percent (30%) of the new hires for New Jobs are Virginia Residents.

**Section 3. Disbursement of GOF Grant.**

(a) *Phase I:* By no later than December 31, 2012, the Locality will request the disbursement to it of the \$1,000,000 Phase I Installment of the GOF Grant. If not so requested by the Locality by December 31, 2012, this Agreement will terminate. The Locality and the Company will be entitled to reapply for a GOF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

The Phase I Installment of the GOF Grant in the amount of \$1,000,000 will be paid to the Locality, upon its request. Within 30 days of its receipt of the proceeds of the Phase I Installment of GOF Grant, the Locality will disburse those GOF Grant proceeds to the Company as an inducement to the Company to achieve the Phase I Targets at the Facility. The Company will use the proceeds of the Phase I Installment of the GOF Grant to defray the cost of the build-out of the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

(b) *Phase II:* In the compliance report to be filed by the Company on or before March 31, 2018, as described in Section 6, the Company will report the number of Virginia Residents holding New Jobs at the Facility as of the Performance Date. If that number is greater than 161, the Company will qualify for the Phase II Installment of the GOF Grant in an amount equal to \$10,000 times the number of Virginia Residents holding New Jobs at the Facility as of the Performance Date over the base number of 161, but not to exceed an aggregate Phase II Installment of \$250,000. Notwithstanding the foregoing, no Phase II Installment in any amount will be paid to the Company if the Company has failed to achieve 100% of its Phase I Targets by the Performance Date.

The Phase II Installment of the GOF Grant in the amount indicated in the prior paragraph will be paid to the Locality, upon its request. Within 30 days of its receipt of the proceeds of the Phase II Installment of the GOF Grant, the Locality will disburse those GOF Grant proceeds to the Company as an inducement to the Company to hire Virginia Residents for its New Jobs. The Company will use the proceeds of the Phase II Installment of the GOF Grant to defray the cost of the build-out of the Facility or for training, as permitted by Section 2.2-115(D) of the Virginia Code. The GOF Grant proceeds may be used to defray such costs incurred and paid prior to disbursement of the Phase II Installment.

(c) *Phase III:* In the compliance report to be filed by the Company on or before March 31, 2018, as described in Section 6, the Company will report the number of Virginia Residents attending Virginia higher educational institutions who have been offered internships at the Facility in the period from the date of this Agreement through the Performance Date and the amount of the Company's funds used to provide stipends to such interns in the same period. If the Company has used its own funds to provide stipends to Virginia Residents attending Virginia higher educational institutions who have been offered internships at the Facility in the period from the date of this Agreement through the Performance Date, the Company will qualify for the Phase III Installment of the GOF Grant in an amount equal to the funds so provided by the

Company, but not to exceed an aggregate Phase III Installment of \$50,000. Notwithstanding the foregoing, no Phase III Installment in any amount will be paid to the Company if the Company has failed to achieve 100% of its Phase I Targets by the Performance Date.

The Phase III Installment of the GOF Grant in the amount indicated in the prior paragraph will be paid to the Locality, upon its request. Within 30 days of its receipt of the proceeds of the Phase III Installment of the GOF Grant, the Locality will disburse those GOF Grant proceeds to the Company as an inducement to the Company to hire as interns Virginia Residents attending Virginia higher educational institutions. The Company will use the proceeds of the Phase III Installment of the GOF Grant to defray the cost of training employees holding the New Jobs, including the cost of training such interns, as permitted by Section 2.2-115(D) of the Virginia Code. The GOF Grant proceeds may be used to defray such costs incurred and paid prior to disbursement of the Phase III Installment.

**Section 4. Break-Even Point; State and Local Incentives.**

VEDP has estimated that the Commonwealth will reach its “break-even point” by the Performance Date. The break-even point compares new revenues expected as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth’s expenditures on incentives, including but not limited to the GOF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
GOF Grant (Phases I, II and III)	\$1,300,000
Virginia Jobs Investment Program (“VJIP”) (Estimated)	75,000
Virginia Community College System (“VCCS”)(Estimated) Non-Credit Training	75,000

In addition to the GOF Grant to be provided by the Commonwealth, the Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

<u>Category of Incentive (Estimated):</u>	<u>Total Amount</u>
Construction of the Jones Branch Connector	\$1,300,000

If, by the Performance Date, the funds disbursed or committed to be disbursed by the Locality for the items listed above as incentives provided as matching grants total less than the \$1,300,000 GOF Grant local match requirement, the Locality, subject to appropriation, will make an additional non-cash grant, in the nature of public infrastructure improvements, to or for the benefit of the Company of the difference at the Performance Date, so long as the Company has met its Phase I Targets. Any changes to the Locality’s incentives from the incentives described above will require the prior approval of the Company and VEDP.

The proceeds of the Phase I Installment, the Phase II Installment and the Phase III Installment of the GOF Grant shall be used for the purposes described in Section 3. The VJIP

grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The VCCS funds will be used by the Company to defray the costs of training its employees, utilizing non-credit courses offered by the Virginia Community College System.

The Locality and the Company have agreed that the Locality's proposed road improvements will provide a direct benefit to the Company by providing better access to the Facility by the Company's employees and visitors.

**Section 5. Repayment Obligation.**

(a) *If Statutory Minimum Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make or cause to be made a Capital Investment of at least \$5,000,000 in the Facility and create and Maintain at least 50 New Jobs at the Facility in order to be eligible for the GOF Grant. In the event of a failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date the entire Phase I Installment of the GOF Grant must be repaid by the Company to the Locality.

(b) *If Statutory Minimum Requirements are Met:* The provisions of this subsection (b) are only applicable if the Company has met the statutory minimum eligibility requirements for a GOF Grant, as described in subsection (a). Solely for purposes of repayment, the Phase I Installment of the GOF Grant is to be allocated as \$500,000 (50%) for the Company's Capital Investment Target and \$500,000 (50%) for its New Jobs Target. If the Company has met at least ninety percent (90%) of both of the Phase I Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the Phase I Installment of the GOF Grant. If the Company has not met at least ninety percent (90%) of either or both of its Phase I Targets, the Company shall repay to the Locality that part of the Phase I Installment of the GOF Grant that is proportional to the Phase I Target or Targets for which there is a shortfall. For example, if at the Performance Date, the Capital Investment is only \$14,880,000 and only 346 New Jobs have been created and Maintained, the Company shall repay to the Locality forty percent (40%) of the moneys allocated to the Capital Investment Target (\$200,000) and twenty percent (20%) of the moneys allocated to the New Jobs Target (\$100,000).

As noted above, if the Company has met at least ninety percent (90%) of both of the Phase I Targets at the Performance Date, there will be no obligation to repay any portion of the Phase I Installment of the GOF Grant. Nevertheless, as described in Subsections 3(b) and (c), no Phase I Installment or Phase II Installment will be paid if the Company has failed to achieve 100% of its Phase I Targets at the Performance Date, and met the other requirements set forth in such subsections.

(c) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Phase I Targets by and through the Performance Date, and if the Locality or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire Phase I Installment of the GOF Grant to the Locality. Such a determination will be based solely on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an

abandonment of the Facility by the Company or other similar significant event that demonstrates the Company will be unable or is unwilling to satisfy the Phase I Targets for the Phase I Installment of the GOF Grant. Such a determination will be subject to the Disputes provision of this Agreement.

(d) *Repayment Dates: Such repayment shall be due from the Company to the Locality within ninety days of the Performance Date or the Determination Date, as applicable.* Any moneys repaid by the Company to the Locality hereunder shall be repaid by the Locality promptly to VEDP for redeposit into the Governor's Development Opportunity Fund. The Locality shall use its best efforts to recover such funds, including legal action for breach of the Company's obligation to make repayments as required by this Agreement. The Company shall be liable for all attorneys' fees and costs incurred by the Locality in connection with any legal action brought to collect such funds.

#### **Section 6. Company Reporting.**

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality and VEDP of the Company's progress on the Phase I Targets. Such progress reports will be provided annually on or before each March 31, commencing March 31, 2013, and covering the period through the prior December 31, and at such other times as the Locality may reasonably require. Such progress reports will substantiate the amount of the Capital Investment at the Facility, the number of New Jobs created at the Facility, the average annual wages paid to those employees, the residency of those employees and the average level of fringe benefits provided to those employees. Further, the progress report due by March 31, 2018 will contain all information required for the Locality and VEDP to assess whether, and in what amounts, a Phase II Installment or a Phase III Installment may be due to the Company. In no event will the Company be required to provide information that the Company determines would breach Company policies relating to information privacy; provided that the Company must provide at least as much information as is reasonably necessary for the Locality and VEDP to determine whether the Company has met the Phase I Targets and met the requirements for disbursement of the Phase II and Phase III installments.

If the Company wishes to count as Capital Investments the capital expenditures made on its behalf by the lessor or developer of the Facility, the Company is responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on behalf of the Company.

#### **Section 7. Dispute Resolution.**

In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with this Agreement (including disputes as to the creation, validity, or interpretation of this Agreement) (a "Dispute"), then upon the written request of either party, each of the parties will appoint a designated senior executive whose task it will be to meet for the purpose of endeavoring to resolve the Dispute. The designated executives will meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with

its resolution. Such executives will discuss the Dispute and will negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceeding relating thereto. The specific format for such discussions will be left to the discretion of the executives but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other parties. No formal proceedings for the resolution of the Dispute may be commenced until the earlier to occur of (a) a good faith mutual conclusion by the executives that amicable resolution through continued negotiation of the matter in issue does not appear likely or (b) the 90<sup>th</sup> day after the initial written request to negotiate the Dispute. If the resolution of the Dispute requires any party to take, or cause to be taken or to cease taking, some action, such party shall be provided a reasonable period of time, not to exceed ninety (90) days, to take, to cause, or to cease taking, such action.

**Section 8. Notices.**

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

with a copy to:

Before the Facility lease commencement  
Date:

Intelsat Corporation  
3400 International Drive, NW  
Washington, DC 20008  
Attention: Director, Corporate Services and  
Real Estate

Intelsat Corporation  
3400 International Drive, NW  
Washington, DC 20008  
Attention: Legal Department

After the Facility lease commencement  
Date:

Intelsat Corporation  
7900 Tysons One Place  
Tysons Corner, Virginia 22102  
Attention: Director, Corporate Services and  
Real Estate

Intelsat Corporation  
7900 Tysons One Place  
Tysons Corner, Virginia 22102  
Attention: Legal Department

if to the Locality, to:

with a copy to:

County of Fairfax, Virginia  
12000 Government Center Parkway, Suite 552  
Fairfax, Virginia 22035-0066  
Attention: Mr. Edward L. Long, Jr., County  
Executive

County of Fairfax, Virginia  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0066  
Attention: David P. Bobzien, Esquire, County  
Attorney

With a further copy to:

Fairfax County Economic Development  
Authority  
8300 Boone Blvd, Suite 450  
Tysons Corner, Virginia 22182  
Attention: Gerald L. Gordon, Ph.D., President  
and Chief Executive Officer

if to VEDP, to:

Virginia Economic Development Partnership  
901 East Byrd Street, 19<sup>th</sup> Floor  
Post Office Box 798 (zip: 23218-0798)  
Richmond, Virginia 23219  
Attention: President and CEO

with a copy to:

Virginia Economic Development Partnership  
901 East Byrd Street, 19<sup>th</sup> Floor  
Post Office Box 798 (zip: 23218-0798)  
Richmond, Virginia 23219  
Attention: General Counsel

**Section 9. Miscellaneous.**

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement between the parties hereto as to the GOF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality and VEDP; provided that the Company shall have the right, without consent of the Locality or VEDP, to assign this Agreement to any entity that controls, is controlled by, or is under common control with, the Company if the Company remains liable for the performance of any such assignee of its obligations under this Agreement and provides written notice to the Locality and VEDP of its intention to make such assignment.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Fairfax, Virginia, and such litigation shall be brought only in such court. In the event of any such litigation, the Locality shall notify the President and Chief Executive Officer of VEDP in writing.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be

restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) *Status of Laws Governing the GOF*: The provisions in this Agreement regarding the GOF Grant reflect the applicable provisions of the Virginia Code as of July 1, 2012. Changes made by the General Assembly in the applicable provisions of the Virginia Code or in the funding available to pay the Phase II Installment and the Phase III Installment, will be read into, and will be deemed to amend, this Agreement. VEDP will provide the Locality and the Company with written notice of any such change.

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IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

**COUNTY OF FAIRFAX, VIRGINIA**

By Edward L Long Jr  
Name: EDWARD L. LONG JR.  
Title: COUNTY EXECUTIVE  
Date: November 20, 2012

**INTELSAT CORPORATION**

By Michelle V Bryan  
Name: Michelle V Bryan  
Title: SVP - HR & Corporate Services  
Date: November 19, 2012



# COMMONWEALTH of VIRGINIA

Office of the Governor

James S. Cheng  
Secretary of Commerce and Trade

November 29, 2012

Mr. Edward Long, Jr.  
County Executive  
Fairfax County  
12000 Government Center Parkway, Suite 552  
Fairfax, Virginia 22035-0066

Dear Mr. Long:

I am delighted to inform you that Governor McDonnell has preliminarily approved a \$1,300,000 grant from the Governor's Opportunity Fund to assist Fairfax County with the location of Intelsat Corporation. Formal approval will occur when Intelsat finalizes its decision and we can jointly announce this significant accomplishment for your community.

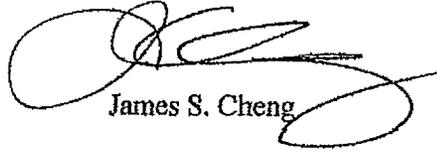
The Intelsat facility is extremely important to both the Commonwealth and Fairfax County, and we are hopeful that the Opportunity Fund Grant will encourage Intelsat to make a favorable decision. You certainly have our full support as we work to this end. If you are successful in securing this commitment from Intelsat to locate in Fairfax County, please notify Suzanne West at the Virginia Economic Development Partnership (804-545-5806) so that the announcement of their decision can be coordinated with the company and you. Governor McDonnell has followed this project closely and would like to participate in the official announcement if his schedule permits. If not, a mutually agreed upon joint press release is the appropriate vehicle for the public disclosure of this project.

We would like to remind you that in accordance with the Governor's Opportunity Fund guidelines, a performance agreement between the County and Intelsat is essential prior to the actual payment of this grant. This item will be required when your payment request is submitted.

Mr. Edward L. Long, Jr.  
November 29, 2012  
Page Two

I want to thank you for your efforts in working on this project to bring economic growth to Fairfax.

Sincerely,



James S. Cheng

JSC:kme

cc Mr. Martin J. Briley  
Virginia Economic Development Partnership

Ms. Suzanne West  
Virginia Economic Development Partnership

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ADMINISTRATIVE - 2

Authorization to Advertise a Public Hearing to Convey Board-Owned Property to a Member of the Public (Braddock District)

ISSUE:

Board authorization to advertise a public hearing to convey Board-owned property to a Member of the Public (Buyer).

RECOMMENDATION:

The County Executive recommends that the Board authorize a public hearing to convey Board-owned property to the Buyer and waive County policy requiring notification of adjacent property owners of the public hearing by certified mail.

TIMING:

Board action is requested on January 29, 2013 to provide sufficient time to advertise the proposed public hearing on March 5, 2013, at 4:00 PM.

BACKGROUND:

The Board of Supervisors is the owner of a parcel of land totaling 0.48 acres located at 11538 Braddock Road and identified as Tax Map No. 56-4 ((5)) parcel 3. This parcel is completely surrounded by privately-owned property. Without access to sanitary sewer or a septic field, the parcel is currently considered undevelopable, and is classified by the Department of Tax Assessment as "nonbuildable".

The property was acquired by the Board during the expansion of Braddock Road in the early 1990's when construction activities caused the existing septic field on the property to fail. The house utilizing the failed septic field was demolished after acquisition. The property is currently maintained as open space.

Mr. David Green (Buyer) is the owner of the lots on either side of the property identified by Tax Map Nos. 56-4 parcels 1, 2 and 4. He would like to buy the Board-owned parcel to create a contiguous property along Braddock Road. The owner is aware of the developmental constraints on the site. The Fairfax County Department of Transportation has indicated that they do not have a use for the parcel, and it has agreed that the parcel should be treated as surplus property.

Since the parcel is no longer needed for road improvement purposes, and since the small size of the parcel and lack of access to public sewer facilities make it unsuitable for any other public use, the County will serve the greater public benefit by conveying the parcel to Buyer for fair market value. If the conveyance is approved, staff will obtain an appraisal to

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determine the fair market value of the property. The Buyer will pay for the cost of this appraisal.

In accordance with Board Policy and section 15.2-1800 of the Code of Virginia, a public hearing is required prior to the disposition of Board-owned property.

FISCAL IMPACT:

The proceeds from the sale will be deposited in the general fund.

ENCLOSED DOCUMENTS:

Attachment A - Location Map 56-4

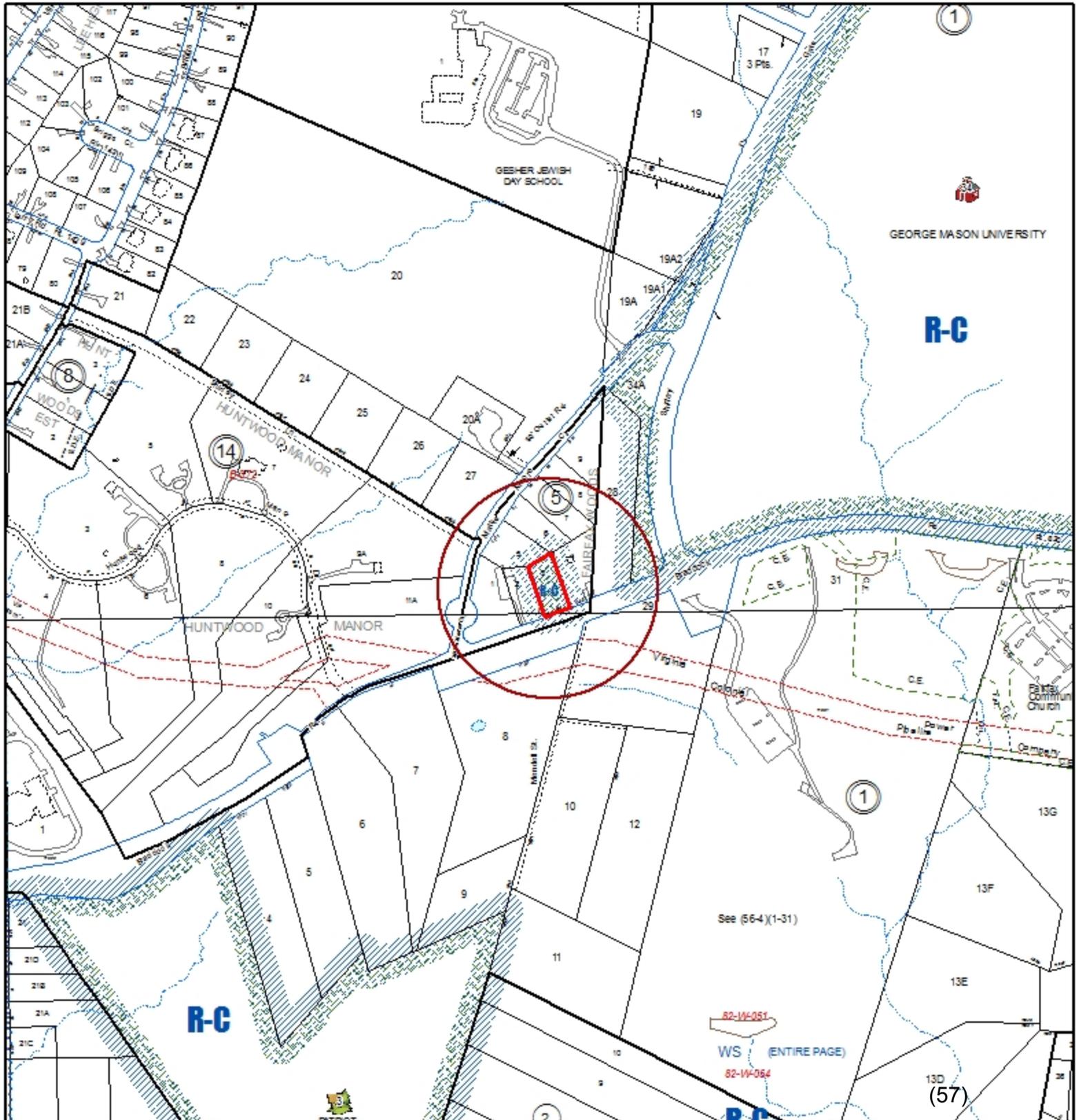
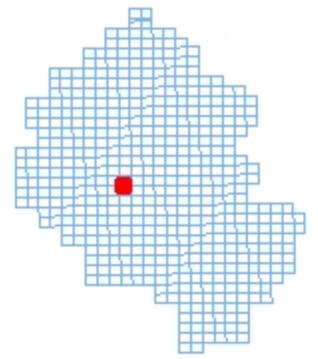
STAFF:

David J. Molchany, Deputy County Executive

Jose A. Comayagua, Jr., Director, Facilities Management Department

# Subject Property: Tax Map No. 0564 05 0003

0 125 250 500 Feet



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ADMINISTRATIVE - 3

Authorization to Advertise a Public Hearing on a Proposed Agreement with the Commissioner of Highways of the Commonwealth of Virginia (Commissioner)  
Re: Sign Removal in the Public Rights-of-Way

ISSUE:

Board authorization of a public hearing on a proposed agreement with the Commissioner that would allow the County to remove certain signs located in the public rights-of-way.

RECOMMENDATION:

The County Executive recommends authorization of the advertisement of a public hearing on proposed agreement and adoption of a resolution set forth in Attachment 1.

TIMING:

Board action is requested on January 29, 2013, to provide sufficient time to advertise the proposed Board of Supervisors' public hearing on February 26, 2013, at 4:00 p.m.

BACKGROUND:

Last year, staff proposed various options to address removal of signs from the public rights-of-way in a memorandum to the Board dated February 10, 2012. Section 33.1-375.1 of the Code of Virginia authorizes the Board of Supervisors of Fairfax County, Virginia, to enter into an agreement with the Commissioner of Highways to act as the Commissioner's agent for the purpose of removing unlawful signs from public rights-of-way. Previously, Section 33.1-375.1 of the Code of Virginia contained an exemption for political signs, protecting them from removal until three days after the election to which they applied. By an amendment to Section 33.1-375.1, effective July 1, 2012, political signs placed in the public rights-of-way became equally subject to removal under an agreement between the Board and the Commissioner. Section 33.1-373 of the Code of Virginia was also amended last year to declare that both signs and advertisements placed in public rights-of-way are a nuisance and may be removed by the Commissioner or his representatives.

If the Board chooses to remove signs from the public right-of-way utilizing the Community Labor Force under the supervision of the Office of the Sheriff, it may do so under Va. Code Ann. § 33.1-375.1, subject to the following procedures:

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- Following completion of an advertised public hearing, the Board may enter into a formal agreement with the Commissioner authorizing the Board to act as the Commissioner's agent for the purpose of removing signs and advertising located within the limits of any highway and collecting penalties and costs provided for in Section 33.1-373. Section 33.1-351 of the Code of Virginia defines "highway" as "every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this Commonwealth."
- Signs advertising or providing directions to a "special event" that are erected from Saturday through the following Monday may not be removed.

In coordination with VDOT and the Office of the Attorney General, the Office of the County Attorney has drafted a proposed agreement between the Board of Supervisors and the Commissioner. The agreement has been approved as to form and content by VDOT on behalf of the Commonwealth Transportation Commissioner, as set forth in Attachment 2.

It should be noted that nothing in this agreement, if approved, would prevent VDOT or other agents acting on their behalf, such as Adopt-A-Highway, from removing signs under their current authority.

REGULATORY IMPACT:

The proposed agreement, if approved, would permit the County to act as the Commissioner's agent for the purpose of removing signs and advertising located within the public right-of-way and collecting penalties and costs provided for in Section 33.1-373 of the Code of Virginia which shall be paid to the County of Fairfax. A copy of a Staff Report dated January 8, 2013, to the Board which outlines the proposed program is enclosed as Attachment 3.

FISCAL IMPACT:

It is estimated the annual cost of removal of the signs will be \$150,000. The Board approved \$150,000 as part of the FY 2012 Carryover Review for this program.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution  
Attachment 2 – Proposed Agreement  
Attachment 3 – Staff Report

STAFF:

Robert A. Stalzer, Deputy County Executive  
Stan Berry, Sheriff  
Jeffrey Blackford, Director, Department of Code Compliance

**Attachment 1**

**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 January 29, 2013, at which meeting a quorum was present, the following resolution was adopted:

WHEREAS, Section 33.1-375.1 of the Code of Virginia allows the Board, after conducting a public hearing on the matter, to enter into an agreement with the Commissioner of Highways to act as the Commissioner's agent for the purpose of removing signs from the Virginia Department of Transportation right-of-way and collecting penalties and costs provided for in Section 33.1-373 of the Code of Virginia.

WHEREAS, the public necessity, convenience, general welfare, and good zoning practice require consideration of the proposed agreement with the Commissioner.

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 public hearing on the proposed agreement as recommended by staff.

A Copy Teste:

---

Catherine A. Chianese  
Clerk to the Board of Supervisors

**Attachment 2**

**AGREEMENT BETWEEN  
THE VIRGINIA DEPARTMENT OF TRANSPORTATION  
AND  
THE BOARD OF SUPERVISORS  
OF  
FAIRFAX COUNTY, VIRGINIA  
FOR ENFORCEMENT OF LAWS REGARDING ILLEGAL SIGNS AND ADVERTISING WITHIN THE  
LIMITS OF THE HIGHWAY**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the Commissioner of Highways of the Commonwealth of Virginia (Commissioner), and the County of Fairfax, Virginia, acting by and through its Board of Supervisors (Board).

**WITNESSETH:**

WHEREAS, pursuant to Title 33.1, Chapter 7, Article 1 of the *Code of Virginia* (1950), as amended (*Code*), the Commissioner, as the chief executive officer of the Virginia Department of Transportation (VDOT), enforces the prohibition on the placement of signs and advertising within the limits of highways in the Commonwealth; and

WHEREAS, the Board, as the governing body of Fairfax County, has an interest in protecting the public health, safety, and welfare, and in protecting the appearance of the County, in general; and

WHEREAS, the Board has found that the proliferation of signs and advertising in the rights-of-way of highways in Fairfax County threatens the public safety and the welfare of the County, and has a negative effect on the appearance of highways; and

WHEREAS, after a public hearing on the matter and by an appropriate resolution adopted by the Board at its meeting on \_\_\_\_\_ [DATE] \_\_\_\_\_, attached hereto as Exhibit A, the Board expressed its desire and agreement to enter into this Agreement with the Commissioner to enforce the provisions of § 33.1-373 of the *Code*, and to collect the penalties and costs provided therein pursuant to § 33.1-375.1 ; and

WHEREAS, the Commissioner desires the Board's assistance in removing signs and advertising from the highways in Fairfax County.

NOW, THEREFORE, for and in consideration of the mutual benefits to be derived from this Agreement, the parties hereto agree as follows:

1. Pursuant to § 33.1-375.1 of the *Code*, the Commissioner hereby authorizes the Board to act as the Commissioner's agent for the purpose of removing any signs or advertising located within the rights-of-way, in violation of § 33.1-373 of the *Code*.
2. The Commissioner further authorizes the Board to act as the Commissioner's agent, pursuant to § 33.1-375.1 of the *Code*, for the purpose of collecting the penalties and costs provided for in § 33.1-373 of the *Code*.
3. The Board may authorize local law-enforcement agencies, including, without limitation, the Fairfax County Sheriff's Office, or other local governmental entities to act as agents of the Commissioner for the purpose of fulfilling the terms of this Agreement.
4. Any penalties and costs collected under this Agreement shall be paid to Fairfax County.

5. Any signs or advertising promoting and/or providing directions to a special event erected from Saturday through the following Monday shall not be subject to this Agreement.
6. The Board shall require each of its employees and any volunteers who are authorized to act on its behalf to comply with the provisions of this Agreement and all applicable laws.
7. If a lawfully placed sign is confiscated by an employee or volunteer authorized to act for the Board in violation of the authority granted under this Agreement, the sign owner shall have the right to reclaim the sign within five business days of the date of such confiscation.
8. The Parties agree that the following procedures shall apply to the collection of penalties and costs referenced in Paragraph 2, above, and any appeals thereto:
  - a. The Board, or its designee, when collecting the penalties and costs referenced in Paragraph 2, above, shall issue an invoice to the person, firm, or corporation being advertised for collection of any and all penalties and costs, as provided in §33.1-373, which shall provide that within 30 days, 33 days if the invoice is sent by mail, the person, firm, or corporation being advertised shall either (a) remit payment of the invoice to the Board, or its designee, or (b) notify the Board or its designee in writing that matter and/or the penalties and costs are disputed.
  - b. In the event that a person, firm or corporation disputes the matter and/or penalties and costs as noted in subdivision a. the Board shall be responsible for resolving the dispute in accord with all applicable laws.
9. This Agreement may be terminated upon 30-days' written notice by either party to the other party.
10. This Agreement may be amended at any time by the written agreement of the parties.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives:

VIRGINIA DEPARTMENT OF TRANSPORTATION

---

Gregory A. Whirley  
Commissioner of Highways

FAIRFAX COUNTY, VIRGINIA

---

Edward L. Long Jr.  
County Executive of Fairfax County



**FAIRFAX**  
**COUNTY** V I R G I N I A

Attachment 3

**PROPOSED SIGN REMOVAL PROGRAM**

Sign Removal Program

**PUBLIC HEARING DATE**

**Board of Supervisors**

February 26, 2013, at 4:00 p.m.

**PREPARED BY**  
**DEPARTMENT OF CODE COMPLIANCE**  
**(703) 324-1300**

January 8, 2013

mrc



Americans With Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information call (703) 324-1334.

## Staff Comment

### Background

Section 33.1-375.1 of the Code of Virginia authorizes the Board of Supervisors of Fairfax County, Virginia, to enter into an agreement with the Commissioner of Highways to act as the Commissioner's agent for the purpose of removing unlawful signs from the public rights-of-way. Previously, Section 33.1-375.1 of the Code of Virginia contained an exemption for political signs, protecting them from removal until three days after the election to which they applied. By an amendment to Section 33.1-375.1, effective July 1, 2012, political signs placed in the public rights-of-way became equally subject to removal under an agreement between the Board and the Commissioner. Section 33.1-373 of the Code of Virginia was also amended this year to declare that both signs and advertisements placed in public rights-of-way are a nuisance and may be removed by the Commissioner or his representatives.

If the Board chooses to remove signs from the public right-of-way and assess the offenders, it may do so under Section 33.1-375.1 of the Code of Virginia subject to the following procedures:

- Following completion of an advertised public hearing, the Board may enter into a formal agreement between the Commissioner to act as the Commissioner's agent for the purpose of removing illegal signs and advertising placed within the limits of any highway and collecting civil penalties provided for in Section 33.1-373. Virginia Code Ann. § 33.1-351 defines the term "highway" as "every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this Commonwealth."
- Signs advertising or providing directions to a "special event" that are erected from Saturday through the following Monday may not be removed.

In coordination with VDOT and the Office of the Attorney General, the Office of the County Attorney has drafted a proposed agreement between the Board of Supervisors and the Commissioner that has been found to be acceptable in both form and content by VDOT on behalf of the Commissioner as set forth in Attachment 2. Additionally, staff has prepared a proposed enforcement program pursuant to the proposed agreement and will develop an education/publicity campaign directed toward civic associations, local Chambers of Commerce, and development and real estate trade groups.

### The Problem

Unlawful signs in the public rights-of-way have been a long-standing problem, but the number of signs has, in some citizens' estimation, spiraled out of control in recent years. Between fields of popsicle-stick signs for homebuilders and politicians, and signs for weight loss, work-at-home businesses, hauling, and other signs placed on every available

traffic sign and utility pole, many citizens in Fairfax County have voiced concern about unlawful signs. One of the issues involved in enforcement is that there is no one agency or department devoted to removal of these signs or enforcement against persons who erect the signs in violation of the law.

### **Current Enforcement Efforts**

Signs within the right-of-way are subject to the provisions of Chapter 7 of Title 33.1 of The Code of Virginia. Va. Code Ann. § 33.1-373 provides, in relevant part, that “any person who in any manner (i) paints, prints, places, puts or affixes any sign or advertisement upon or to any rock, stone, tree, fence, stump, pole, mile-board, milestone, danger-sign, guide-sign, guidepost, highway sign, historical marker, building or other object lawfully within the limits of any highway or (ii) erects, paints, prints, places, puts, or affixes any sign or advertisement within the limits of any highway shall be assessed a civil penalty of \$100. Each occurrence shall be subject to a separate penalty.” There are some limited exceptions to the prohibitions of Va. Code § 33.1-373, which are presented in Va. Code § 33.1-355. These include signs for no trespassing, Red Cross stations, signs at the intersections of two or more roads giving the distance or direction to a church, residence, or place of business, and signs denoting only the name of a civic service club or church. Further, as referenced above, signs and advertising promoting and/or providing directions to a special event erected from Saturday through the following Monday shall not be subject to removal under an agreement under Va. Code Ann. § 33.1-375.1.

Currently, VDOT has the primary responsibility for the removal of illegal signs in public rights-of-way. According to VDOT staff, VDOT engages in the removal of illegally posted signs in the public right of way on a complaint basis. It is also VDOT’s policy to send invoices for costs to those parties responsible for the placement of the illegal signs.

### **Adopt A Highway Program**

The Adopt-A-Highway Program sponsored by VDOT has the authority to remove illegal signs from public rights-of-way. Currently, according to VDOT, there are approximately 250 groups in the County, with about half being active in the clean-up programs. Clean-ups are provided on both secondary and primary roadways in segments from ¼ to 2 miles in length. This program, administered as a community-sponsored program, is at a minimal cost to the state and no direct cost to the County. This program would be unaffected by any agreement between the Board and the Commissioner.

### **Proposed Enforcement Program – Initial Phase**

If the Board of Supervisors authorizes the sign removal program, county staff will educate the public and business groups about it after the sign removal agreement has been executed. On this effort, the Department of Code Compliance will work in coordination with the Sheriff’s Office, Office of Public Affairs, VDOT’s public affairs staff. These efforts may include outreach to homeowners and civic groups, business and trade

organizations, public service announcements, and outreach to the news media.

### **Proposed Enforcement Program – Second Phase**

Upon selection of the roadway segments and public information effort by County staff, the actual implementation of the program would begin. The steps required for the implementation of the program are as follows:

#### **Community Labor Force**

The Office of the Sheriff will provide its Community Labor Force (CLF) to remove signs in identified areas of the County. It is estimated that the cost of this program will be \$150,000 on an annual basis. CLF crews would remove all signs located in the public rights-of-way between Tuesdays and Fridays. A limitation on the days selected will help insure that legal special event signs permitted from Saturday through Monday will not be removed. These signs will then be stored at a County facility for five (5) days, which would allow the owner of the sign to reclaim it as required by Va. Code Ann. § 33.1-375.1(D). After this five (5) day period, unclaimed signs would be destroyed.

Assuming that this program is maintained for a period of one (1) year in the County, at the end of the one (1) year period it will be evaluated by staff and an analysis of its successes and/or failures will be forwarded to the Board of Supervisors. If it is determined by the Board of Supervisors that the program should be retained, any modifications suggested by the Board of Supervisors will be incorporated into the program and it will be maintained on a permanent basis.

#### **Proposed Enforcement Program – Cost Analysis**

Staff of the Office of the Sheriff and the Department of Code Compliance will monitor and record all costs associated with the implementation of this pilot program during its initial one (1) year test period. At this time, it is estimated that this program will cost approximately \$150,000 on an annual basis for the removal of the signs.

#### **Staff Recommendation**

Staff recommends that if it is the intent of the Board of Supervisors to implement a sign removal program in the immediate future pursuant to an agreement with the Commissioner, that the Board utilize the Community Labor Force and the Adopt-A-Highway Program as outlined in this staff report.

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ADMINISTRATIVE - 4

Authorization to Advertise a Public Hearing to Establish the Bonnie Brae Community Parking District (Braddock District)

ISSUE:

Board authorization to advertise a public hearing to consider a proposed amendment to Appendix M of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to establish the Bonnie Brae Community Parking District (CPD).

RECOMMENDATION:

The County Executive recommends that the Board authorize advertisement of a public hearing for February 26, 2013, at 4:00 p.m. to consider adoption of a Fairfax County Code amendment (Attachment I) to establish the Bonnie Brae CPD.

TIMING:

The Board of Supervisors should take action on January 29, 2013, to provide sufficient time for advertisement of the public hearing on February 26, 2013, at 4:00 p.m.

BACKGROUND:

Fairfax County Code Section 82-5B-2 authorizes the Board to establish a CPD for the purpose of prohibiting or restricting the parking of watercraft; boat trailers; motor homes; camping trailers and any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds except school buses used on a current and regular basis to transport students; any vehicle designed to transport 16 or more passengers including the driver, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4 on the streets in the CPD.

No such CPD shall apply to (i) any commercial vehicle when discharging passengers or when temporarily parked pursuant to the performance of work or service at a particular location or (ii) utility generators located on trailers and being used to power network facilities during a loss of commercial power or (iii) restricted vehicles temporarily parked on a public street within any such CPD for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip or (iv) restricted vehicles that are temporarily

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parked on a public street within any such CPD for use by federal, state, or local public agencies to provide services.

Pursuant to Fairfax County Code Section 82-5B-3, the Board may establish a CPD if: (1) the Board receives a petition requesting such an establishment and such petition contains the names, addresses, and signatures of petitioners who represent at least 60 percent of the addresses within the proposed CPD, and represent more than 50 percent of the eligible addresses on each block of the proposed CPD, (2) the proposed CPD includes an area in which 75 percent of each block within the proposed CPD is zoned, planned or developed as a residential area, (3) the Board receives an application fee of \$10 for each petitioning property address in the proposed CPD, and (4) the proposed CPD must contain the lesser of (i) a minimum of five block faces or (ii) any number of blocks that front a minimum of 2,000 linear feet of street as measured by the centerline of each street within the CPD.

Staff has verified that the requirements for a petition-based CPD have been satisfied.

The parking prohibition identified above for the CPD is proposed to be in effect seven days per week, 24 hours per day.

FISCAL IMPACT:

The cost of sign installation is estimated at \$900 to be paid out of Fairfax County Department of Transportation (FCDOT) funds.

ENCLOSED DOCUMENTS:

Attachment I: Amendment to the *Fairfax County Code*, Appendix M (CPD Restrictions)  
Attachment II: Area Map of Proposed Bonnie Brae CPD

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Karyn Moreland, Acting Division Chief, Capital Projects and Operations Division, FCDOT  
Selby Thannikary, Section Chief, Traffic Operations Section, FCDOT  
Maria Turner, Sr. Transportation Planner, FCDOT

PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA  
APPENDIX M

M-77 Bonnie Brae Community Parking District

(a) *District Designation.*

(1) The restricted parking area is designated as the Bonnie Brae Community Parking District.

(2) Blocks included in the Bonnie Brae Community Parking District are described below:

*Allerton Road (Route 5198)*

From Zion Drive to Black Oak Drive.

*Arrowood Street (Route 5194)*

From Black Oak Drive to Southport Lane.

*Black Oak Drive (Route 5196)*

From cul-de-sac north to cul-de-sac south.

*Fiesta Road (Route 5199)*

From Southport Lane to cul-de-sac inclusive.

*Indigo Lane (Route 5197)*

From cul-de-sac north to cul-de-sac south.

*Southport Lane (Route 5195)*

From Black Oak Drive to cul-de-sac inclusive.

(b) *District Provisions.*

(1) This District is established in accordance with and is subject to the provisions set forth in Article 5B of Chapter 82.

(2) Parking of watercraft; boat trailers; motor homes; camping trailers; any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds except school buses used on a current and regular basis to transport students; any vehicle designed to transport 16 or more passengers including the driver, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is

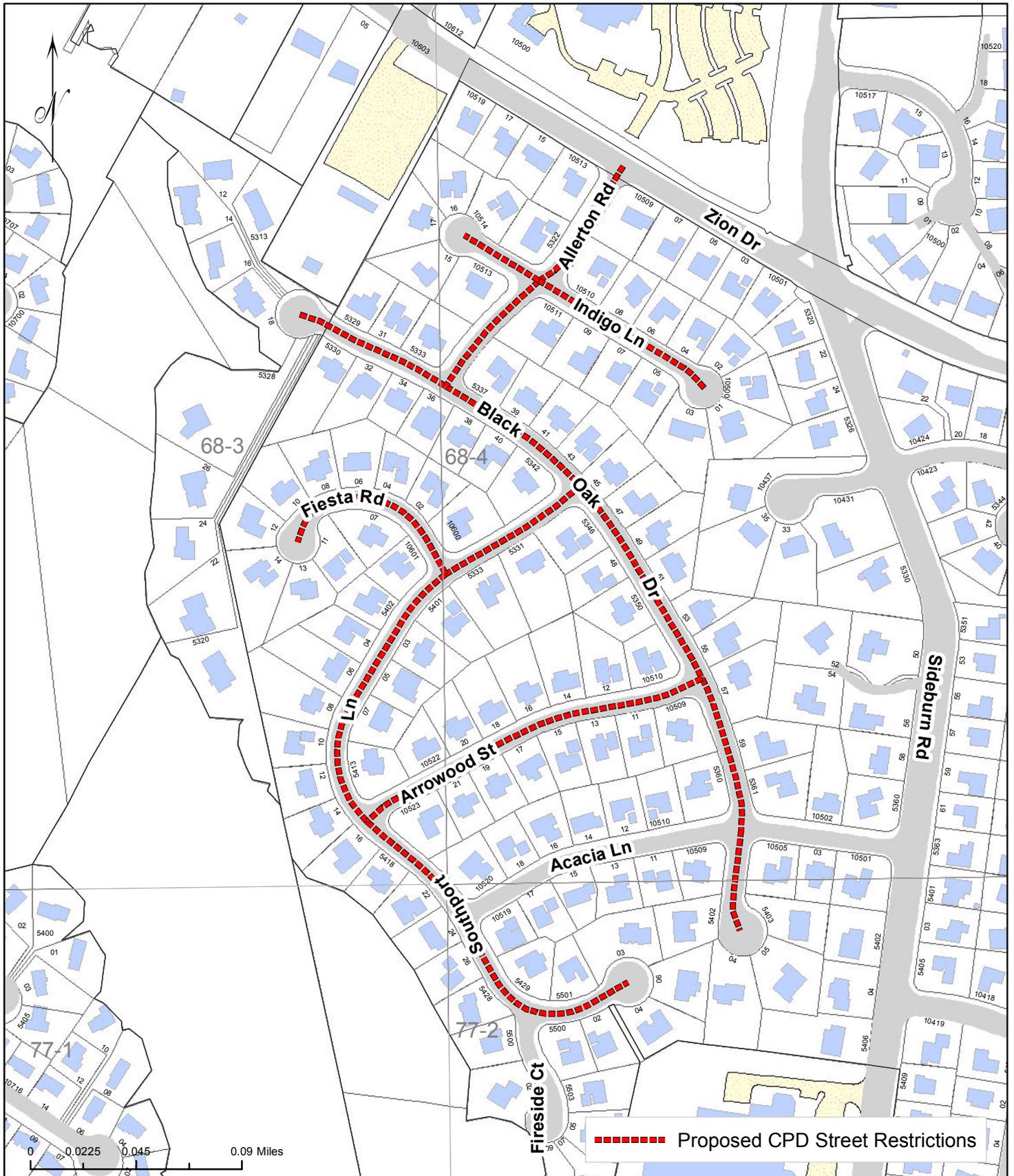
being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4 is prohibited at all times on the above-described streets within the Bonnie Brae Community Parking District.

(3) No such Community Parking District shall apply to (i) any commercial vehicle when discharging passengers or when temporarily parked pursuant to the performance of work or service at a particular location or (ii) utility generators located on trailers and being used to power network facilities during a loss of commercial power or (iii) restricted vehicles temporarily parked on a public street within any such District for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip or (iv) restricted vehicles that are temporarily parked on a public street within any such District for use by federal, state, or local public agencies to provide services.

- (c) *Signs.* Signs delineating the Bonnie Brae Community Parking District shall indicate community specific identification and/or directional information in addition to the following:

NO PARKING  
Watercraft  
Trailers, Motor Homes  
Vehicles ≥ 3 Axles  
Vehicles GVWR ≥ 12,000 lbs.  
Vehicles ≥ 16 Passengers

FAIRFAX COUNTY CODE §82-5B



Fairfax County Department of Transportation  
Traffic Operations Section  
COMMUNITY PARKING DISTRICT (CPD)  
Proposed Bonnie Brae CPD  
Braddock District



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ADMINISTRATIVE - 5

Authorization to Advertise Public Hearings on Proposed Amendments to Chapter 2 (General Subdivision and Site Plan Information), Chapter 4 (Geotechnical Guidelines), Chapter 6 (Storm Drainage) and Chapter 7 (Streets, Parking and Driveways) of the Public Facilities Manual Re: Testing Procedures for Infiltration Facilities and Minor Editorial Corrections

ISSUE:

Board authorization to advertise public hearings on proposed amendments to Chapter 2 (General Subdivision and Site Plan Information), Chapter 4 (Geotechnical Guidelines), Chapter 6 (Storm Drainage) and Chapter 7 (Streets, Parking and Driveways) of the Public Facilities Manual (PFM). The proposed amendments to Chapters 4 and 6 incorporate procedures for soil testing necessary for the design of infiltration facilities. The proposed amendments to Chapters 2 and 7 are limited to minor editorial corrections.

RECOMMENDATION:

The County Executive recommends that the Board authorize the advertisement of the proposed amendments to the PFM.

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 Chapters 4 and 6 of the PFM have been recommended for approval by the Engineering Standards Review Committee.

TIMING:

The Board is requested to take action on January 29, 2013, to provide sufficient time to advertise public hearings on February 21, 2013, at 8:15 p.m. before the Planning Commission and on March 19, 2013, at 4:00 p.m. before the Board.

BACKGROUND:

Testing guidelines for infiltration facilities have been available in Chapter 5 of the Northern Virginia BMP Handbook since 1992. These guidelines were originally developed by the Fairfax County Soil Science Office. A review of the soil testing guidelines was initiated by County staff in 2001. The testing guidelines were refined in

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2005 and distributed informally to submitting engineers. The guidelines were published by the Department of Public Works and Environmental Services (DPWES) in Letter to Industry #07-04 on April 3, 2007. In June 2010, Letter to Industry #10-04 and its accompanying Technical Memorandum further refined the guidelines. The 2010 version of the letter to industry included a new technique for determining the seasonal high water table based on soil morphology that can be used regardless of the season of the year or amount of antecedent rainfall.

The soil testing guidelines for infiltration facilities were developed in cooperation with industry and the academic community between 2005 and 2010. Committee members from industry included practicing geotechnical engineers, soil scientists and geologists. Representatives from the Northern Virginia Soil and Water Conservation District and the Virginia Polytechnic Institute and State University were also involved in the development of the procedures. County staff members involved in the committee meetings included geotechnical and stormwater engineers. Current scientific literature on soil science and soil morphology was reviewed and discussed during the many committee meetings. The Engineering Standards Review Committee (ESRC) reviewed the proposed amendments and provided comments in 2011, 2012 and 2013.

The proposed amendments will incorporate the procedures for soil testing necessary for the design of infiltration facilities into the PFM. The proposed amendments include requirements and procedures for the determination of the seasonal high water table, soil characterization, soil borings, soil infiltration rate, laboratory testing and report presentation. The proposed amendments also include a requirement for a pre-construction conference to discuss construction and certification requirements for proposed infiltration facilities.

There has been an increase in the number of Low-Impact Development (LID) stormwater facilities proposed since LID facilities were added to the PFM in 2007. Many of the LID practices are enhanced when used in conjunction with infiltration facilities or depend on infiltration of stormwater runoff to provide water quality and quantity controls. These LID practices include pervious pavement, bioretention facilities and wet and dry swales. The number of site, subdivision construction and grading plans proposing the construction of LID facilities is expected to further increase when the new State stormwater regulations come into effect in 2014. Infiltration testing will become more important as the number of proposed LID facilities grows.

PROPOSED AMENDMENTS:

The amendments to Chapter 4 of the PFM incorporate the following provisions:

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- The amendments describe the soil testing procedures required before the design of an infiltration facility can be approved on a site plan, a subdivision construction plan or a grading plan. The number, depth and location of borings and test pits for each facility are specified. The method to determine the depth requirements of the soil tests, based on the depth of the proposed infiltration facility, is established. Also specified are the measurements to be taken during the soil testing.
- A definition of bedrock, to distinguish it from soil, is provided in the amendments.
- The use of soil morphology to determine the seasonal high water table (SHWT) is provided as an alternative to some of the required soil tests. Normal testing of the SHWT by observation of water levels in boring holes is limited to only part of the year depending on the antecedent rainfall. By incorporating this testing procedure, infiltration facilities can be sited and designed throughout the year.
- The methodology to be used to determine the infiltration rate of soils is provided in the procedures. The requirements for the casing used to line the soil borings where the infiltration test is to be completed are provided. The groundwater sampling methodology is specified. The minimum acceptable infiltration rate at the location of the future infiltration facility is defined.
- A notable change from the current soil testing guidelines is the maximum infiltration rate allowed. Previously, the maximum infiltration rate was limited to 8 inches per hour based on concerns that higher rates would not allow the stormwater runoff to be treated before it entered the groundwater. The amendments propose to allow infiltration facilities in areas where the infiltration rate is over 8 inches per hour provided that the facility is in an environmentally suitable location.
- The amendments require a preconstruction meeting to discuss PFM and site-specific requirements as well as third-party inspection certifications. Earlier guidelines did not require this meeting.
- The amendments require that infiltration rate tests use a modified constant head methodology. The ESRC recently suggested this methodology since it would better model an infiltration system. The letters to industry in 2007 and 2010 used a falling head test.
- The amendments identify how the soil samples for the laboratory tests are gathered and identify the required laboratory tests.

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- The amendments identify the information from the soil testing procedures to be included in the final report for each project. The final report can be provided within the Soil Report for the project. Alternatively, the final report can be submitted as a part of the first submission of a site plan, a subdivision construction plan or a grading plan. A narrative would accompany the testing results and the soil classifications. The feasibility of the proposed infiltration facility and recommendations for the design and construction of the facility would also be a part of the narrative.

The amendments to Chapter 6 refer the designer of infiltration facilities to the soil testing procedures in PFM Chapter 4.

The amendments to Chapters 2 and 7 are limited to minor editorial corrections.

FISCAL IMPACT:

None. Staff currently reviews infiltration testing results as required for the design of facilities using infiltration and as part of geotechnical reports and plan submissions. Staff currently holds pre-construction meetings and performs inspections of infiltration facilities as part of normal inspection-related activities. Therefore, the proposed amendments will have no impact on staff workload.

REGULATORY IMPACT:

Minimal. The amendments to PFM Chapters 4 and 6 formalize existing County guidelines for infiltration testing currently being used by industry with minimal changes. As noted above in the Fiscal Impact Section, the requirement to perform the testing already exists. The infiltration testing procedures will help to ensure proper design of infiltration facilities.

ENCLOSED DOCUMENTS:

Attachment I – Staff Report

STAFF:

Robert A. Stalzer, Deputy County Executive  
James Patteson, Director, Department of Public Works and Environmental Services (DPWES)  
Michelle Brickner, Deputy Director (Land Development Services), DPWES  
Paul Shirey, Director, Code Development & Compliance Division, DPWES

# STAFF REPORT

- PROPOSED COUNTY CODE AMENDMENT
- PROPOSED PFM AMENDMENT
- APPEAL OF DECISION
- WAIVER REQUEST

Proposed Amendments to Chapter 2 (General Subdivision and Site Plan Information), Chapter 4 (Geotechnical Guidelines), Chapter 6 (Storm Drainage) and Chapter 7 (Streets, Parking and Driveways) of the Public Facilities Manual Re: Testing Procedures for Infiltration Facilities and Minor Editorial Corrections

Authorization to Advertise	<u>January 29, 2013</u>
Planning Commission Hearing	<u>February 21, 2013</u>
Board of Supervisors Hearing	<u>March 19, 2013</u>
Prepared by:	Site Code Research and Development Branch <u>BF 703- 324-7180</u>
	January 29, 2013

## STAFF REPORT

### A. ISSUE:

Proposed amendments to Chapter 2 (General Subdivision and Site Plan Information), Chapter 4 (Geotechnical Guidelines), Chapter 6 (Storm Drainage) and Chapter 7 (Streets, Parking and Driveways) of the Public Facilities Manual (PFM). The proposed amendments to Chapters 4 and 6 incorporate procedures for soil testing necessary for the design of infiltration facilities. The proposed amendments to Chapters 2 and 7 are limited to minor editorial corrections.

### B. RECOMMENDED ACTION:

Staff recommends that the Board of Supervisors adopt the proposed amendments to Chapter 2 (General Subdivision and Site Plan Information), Chapter 4 (Geotechnical Guidelines), Chapter 6 (Storm Drainage) and Chapter 7 (Streets, Parking and Driveways) of the Public Facilities Manual (PFM).

### C. TIMING:

Board of Supervisors authorization to advertise – January 29, 2013

Planning Commission Public Hearing – February 21, 2013

Board of Supervisors Public Hearing – March 19, 2013

Effective Date – March 20, 2013

### D. SOURCE:

Department of Public Works and Environmental Services (DPWES)

### E. COORDINATION:

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 Chapters 4 and 6 of the PFM have been recommended for approval by the Engineering Standards Review Committee.

### F. BACKGROUND:

Testing guidelines for infiltration facilities have been available in Chapter 5 of the Northern Virginia BMP Handbook since 1992. These guidelines were originally developed by the Fairfax County Soil Science Office. A review of the soil testing guidelines was initiated by County staff in 2001. The testing guidelines were refined in 2005 and distributed informally to submitting engineers. The guidelines were published by the Department of Public Works and Environmental Services (DPWES) in Letter to Industry #07-04 on April 3, 2007. In June 2010, Letter to Industry #10-04 and its accompanying Technical Memorandum further refined the guidelines. The 2010 version of the letter to industry included a new technique for determining the seasonal high water table based on soil morphology that can be used regardless of the season of the year or amount of antecedent rainfall.

The soil testing guidelines for infiltration facilities were developed in cooperation with industry and the academic community between 2005 and 2010. Committee members from industry included practicing geotechnical engineers, soil scientists and geologists. Representatives from the Northern Virginia Soil and Water Conservation District and the Virginia Polytechnic Institute and State University were also involved in the development of the procedures. County staff members involved in the committee meetings included geotechnical and stormwater engineers. Current scientific literature on soil science and soil morphology was reviewed and discussed during the many committee meetings. The Engineering Standards Review Committee (ESRC) reviewed the proposed amendments and provided comments in 2011, 2012 and 2013.

The proposed amendments will incorporate the procedures for soil testing necessary for the design of infiltration facilities into the PFM. The proposed amendments include requirements and procedures for the determination of the seasonal high water table, soil characterization, soil borings, soil infiltration rate, laboratory testing and report presentation. The proposed amendments also include a requirement for a pre-construction conference to discuss construction and certification requirements for proposed infiltration facilities.

There has been an increase in the number of Low-Impact Development (LID) stormwater facilities proposed since LID facilities were added to the PFM in 2007. Many of the LID practices are enhanced when used in conjunction with infiltration facilities or depend on infiltration of stormwater runoff to provide water quality and quantity controls. These LID practices include pervious pavement, bioretention facilities and wet and dry swales. The number of site, subdivision construction and grading plans proposing the construction of LID facilities is expected to further increase when the new State stormwater regulations come into effect in 2014. Infiltration testing will become more important as the number of proposed LID facilities grows.

#### G. PROPOSED AMENDMENTS:

The amendments to Chapter 4 of the PFM incorporate the following provisions:

- The amendments describe the soil testing procedures required before the design of an infiltration facility can be approved on a site plan, a subdivision construction plan or a grading plan. The number, depth and location of borings and test pits for each facility are specified. The method to determine the depth requirements of the soil tests, based on the depth of the proposed infiltration facility, is established. Also specified are the measurements to be taken during the soil testing.
- A definition of bedrock, to distinguish it from soil, is provided in the amendments.
- The use of soil morphology to determine the seasonal high water table (SHWT) is provided as an alternative to some of the required soil tests. Normal testing of the SHWT by observation of water levels in boring holes is limited to only part of the year depending on the antecedent rainfall. By incorporating this testing procedure, infiltration facilities can be sited and designed throughout the year.
- The methodology to be used to determine the infiltration rate of soils is provided in the procedures. The requirements for the casing used to line the soil borings where the infiltration test is to be completed are provided. The groundwater sampling methodology is specified. The minimum acceptable infiltration rate at the location of the future infiltration facility is defined.
- A notable change from the current soil testing guidelines is the maximum infiltration rate allowed. Previously, the maximum infiltration rate was limited to 8 inches per hour based on concerns that higher rates would not allow the stormwater runoff to be treated before it entered the groundwater. The amendments propose to allow infiltration facilities in areas where the infiltration rate is over 8 inches per hour provided that the facility is in an environmentally suitable location.
- The amendments require a pre-construction meeting to discuss PFM and site-specific requirements as well as third-party inspection certifications. Earlier guidelines did not require this meeting.
- The amendments require infiltration rate tests to use a modified constant head methodology. The ESRC recently suggested this methodology since it would better model an infiltration system. The letters to industry in 2007 and 2010 used a falling head test.
- The amendments identify how the soil samples for the laboratory tests are gathered and identify the required laboratory tests.
- The amendments identify the information from the soil testing procedures to be included in the final report for each project. The final report can be provided within the Soil Report for the project. Alternatively, the final report can be submitted as a part of the first submission of a site plan, a subdivision

construction plan or a grading plan. A narrative would accompany the testing results and the soil classifications. The feasibility of the proposed infiltration facility and recommendations for the design and construction of the facility would also be a part of the narrative.

The amendments to Chapter 6 refer the designer of infiltration facilities to the soil testing procedures in PFM Chapter 4.

The amendments to Chapters 2 and 7 are limited to minor editorial corrections.

#### H. REGULATORY IMPACT:

Minimal. The amendments to PFM Chapters 4 and 6 formalize existing County guidelines for infiltration testing currently being used by industry with minimal changes. As noted above in the Fiscal Impact Section, the requirement to perform the testing already exists. The infiltration testing procedures will help to ensure proper design of infiltration facilities.

#### I. ATTACHED DOCUMENTS:

Attachment A – Proposed amendments to Chapter 4 of the PFM  
Attachment B – Proposed amendments to Chapter 6 of the PFM  
Attachment C – Proposed amendments to Chapter 2 of the PFM  
Attachment D – Proposed amendments to Chapter 7 of the PFM

**Proposed Amendment to Chapter 4 (Geotechnical Guidelines)  
of the  
Public Facilities Manual**

1 **Deletions are shown as strikeouts and insertions are underlined.**

2  
3 **Insert §4-0700 (Testing for Infiltration Facilities) into the Public Facilities Manual**  
4 **to read as follows:**

5  
6 **4-0700 Testing for Infiltration Facilities**

7  
8 **4-0701 Purpose and Scope**

9  
10 4-0701.1 The purpose of infiltration testing is to determine the character, physical  
11 properties and Seasonal High Water Table (SHWT) of natural soil deposits proposed to  
12 be used for infiltration of stormwater. Infiltration facilities include facilities such as  
13 percolation trenches (PFM 6-1303), pervious pavement with full or partial exfiltration  
14 (PFM 6-1304) and bioretention basins or rain gardens (PFM 6-1307). For a general  
15 discussion of the design of the infiltration facilities see Virginia DCR Stormwater Design  
16 Specification No. 8, Infiltration Practices.

17  
18 4-0701.2 The scope of the investigation must be planned with knowledge of the intended  
19 project size, facility size, land utilization and general subsurface characteristics. The  
20 complete evaluation must include a Geotechnical Investigation in the field, laboratory  
21 testing of select soil samples retrieved in the field to confirm soil and strata classifications  
22 and a final report.

23  
24  
25 **4-0702 Geotechnical Investigation**

26  
27 4-0702.1 Geotechnical investigation to be performed by borings or a combination of  
28 borings and test pit per § 4-0702.5.

29  
30 4-0702.2 Determination of the SHWT should be performed during the months of  
31 November through May. SHWT determination by direct observation of the ground water  
32 level should not be performed during the months of June through October unless the  
33 value of the Palmer Drought Severity Index (PDSI) is equal to or greater than 2.0 (i.e.,  
34 wet). If the value of the PDSI is less than 2.0 (i.e., near normal or drier), the  
35 determination of SHWT by direct observation and testing conducted during the months of  
36 June through October may be used for preliminary design only. Final design shall then be  
37 based on a confirmatory investigation performed during the months of November through  
38 May (or anytime of the year when the PDSI is greater than 2.0). Weekly values of the  
39 PDSI are available online from the National Weather Service Climate Prediction Center.  
40 Fairfax County is located in Virginia Climate Division #4.

41  
42 4-0702.3 The SHWT may be determined using soil morphology throughout the year by a  
43 certified/licensed professional registered in Virginia with training and experience in soil

1 morphology (certified/licensed professional soil scientist, licensed onsite soil evaluator,  
2 certified professional wetland delineator, or certified professional geologist). Professional  
3 engineers registered in Virginia with experience in the field of geotechnical engineering  
4 may also be certified to determine the SHWT provided that they have successfully  
5 completed the Soil Morphology Training Class offered by the Northern Virginia Soil and  
6 Water Conservation District (NVSWCD) and are on its list of certified professionals.

7  
8 4-0702.4 Evaluation of the SHWT utilizing soil morphology shall be based on low-  
9 chroma colors, mottles and redoximorphic features of the soil. Unlike other types of field  
10 tests which may be performed by an individual under the responsible charge of the  
11 registered professional, this evaluation must be performed by the registered professional  
12 personally. If the registered professional performing the evaluation determines that a  
13 follow-up confirmatory field measurement of the SHWT is required, or if required by the  
14 County, the follow-up evaluation shall be performed when the Palmer Drought Severity  
15 Index (PDSI) is equal or greater than 2.0, or anytime during the months of November  
16 through May.

17  
18 4-0702.5 Each proposed facility requires a minimum of three borings, or a test pit and  
19 two borings, located within the footprint of the proposed infiltration facility.

20  
21 4-0702.5A The first or initial boring, which could also be a test pit, should be located  
22 approximately in the center of the footprint of the proposed facility. The first boring or  
23 test pit is performed to document the soil profile, horizons, groundwater table, depth of  
24 bedrock (defined in § 4-0702.5B) and the general suitability of the site for infiltration.

25  
26 4-0702.5B Bedrock is defined as materials exhibiting a minimum SPT N-value of 60. In  
27 the Triassic (Culpeper) Basin and Piedmont Upland physiographic provinces, the  
28 aforementioned minimum SPT N-value will correlate approximately to weathered rock  
29 (i.e., in such areas, the separation is measured to a weathered rock surface, especially  
30 where underlain by shale, siltstone, sandstone and/or schist).

31  
32 4-0702.5C The soil description must include all soil horizons.

33  
34 4-0702.5D Soil textures should be identified according to the Unified Soil Classification  
35 System (USCS) per ASTM D-2488 (Description and Identification of Soils Visual-  
36 Manual Procedure) and the USDA Textural Classification.

37  
38 4-0702.5E Dynamic Cone Penetrometer (DCP) [ASTM Special Technical Publication  
39 #399] test or Standard Penetration Test (SPT) [ASTM D1586-99] results should be  
40 provided for the initial boring or test pit.

41  
42 4-0702.5F The boring or test pit depth shall extend no less than 48 inches below the  
43 invert of the proposed facility.

44

1 4-0702.5G The boring shall be continuously sampled from 24 inches above the  
2 anticipated or proposed facility invert to the termination depth of the boring to better  
3 evaluate the subsurface conditions.

4  
5 4-0702.5H Groundwater elevations are to be recorded at the time of the boring and at  
6 least 24 hours following its completion.

7  
8 4-0702.5I The shallowest measurement may be used as the SHWT if the conditions of  
9 § 4-0702.2 are met.

10  
11 4-0702.6 The second and third borings, with minimum diameters defined in § 4-0703.3B  
12 and drilled at an offset distance of not less than 5 feet from the initial boring or test pit,  
13 are used for the infiltration tests.

14  
15 4-0702.7 Additional profile borings/test pits shall be provided for every 100 linear feet or  
16 every 10,000 square feet of the proposed infiltration facility. Additional borings/test pits  
17 may also be performed at the discretion of the certified/licensed professional to  
18 adequately characterize infiltration characteristics.

19  
20 4-0702.8 Additional infiltration tests shall be required for every 50 linear feet or every  
21 2,000 square feet of the proposed facility. Additional infiltration tests may also be  
22 performed at the discretion of the certified/licensed professional to adequately  
23 characterize infiltration characteristics.

24  
25 4-0702.9 The field infiltration rate is based on the average of all field tests located within  
26 the facility.

### 27 28 29 **4-0703 Infiltration Testing**

30  
31 4-0703.1 Actual infiltration rates shall be determined via on-site test(s) conducted within  
32 24 inches of the anticipated or proposed facility invert.

33  
34 4-0703.2 Specific requirements are as follows:

35  
36 4-0703.2A Drill two borings adjacent to the initial test pit or boring, each at an offset of  
37 greater than 5 feet, and to a depth of within 24 inches of the anticipated or proposed  
38 invert of the facility. The diameter of the boring shall snugly fit the diameter of the casing  
39 (see § 4-0703.3B). Remove any loose material from each boring.

40  
41 4-0703.2B Install a solid casing 3 to 5 inches in diameter to the bottom of the boring.  
42 Remove any smeared soil surfaces and loose material from the casing. A 2-inch layer of  
43 coarse sand or fine gravel may be placed at the bottom of the boring to prevent scouring  
44 and sedimentation.

45

1 4-0703.2C Fill the standpipe with water to a height of at least 24 inches above the bottom  
2 of the casing, and allow pre-soaking for 24 hours.

3  
4 4-0703.2D After 24 hours, refill the standpipe to a height of 24 inches above the bottom  
5 of the casing and record the water level drop in inches after one hour. Repeat the  
6 procedure three times by filling the standpipe to a height of 24 inches and measuring the  
7 drop in water level after one hour. A total of four observations shall be completed. The  
8 infiltration rate of each test boring is the average of the change in water level readings in  
9 inches per hour, or the last reading, whichever is the most representative of the  
10 subsurface conditions based on the opinion of the certified/licensed professional  
11 conducting the tests. Should the infiltration rates in the two borings prove inconsistent,  
12 additional borings and infiltration tests must be performed or the lowest infiltration rate  
13 obtained shall be used as the field infiltration rate.

14  
15 4-0703.2E The field infiltration rate for a proposed facility is the average of all field  
16 infiltration rates conducted within that facility, per § 4-0702.9. A field infiltration rate of  
17 at least 0.5 inches per hour at the design depth of the proposed facility must be obtained  
18 for the infiltration to be considered feasible. The design infiltration rate for the facility is  
19 one-half of the field infiltration rate. If field infiltration rates of 8 or more inches per hour  
20 are recorded, the design professional shall be contacted to confirm that the facility is in a  
21 suitable location with respect to environmental concerns.

22  
23 4-0703.2F Soil boring locations shall be accurately documented on the plans.

24  
25 4-0703.2G Infiltration testing shall be performed by a qualified professional or his/her  
26 authorized representatives. The professional shall either be a Virginia licensed  
27 professional engineer with experience in geotechnical engineering and soil evaluation, a  
28 Virginia certified/licensed professional soil scientist, or a Virginia certified professional  
29 geologist.

30  
31 4-0703.2H A change in design at the permitting plan review stage may necessitate  
32 additional testing. The final design invert of the proposed facility must be within 24  
33 inches of the elevation at which the infiltration test(s) used for design were conducted.

34  
35 4-0703.2I Septic percolation tests are not acceptable as an alternative to infiltration tests.

36  
37  
38 **4-0704 Laboratory Testing**

39  
40 4-0704.1 Grain-size sieve analyses and hydrometer tests must be performed to determine  
41 the USDA textural and USCS classifications at the proposed or anticipated invert of the  
42 facility.

43  
44 4-0704.2 The tests should also be done on representative samples from all soil layers  
45 encountered to a depth of 4 feet below the final invert of the facility.

46

1 **4-0705 Report Presentation and Submission**

2  
3 4-0705.1 The report shall include the proposed infiltration facility plan, the boring  
4 locations, all boring logs and laboratory test data.

5  
6 4-0705.1A USDA textural classification and USCS soil description shall be provided in  
7 the report as well as on the boring logs.

8  
9 4-0705.1B A table shall be included in the report showing the dates, times and hourly  
10 readings of the water level for each infiltration test along with the averaged field  
11 infiltration rates for each test within the proposed facility.

12  
13 4-0705.1C The report shall discuss the feasibility of the proposed facility and the impact  
14 of the proposed facility on adjoining properties. The report shall provide  
15 recommendations for construction as well as the design infiltration rate for the proposed  
16 facility.

17  
18 4-0705.2 The report can be included as part of the formal geotechnical report submitted  
19 for a site, subdivision or infill grading plan.

20  
21 4-0705.2A The report may also be submitted as part of the site, subdivision or infill  
22 grading plan, provided it is included on the first submission.

23  
24 4-0705.2B The report may also be submitted separately as a geotechnical report or as an  
25 addendum to a geotechnical report if a separate report was previously submitted.

26  
27  
28 **4-0706 Pre-construction Meeting**

29  
30 4-0706.1 A pre-construction meeting shall be held with representatives of the  
31 owner/developer, the contractor, the third-party inspection firm and the Site Development  
32 and Inspection Division. The PFM and site-specific requirements and the third-party  
33 inspection certification shall be reviewed and discussed.

**Proposed Amendment to Chapter 6 (Storm Drainage)  
of the  
Public Facilities Manual**

1 **Deletions are shown as strikeouts and insertions are underlined.**

2  
3 **Amend § 6-1303.3 (Percolation Trenches) of the Public Facilities Manal to read as**  
4 **follows:**

5  
6 6-1303.3 (56-96-PFM) Percolation trenches may be useful only in areas where the soil is  
7 pervious and where the water table is lower than the design depth of the trench. ~~A soils~~  
8 ~~analysis prepared by a professional authorized by the State to provide such information~~  
9 ~~must be submitted with design plans.~~ The design of the facility shall be in accordance  
10 with the soil testing, reporting and meeting procedures of § 4-0700 et seq. The use of  
11 percolation trenches is undesirable in soil slippage areas.

12  
13 **Amend § 6-1304.4I (Pervious Pavement) to read as follows:**

14  
15 6-1304.4I For facilities utilizing infiltration, ~~a soils analysis shall be prepared and~~  
16 ~~infiltration tests conducted by a licensed professional engineer with experience in~~  
17 ~~geotechnical engineering and soil evaluation, a certified professional soil scientist, or a~~  
18 ~~certified professional geologist. Recommended guidelines for performing the field tests~~  
19 ~~and soils analysis are available from the Department of Public Works and Environmental~~  
20 ~~Services. A minimum field measured infiltration rate of 0.52 inches per hour shall be~~  
21 ~~required for infiltration. The design infiltration rate shall be half of the field measured~~  
22 ~~rate.~~ the design of the facility shall be in accordance with the soil testing, reporting and  
23 meeting procedures of § 4-0700 et seq. Soils with a CBR (minimum 96 hours soaked)  
24 less than 5 or that are highly expansive are not suitable for infiltration. Such soils would  
25 require compaction or other measures to be used as a pavement subgrade that would  
26 compromise their ability to infiltrate water. Pervious pavements on these soils shall be  
27 designed for no infiltration with unrestricted underdrains.

28  
29 **Amend § 6-1307.4O (Bioretention Filters and Basins) to read as follows:**

30  
31 6-1307.4O For facilities utilizing infiltration, ~~a soils analysis shall be prepared and~~  
32 ~~infiltration tests conducted by a licensed professional engineer with experience in~~  
33 ~~geotechnical engineering and soil evaluation, a certified professional soil scientist, or a~~  
34 ~~certified professional geologist. Recommended guidelines for performing the field tests~~  
35 ~~and soils analysis are available from the DPWES. A minimum field measured infiltration~~  
36 ~~rate of 0.52 inches per hour shall be required for infiltration. The design infiltration rate~~  
37 ~~shall be half of the field measured rate.~~ the design of the facility shall be in accordance  
38 with the soil testing, reporting and meeting procedures of § 4-0700 et seq.

**Proposed Amendment to Chapter 2 (General Subdivision and Site Plan  
Information)  
of the  
Public Facilities Manual**

1 **Deletions are shown as strikeouts and insertions are underlined.**

2

3 **Amend §2-0502 (Inspections) of the Public Facilities Manual by revising the text to**  
4 **read as follows:**

5

6 2-0502.1B Prior to requesting a pre-construction conference, the developer ~~director~~  
7 shall:

8

9 2-0502.1B(1) Have the project plans approved by the Director.

10

11 2-0502.1B(2) Obtain all necessary permits.

**Proposed Amendment to Chapter 7 (Streets, Parking and Driveways)  
of the  
Public Facilities Manual**

1 **Deletions are shown as strikeouts and insertions are underlined.**

2

3 **Amend §7-1004 (Standards and Criteria) of the Public Facilities Manual by revising**  
4 **Table 7.11 to read as follows:**

5

<b>Table 7.11 Lighting Levels For Proposed Curb &amp; Gutter Streets: Alternate Security Fixtures (RF-3) (High Pressure Sodium Vapor) (110-12-PFM, 99-07-PFM, 80-03-PFM)</b>						
<b>Area Class</b>	<b>Roadway Class</b>	<b>ADT</b>	<b>Lamp Size Lumens</b>	<b>Maximum Spacing ft.</b>	<b>Mounting Height ft.</b>	<b>Notes</b>
<b>Residential</b>	Local	<u>0-400</u>	5,000	160	14	1,2
		<del>251-400</del>	<del>5,000</del>	<del>160</del>	<del>14</del>	<del>1,2</del>
		401- <u>1000-2000</u>	8,000	160	14	1,2
		<del>1001-2000</del>	<del>8,000</del>	<del>160</del>	<del>14</del>	<del>1,2</del>
NOTES: <sup>1/</sup> Measured from face of pole to face of curb. <sup>2/</sup> Poles to be placed on one side of the roadway.						

6

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ADMINISTRATIVE – 6

Streets into the Secondary System (Dranesville, Mason, Mount Vernon, Springfield, and Sully 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>
Springvale Estates	Dranesville	Springvale Meadow Lane  Springvale Road (Route 674) (Additional Right-of-Way (ROW) Only)
County Investments Co. Parcel B Palace Garden Restaurant	Mason	Frontage Road of Little River Turnpike (FR781) (Additional ROW Only)  John Marr Drive (Route 2948) (Additional ROW Only)
Boyer & Cocke Subdivision Lots 1 & 2 Hoa Nghiem Pagoda	Mt. Vernon	Backlick Road (Route 617) (Additional ROW Only)
Mazzello Cove	Mt. Vernon	Alban Road (Route 790) (Additional ROW Only)
Lee-Brooke Section Two	Springfield	Garden Road  Center Road (Route 777) (Additional ROW Only)

Board Agenda Item  
January 29, 2013

<u>Subdivision</u>	<u>District</u>	<u>Street</u>
Fidelio Properties (Ferguson Enterprises) and Centreville Road Widening (0657-029-385, C501)	Sully	Low Street
		Centerview Drive
		Centreville Road (Route 657) (Additional ROW Only)
Madison Meadows	Sully	Madison Meadows Lane
		Vale Road (Route 671) (Additional ROW Only)
Sully North Investments Dulles Discovery	Sully	Air and Space Museum Parkway (Route 7833)
		Air and Space Museum Parkway (Route 7833) (Additional ROW Only)
		Wall Road (Route 645) (Additional ROW Only)

TIMING:  
Routine.

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

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

**FAIRFAX COUNTY BOARD OF SUPERVISORS  
FAIRFAX, VA**

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.

**ENGINEERING MANAGER: Terry L. Yates, P.E.**

BY: *Nadia Ryzhansk*

**VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA**  
REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.

**PLAN NUMBER: 1600 - SP - 01**

**SUBDIVISION PLAT NAME: County Investments Co., - Parcel B (Palace Garden Restaurant)  
COUNTY MAGISTERIAL DISTRICT: Mason**

**FOR OFFICIAL USE ONLY**

**DATE OF VDOT INSPECTION APPROVAL: 10/18/2012**

STREET NAME	LOCATION		MILE LENGTH
	FROM	TO	
Frontage Road of Little River Turnpike (FR781) (Additional Right-of-Way Only)	357' NW CL John Marr Drive (Route 2948)	90' W to Section Line	0.0
John Marr Drive (Route 2948) (Additional Right-of-Way Only)	654' SW CL Frontage Road of Little River Turnpike (FR781)	91' SW to Section Line	0.0
<b>NOTES:</b>			<b>TOTALS:</b>
Frontage Road of Little River Turnpike: 6' Concrete Pavers Sidewalk on South Side to be maintained by Fairfax County.			0.0
John Marr Drive: 6' Concrete Pavers Sidewalk on North Side to be maintained by Fairfax County.			











# Street Acceptance Form For Board Of Supervisors Resolution - June 2005

**FAIRFAX COUNTY BOARD OF SUPERVISORS  
FAIRFAX, VA**

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.

**ENGINEERING MANAGER: Terry L. Yates, P.E.**

BY: *Nadia Alsharif*

**VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA**

REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.

**PLAN NUMBER: 9751-SP-007**

**SUBDIVISION PLAT NAME: Sully North Investments - Dulles Discovery**

**COUNTY MAGISTERIAL DISTRICT: Sully**

**FOR OFFICIAL USE ONLY**

**DATE OF VDOT INSPECTION APPROVAL: 11/16/2012**

STREET NAME	LOCATION		MILE LENGTH
	FROM	TO	
Air and Space Museum Parkway (Route 7833)	CL Wall Road (Route 645) - 885' NW CL Centreville Road (Route 657)	979' SW to Existing Air and Space Museum Parkway (Route 7833)	0.19
Air and Space Museum Parkway (Route 7833) (Additional Right-of-Way Only)	979' SW CL Wall Road (Route 645)	126' W to Section Line (North Side) and 576' W to Section Line (South Side)	0.0
Wall Road (Route 645) (Additional Right-of-Way Only)	773' NW CL Centreville Road (Route 657)	677' NW to Section Line	0.0
<b>NOTES:</b>			<b>TOTALS:</b>
Air and Space Museum Parkway: 8' Asphalt Trail on the South/East Side to be maintained by Fairfax County.			0.19
Air and Space Museum Parkway: 5' Concrete Sidewalk on the West Side of to be maintained by VDOT.			
Wall Road: 5' Concrete Sidewalk on the South Side to be maintained by VDOT.			

Board Agenda Item  
January 29, 2013

ADMINISTRATIVE - 7

Discontinuance of Portions of Old Springhouse Road (Route 3543) From the Secondary System of State Highways (Providence District)

ISSUE:

Board adoption of the attached resolution requesting that the remaining portions of Old Springhouse Road (Route 3543) be discontinued from the Secondary System of State Highways (Secondary System).

RECOMMENDATION:

The County Executive recommends that the Board adopt the attached resolution requesting that the identified portion of subject roadway be discontinued from the Secondary System.

TIMING:

Routine.

BACKGROUND:

The applicant, Cityline Partners/Capital One, is requesting the discontinuance of the remaining portions of Old Springhouse Road (Route 3543). On March 22, 1999, the Board of Supervisors approved an abandonment of the majority of Old Springhouse Road with two residual sections remaining. At the time of abandonment, the Capital Beltway (I-495) was being widened for additional lanes of HOV traffic and single occupancy lanes. To accommodate the I-495 widening, a portion of Old Springhouse Road right-of-way was dedicated to the Virginia Department of Transportation (VDOT).

After the 1999 abandonment, as part of redevelopment projects, Old Springhouse Road was replaced with divided access roads and will be redeveloped further with the recently approved PTC rezoning on the Capital One site (RZ 2010-PR-021/PCA 92-P-001-08).

One section of Old Springhouse Road, which is located at the Cityline/Capital One site fronting on Dolley Madison Boulevard (Route 123) and is the subject of this request for discontinuance, was dedicated to the Board of Supervisors of Fairfax County on May 16, 2012, by West Group Properties by a Deed of Quitclaim (Attachment II) (DB 22311 PG 0860).

Notice of intention to discontinue Old Springhouse Road was given in accordance with

Board Agenda Item  
January 29, 2013

Va. Code Ann. § 33.1-150 (2011), and the two remaining portions of Old Springhouse Road subject to this discontinuance are no longer needed for public convenience.

A maintenance agreement between the County and Capital One Bank will be recorded with Fairfax County Land Records to address the maintenance responsibility.

If the discontinuance request is approved, the mileage will be removed from VDOT's maintenance responsibility which assists in administering its maintenance mileage logs that are used to determine levels of State maintenance funding within Fairfax County.

FISCAL IMPACT:  
None.

ENCLOSED DOCUMENTS:  
Attachment I: Resolution  
Attachment II: Quitclaim Deed  
Attachment III: Plat  
Attachment IV: Location Map

STAFF:  
Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Michael A. Davis, FCDOT

**RESOLUTION**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Fairfax County Government Center at Fairfax, Virginia, on Tuesday, January 29, 2013, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, Cityline Partners/Capital One petitioned the Fairfax County Board of Supervisors to discontinue portions of Springhouse Road (Route 3543), and;

WHEREAS, two residual portions remained after the Board of Supervisors approved a partial abandonment of Old Springhouse Road (Route 3543) on March 22, 1999, and;

WHEREAS, a portion of Old Springhouse Road (Route 3543) right-of-way was dedicated to VDOT to accommodate the I-495 widening but not discontinued, and;

WHEREAS, the portion of Old Springhouse Road fronting on Dolley Madison Boulevard (Route 123) was dedicated to the Fairfax County Board of Supervisors by a Deed of Quitclaim and recorded among the Land Records of Fairfax County, Virginia, in Deed Book 22311 and Page 860, and;

WHEREAS, the sections of Old Springhouse Road that are hereby discontinued are no longer needed for public convenience, and;

WHEREAS, notice of intention to discontinue Old Springhouse Road was given in accordance with Va. Code Ann. § 33.1-150 (2011),

NOW THEREFORE, BE IT RESOLVED that this Board hereby requests, pursuant to Virginia Code Section 33.1-150, that the Commonwealth Transportation Board, discontinue as part of the secondary system of state highways, the remaining residual portions of Old Springhouse Road (Route 3543).

A Copy Teste:

---

Catherine A. Chianese  
Clerk to the Board of Supervisors

Fairfax Circuit Court - CPAN Cover Sheet v2.0

Page 1 of 1

## Fairfax County Land Records Cover Sheet

**Instruments**

QUITCLAIM DEED

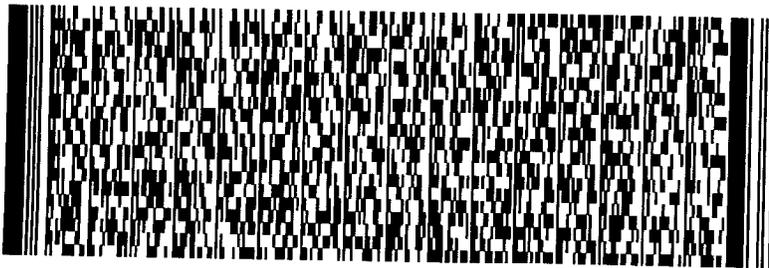
**Grantor(s)**

WEST GROUP PROPERTIES LLC\_F\_N

**Grantee(s)**

BOARD OF SUPERVISORS\_F\_N

<b>Consideration</b>		<b>Consideration %</b>	100
<b>Tax Exemption</b>	NC	<b>Amount Not Taxed</b>	
<b>DEM Number</b>		<b>Tax Map Number</b>	
<b>Original Book</b>	2386	<b>Original Page</b>	132
<b>Title Company</b>	WALSH COLUCCI		<b>Title Case</b> 7079.6
<b>Property Descr.</b>	OLD SPRINGHOUSE ROAD ROUTE 3543		
<b>Certified</b>	No	<b>Copies</b>	0
		<b>Page Range</b>	



Print Cover Sheet

Prepared by and

Box 67

Return to:

Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.  
2200 Clarendon Blvd., Suite 1300  
Arlington, VA 22201-3359  
HMG

T17# 029-4

**DEED OF QUITCLAIM**

THIS DEED OF QUITCLAIM is made this 4th day of April, 2012, by and between **WEST GROUP PROPERTIES, LLC**, a Virginia limited liability company ("West Group"), successor in interest to WESTGATE CORPORATION, a Virginia corporation, and MAPLEWOOD CORPORATION, a Virginia corporation, Grantor; and the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a body corporate and politic, its successors and assigns ("County"), Grantee.

**WITNESSETH:**

WHEREAS, by a Deed of Dedication recorded in Deed Book 2386 at page 132 Westgate Corporation ("Westgate") and Maplewood Corporation ("Maplewood") dedicated certain portions of the right-of-way known as Old Springhouse Road, including those portions more particularly shown on a plat entitled "Plat Showing Quitclaim of Old Springhouse Road-Route #3543 Property," dated December 12, 2011, revised May 7, 2012, and prepared by VIKA, Incorporated, attached hereto and incorporated herein ("Plat"); and

WHEREAS, in the Deed of Dedication it is unclear if the dedication to public use and benefit as a road, highway and thoroughfare was made in fee simple or by easement; and

WHEREAS, West Group is the successor in interest to both Westgate and Maplewood;

WHEREAS, it is the desire of West Group to dedicate by quitclaim to the County for public street purposes any and all right, title and interest including, but not limited to, fee simple interest in the areas labeled as "Quitclaim Area" on the Plat.

NOW, THEREFORE that in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, West Group does hereby dedicate by quitclaim unto the County for public street purposes and any and all other public transportation purposes any and all right, title and interest including, but not limited to, fee simple interest in the areas described as "43,817 S.F. or 1.00590 AC. (Quitclaim Area)" and "70,518 S.F. or 1.61887 AC. (Quitclaim Area)" on the Plat. Westgate reserves for itself and its successors and assigns in interest to the Quitclaim Area density credit for the area dedicated by quitclaim for public street purposes and any and all other public transportation purposes per Article 2-308(4)(A)(3) of the Fairfax County Zoning Ordinance.

**COVENANTS REAL**

The Owner declares that the agreements and covenants stated in this Deed are not covenants personal to the Owner, but are covenants real, running with the land.

**FREE CONSENT AND DESIRE**

This Deed is made with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any.

**MISCELLANEOUS**

This Deed shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. This Deed may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. This Deed is in accordance with the Statutes of Virginia and the ordinances in force in Fairfax County governing the platting and subdivision of land, and is

approved by the proper authorities as evidenced by their endorsement hereto and the Plat.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]**

Witness the following signatures and seals:

**WEST GROUP PROPERTIES, LLC**

By: G.T. Halpin  
Name: G.T. Halpin  
Title: President/Member

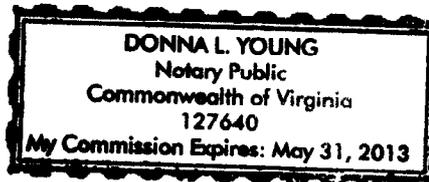
STATE OF Virginia :  
-CITY/COUNTY OF Fairfax : to-wit

I, Donna L. Young, a notary public in and for the State and County aforesaid, do certify that G.T. Halpin, President of West Group Properties, LLC, whose name is signed to the foregoing instrument dated April 4, ~~2011~~ 2012, has acknowledged the same before me.

GIVEN under my hand this 4<sup>th</sup> day of April, ~~2011~~ 2012.

Donna L. Young  
Notary Public

Registration No.: 127640  
My Commission Expires: 5-31-13



Executed and approved on behalf of the Board of Supervisors of Fairfax County, Virginia, by the authority granted by said Board.

APPROVED AS TO FORM:

Director, Department of Public Works & Environmental Services

*[Signature]*  
Assistant County Attorney

By: *[Signature]*  
Branch Manager, Customer and Technical Support Center, LDS

COMMONWEALTH OF VIRGINIA:

COUNTY OF FAIRFAX: to-wit

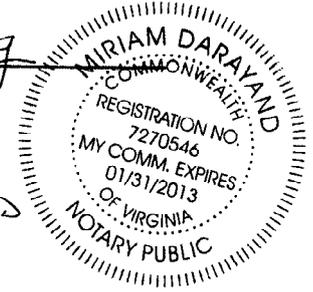
The foregoing instrument was acknowledged before me this 14 day of May, 2012, by KENNETH R. WILLIAMS, Branch Manager, Customer and Technical Support Center, Land Development Services, Department of Public Works & Environmental Services.

*[Signature]*  
Notary Public

Registration No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

I WAS COMMISSIONED A  
NOTARY PUBLIC AS  
MIRIAM DARAYAND



Density/Intensity Credit approved on behalf of the Board of Supervisors of Fairfax County, Virginia, pursuant to Section 2.308-4-A(3) of the Fairfax County Zoning Ordinance.

By: Edward L. Long, Jr.  
County Executive

COMMONWEALTH OF VIRGINIA:

COUNTY OF FAIRFAX: to-wit

The foregoing instrument was acknowledged before me this 14TH day of MAY, 2012, by EDWARD L. LONG, JR., County Executive.

Jo Ann Hawach  
Notary Public

My Commission Expires: JULY 31, 2012

Virginia Notary Registration #: 178038



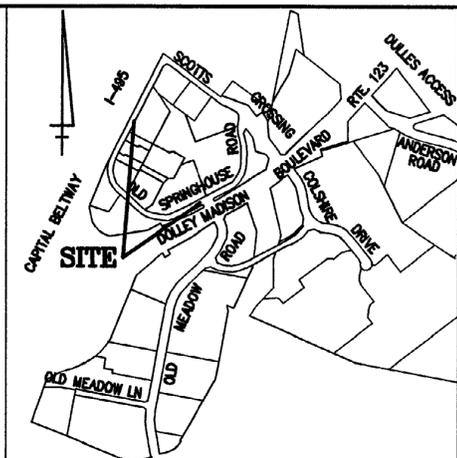
**NOTES:**

1. THE SUBJECT PROPERTY SHOWN HEREON IS SHOWN ON FAIRFAX COUNTY TAX ASSESSMENT MAP 029-4.
2. THE PROPERTY SHOWN HEREON IS LOCATED IN FLOOD ZONE "X" (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) AND FLOOD ZONE "AE" (BASE FLOOD ELEVATION DETERMINED) AS SHOWN ON THE FLOOD INSURANCE RATE MAP COMMUNITY PANEL NUMBER 515525 0165 E DATED SEPTEMBER 17, 2010.
3. THE HORIZONTAL DATUM REFERENCES VIRGINIA STATE GRID NORTH BASED UPON A PLAT ENTITLED "RESUBDIVISION, VACATION AND DEDICATION OF VARIOUS EASEMENTS, AND STREET DEDICATION ON LOTS 1, 2, 2A, 2B, 3, 4, 5, 6, 7, 8A, 9B, 11A, 12, 13, 14 & 15 WESTGATE INDUSTRIAL PARK" AS RECORDED IN DEED BOOK 11964 AT PAGE 1011 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.
4. THE SUBJECT PROPERTY IS PART OF THE PROPERTY ORIGINALLY ACQUIRED BY WESTGATE CORPORATION BY DEED RECORDED IN DEED BOOK 2238 PAGE 333 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.
5. THERE IS A RESOURCE PROTECTION AREA (RPA) ON THE SUBJECT PROPERTY. THE RPA AREA MAY NOT BE DISTURBED WITHOUT SPECIFIC AUTHORIZATION FROM FAIRFAX COUNTY. THE AREAS SHOWN HEREON AS RPA HAVE BEEN TAKE FROM FAIRFAX COUNTY CHESAPEAKE BAY PRESERVATION MAP DATED 8/8/2005. THIS PLAT COMPLIES FULLY WITH THE AMENDMENT OF CHAPTER 118 (CHESAPEAKE BAY PRESERVATION ORDINANCE) OF THE CODE OF FAIRFAX COUNTY.
6. THE BOUNDARY INFORMATION SHOWN HEREON IS BASED ON RECORD INFORMATION.
7. DENSITY CREDIT FOR THE AREA QUITCLAIMED IS ESTABLISHED PER ARTICLE 2-308 OF THE ZONING ORDINANCE. DENSITY SHALL BE CREDITED TOWARDS TM #029-4-006-0102 ASSOCIATED WITH RZ 2011-PR-010.

**QUITCLAIM AREA TABULATION:**

OLD SPRINGHOUSE ROAD (DB 2386 PG 132) 70,518 SF OR 1.61887 ACRES  
 OLD SPRINGHOUSE ROAD (DB 2386 PG 132) 43,817 SF OR 1.00590 ACRES  
**TOTAL STREET DEDICATION 114,335 SF OR 2.62477 ACRES\***

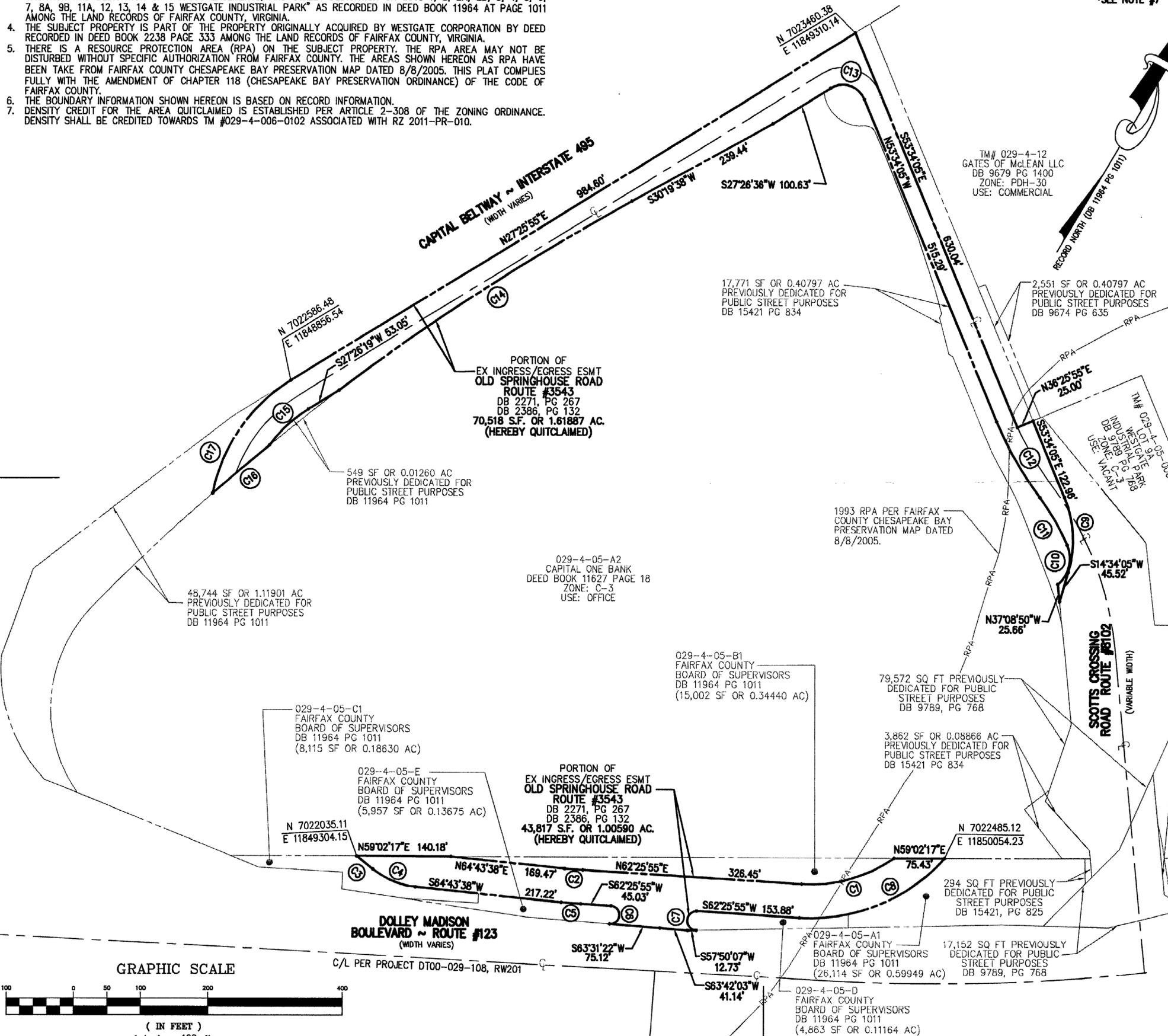
\*SEE NOTE #7



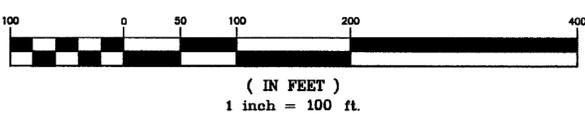
VICINITY MAP

SCALE: 1"=1000'

CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHD BRG	CHORD
C1	145.34'	218.83'	38°03'15"	75.46'	N43°28'23"E	142.68'
C2	27.24'	679.93'	2°17'44"	13.62'	N63°34'46"E	27.24'
C3	31.26'	2889.82'	0°37'11"	15.63'	N82°23'29"W	31.26'
C4	69.14'	121.63'	32°34'05"	35.53'	S81°00'50"W	68.21'
C5	29.24'	729.93'	2°17'43"	14.62'	S63°34'47"W	29.24'
C6	42.16'	13.42'	179°59'59"	INFINITE'	N27°02'05"W	26.84'
C7	43.23'	14.10'	175°41'02"	374.18'	S29°52'02"E	28.18'
C8	241.13'	269.65'	51°14'12"	129.30'	S36°48'50"W	233.18'
C9	113.13'	166.20'	39°00'05"	58.86'	S34°04'05"E	110.96'
C10	64.14'	50.00'	73°29'47"	37.33'	N17°41'39"W	59.83'
C11	81.37'	350.53'	13°18'03"	40.87'	N61°05'29"W	81.19'
C12	129.86'	525.88'	14°08'55"	65.26'	N60°39'42"W	129.53'
C13	60.48'	35.00'	99°00'07"	40.98'	S76°55'55"W	53.23'
C14	518.19'	3503.94'	8°28'24"	259.57'	S26°05'26"W	517.72'
C15	79.00'	202.95'	22°18'14"	40.01'	S16°17'28"W	78.51'
C16	110.59'	3503.94'	1°48'30"	55.30'	S18°48'29"W	110.59'
C17	209.43'	253.27'	47°22'40"	111.12'	N03°44'49"E	203.51'



**GRAPHIC SCALE**



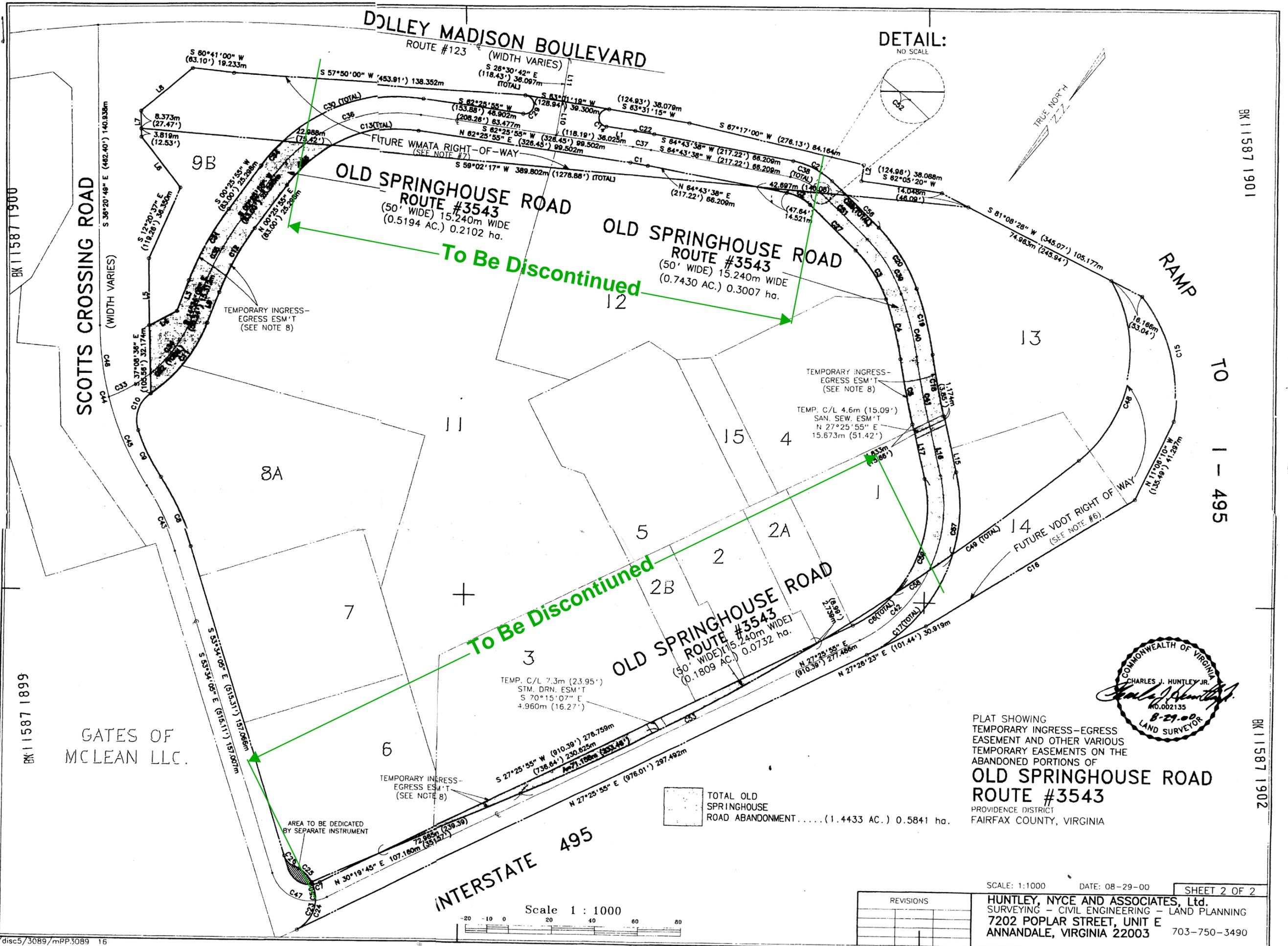
COMMONWEALTH OF VIRGINIA  
 5/7/2012  
 J THOMAS HARDING  
 Lic. No. 1836  
 LAND SURVEYOR

PLAT SHOWING QUITCLAIM OF OLD SPRINGHOUSE ROAD - ROUTE #3543 PROPERTY  
 DEED BOOK 2271 PAGE 267  
 DEED BOOK 2386 PAGE 132  
 PROVIDENCE DISTRICT  
 FAIRFAX COUNTY, VIRGINIA  
 SCALE: 1"=100' DATE: DECEMBER 12, 2011  
 REVISED: MAY 7, 2012  
 SHEET 1 OF 1

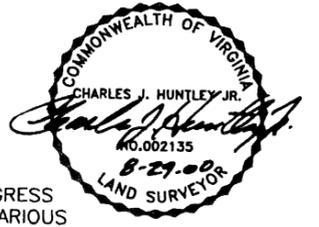
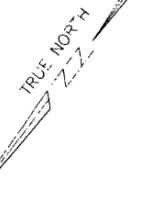
ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS ■ SUSTAINABLE DESIGN  
 VIKI INCORPORATED  
 8180 GREENSBORO DRIVE SUITE 200 MCGLEAN, VIRGINIA 22102  
 (703)442-7800 ■ FAX (703)781-2787  
 MCGLEAN, VA GERMANTOWN, MD

RP#

P:\Surveys\LD03-PROJECTS\6927-RP\dwg\6927-RP EXHIBIT OLD SPRINGHOUSE.dwg 12/13/2011 11:54:06 AM EST



DETAIL:  
NO SCALE

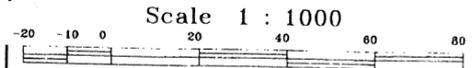


PLAT SHOWING  
TEMPORARY INGRESS-EGRESS  
EASEMENT AND OTHER VARIOUS  
TEMPORARY EASEMENTS ON THE  
ABANDONED PORTIONS OF  
**OLD SPRINGHOUSE ROAD  
ROUTE #3543**  
PROVIDENCE DISTRICT  
FAIRFAX COUNTY, VIRGINIA

SCALE: 1:1000      DATE: 08-29-00      SHEET 2 OF 2

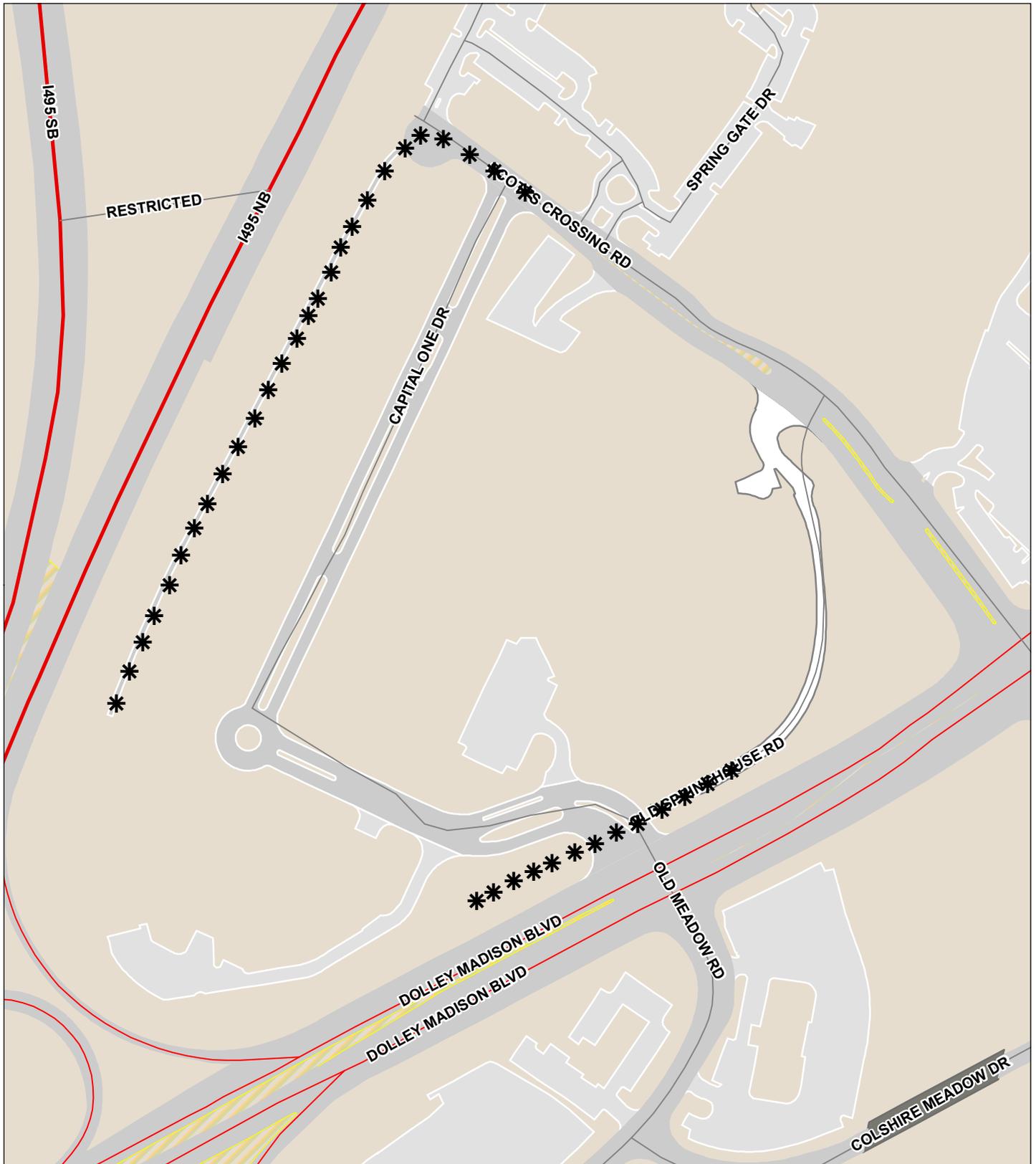
**HUNTLEY, NYCE AND ASSOCIATES, Ltd.**  
SURVEYING - CIVIL ENGINEERING - LAND PLANNING  
7202 POPLAR STREET, UNIT E  
ANNANDALE, VIRGINIA 22003      703-750-3490

NO.	REVISIONS

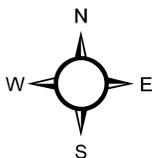


# Discontinuance of Portions of Old Springhouse Road (Route 3543)

Providence District



Tax Map 29-4



**\* Symbol Denotes Segments to be Discontinued**

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ADMINISTRATIVE – 8

Authorization to Advertise Public Hearing on a Proposed Zoning Ordinance Amendment  
Re: Home Child Care Facilities

ISSUE:

The proposed amendment is in response to a Board of Supervisors' (Board) request to consider an increase in the maximum number of children that may be cared for in a home child care facility with special permit approval from 10 to 12, a reduction in the special permit filing fee for home child care facilities, and to review the appropriateness of the existing special permit standards. These proposed changes are prompted by a recent change in policy by the Virginia Department of Social Services which requires the Zoning Administrator to review home child care facilities that are subject to State licensing.

RECOMMENDATION:

The County Executive recommends the authorization of the proposed amendment by adopting the resolution set forth in Attachment 1.

TIMING:

Board action is requested on January 29, 2013, to provide sufficient time to advertise the proposed Planning Commission public hearing on March 20, 2013, at 8:15 p.m., and the proposed Board of Supervisors (Board) public hearing on May 14, 2013 at 4:30 p.m.

BACKGROUND:

The proposed amendment is on the 2012 Priority 1 Zoning Ordinance Amendment Work Program and proposes changes to the home child care facility regulations. These proposed changes are in response to a policy change that was enacted by the Virginia Department of Social Services effective July 1, 2012, which requires home child care providers renewing their State license or seeking their first State license for a Family Day Home (home child care facility) to have the local Zoning Administrator sign a form acknowledging the provider's plan to seek a child care license. This requirement highlighted the differences between the County and State regulations given that existing providers may currently have a State license to care for twelve children and the maximum number of children that can be provided for in a home child care facility under County zoning is ten. Specifically, the amendment:

Board Agenda Item  
January 29, 2013

- (1) Increases the maximum number of children permitted to be cared for in a home child care facility by special permit from ten to twelve.
- (2) Revises the additional standards for home child care facility special permits contained in Sect. 8-305 to (a) require the home child care facility limitation for by-right uses contained in Par. 6 of Sect. 10-103 be met, except for the numbers of children and non-resident employees; (b) require the Board of Zoning Appeals (BZA) to review access to the site; and (c) allow the BZA to consider the availability of on-street parking and /or alternative drop off and pick up areas located in proximity to the site.
- (3) Allows home child care facilities that have more than seven children in a single family detached dwelling and five children in all other dwelling types to be allowed in any P district with special permit approval by the BZA.
- (4) Reduces the current special permit application fee of \$1,100 for home child care facilities to as low as \$435.

A more detailed discussion of the proposed amendment is set forth in the Staff Report enclosed as Attachment 2.

REGULATORY IMPACT:

There are approximately 500 home child care facilities licensed by the Virginia Department of Social Services in the County and the majority of them have been licensed for the care of twelve children. However, the maximum number of children allowed under Fairfax County regulations is ten. The County and the Virginia Department of Social Services Division of Licensing Programs have entered into an agreement while the Board considers revisions to the Zoning Ordinance. Under the agreement, the State is continuing to issue renewals for the existing number of children licensed to be in care, and County enforcement action for licensed numbers of children in care has been suspended, provided there are no life or safety issues. Once the Board takes action on a Zoning Ordinance amendment, home child care providers are then expected to take steps to achieve compliance with all County zoning regulations within a reasonable time following the Board's decision on this amendment. Existing State license holders will need to either reduce the number of children in care or submit an acceptable special permit application within this time. New applicants for state licenses, however, are expected to comply with the current County regulations.

The proposed amendment brings into better alignment the differences between County and State regulations with regard to the maximum number of children. It also facilitates the maintenance of existing facilities and the establishment of new home child care

Board Agenda Item  
January 29, 2013

facilities that may require special permit approval by potentially reducing the application fee and by making the approval process for such facilities the same in all P districts.

FISCAL IMPACT:

It is anticipated that there will be an influx of special permit applications for home child care facilities as a result of this amendment. Lowering of the application fee will, however, reduce the amount of revenue that is generated from these applications. The increase in applications will impact the work load of both staff and the BZA because it is anticipated that the additional applications will be processed using existing resources. Although there will be increased workloads in the short term, it is anticipated that in the long term the impacts will be minimal because once a special permit for a home child care facility is approved for a certain provider at a specific location, there are no additional zoning approvals required. Home child care providers will continue to be required to renew their State licenses every one, two, or three years.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution  
Attachment 2 – Staff Report

STAFF:

Robert A. Stalzer, Deputy County Executive  
Fred Selden, Director, Department of Planning and Zoning (DPZ)  
Leslie B. Johnson, Zoning Administrator, DPZ  
Cathy S. Belgin, Senior Assistant to the Zoning Administrator, DPZ

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**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 January 29, 2013, at which meeting a quorum was present and the following resolution was adopted:

WHEREAS, many home child care providers in the County have been issued licenses by the Virginia Department of Social Services to operate with a greater number of children than are currently permitted by the Zoning Ordinance; and

WHEREAS, it may be appropriate to allow the Board of Zoning Appeals (BZA) to approve a home child care facility special permit to care for up to 12 children, rather than the current maximum of 10 children, if certain conditions are met; and

WHEREAS, it may be appropriate to reduce the filing fee for home child care facility special permit applications to be more closely aligned with the fees for other residential zoning application types; and

WHEREAS, it may be appropriate to require special permit approval in all P Districts for home child care facility applications requesting to operate above the by right limitations; and

WHEREAS, it may be appropriate to modify the additional standards for home child care special permits to more closely align with the by right home child care use limitations and to give the BZA additional flexibility to allow on-street parking and alternative pick up and drop off locations in certain situations; and

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:

---

Catherine A. Chianese  
Clerk to the Board of Supervisors



FAIRFAX  
COUNTY

ATTACHMENT 2

# STAFF REPORT

V I R G I N I A

## PROPOSED ZONING ORDINANCE AMENDMENT

Home Child Care Facilities

### PUBLIC HEARING DATES

**Planning Commission**

March 20, 2013 at 8:15 p.m.

**Board of Supervisors**

May 14, 2013 at 4:30 p.m.

**PREPARED BY  
ZONING ADMINISTRATION DIVISION  
DEPARTMENT OF PLANNING AND ZONING  
703-324-1314**

January 29, 2013

CSB



Americans With Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice.  
For additional information on ADA call 703-324-1334 or TTY 711 (Virginia Relay Center).

## STAFF COMMENT

The proposed amendment is on the 2012 Priority 1 Zoning Ordinance Amendment Work Program and is in response to a Board of Supervisors' (Board) request to consider an increase in the maximum number of children permitted to be cared for in a home child care facility with special permit approval from 10 to 12, a reduction in the special permit filing fee for home child care facilities, and to review the appropriateness of the existing special permit standards. These proposed changes are prompted by a recent change in policy by the Virginia Department of Social Services which requires Zoning Administrator review of home child care facilities that are subject to State licensing. Implementation of this requirement has highlighted the differences between the current Zoning Ordinance regulations and State licensing regulations.

### **Current Zoning Ordinance Provisions**

Pursuant to Par. 6 of Sect. 10-103 of the Zoning Ordinance, home child care facilities are permitted as an accessory use to any residential dwelling, with the following use limitations: care for up to 7 children is permitted by-right in any single family detached dwelling, and care for up to 5 children is permitted by-right in any single family attached (townhome), multiple family dwelling (apartment or condominium), or mobile home. These limitations do not include the providers' own children who may also be cared for in the home child care facility. The child care provider must either reside at the dwelling or may provide care in a dwelling other than their own as long as the dwelling is the primary residence of one of the children being cared for; but in either case, no exterior evidence of the child care facility, such as signs, is permitted. In addition, one non-resident assistant, whether paid or not, is permitted between the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday. Home child care facilities are further subject to the regulations contained in Chapter 30 of the County Code (for home child care facilities caring for up to 5 children) or Title 63.2, Chapter 17 of the Code of Virginia (for home child care facilities caring for 6 or more children). A copy of Par. 6 of Sect. 10-103 is provided as Attachment A. Additional children up to a maximum of 10 and/or additional non-resident assistants may be allowed with special permit approval from the Board of Zoning Appeals (BZA), except in the PDH, PDC, PRM and PTC District where special exception approval is required by the Board. Home child care facilities exceeding the by-right levels may also be permitted in the P Districts when depicted on an approved development plan.

### **Background**

The Virginia Department of Social Services established an administrative change that became effective July 1, 2012, which among other things requires providers renewing their State license or seeking their first State license for a "Family Day Home" (home child care facility) to have the local Zoning Administrator sign a form acknowledging the provider's plan to seek a child care license. The form requires the provider to state the number of children that the provider requests to care for under the State license. As part of this review, it became evident that there are numerous home child care facilities that have received licenses from the State but are caring for more children than are currently permitted under the Zoning Ordinance and/or have not received the required zoning approval. Nearly 500 home child care providers in the County are currently licensed by the State.

Furthermore, the majority of these existing State-licensed facilities are approved for the care of 12 children, while the greatest number of children that the County allows in a home child care facility is 10 with special permit or special exception approval.

After receiving testimony from a number of home child care providers regarding the impacts of the administrative State licensing changes at the June 19, 2012, Board meeting, the Board requested staff to prepare a Zoning Ordinance amendment to address this issue, and also requested that staff pursue an agreement with the State regarding temporary measures to address this discrepancy without disrupting the provision of established licensed child care.

The County and the Virginia Department of Social Services Division of Licensing Programs have entered into such an agreement while the Board considers revisions to the Zoning Ordinance. Under the agreement, the State is continuing to issue renewals for the existing number of children licensed to be in care, and County enforcement action for licensed numbers of children in care has been suspended, provided that there are no life or safety issues. Once the Board takes action on a Zoning Ordinance amendment, home child care providers are then expected to take steps to achieve compliance with all County zoning regulations within a reasonable time period. Existing State license holders will need to either reduce the number of children in care or pursue the appropriate zoning approvals to come into compliance. New applicants for State license, however, are expected to comply with the current County regulations.

In conjunction with the County's Office for Children, staff has participated in several public meetings to inform the home child care provider community and citizens about the changes in the State regulations, to clarify the differences between State and County regulations, to inform providers of the interim procedures being implemented, and to discuss the proposed Zoning Ordinance amendment. During these meetings there were a range of concerns expressed by the home child care providers, including the difficulty and cost involved in filing a special permit (or special exception) application, the posting of signs advertising the public hearing which may generate neighborhood concerns even though the existing facility was currently operating without complaint, and the impact that neighbor comments could have on potential zoning approvals, among others. Several providers requested that the by-right numbers for children permitted to be cared for in the home be increased, particularly for providers living in townhouses, with providers noting that some townhouses are larger than some single family detached dwellings. It was also suggested by some providers that home child care facilities already operating without complaint with up to 12 children with a State license be permitted to continue operating without requiring additional zoning approval. Residents living near home child care facilities also participated in these meetings, and they expressed concerns primarily related to higher traffic volumes on neighborhood streets, blocked driveways and inadequate on-site parking.

In order to help facilitate the special permit application process for potential applicants, a new special permit application package has been developed specifically for home child care facilities. Simplified instructions are included and all the parts not relevant to home child care facilities have been deleted. A website has also been created that includes the application form and other pertinent information for home child care facility providers.

On October 2, 2012, staff provided an update to the Board's Development Process Committee, which is a committee of the whole Board, on the status of home child care facilities, including the history of Zoning Ordinance provisions, a comparison of the home child care facility regulations and fees of neighboring and comparable jurisdictions with Fairfax County regulations, the special permit/special exception applications history for home child care facilities in the County, and the zoning enforcement history of home child care facilities in the County. Staff provided an update to the Development Process Committee on January 15, 2013 to summarize staff's proposed Zoning Ordinance text changes.

The Zoning Ordinance has periodically been amended to coincide with changes to the State and County Code regulations regarding home child care facilities. In general, there has been a gradual increase in the number of children permitted in a home child care facility. The State increased the maximum number of children which could be cared for under a State family day home license from 9 to 12 in 1993. On March 18, 2002, in response to requests from home child care providers, the Board adopted a Zoning Ordinance amendment which permitted one nonresident employee to work in the home child care facility by-right, similar to other home occupations. At that time, the Board also considered increasing the number of children allowed to be cared for with special permit approval from 10 to 12, but the Board did not approve the increase.

Staff evaluated the regulations of several other area jurisdictions, including the counties of Arlington, Loudoun, Prince William, Stafford, Chesterfield, Henrico, Hanover, and Montgomery County, MD, the cities of Alexandria, Falls Church, and Fairfax, and the towns of Herndon and Vienna. The analysis shows that the current Fairfax County Zoning Ordinance provisions regarding numbers of children permitted to be cared for are generally within the range of existing regulations throughout the region. The majority of the above jurisdictions currently allow 5 children by-right, and most do not count the providers' children. Loudoun County allows up to 9 children but includes the providers' children in that count; Prince William allows up to 9 children on lots greater than 5,000 square feet in size, otherwise 5 children are permitted; and Montgomery County allows up to 8 children in most residential districts and up to 12 children in some, and also includes the providers' children in those counts. All but one jurisdiction (Stafford County, which allows up to 12 children by-right) have public hearing processes to enable providers to request care of additional children, increase the business hours and/or increase the number of nonresident assistants. The maximum numbers of children permitted with a public hearing process ranges from 9 to 12. It should be noted that Loudoun County and the Town of Herndon are also currently considering Zoning Ordinance changes to better align with state regulations. Application fees in these jurisdictions for the special exception and special permit applications for home child care facilities range from \$200 to \$1800, with the majority being lower than the County's current filing fee of \$1,100. The chart in Attachment B contains details on other area jurisdictions' regulations.

Since the 1980's, a total of 42 special permit applications and 6 special exception applications for home child care facilities have been filed. Of those applications, 20 special permits and 2 special exceptions were approved. Commonly approved development conditions included providing a fenced play area, planting trees, staggering arrival and departure times, prohibiting signs, prohibiting conversion of garage spaces to uses other than parking, expanding driveway space, limitations on enrollment and assistants, and specific playground equipment setbacks from neighboring properties. Common reasons for denial of applications included heavy traffic flow, poor sight distance,

inadequate access into the property, inadequate on-site parking, lack of available street parking, and play yard safety issues.

Despite the ongoing difference between the maximum number of children permitted under a State license and the Zoning Ordinance regulations, there have been relatively few complaints received by the Department of Code Compliance (DCC) concerning home child care facilities. Since 2007, a total of 139 home child care facility zoning complaints were received. Many of those complaints were either unfounded or voluntary compliance was achieved. Only 24 complaints resulted in Notices of Violation being issued during that time.

During the October 2, 2012, Development Process Committee Meeting, the Board raised several issues. The issues of differentiating the number of children permitted to be cared for by-right as determined by lot size was raised, in light of the fact that Prince William County makes a distinction between lots above and below 5,000 square feet in size, with more children permitted to be cared for by-right on the larger lots. In Fairfax County, however, the minimum lot sizes for single family detached dwellings in all conventional residential zoning districts equal or exceed 5,000 square feet.

Additionally, in P Districts, there are no minimum lot size requirements. The idea of basing the number of children permitted to be cared for by-right on dwelling size was also raised. Currently a distinction is made in the Zoning Ordinance between dwelling types, with single family detached dwellings having a larger allowance for number of children by-right than other dwelling types. It has been noted that a townhouse may be significantly larger than a detached house; and that home child care providers residing in a large townhouse are only permitted to have 5 children in care by-right while home child care providers residing in a very small detached house are permitted to have 7 children in care by-right. However, it is staff's opinion that lot size and dwelling size are not necessarily the most distinguishing factors in determining potential land use impacts, but rather factors such as access, public road frontage versus private road frontage, parking availability, and lot layout are more significant in determining land use impacts which may be associated with a home child care facility. As these issues are more prevalent in townhouse and multiple family developments, staff believes that the distinction between single family detached dwellings and other dwelling types as currently set forth in the Zoning Ordinance is appropriate with regard to the maximum number of children permitted to be cared for by-right.

Finally, regarding the proposed change to the fees for the special permit applications for home child care facilities, staff looked at the range of existing fees for other home-based zoning applications in the County. The ranges for these fees were as follows: \$435 for a special permit for an accessory dwelling unit, \$600 for appeals, which are frequently residential in nature, and \$910 for a number of residential application types. These residential applications include special permits for modifications to limitations on the keeping of animals, errors in building location, reduction in minimum yard requirements, and increases in fence height. They also include residential variances for reduction in minimum yards, increases in fence height, modification of location regulations or use limitations for accessory structures or uses, and modifications of grades for single family detached dwellings. Staff, in consultation with the Board, concluded that the advertised range should be between \$435 and the current fee of \$1,100.

## **Proposed Amendment**

In order to align more fully with State licensing regulations, staff recommends that the BZA should have the authority to approve a special permit to allow a home child care facility to care for up to 12 children, rather than the current maximum of 10, if the appropriate conditions exist on the site. Staff believes that the current filing fee of \$1,100 for home child care facility special permit applications is appropriate given the amount of staff review required to process and review these applications, as the advertising and staff costs associated with processing this type of special permit application typically exceeds the \$1,100 filing fee. If the Board desires to lower the filing fee, staff recommends a fee similar to the fee that has been established for residential special permits and variances for modifications of yards, error in building location and the like, which is currently \$910. In order to provide the Board with legislative flexibility, staff recommends an advertised range between \$435 and \$1,100 and the Board can consider any fee within that range.

As previously noted, home child care facilities are permitted accessory uses subject to the use limitations contained in Par. 6 of Sect. 10-103 which include, among things, prohibition of signs, permitted employee hours, and that the facility must be the primary residence of the provider. Increases in the number of children and non-resident employees currently require special permit approval in most districts, and all such special permit requests are subject to the additional standards contained in Sect. 8-305 of the Zoning Ordinance. Staff believes that the existing additional standards are generally sufficient and flexible enough to allow the BZA to address the specifics of each application and impose conditions that will mitigate impacts on surrounding properties. There are certain conditions that the BZA frequently imposes on home child care facility special permits, such as the prohibition of signage, which are accommodated in the by-right use limitations. Therefore, staff believes it is appropriate to revise the home child care facility special permit additional standards to specifically require that, except for the number of children and non-resident employees, all special permit approved home child care facilities shall also be subject to the provisions of Par. 6 of Sect. 10-103.

Adequate parking and access to the site are important issues that potentially could impact nearby properties. One of the special permit additional standards requires that the BZA review all existing and/or proposed parking to determine if such parking is sufficient. The BZA may require the provision of additional on-site parking to accommodate the specific home child care facility on a site. Because traffic and parking conditions can vary greatly from one site to another, staff recommends that site access should always be a consideration and there may be instances where consideration of on-street parking could be appropriate in accommodating the needs of a proposed home child care facility. Therefore, staff recommends that the special permit home child care facility additional standards be revised to require the BZA to review site access, and to allow the BZA to consider the availability of on-street parking and/or alternative drop off and pick up areas located in close proximity to the use in determining whether there is sufficient parking to serve the home child care facility. The amendment incorporates revisions to Sect. 8-305 addressing these recommendations.

Home child care facilities that operate above the by-right limitations are currently permitted in all P Districts when depicted on an approved development plan, and by special permit approval in the PRC District and special exception approval in all other P Districts when not depicted on an

approved development plan. Although the filing fee for home child care facility special exception applications has recently been revised to be the same as for the special permit application (\$1,100), the special exception application process involves public hearings before the Planning Commission and Board, whereas the special permit process only involves a public hearing before the BZA. Staff believes that the approval process for all P Districts should be the same as there is no apparent reason to treat the PRC District differently. Given that home child care facilities occur within a dwelling unit and it would typically be unknown at the time of rezoning or development plan approval whether a future resident will operate a home child care facility at a specific location, and given that not all property may be appropriate for a home child care facility that operates above the by-right levels, staff concludes that it is appropriate to require all home child care facilities that operate above the by-right levels to obtain special permit approval from the Board of Zoning Appeals. The proposed changes to Article 6 result in home child care facilities in all P Districts operating above the by-right limits being treated the same and requiring special permit approval even if shown on an approved development plan.

### **Conclusion**

The proposed amendment effectively brings the County's regulations regarding home child care facilities into a more close alignment with the State licensing regulations, while continuing to mitigate the potential negative impacts associated with such facilities on residential communities. In addition, the proposed amendment facilitates the special permit process for home child care facilities by reducing the filing fee, requiring special permit approval in all districts for home child care facilities that exceed the by-right numbers, allowing the BZA to consider on-street parking in evaluating the appropriateness of the site for operating a home child care facility, and requiring adherence to the use limitations for home child care facilities contained in Article 10.

Therefore, staff recommends approval of the proposed amendment with an effective date of 12:01 a.m. on the day following adoption.

## PROPOSED AMENDMENT

*This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of January 29, 2013 and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.*

1 **Amend Article 20, Ordinance Structure, Interpretations and Definitions, Part 3, Definitions,**  
2 **by revising the Home Child Care Facility definition to read as follows:**

3  
4 HOME CHILD CARE FACILITY: A dwelling or mobile home where ~~ten (10)~~ twelve (12) or fewer  
5 children receive care, protection and supervision during only part of a twenty-four (24) hour day  
6 unattended by parent or legal guardian. Such use shall be permitted in accordance with the  
7 provisions of Part 1 of Article 10 or Part 3 of Article 8. For purposes of this Ordinance, when such a  
8 use is located in a structure other than a dwelling, it shall be deemed a CHILD CARE CENTER.  
9

10  
11 **Amend Article 8, Special Permits, Part 3, Group 3 Institutional Uses, Sect. 8-305, Additional**  
12 **Standards for Home Child Care Facilities, by revising Paragraphs 1 and 2 to read as follows:**

- 13  
14 1. The number of children that may be cared for in a home child care facility may exceed the  
15 number of children permitted under Par. 6A of Sect. 10-103, but in no event shall the  
16 maximum number of children permitted at any one time exceed ~~ten (10)~~ twelve (12), excluding  
17 the provider's own children. The BZA may also allow more than one nonresident person to be  
18 involved with the use. Except as described above, home child care facilities shall also be  
19 subject to the use limitations of Par. 6 of Sect. 10-103.  
20  
21 2. The BZA shall review access to the site and all existing and/or proposed parking, including but  
22 not limited to the availability of on-street parking and/or alternative drop off and pick up areas  
23 located in proximity to the use, to determine if such parking is sufficient. The BZA may  
24 require the provision of additional off-street parking spaces based on the maximum number of  
25 vehicles expected to be on site at any one time and such parking shall be in addition to the  
26 requirement for the dwelling unit.  
27  
28

29 **Amend Article 18, Administration, Amendments, Violations, and Penalties, Part 1,**  
30 **Administration, Sect. 18-106, Application and Zoning Compliance Letter Fees, by revising the**  
31 **Group 3 special permit application fee and the Category 3 special exception application fee set**  
32 **forth in Par. 1 to read as follows:**

33 All appeals and applications as provided for in this Ordinance and requests for zoning compliance

1 letters shall be accompanied by a filing fee in the amount to be determined by the following  
 2 paragraphs unless otherwise waived by the Board for good cause shown; except that no fee shall be  
 3 required where the applicant is the County of Fairfax or any agency, authority, commission or other  
 4 body specifically created by the County, State or Federal Government. All fees shall be made  
 5 payable to the County of Fairfax. Receipts therefore shall be issued in duplicate, one (1) copy of  
 6 which receipt shall be maintained on file with the Department of Planning and Zoning.

7  
 8 1. Application for a variance, appeal, special permit or special exception:

9 Application for a:

10 Group 3 special permit

- 11 • Churches, chapels, temples, synagogues and other such places of \$11025  
 12 worship with a child care center, nursery school or private school which  
 13 has an enrollment of 100 or more students daily
- 14 • Home child care facilities \$910  
 15 [The advertised fee range is \$435 to \$1,100]
- 16 • All other uses \$1100

17  
 18 Application for a:

19 Category 3 special exception

- 20 • Child care centers, nursery schools and private schools which have an \$1100  
 21 an enrollment of less than 100 students daily, churches, chapels, temples,  
 22 synagogues and other such places of worship with a child care center,  
 23 nursery school or private school which has an enrollment of less than  
 24 100 students daily and independent living facilities for low income tenants,  
 25 whether a new application or an amendment to a previously approved and  
 26 currently valid application, with or without new construction, ~~home child~~  
 27 ~~care facilities~~
- 28 • Churches, chapels, temples, synagogues and other such places of \$11025  
 29 worship with a child care center, nursery school or private school which  
 30 has an enrollment of 100 or more students daily
- 31 • All other uses \$16375

32  
 33  
 34 **Amend Article 6, Planned Development District Regulations, as follows:**

35  
 36 *[The proposed changes to Article 6 establish home child care facilities in all P Districts as*  
 37 *a special permit use when operating above the by-right limitations set forth in Par. 6 of*  
 38 *Sect. 10-103.]*

39  
 40 - **Amend Part 1, PDH Planned Development Housing District, as follows:**

41  
 42 - **Amend Sect. 6-103, Secondary Uses Permitted, by revising Par. 10 to read as follows:**

43  
 44 The following secondary uses shall be permitted only in a PDH District which contains  
 45 one or more principal uses; only when such uses are presented on an approved final  
 46 development plan prepared in accordance with the provisions of Article 16; and subject to  
 47 the use limitations set forth in Sect. 106 below.

48 10. Institutional uses (Group 3), limited to:

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- A. Churches, chapels, temples, synagogues and other such places of worship
- B. Convents, monasteries, seminaries and nunneries
- C. Group housekeeping units
- D. Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school, or private school of general or special education

- **Amend Sect. 6-104, Special Permit Uses, by adding a new Par. 1 to read as follows, and renumbering the subsequent paragraphs accordingly.**

For specific Group uses, regulations and standards, refer to Article 8.

1. Group 3 - Institutional Uses, limited to:

- A. Home child care facilities

- **Amend Part 2, PDC Planned Development Commercial District, as follows:**

- **Amend Sect. 6-203, Secondary Uses Permitted, by revising Par. 8 to read as follows:**

The following secondary uses shall be permitted only in a PDC District which contains one or more principal uses; only when such uses are presented on an approved final development plan prepared in accordance with the provisions of Article 16; and subject to the use limitations set forth in Sect. 206 below.

8. Institutional uses (Group 3), limited to:

- A. Churches, chapels, temples, synagogues and other such places of worship
- B. Convents, monasteries, seminaries and nunneries
- C. Group housekeeping units
- D. Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school, or private school of general or special education

- **Amend Sect. 6-204, Special Permit Uses, by adding a new Par. 1 to read as follows, and renumbering the subsequent paragraphs accordingly.**

For specific Group uses, regulations and standards, refer to Article 8.

1. Group 3 - Institutional Uses, limited to:

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2           A. Home child care facilities

3  
4 - **Amend Part 3, PRC Planned Residential Community District, as follows:**

5  
6 - **Amend Sect. 6-302, Permitted Uses, as follows:**

7  
8 - **Amend Par. A (Residential Uses), by revising Par. A(10) to read as follows:**

9  
10           (10) Institutional uses (Group 3), limited to:

11  
12                   (a) Churches, chapels, temples, synagogues and other such places of worship

13  
14                   (b) Convents, monasteries, seminaries and nunneries

15  
16                   (c) Group housekeeping units

17  
18                   (d) Churches, chapels, temples, synagogues and other such places of worship  
19                         with a child care center, nursery school, or private school of general or  
20                         special education

21  
22 - **Amend Par. B (Neighborhood Convenience Center), by deleting Par. B(8)(d).**

23  
24           (8) Institutional uses (Group 3), limited to:

25  
26                   ~~(d) Home child care facilities~~

27  
28 - **Amend Par. C (Village Center), by revising Par. C(11) to read as follows:**

29  
30           11. Institutional uses (Group 3), limited to:

31  
32                   (a) Churches, chapels, temples, synagogues and other such places of worship

33  
34                   (b) Convents, monasteries, seminaries and nunneries

35  
36                   (c) Group housekeeping units

37                   (d) Churches, chapels, temples, synagogues and other such places of worship  
38                         with a child care center, nursery school, or private school of general or  
39                         special education

40  
41 - **Amend Par. E (Convention/Conference Center), by deleting Par. E(11)(c).**

42  
43           (11) Institutional uses (Group 3), limited to:

44  
45                   ~~(c) Home child care facilities~~

46  
47 - **Amend Sect. 6-303, Special Permitted Uses, by adding a new number 5 to read as**  
48 **follows and renumbering the subsequent paragraphs accordingly.**

1  
2 5. Group 3 – Institutional Uses, limited to:

3  
4 A. Home child care facilities

5  
6 - **Amend Part 4, PRM Planned Residential Mixed Use, as follows:**

7  
8 - **Amend Sect. 6-403, Secondary Uses Permitted, by deleting Par. 12C.**

9  
10 The following secondary uses shall be permitted only in a PRM District which contains  
11 one or more principal uses; only when such uses are presented on an approved final  
12 development plan prepared in accordance with the provisions of Article 16; and subject to  
13 the use limitations set forth in Sect. 406 below.

14  
15 12. Institutional uses (Group 3), limited to:

16  
17 C. ~~Home child care facilities~~

18  
19 - **Amend Sect. 6-404, Special Permit Uses, by adding a new Par. 1 to read as follows,  
20 and renumbering the subsequent paragraph accordingly.**

21  
22 For specific Group uses, regulations and standards, refer to Article 8.

23  
24 1. Group 3 - Institutional Uses, limited to:

25  
26 A. Home child care facilities

27  
28 - **Amend Part 5, PTC Planned Tysons Corner Urban District, as follows:**

29  
30 - **Amend Sect. 6-502, Permitted Uses, by revising Par. 17 to read as follows:**

31  
32 The following uses shall be permitted subject to the approval of a final development plan  
33 prepared in accordance and the provisions of Article 16; and subject to the use limitations  
34 set forth in Sect. 505 below.

35  
36 17. Institutional uses (Group 3), limited to:

37  
38 A. Churches, chapels, temples, synagogues and other such places of worship

39  
40 B. Convents, monasteries, seminaries and nunneries

41  
42 C. Group housekeeping units

43  
44 D. Churches, chapels, temples, synagogues and other such places of worship  
45 with a child care center, nursery school, or private school of general or  
46 special education

47 - **Amend Sect. 6-503, Special Permit Uses, by adding a new Par. 2 to read as follows  
48 and renumbering the subsequent paragraphs accordingly.**

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1. For specific Group uses, regulations and standards, refer to Article 8.
2. Group 3 - Institutional Uses, limited to:
  - A. Home child care facilities

**ARTICLE 10 ZONING ORDINANCE PROVISIONS  
for HOME CHILD CARE FACILITIES**

**Article 10, Accessory Uses, Accessory Service Uses, and Home Occupations,  
Part 1, Accessory Uses and Structures, Sect. 10-103, Use Limitations:**

6. The following use limitations shall apply to home child care facilities:

A. The maximum number of children permitted at any one time shall be as follows:

(1) Seven (7) when such facility is located in a single family detached dwelling.

(2) Five (5) when such facility is located in a single family attached, multiple family or mobile home dwelling.

The maximum number of children specified above shall not include the provider's own children.

B. A home child care facility shall be operated by the licensed or permitted home child care provider within the dwelling that is the primary residence of such provider, and except for emergency situations, such provider shall be on the premises while the home child care facility is in operation. Notwithstanding the above, a substitute care provider may operate a home child care facility in the absence of the provider for a maximum of 240 hours per calendar year.

C. There shall be no exterior evidence, including signs, that the property is used in any way other than as a dwelling, except that play equipment and other accessory uses and structures permitted by this Part shall be allowed.

D. In addition to the persons who use the dwelling as their primary residence, one (1) nonresident person, whether paid or not for their services, may be involved in the home child care use on the property, provided that there is only one (1) such person on the property at any one time and the hours of such attendance shall be limited to 7:00 AM to 6:00 PM, Monday through Friday.

E. Notwithstanding the provisions of Par. B above, a child care provider may care for the maximum number of children permitted in Par. A above in a dwelling other than the provider's own, as long as the dwelling is the primary residence of at least one of the children being cared for by the provider. Such child care provider shall comprise the one nonresident person allowed under Par. D above.

F. All such uses shall be subject to the regulations of Chapter 30 of The Code or Title 63.2, Chapter 17 of the Code of Virginia.

G. An increase in the number of children permitted under Par. A above or the involvement of more than one nonresident person as permitted under Par. D above may be permitted in accordance with the provisions of Part 3 of Article 8.

Home Child Care Regulations in Neighboring Jurisdictions

Municipality	Number by right	Are Provider's Children Counted?	Number with Additional Approval (method)	Are Provider's Children Counted?	Are Outside Employees Permitted? (Number)	Application Fee	Other Notes
<b>Fairfax County</b>	<b>5 in townhouse, 7 in sfd</b>	<b>no</b>	<b>up to 10 (special permit)</b>	<b>no</b>	<b>1 by right, additional with special permit</b>	<b>\$1,100</b>	
Arlington County	5	no	6-9 (Special Exception)	n/a	yes (1 for 6-9 children)	\$122 (license fee)	requires license from County Mgr.
City of Alexandria	5	yes	6-9	yes	yes (1 for 6-9 children)	\$250	
City of Falls Church	5	no	>5 (special use permit, only in some districts)	no	yes (with special use permit only)	\$200	very few requests, little prescedent
City of Fairfax	5	no, but max of 8 incl. the providers' under age 10	12 (Special Use Permit)	no	(unclear)	\$500	to date all SUP applicants have requested the max 12
Town of Herndon	5	no	>5	(unclear)	yes (1)	\$300	no SE requests to exceed 5 to date
Town of Vienna	up to 7	(unclear)	8+ (Conditional Use Permit)	yes	yes (not specified)	\$400	
Loudon County	9 (zoning permit)	yes	up to 12 (with SE)	n/a	yes, defers to State approval	\$165 (permit) \$1800 (SE)	all require the zoning permit
Prince William County	9 for SFD on > 5,000 sf lots; all others 5	no	6-9 where only 5 by right (Special Use Permit)	no	yes (1 by right only)	\$265	requires home occ permit and occupancy permit, over 10 children is a full fledged child care center
Stafford County	up to 12	no	n/a	n/a	n/a	n/a	
Chesterfield County	5	no	12 (Conditional Use Permit?)	no	yes	\$300	
Henrico County	"small" up to 5; "large" 6-12 (lim. to hrs. of 6AM-6PM)	no	6-12 outside hour limits (Special Exception)	no	none by right, Special Exception Approval req.	\$600	
Hanover County	5 with caviat*	no	12 (Special Exception)	no	yes	\$750	*caviat for by right is no more than 4 children (inc. own) under age 2
Montgomery County, MD	8 all resid. Districts; 12 some districts	yes	up to 12 (Special Exception some districts)	yes	yes (2 for up to 8 children, 3 for 9-12 children)	unknown	

ACTION – 1

Revisions to Chapters 4, 16 and 17 of the Personnel Regulations Clarifying Conflict of Interest Restrictions, Aligning Standards of Conduct with Virginia Code, and Aligning Grievance Submission Schedules with Virginia Code

ISSUE:

Revisions to the Fairfax County Personnel Regulations are proposed to ensure compliance with the Virginia Code and provide administrative and policy clarification.

RECOMMENDATION:

The County Executive recommends that the Board approve the proposed revisions to Chapters 4, 16, and 17 of the Personnel Regulations.

TIMING:

Routine

BACKGROUND:

Periodically, the Department of Human Resources brings forward proposed revisions to the Personnel Regulations for Board consideration. This series of proposed revisions originally included changes to Chapter 10 of the Personnel Regulations, specifically, the Family Medical Leave Act (FMLA). These revisions were withdrawn to permit further review of pending amendments to FMLA regulations and FMLA audit findings. The proposed changes to Chapter 10 were clarifications of existing language and not time sensitive.

The following summarizes proposed changes, by chapter.

Chapter 4 - Pay Plan, Hours of Work and Overtime (Attachment 1)

- Clarifies requirements and limitations associated with employees engaging in outside employment. At the suggestion of the County Attorney, provisions related to outside employment conflict of interest restrictions are revised to ensure alignment with the State Conflict of Interests Act. (4.16)

Chapter 16 – Conduct and Discipline (Attachment 2)

- Modifies restrictions on an employee's ability to bring a gun to work or onto County premises and aligns this standard of conduct with Virginia Code §15.2-915. The recent change to the Virginia Code precludes localities from having a workplace rule preventing an employee from storing a lawfully possessed firearm and ammunition in a locked private motor vehicle on County premises.
- Clarifies existing prohibitions against employees bringing other types of weapons to work or onto County premises. (Addendum 1, Chapter 16)

Chapter 17 – Grievance Procedure (Attachment 3)

- Modifies the deadline for filing an appeal of the County Executive's grievability determination to align with Virginia Code §15.2-1507 (A)(9)(a). (17.5-4c)

These changes were reviewed by the County Attorney. 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 December 3, 2012, and the Commission's comments are included as Attachment 4.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

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

STAFF:

Susan Woodruff, Director, Department of Human Resources  
Cynthia Tianti, Deputy County Attorney, Office of the County Attorney

## CHAPTER 4

### Pay Plan, Hours of Work and Overtime

#### 4.1 Pay Ranges

- 1 In preparing the pay plan, consideration shall be given to the duties and responsibilities of the various types of positions, the prevailing rates paid for comparable services in public and private employment and to experience in recruiting for such positions. Pay ranges shall include a minimum rate, a midpoint rate and a maximum rate for each class. Pay ranges assigned to classes consisting of public safety employees shall include such intermediate rates or steps as deemed necessary.
- 2 The rate of pay set forth in the plan shall include total pay in every form, except that it shall not include allowance for actual and necessary travel expense authorized and included as incident to employment. If subsistence, quarters or other maintenance is furnished to an employee, the reasonable value thereof shall be deducted from the rate of pay set forth in the plan. Exceptions to this provision must be approved by the Board of Supervisors.
- 3 When, in the opinion of the department head or deputy, following these rules results in an inequity, the Human Resources Director may authorize a salary adjustment if he /she concurs in the opinion of the department head or deputy.
- 4 Except as provided in these rules, performance pay increase dates shall not be affected by the adoption of the new pay plan.

#### 4.2 Starting Rate of Pay

- 1 The minimum rate of pay for a class shall normally be paid upon appointment.
- 2 Original appointment not to exceed the midpoint rate may be made if any of the following conditions exist:
  - a. The qualifications of the applicant significantly exceed the requirements for the class.
  - b. Difficulty of recruitment requires payment of a higher rate.
- 3 Original appointment above the midpoint rate requires the approval of the Human Resources Director.

- 4 A former employee being reinstated, as defined in Chapter 2, will be appointed at a rate of pay equal to or greater than the rate he/she was receiving at the time of his/her separation, adjusted to reflect any cost of living or market pay adjustments pay to that pay grade since his/her separation.

#### 4.3 Performance Pay Increase/Bonus

- 1 Performance pay increase or bonuses may be granted to those employees who meet the requirements specified for such increases or bonuses. Employees considered not qualified for performance pay increase shall be handled in accordance with the provisions of Chapter 12.

#### -2 Eligibility

A non-public safety employee receiving less than the maximum scheduled rate for his/her grade may be granted an annual percentage salary increase not to exceed the amount authorized by the Board of Supervisors. An employee receiving the maximum scheduled rate for his/her grade may be granted an annual percentage bonus not to exceed the amount authorized by the Board of Supervisors. In those cases where receipt of a performance pay increase would move an employee's salary beyond the maximum rate of pay for their pay grade, the employee's salary will be moved to the maximum rate of pay and he/she will receive the remainder of the increase as a bonus, assuming the rating would otherwise qualify for a bonus and provided the amount of the bonus does not exceed the maximum bonus amount for that rating. A performance pay increase for a public safety employee advances him/her to the next step in the grade. Eligibility for performance pay increases and bonuses are subject to available funding and the following:

- a. His/her work has met or exceeded the performance requirements established by his/her department head or designee to qualify for a pay increase. Public safety employees' performance must exceed the minimum performance standards to qualify for a performance pay increase. Effective August 1, 1990 employees who enlist, or are inducted into military service, or who are members of a reserve component of the armed forces of the United States who are ordered to active duty and return to County employment; upon their release from active duty and whose service is other than dishonorable shall be deemed to have satisfied this requirement for the period they are on active duty. The total length of active military service may not exceed five years, unless the period beyond five years, up to one additional year, is at the request and for the convenience of the federal government.
- b. A performance review period is 12 months. The only exception is for public safety employees who serve 2 years in step 8 before being eligible to move to step 9.

Notwithstanding the merit review periods listed above, effective July 13, 1991, the beginning of the first full pay period in FY 1992, all employees who have merit increment dates shall have their merit increment date extended by one year.

Thus, for example, an employee who had a merit increment date of the first day of payroll number 15 in 1991, which falls on July 13, 1991, would have a new increment date of the first day of payroll number 15 in 1992. An employee who had a merit increment date of the first day of payroll number 15 in 1992, which falls on July 11, 1992, would have a new merit increment date of the first day of payroll number 15 in 1993, which falls on July 10, 1993. An employee who had a merit increment date of the first day of payroll number 15 in 1993, which falls on July 10, 1993, would have a new merit increment date of the first day of payroll number 15 in 1994, which falls on July 9, 1994.

Notwithstanding the merit review periods listed above, effective July 11, 1992, the beginning of the first full pay period in FY 1993, all employees who have merit increment dates shall have their merit increment date extended by one year. Thus, for example, an employee who had a merit increment date of the first day of payroll number 15 in 1992 which falls on July 11, 1992, would have a new merit increment date of the first day of payroll number 15 in 1993, which falls on July 10, 1993. An employee who had a merit increment date of the first day of payroll number 15 in 1993 which falls on July 10, 1993, would have a new merit increment date of the first day of payroll number 15 in 1994 which falls on July 9, 1994. An employee who had a merit increment date of the first day of payroll number 15 in 1994, which falls on July 9, 1994, would have a new merit increment date of the first day of payroll number 15 in 1995, which falls on July 8, 1995.

- 3 Each employee shall have a performance pay increase date established when he/she is initially appointed to a merit position. The performance pay increase date corresponds to the beginning of a pay period. Partial pay periods do not count towards the performance pay increase date. Performance pay increase dates consist of the payroll number and year the increase is effective.
- 4 Creditable service in the completion of performance review periods includes:
  - a. Continuous employment in the competitive service not including overtime.
  - b. Period of involuntary separation initiated by the department head followed by reinstatement after appeal by the Civil Service Commission under the grievance procedure, for which the Commission determines that the

employee is entitled to back pay. In the event that the period that the Commission determines that the employee is entitled to back pay is less than the entire period of separation, the employee's performance pay increase date shall be adjusted accordingly.

- c. Honorable service with the armed forces by employees who enlist or are inducted into military service or who are members of a reserve component of the United States who are ordered to active duty and who return to County employment upon their release from active duty. The total length of active military service, which can be credited, may not exceed four years, unless the period beyond four years, up to one additional year, is at the request and for the convenience of the Federal Government.

#### 4.4 Outstanding Performance Award

- 1 An employee who has completed their initial probationary period and performs the duties and responsibilities of his/her position in an outstanding manner and whose work generally is well above expectations shall be eligible to be considered for an outstanding performance award.
- 2 An outstanding performance award may be recommended by a department head or designee. Such outstanding performance award recommendation shall be in writing, shall state the reason for such recommendation and shall be submitted through the Deputy County Executive to the Human Resources Director, as appropriate, for implementation.
- 3 Outstanding performance awards may be granted in any dollar amount not to exceed \$1,000 the amount authorized by the Board of Supervisors.

#### 4.5 Longevity Pay Increment for Public Safety Employees

Public Safety employees shall receive a longevity increment increase after 15 years of service and reaching top step in grade. A second longevity increase is awarded after 20 years of service.

#### 4.6 Within-Grade Adjustment

When in the opinion of the County Executive, it is in the best interest of the County to do so, he/she may authorize a salary adjustment to encourage retention of highly qualified County employees and address pay inequities not to exceed the maximum rate of pay assigned to the employee's class. The employee's performance pay increase date shall not change.

4.7 Pay Rate in Promotion, Demotion, Reallocation of Position or Transfer - Except Public Safety Employees

If an employee other than a public safety employee is promoted, demoted, appointed to a reallocated position or transferred, his/her rate of pay for the new position shall be determined as follows:

- 1 When a position is filled by promotion, the appointee shall receive a salary increase equal to 10% for one and two-grade promotions and 15% for promotions of three or more grades not to exceed the maximum rate of pay assigned to the new job class or the minimum rate of pay for the new job class whichever is greater. In addition, the appointee will receive a pro-rated pay adjustment for time served in the current review period. Such pay adjustment will be determined using the average pay for performance percentage increased included in the adopted budget for that fiscal year. That percentage increase will then be pro-rated based on the number of pay periods the employee served prior to promotion. In all promotions, the appointee shall receive a new performance pay increase date, which shall be calculated from the payroll number and year of his/her promotion.
- 2 With the exception of disciplinary demotions or demotions during a promotional probationary period, when an employee is demoted, he/she shall be placed at the same salary in the new pay grade. If the employee's salary is greater than the maximum salary of the new pay grade he/she shall be placed at the maximum salary for the new pay grade. The performance pay increase date shall not change.  
  
When an employee is promoted or reinstated to his or her former job class within a year from the date of demotion, he or she shall remain at the same salary or be placed at the salary he or she was receiving prior to the demotion, whichever is greater and the performance pay increase date shall not change.
- 3 When an employee is demoted for disciplinary reasons he or she shall be placed at the salary in the new grade that is 5% less than his/her current salary not to exceed the maximum salary for the pay grade. The performance pay increase date shall not change.
- 4 When an employee is demoted during a promotional probationary period, the employee's former rate of pay shall be reinstated in the new lower pay grade, not to exceed the maximum salary for the pay grade. If the pre-promotion performance pay increase (PPI) falls between the date of the promotion and the date of the subsequent demotion, the promotion date shall be retained as the PPI date; otherwise the pre-promotion PPI date shall be reinstated.
- 5 When an employee is transferred from a position of one class to a position of another class at the same level, he/she shall continue to be paid at the same rate of pay.

- 6 Upon upward reclassification of a position, the incumbent shall receive a pay increase equal to 5% of the midpoint of the salary range for the new, higher pay job class or move to the minimum of the new range, which ever is greater not to exceed the maximum rate of pay for the new pay grade. The performance pay increase date shall not change.
- 7 Upon review of a job class to determine if a regrade is warranted, the incumbents in the job class may be entitled to a pay adjustment regardless of whether the job class is regraded or not. The determination of pay increase eligibility and the amount of such pay increase will be made in accordance with procedures approved by the County Executive and the Board of Supervisors. In no case shall the employee's salary be less than the minimum or greater than the maximum for the new pay range.

4.8 Pay Rate in Promotion, Demotion, Reallocation of Position or Transfer - Public Safety Employees

If a public safety employee is promoted, demoted, appointed to a reallocated position or transferred, his/her rate of pay for the new position shall be determined as follows:

- 1 When a position is filled by promotion, except as noted elsewhere in this chapter, the appointee shall receive the greater amount of the minimum rate for the class of the new position or an amount in excess of one normal within grade increase in the pay grade of the class of the position held prior to promotion. Such increase shall not be less than 6% and if the promotion is three grades or more, the employee shall be placed in the new grade at a step closest to, but not in excess of a 15 % increase. The appointee shall receive a new performance pay increase date, which shall be calculated from the payroll number and year of his/her promotion.
- 2 When an employee is demoted, he/she shall be placed in the pay step in the new pay grade, which represents the closest dollar amount that is less than the former pay. The performance pay increase date shall not change.

When an employee is promoted or reinstated to his or her former job class within a year from the date of demotion, he or she shall remain at the same salary or be placed at the salary he or she was receiving prior to the demotion, whichever is greater and the performance pay increase date shall not change.

- 3 When an employee is demoted to his or her former job class during a promotional probationary period, the employee's former grade and step shall be reinstated. When an employee is demoted to a job class other than that in which he/she was serving at the time of promotion, he/she shall be placed at the step in the lower grade that is closest to, but not less than the employee was making prior to promotion. If the employee's pre-promotion performance pay increase (PPI) date falls between the date of promotion and the date of the subsequent demotion, the promotion date will be retained as the PPI date; otherwise the pre-promotion PPI date shall be reinstated.

- 4 When an employee is transferred from a position of one class to a position of another class at the same level, he/she shall continue to be paid at the same rate of pay.
- 5 Upon upward reclassification/reallocation of a position, the incumbent shall receive the greater amount of either the minimum rate for the new grade or the next higher dollar rate in the new pay grade as compared to the dollar rate in the lower grade except in the following instances:
  - a. Employees who have served one year or more in a two year review period and who upon reclassification/reallocation, move to a step with a one year review period, shall receive an additional step upon reclassification/reallocation to the new grade. The employee shall receive a new performance pay increase date, which shall be calculated from the payroll number and year of the reclassification/reallocation using the performance review period for the new step.
  - b. Except as noted above, the performance pay increase date shall not change unless the reclassification/reallocation moves the employee to a step with a shorter review period. In such cases, the year of the performance pay increase date is reduced if the time between the effective date of the reclassification/reallocation action and the employee's performance pay increase date is more than one year.

4.9 Pay Rate in Promotion, Demotion, Reallocation of Position or Transfer - Police Officers and Deputy Sheriffs

- 1 A Police Officer I promoted to Police Officer II or a Deputy Sheriff I promoted to Deputy Sheriff II shall receive an increase in pay not to exceed one within grade increase and the performance pay increase date will not change.
- 2 A Police Officer II or Deputy Sheriff II who is receiving a proficiency pay adjustment and is promoted to Police Sergeant or Deputy Sheriff Sergeant respectively, shall receive an increase in pay not to exceed one within grade increase and the performance pay increase date will not change.
- 3 In all other cases, the normal rules affecting promotion, demotion, reallocation of positions, and transfer for public safety employees shall apply.

4.10 Allowances Granted Police Officers

- 1 Police Officers required to wear civilian clothes while on duty shall be granted a clothing allowance while such assignment lasts.
- 2 A Police Officer II who has a minimum of five (5) years of service as a sworn officer with Fairfax County and who is certified by the Chief of Police or designee

as demonstrating exemplary expertise in an authorized Police Officer II specialty, may be eligible to receive a police proficiency pay adjustment and assume the work title of "Master Police Officer".

- a. A Police Officer II who is eligible for a police proficiency pay adjustment shall be reassigned to pay grade O-19 and shall receive an increase in pay not to exceed one within grade increase, and the performance pay increase date will not change.
- b. The number of Police Officers receiving a proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Police Officer II positions.

#### 4.11 Allowances Granted Deputy Sheriffs

- 1 A Deputy Sheriff II who has a minimum of five (5) years of service as a sworn Deputy Sheriff with Fairfax County and who is certified by the Sheriff or designee as demonstrating exemplary expertise in an authorized Deputy Sheriff position, may be eligible to receive a proficiency pay adjustment and assume the work title of "Master Deputy Sheriff".
  - a. A Deputy Sheriff who is eligible for a proficiency pay adjustment shall be reassigned to pay grade C-19 and shall receive an increase in pay not to exceed one within grade increase and the performance pay increase date will not change.
  - b. The number of Deputy Sheriff II's receiving a proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Deputy Sheriff II positions.

#### 4.12 Allowances Granted Uniformed Fire Employees

- 1 A Fire Technician who has a minimum of five (5) years of service as a uniformed Fire employee with Fairfax County, and who is certified by the Chief of Fire and Rescue or designee as demonstrating exemplary expertise in an authorized Fire Technician specialty, may be eligible to receive a fire proficiency pay adjustment and assume the work title of "Master Firefighter."
  - a. A Fire Technician who is eligible for a fire proficiency pay adjustment shall be reassigned to pay grade F-20 and shall receive an increase in pay not to exceed one within grade increase, and the performance pay increase date will not change.
  - b. The number of Fire Technicians receiving a fire proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Fire Technician positions.

4.13 Allowances Granted Animal Control Officers

- 1 An Animal Control Officer II who has a minimum of five (5) years of service as an Animal Control Officer with Fairfax County and who is certified by the Chief of Police or designee as demonstrating exemplary expertise in an authorized Animal Control Officer specialty, may be eligible to receive a proficiency pay adjustment and assume the work title of "Master Animal Control Officer."
  - a. An Animal Control Officer II who is eligible for a proficiency pay adjustment shall be reassigned to pay grade P-21 and shall receive an increase in pay not to exceed one within grade increase, and the performance pay increase date will not change.
  - b. The number of Animal Control Officer II's receiving a proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Animal Control Officer II positions.

4.14 Hours of Work

- 1 The regular work period for all full-time County employees, excluding law enforcement and fire protection personnel, shall be 40 hours worked or on paid leave (excluding meal periods) within a seven consecutive calendar day period beginning and ending as defined in Chapter 2. The schedule of hours for the workweek shall be determined by the department head or designee.
- 2 The regular work period for fire protection personnel shall be 28 consecutive calendar days, beginning and ending as defined in Chapter 2. The number of hours worked during the 28-day work period may vary depending on shift schedules and department needs.
- 3 The regular work period for law enforcement personnel shall be 14 consecutive calendar days, beginning and ending as defined in Chapter 2. The number of hours worked during the 14-day work period may vary depending on shift schedules and department needs.
- 4 The County Executive may authorize the inclusion of the meal period as actual work for shift positions.
- 5 All employees in the Merit System shall be entitled to a 15 minute rest period for each four hours of assigned work, during a duty day, as scheduled by the department head or designee. Whenever possible, the rest period shall be scheduled at the middle of each such four-hour period of work.
- 6 Shift Differential Premium Pay shall be authorized for all merit employees who are scheduled to work on fixed and/or rotating shifts that start at or after 1:00 P.M. wherein the hours scheduled on a shift after 4:00 P.M. are greater than the hours scheduled prior to 4:00 P.M., excluding employees who work flex-time schedules.

If an employee whose regular shift schedule qualifies him/her for shift differential premium pay, reports to work prior to the start of their regular shift hours, he/she remains eligible for shift differential premium pay for all hours worked after 1:00 P.M. regardless of the time he/she actually begins working on that day. The hours worked before the beginning of the regular shift schedule are not eligible for shift differential.

- 7 The Evening Shift shall encompass all shift schedules, which begin between the hours of 1:00 P.M. and 7:59 P.M. The premium pay rate established for the Evening Shift shall apply for all regularly scheduled hours actually worked between 1:00 P.M. and 7:59 P.M.
- 8 The Night Shift shall encompass all shift schedules, which begin at 8:00 P.M. and thereafter. The premium pay rate established for the Night Shift shall apply for all regularly scheduled hours actually worked between 8:00 P.M. and 6:59 A.M.
- 9 Employees assigned to 24-Hour Shift Schedules shall be paid Shift Differential Premium Pay for all regularly scheduled hours actually worked between the hours of 4:00 P.M. and 7:00 A.M. and in accordance with established payroll procedures.
- 10 Employees are paid and earn leave based on data recorded in official time and attendance records. An “online” timesheet is used to document time worked and leave taken. There are two types of time and attendance reporting:
  - a. Employees required to use positive time reporting must record all absences and hours worked each pay period.
  - b. Employees required to use negative time reporting only record exceptions to their scheduled work hours. If no exceptions are entered, the employee is paid a biweekly amount based on their scheduled hours.

#### 4.15 Overtime, Compensatory Time, Call-Back Time, Consecutive Shift Time

##### -1 Overtime.

FLSA overtime shall include all hours worked or on paid leave by an FLSA eligible employee (other than law enforcement and fire protection personnel) in excess of 40 hours in a work week.

Overtime for FLSA eligible law enforcement personnel (excluding sworn Police Officers, Animal Control Officers, and Deputy Sheriffs scheduled to work a 40 hour week) shall include all hours worked or on paid leave in excess of 86 hours in a 14-day work period. Overtime for FLSA eligible law enforcement personnel in the Police Department and Deputy Sheriffs scheduled to work a 40 hour week shall include all hours worked or on paid leave in excess of 82 hours in a 14-day work

period. Overtime for FLSA eligible fire protection personnel shall include all hours worked or on paid leave in excess of 212 hours in a 28-day work period. Non-FLSA overtime includes hours worked in excess of the employee's scheduled hours but less than the eligibility requirement for FLSA overtime. Overtime shall be kept to a minimum and shall be used to relieve occasional excessive workloads or emergencies, and not to provide for constant recurring requirements. Overtime may be mandated when related to the health, welfare or safety of either the public or employees. Except in emergency situations, all overtime worked by an employee shall be approved by the employee's supervisor or designee, verbally or in writing prior to the overtime being worked. Employees shall not work in excess of authorized scheduled hours without express approval of the supervisor.

-2 Eligibility.

Employees shall earn compensatory time or be paid for overtime hours actually worked in accordance with the following provisions:

- a. FLSA eligible employees excluding law enforcement and fire protection personnel as defined in Chapter 2:
  - (1) shall be compensated at one and one-half times their regular rate of pay for all eligible hours worked or on paid leave in excess of 40 hours during the designated seven consecutive day work period. If requested by the employee and approved by the department head or designee, compensatory time at the rate of time and a half may be awarded in lieu of overtime pay. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at one and one-half times the regular rate of pay must be awarded.
  - (2) shall earn straight compensatory time or be paid overtime at their hourly rate of pay, at the employee's discretion, for hours worked in excess of their scheduled hours wherein the time actually worked is less than forty hours in a seven day work period. If the employee's compensatory time leave balance is 240 hours or greater, overtime pay at the hourly rate of pay must be awarded.
- b. Straight pay eligible employees shall, at the discretion of the department head or designee, earn straight compensatory time or be compensated at their hourly rate of pay for all time worked in excess of their scheduled work hours.
- c. Compensatory time eligible employees shall earn straight compensatory time for time worked in excess of their scheduled work hours.
- d. FLSA eligible fire protection personnel:

- (1) shall be compensated at one and one-half times their regular rate of pay for all eligible hours worked or on paid leave in excess of 212 hours during the 28 consecutive day work period. If requested by the employee and approved by department head or designee, compensatory time at the rate of time and a half may be awarded in lieu of overtime pay. If the employee's compensatory leave balance is 336 hours or greater, overtime pay at one and one-half times the regular rate of pay must be awarded.
- (2) shall earn straight compensatory time or be paid overtime at their hourly rate of pay, at the employee's discretion, for hours worked in excess of their scheduled hours wherein the hours actually worked are less than 212 hours in a 28 day work period. If the employee's compensatory leave balance is 336 hours or greater, overtime pay at the hourly rate of pay must be awarded.

All other Fire and Rescue Department employees shall be treated as described in Section 4.15 - 2a, b, or c.

e. FLSA eligible law enforcement personnel:

- (1) shall be compensated at one and one-half times their regular rate of pay for all hours worked or on paid leave in excess of 86 hours (82 hours for sworn Police Officers and Deputy Sheriffs scheduled to work a 40 hour week) during the 14 consecutive day work period. If requested by the employee and approved by the department head or designee, compensatory time at the rate of time and a half may be awarded in lieu of overtime pay. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at one and one-half times the regular rate of pay must be awarded.
- (2) shall earn straight compensatory time or be paid overtime at their hourly rate of pay, at the employee's discretion, for hours worked in excess of their scheduled hours wherein the hours actually worked are less than 86 hours (82 hours for sworn Police Officers and Deputy Sheriffs scheduled to work a 40 hour week) in a 14 day work period. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at the hourly rate of pay must be awarded.
- (3) shall be compensated at one and one-half times their hourly rate of pay for actual court time worked when such court time falls on the employee's scheduled day off or begins more than two hours prior to the employee's scheduled shift, regardless of the number of hours worked in a given work period.

All other public safety employees shall be treated as described in Section 4.15 - 2a, b, or c.

## -3 Holiday/Emergency Administrative Leave.

Pro-rata adjustments shall be made for the holiday usage rate for shift schedules other than 40 hours per week to ensure compliance with the provisions of Chapter 10.

- a. 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 on which a holiday falls computed at the rate of one-tenth of an hour times the employees bi-weekly scheduled hours.
- b. When an employee is required to work due to an emergency, staff shortage or hours worked that are a part of the regular work week on a holiday (actual or observed), the employee shall be compensated for the hours actually worked at the employee's hourly rate of pay or in accordance with the rules governing overtime, if applicable.

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.

In addition, employees shall receive holiday compensation as follows:

- (1) FLSA eligible employees shall, at the employee's discretion, be granted holiday compensatory time or be paid holiday pay not exceeding the employee's regularly scheduled hours or one half of the employee's regularly scheduled hours for a half-day holiday. If the employee's compensatory leave balance is 240 hours or greater, holiday pay at the employee's hourly rate must be granted.
  - (2) Straight pay eligible employees shall, at the discretion of the department head or designee, be granted holiday compensatory time or be paid holiday pay not exceeding the employee's regularly scheduled hours or one half of the employee's regularly scheduled hours for a half-day holiday) at the employee's hourly rate of pay.
  - (3) Compensatory time eligible employees shall be granted holiday compensatory time not exceeding the employee's regularly scheduled hours or one half of the employee's regularly scheduled hours for a half-day holiday) at the employee's hourly rate of pay.
- c. When a holiday falls on an employee's scheduled day off, the employee shall be compensated as follows:
    - (1) FLSA eligible employees shall, at the employee's discretion, be granted holiday compensatory time or be paid holiday pay not

exceeding eight hours (4 hours for a half-day holiday) at the employee's hourly rate of pay. If an employee's compensatory leave balance is 240 hours or greater, holiday pay at the employee's hourly rate must be granted.

- (2) Straight pay eligible employees shall at the discretion of the department head or designee, be granted holiday compensatory time or be paid holiday pay not exceeding eight hours (4 hours for a half-day holiday) at the employee's hourly rate of pay.
  - (3) Compensatory time eligible employees shall be granted holiday compensatory time not exceeding eight hours (4 hours for a half-day holiday).
- d. When a holiday falls on an employee's scheduled work day and the employee does not work, the employee shall receive holiday pay at the employee's hourly rate of pay. Full-time merit employees (other than Fire and Rescue Department employees on the 24-hour shift schedule) who are scheduled to work more than 8 hours due to departmental operational needs (this does not include employees who elect to work a compressed work week or flex schedule), shall be granted holiday time off with pay up to the regularly scheduled hours for a full holiday (or one-half of the regularly scheduled hours for a half holiday).
- e. In the event of extreme inclement weather or other emergency, wherein the general County government is closed by the County Executive and all employees are granted Emergency Administrative Leave, those employees required to perform emergency services shall be compensated for the hours actually worked at the employee's hourly rate of pay or in accordance with the rules governing overtime. In addition, the employee shall be compensated as follows:
- (1) FLSA eligible employees shall at the employee's discretion, be granted compensatory time or be paid at the employee's hourly rate of pay for the number of hours that coincide with the employee's work schedule for the day itself not to exceed the maximum amount granted by the County Executive. If the employee's compensatory leave balance is 240 hours (336 hours for fire protection personnel) or greater, the employee must be paid for these hours.
  - (2) Straight pay eligible employees shall, at the discretion of the department head or designee, be granted compensatory time or be paid at the employee's hourly rate of pay for the number of hours that coincide with the employee's work schedule for the day itself not to exceed the maximum amount granted by the County Executive.

- (3) Compensatory time eligible employees shall be granted compensatory time for the number of hours that coincide with the employee's work schedule for the day itself not to exceed the maximum amount granted by the County Executive.

-4 Compensatory Time.

Compensatory time shall be earned and credited to an employee's records on the basis of actual hours worked in excess of the employee's scheduled hours. FLSA eligible employees who earn compensatory time for FLSA overtime hours worked (as defined 4.15 – 2 a(l), d(l), and e(l) shall accrue 1 1/2 hours of compensatory time for each overtime hour worked.

All other compensatory time shall be accrued on an hour for hour basis. Compensatory time off for overtime worked shall be granted upon request of the employee, when approved by the department head or designee.

- a. In the event that an employee is granted compensatory time off in excess of the employee's accrued balance, the excess shall be charged against the employee's annual leave balance.
- b. Compensatory time not to exceed 240 hours may be carried forward from one calendar year to the next calendar year.
- c. County employees shall be awarded a terminal leave payment for any accrued compensatory time not to exceed a maximum of 240 hours (336 hours for fire protection personnel). This will be paid at the employee's current hourly rate of pay at the time of termination with the exception that FLSA eligible employees will be paid at the current regular rate or at the average regular rate for the last 3 years, whichever is greater.
- d. Notwithstanding the provisions of this section or any other provision of these personnel regulations or of the procedural directives governing the exempt service, effective July 1, 1998, senior managers shall not be eligible to earn or accrue compensatory leave. For purposes of this section, "senior managers" are noted in a procedural memorandum issued by the Human Resources Director.

Senior managers shall be credited with the amount of unused compensatory leave accrued as of July 1, 1998. Subject to the provisions of these regulations and any other applicable procedural directive, they may take such compensatory leave after July 1, 1998 until such leave balances are exhausted. Senior managers may carry over no more than 240 hours of previously accrued and unused compensatory leave into the 1999 calendar year. Upon separation, senior managers shall be granted a terminal leave payment for any such accrued and unused compensatory leave paid at the

senior manager's current rate of pay, on an hourly basis, at the time of separation not to exceed a maximum of 240 hours.

-5 Call-Back Time.

Call-back time refers to situations wherein an employee is off duty and is called to return to work after departing from the work place. It does not apply to those incidents where an employee is at work or has not departed from the work site and the work period is extended.

Employees called back to work shall be credited with a minimum of four hours overtime in each separate instance, excluding travel time, regardless of the hours actually worked.

- (a) FLSA eligible employees shall, at the employee's discretion, be granted compensatory time (at the time and one-half rate) or be paid at one and one-half times their hourly rate of pay for call-back hours. If the employee's compensatory leave balance is 240 hours or greater, the employee must be paid.
- (b) Straight pay eligible employees shall, at department head's or designee's discretion, earn straight compensatory time or be compensated at their hourly rate of pay for all call-back time.
- (c) Compensatory time eligible employees on all pay scales shall earn straight compensatory time for all call-back time.

-6 Consecutive Shift Time.

Consecutive Shift time refers to situations wherein an employee has completed a full eight or more hour shift and is required to remain on duty a second consecutive shift to perform essential services during an emergency situation or to meet minimum State certification standards in the Department of Public Works and Environmental Services.

Employees required to perform 2nd consecutive shifts shall be compensated as follows:

- (a) FLSA eligible employees shall, at the employee's discretion, be granted compensatory time (at the time and one-half rate) or be paid at one and one-half times their hourly rate of pay for consecutive shift hours. If the employee's compensatory leave balance is 240 hours or greater, the employee must be paid.
- (b) Straight pay eligible employees shall, at the department head's or designee's discretion, earn straight compensatory time or be compensated at their hourly rate of pay for all consecutive shift time.

- (c) Compensatory time eligible employees shall earn straight compensatory time for all consecutive shift time.

4.16 Outside Employment; ~~Violation of State Law on~~ ~~and~~ Conflict of Interests

- 1 Employees in the competitive service shall not engage in any employment, activity or enterprise, which has been or may be determined to be inconsistent, incompatible, or in conflict with duties, functions, or responsibilities of their County employment.
- 2 No employee in the competitive service shall hold any other position in any other governmental jurisdiction or in private employment, when such other position may have the effect of reducing the efficiency of such employee in the competitive service.
- 3 Employees in the competitive service who desire to accept outside employment in addition to their regular County positions shall inform their respective department head or designee of the nature and extent of such outside employment. The department head or designee shall thereupon determine whether or not the holding of such employment conflicts with the duties and responsibilities of said employee to the County.
- 4 Violation of the County's rules on outside employment ~~and conflict of interest or the Virginia State and Local Government Conflict of Interests Act or any successor statute thereto~~ may be grounds for dismissal.

4.17 Application of Pay Policies to Deferred Retirement Option Plan (DROP) Participants

Notwithstanding any provision of this chapter to the contrary, employees who are participating in the Deferred Retirement Option Plan (DROP) are considered as merit employees and the pay provisions included in this chapter continue to apply during their DROP participation.

## CHAPTER 16

### Conduct and Discipline

#### 16.1 Purpose and Scope

The purpose of this Chapter is to establish the standards of conduct for County employees and to prescribe procedures for warning and the progressive discipline of such employees.

#### 16.2 Policy

It shall be the policy of Fairfax County government to ensure that all employees observe the Code of Ethics and the Standards of Conduct as prescribed herein. It shall be the policy of the County to ensure that all department heads and supervisors treat and discipline employees under their respective jurisdictions in a fair and equitable manner. Employees who feel they have not been so treated have a right to present their grievances following the procedures outlined in Chapter 17.

#### 16.3 Definitions

##### -1 Informal Warnings

Oral Warnings - such actions are excluded under the grievance procedure

##### -2 Formal Warnings

Written Reprimands

##### -3. Formal Disciplinary Actions

a. Suspensions

b. Dismissals

c. Disciplinary Demotions

#### 16.4 Responsibilities

##### -1 Each employee will:

a. Observe the Standards of Conduct, code of ethics, and other workplace rules.

b. Conduct him/herself, both on and off the job, in a manner, which will reflect credit

on the County government, and respective departments.

-2 Department heads and supervisors will:

- a. Inform employees of rules governing conduct and discipline as well as other workplace rules and special requirements;
- b. Treat employees in a fair and equitable manner;
- c. Investigate apparent employee offenses obtaining complete facts and full justification, administer appropriate disciplinary action when warranted and as described in this Chapter; and
- d. Consult with the Human Resources Director or his/her designees if necessary where disciplinary action involving loss of pay is contemplated.

-3 Human Resources Director and his/her staff will:

- a. Provide information and guidance to supervisors at all levels on standards of conduct and effective use of progressive discipline;
- b. Provide advice and assistance to supervisors in the uniform and equitable interpretation and application of the provisions of this Chapter;
- c. Ensure that the workplace rules and special requirements established by department heads and supervisors are not in conflict with the provisions of this Chapter;
- d. Evaluate management practices in the administration of discipline and compliance with standards of conduct within departments and provide recommendations to department heads when such management practices require changes; and
- e. Advise department heads on policy and procedures and recommend appropriate action.

-4 Department heads will make the final decision on issuance of formal disciplinary actions of suspension, dismissal, or disciplinary demotions.

### 16.5 Disciplinary Actions

Disciplinary action will be taken only for good cause and after careful review of allegations with a goal, where appropriate, of correcting problem situations. However, disciplinary action must be taken when warranted to promote the efficiency of the Fairfax County service. The severity of the disciplinary action will be determined by the severity of the misconduct and review of the employee's work record.

- 1 Oral Reprimand or Warning. When a supervisor deems that an informal oral reprimand or warning is warranted, he/she will:
  - a. Advise the employee, in private, of the specific infraction of the rule or breach of conduct and the date it occurred;
  - b. Allow the employee an opportunity to explain and weigh the explanation;
  - c. If warranted, administer the reprimand or warning informally; and
  - d. Maintain an informal record of the discussion with the employee's knowledge of such a record.
  
- 2 Written Reprimand. When a supervisor determines that an offense is of such a nature that a record should be placed in an employee's personnel file maintained within the Department of Human Resources, a letter of reprimand will be prepared. The letter will contain:
  - a. Statement of charges in sufficient written detail to enable the employee to understand fully the violation, infraction, conduct, or offense for which he/she is being disciplined;
  - b. Statement that it is an official letter of reprimand and that it will be placed in the employee's official personnel folder;
  - c. Previous offenses in those cases where the letter is considered a continuation of progressive discipline; and
  - d. Statement that similar occurrences could result in a proposal that more severe disciplinary action be initiated, up to and including dismissal.
  
- 3 Suspension. When a supervisor determines that an offense requires a more severe disciplinary action than a written reprimand, he/she will:
  - a. Investigate alleged employee offenses promptly; obtain all pertinent facts in the case (time, place, events and circumstances) including, but not limited to, making contact with persons involved or having knowledge of the incident;
  - b. Discuss the case including the length of suspension with higher levels of supervision, where appropriate;

- c. Consult with the Human Resources Director or his/her designee if necessary when suspensions are contemplated;
  - d. Prepare and submit advance notice letter to appropriate levels for review and approval; and
  - d. Consider employee's reply to the advance notice letter and make final recommendation to department head. The department head will make the final decision.
- 4 Dismissal. The dismissal of an employee shall constitute the most severe type of disciplinary action authorized under this Chapter. This action should only be taken when a department head has determined that an employee is unsuited for employment in Fairfax County. When this determination has been made, the procedures outlined in the preceding paragraphs under Suspensions will be followed.
- 5 Disciplinary Demotion. Separate and apart from disciplinary actions described in the preceding paragraphs, a department head may initiate a non-job performance demotion when an employee willfully violates or fails to comply with the requirements imposed by the Standards of Conduct or when an employee willfully participates in prohibited conduct as described by this Chapter. When such action is contemplated, the procedure outlined in the preceding paragraphs under Suspensions will be followed.
- 6 When disciplinary action is necessary, the department head may enter into an Employee Assistance Program Disciplinary Diversion Agreement under conditions set forth in procedures established by the Human Resources Director.

#### 16.6 Criteria for Advance Notice Letter

- 1 The advance notice letter must include:
- a. Statement of charges in sufficient detail to enable the employee to understand fully the violation, infraction, conduct, or offense for which he/she is being disciplined;
  - b. Type of disciplinary action (suspension, dismissal, or disciplinary demotion);
  - c. A list of previous offenses, if any, which have been considered in arriving at the current disciplinary action;
  - d. Effective date of disciplinary action (no sooner than ten (10) business days from the date of advance notice letter) and employee's right to reply (five (5)) business days from receipt of the letter);
  - e. Employee's right to grieve should the final decision result in a suspension, dismissal or disciplinary demotion; and
  - f. Statement that the action proposed, if implemented, will become a permanent part of

his/her personnel file.

16.7 Circumstances When Administrative Leave Is Appropriate Prior to Compliance with Advance Notice Letter Provisions

When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed or when circumstances are such that the retention of the employee in an active duty status may result in damage to County property or may be detrimental to the interests of the County or injurious to the employee, his/her fellow workers, or the general public, the department head or designee may temporarily assign him/her to duties in which these conditions will not exist or place the employee on administrative leave until appropriate disciplinary action, if any, is determined and the provisions of Section 16.6 have been followed.

16.8 Probationary Employees

- 1 The disciplinary procedures prescribed herein shall be applicable to those employees of the competitive service assigned to a merit position. Employees are not covered by the rules of progressive discipline until they have completed a probationary period of twelve (12) months and any extensions authorized in accordance with the provisions of Chapter 7 after original appointment and may be terminated without benefit of this procedure.
- 2 All employees are required to observe the Code of Ethics and Standards of Conduct prescribed herein.

## 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, creed, national origin, marital status, disability, sexual orientation, genetic information, union or political affiliation, veterans' status, disabled veterans' status, 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, sexual orientation, creed, genetic information, union or political affiliation, veterans' status, or disabled veterans' status.

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~~. with the exception that employees of county agencies may store a lawfully possessed firearm and ammunition in a locked motor vehicle on county premises. This prohibition shall not apply to employees of the Community Services Board, the Fairfax County Adult Detention Center, any Fairfax County juvenile detention facility, and any employee whose appointing authority has specifically authorized the employee to bring a gun to work or onto county premises.

Bringing any weapon (except a gun as expressly permitted above), either concealed or displayed, to work or onto county premises, unless specifically authorized to do so by the appointing authority. For the purposes of this standard of conduct, the term weapon includes instruments of combat, or any object carried for the purpose of inflicting or threatening bodily injury.

**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.<sup>1</sup>

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.<sup>2</sup>

Discriminating in the provision of public services, including, but not limited to, firefighting, emergency medical, or law enforcement services, or responding to requests

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

2 Va. Code Ann. § 15.2-1512.2(D).

for such services, on the basis of the political affiliation or political activities of the person or organization for which such services are provided or requested.<sup>3</sup>

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

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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.<sup>5</sup> 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.

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<sup>5</sup> 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. 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-calendar 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-calendar 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:** December 6, 2012

**TO:** Susan Woodruff, Director  
Department of Human Resources

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

**SUBJECT:** Public Hearing on Proposed Revisions to the Personnel Regulations  
Chapters 4, 16 and 17

Following an advertised public hearing held on December 3, 2012, 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; Jason Fong; Robert Frye; Tom Garnett; John Harris; Audrey Morton; Pat Morrison; and, John Townes.

Initially the Board of Supervisors approved advertising a public hearing for proposed revisions to Chapter 10 of the Personnel Regulations in addition to those mentioned above. However, the Department of Human Resources (DHR) withdrew the proposed revisions to Chapter 10 from consideration. In making this decision, DHR considered the following:

- Results of the Internal Audit review of agency FML procedures are not yet available;
- Federal regulation changes are pending which will likely require further revisions to Chapter 10 in 2013; and
- Training and education enhancements in planning by DHR for the next 6-9 months will provide insight that will help direct the need for future revisions.

Therefore the Commission did not hear comments from speakers regarding the proposed revisions to Chapter 10, or any proposed revisions that were related to the Family/ Medical Leave Act as those were taken off the table.

Susan Woodruff, Director, Department of Human Resources, gave an overview regarding the proposed changes to Chapters 4, 16 and 17; Cynthia Tianti, Deputy County Attorney, County Attorney's Office was also available to respond to questions.

The Commission received testimony from multiple speakers: Randy Creller, Employee Advisory Council (EAC); Lonney Dickinson, EAC; Karen Conchar, Service Employees International Union (SEIU) VA Local 512; Colin Flanigan, Local 2068; John Niemiec, Local 2068; Dave Lyons, SEIU VA Local 512; Paula Woodrum, President, Fairfax County Government Employee Union (FCGEU)/ SEIU VA Local 512; and, Avery Dotson, EAC. Several speakers requested that the proposed changes to Chapter 16 be expanded to include allowing other hunting weapons, such as crossbows, be kept locked in employee vehicles during the work day while parked on County premises. Several other speakers spoke in support of the proposed changes to Chapter 16 as presented by the Department of Human Resources.

Civil Service Commission  
12000 Government Center Parkway, Suite 258  
Fairfax, Virginia 22035  
Phone 703-324-2930 Fax 703-324-2936  
www.fairfaxcounty.gov

Chapter 4

The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed recommendations as drafted for Chapter 4.

The Commission endorses the recommendation that the Department of Human Resources provide adequate training to County employees so that they will understand what the language regarding "conflict of interest" means, and what the County process is for requesting approval of outside employment.

Chapter 16

The members of the Civil Service Commission present voted seven to one to recommend that the Board of Supervisors approve the proposed recommendations as drafted for Chapter 16.

Chapter 17

The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed recommendations as drafted for Chapter 17.5-4(c). During the discussion, it was also proposed that for consistency, the word "business" in Section 17.5-4(b) also be changed to "calendar". This was approved as well during the unanimous vote.

Chapter 17.5-4(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~~ calendar days of receipt of such request.

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

cc: Board of Supervisors  
Commissioners, Civil Service Commission  
Edward L. Long, Jr., County Executive  
David Bobzien, County Attorney  
Cynthia Tianti, Deputy County Attorney  
Peter Andreoli, Deputy County Attorney  
Randy Creller, Chair, Employee Advisory Council  
John Niemiec, President, Fairfax County Professional Firefighters & Paramedics Union/ Local 2068  
Paula Woodrum, President, Fairfax County Government Employees Union/ SEIU

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ACTION - 2

Endorsement of the FY 2014 Virginia Department of Transportation's Transportation Alternatives Grant Applications

ISSUE:

The Transportation Alternatives Program (TAP), included in the newly enacted Federal Surface Transportation Act, Moving Ahead for Progress in the 21st Century (MAP-21), replaces Transportation Enhancements Program (TEP), Recreational Trails, Safe Routes to School, and several other discretionary programs, by combining them into a single funding source starting in FY 2014. The Virginia Department of Transportation (VDOT) is only soliciting applications for grants for the first year of the TAP from projects that have current TEP funding. Since the projects have already been through the public hearing process, no public hearing is required for FY 2014.

RECOMMENDATION:

The County Executive recommends the Board endorse the proposed list of applications (Attachment 1) and their respective resolutions (Attachment 2) for the FY 2014 Transportation Alternatives Program (TAP). Applications are due to VDOT on February 1, 2013.

The Board should be aware that any approved funds will be distributed through the jurisdiction endorsing the project, and that the jurisdiction endorsing the TAP project will be responsible for any cost overruns. Although the Project Endorsement Resolution indicates Fairfax County agrees to pay 20 percent of the total cost of a project, staff has advised each applicant that they alone will be completely responsible for the 20 percent match and any cost overruns.

The Board should also be aware that VDOT's TAP regulations require the sponsoring jurisdiction to accept responsibility for future maintenance and operating costs of any projects that are funded.

TIMING:

Board endorsement is requested on January 29, 2013, to meet the February 1, 2013, application deadlines.

DISCUSSION:

The TAP program will be similar in nature to TEP. Applicants will be required to make the same 20 percent match, with grant awards covering the 80 percent remaining. The TAP information packet has been included (Attachment 3) to cover all details about the TAP. Some of the major differences are outlined as follows:

Board Agenda Item  
January 29, 2013

- The TEP included 12 categories of projects that were eligible. TAP now includes nine. No County projects were affected by this change. The project types include beautification, operation of historic transportation facilities, and scenic or historic highway programs.
- The Safe Routes to School and Recreational Trails Programs have been merged with the Enhancement Program in the TAP.
- A new program, not fully defined at this time, for the planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways has been added.
- VDOT currently plans to open the FY2015 TAP to new applications.

FISCAL IMPACT:

If any of the projects are awarded grant allocations, DOT staff will return to the Board at such time to appropriate funding. TAP projects require a minimum 20 percent local match. Any project endorsed by the Board must have an identified source of funding for the 20 percent match. VDOT has implemented new requirements for jurisdictional sponsors (like Fairfax County) to provide technical guidance and oversight throughout project development. Additionally, the sponsor must ensure that the budget accurately reflects project cost and accept responsibility for future maintenance and operating cost of the completed project. Staff will return to the Board with specific project agreements, if any of these applications receive funding.

CREATION OF POSITIONS:

No positions will be created through this action.

ENCLOSED DOCUMENTS:

Attachment 1 – Proposed Transportation Alternative Projects, FY2014

Attachment 2 – Project Endorsement Resolutions

Attachment 3 – VDOT's Presentation on Transportation Alternatives

STAFF:

Robert A. Stalzer, Deputy County Executive

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

Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT

Ken Kanownik, Transportation Planner, Coordination and Funding Division, FCDOT

Proposed Transportation Alternative Project, FY2014  
(Descriptions Based on Information Provided by Applicant)

1. Cross-County Trail (CCT) in Lorton

Fairfax County is proposing the design and construction of a new multi-use trail to provide non-motorized access between the Occoquan Regional Park and the Laurel Hill Greenway, both of which are portions of the CCT. The trail connects users with the historic Workhouse Arts Center, a program of the Lorton Arts Foundation (LAF), which is listed on the National Register of Historic Places, and enhances an already significant historic destination.

The CCT will connect with the regional network of existing and planned trails, including: High Point Trail, Fairfax CCT, the Laurel Hill Greenway, and the Potomac Heritage National Scenic Trail. Specifically, the Potomac Heritage National Scenic Trail system consists of a braided network of trails identified as a trunk line in the Greenways Task Force Study, and a key historic and scenic element running from the mouth of the Potomac River to Pittsburgh, Pennsylvania. The Potomac Heritage National Scenic Trail (PHNST) is one of the 24 Congressionally-designated trails in the National Trails System and one of seven scenic trails in the US. The PHNST sites identified for this project will offer communities significant enhancements to existing recreational amenities, leverage heritage tourism and economic benefits, expand non-motorized transportation networks, create educational and interpretive experiences, connect neighborhoods, historic sites and parkland, and rebuild community connections.

The improvements to this section of trail will provide residents of higher density neighborhoods and the newer developments that surround the Workhouse Arts Center buildings with safe multi-use trail access to many recreational facilities and places of historic interest in the area, including: Occoquan Regional Park, the Town of Occoquan, and to the other sections of the Cross County Trail. The LAF portion of the trail is three miles west of South County Secondary School and will offer expanded recreational opportunities for their athletic programs. Residents and visitors will have a safe pedestrian and bicycle route to businesses, bus stops, and other commuter transportation facilities in Lorton.

The CCT will also provide rest areas for trail users to include bike racks, horse tie-ups, water fountains, a concession stand, picnic area, and interpretive and directional signs. Trail users will have easy access to the Workhouse Arts Center buildings and facilities, which include visual, and performing arts venues, restaurants, restrooms and other recreational offerings. All facilities are ADA

accessible. The Workhouse will provide safe secure parking for walkers, joggers and cyclists.

To make the CCT truly a multi-use trail, it will be 18 feet wide. There will be a natural surface for horses (4 feet wide); a paved bike/pedestrian portion (10 feet wide); plus an additional 4 feet on the sides.

## 2. Mason Neck Trail

Construction of a multi-use trail to provide non-motorized access to the historic, environmental and recreational resources of Pohick Bay Regional Park, the Meadowood Recreation Area, Gunston Hall Plantation, Mason Neck State Park and the Elisabeth Hartwell Mason Neck National Wildlife Refuge.

The Mason Neck Trail will connect to the regional network of existing and planned trails, including the High Point Trail, Fairfax Cross-County Trail, Potomac Heritage National Scenic Trail, and Laurel Hill Greenway. The trail will provide residents of the higher density neighborhoods of Lorton, safe pedestrian and bicycle access to the many recreational opportunities offered at public park facilities on Mason Neck, including; swimming, fishing, boating, golf, hiking, birding and other cultural activities. Residents of Mason Neck will have a safe, off-road bicycling route to the Virginia Railway Express rail station, bus stops and other commuter transportation facilities in Lorton.

## 3. Phase III of the Georgetown Pike Walkway Project

This project is a multi-use trail project extending from Route 7 and Georgetown Pike to Great Falls National Park (EN99-0290164). Georgetown Pike is on the National Register of Historic Places and is Virginia's first Historic and Scenic By-Way. The stone-dust trail runs beside Georgetown Pike providing alternative transportation to parks, commercial centers, historic landmarks, schools and neighborhoods for pedestrians, cyclists and equestrians.

The project will be constructed at the western end of Georgetown Pike, connecting the Seneca Shopping Center and site of the historic Salem Baptist Church with the western terminus of Georgetown Pike Trail Project – Phase 2 (see below).

Georgetown Pike Trail Project - Phase I was completed in the Summer 2010 and was comprised of the construction of a trail (also on Georgetown Pike), from Applewood Lane to Walker Road in the village of Great Falls. In addition, a stone dust trail along Georgetown Pike in front of the Great Falls Library and historic Grange was improved.

Georgetown Pike Trail Project - Phase 2, scheduled for construction in 2014, will run from Utterback Store Road to Falls Chase Court and will create the longest contiguous segment of trail along Georgetown Pike. It will give several neighborhoods trail access to local commercial areas and create a contiguous trail route for several equestrian facilities on Blacks Hill Road. Improvements to a flood plain and hand rails will be installed ensuring Americans with Disabilities Act (ADA) compliance.

The trail along Georgetown Pike will be constructed using crushed stone and ADA compliant railings with wooden facades, where needed, to help preserve the historic integrity of the Pike and natural beauty of the Great Falls Area.

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, January 29, 2013, at which meeting a quorum was present and voting, the following resolution was adopted.

PROJECT ENDORSEMENT RESOLUTION

WHEREAS, in accordance with Commonwealth Transportation Board construction allocation procedures, it is necessary that a request by resolution be received from the local government or state agency in order that the Virginia Department of Transportation program a Transportation Alternatives project in the County of Fairfax.

NOW, THEREFORE, BE IT RESOLVED that the County of Fairfax requests the Commonwealth Transportation Board to provide additional funding for the Cross County Trail

BE IT FURTHER RESOLVED, that the County of Fairfax hereby agrees to pay a minimum 20 percent of the total cost for planning and design, right-of-way, and construction of this project, and that, if the County of Fairfax subsequently elects to cancel this project, the County of Fairfax hereby agrees to reimburse the Virginia Department of Transportation for the total amount of the costs expended by the Department through the date the Department is notified of such cancellation.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2013, Fairfax, Virginia

BY \_\_\_\_\_  
Edward L. Long Jr.,  
County Executive

ATTEST \_\_\_\_\_  
Catherine A. Chianese  
Clerk to the Board of Supervisors

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, January 29, 2013, at which meeting a quorum was present and voting, the following resolution was adopted.

PROJECT ENDORSEMENT RESOLUTION

WHEREAS, in accordance with Commonwealth Transportation Board construction allocation procedures, it is necessary that a request by resolution be received from the local government or state agency in order that the Virginia Department of Transportation program a Transportation Alternatives project in the County of Fairfax.

NOW, THEREFORE, BE IT RESOLVED that the County of Fairfax requests the Commonwealth Transportation Board to provide additional funding for the Mason Neck Trail

BE IT FURTHER RESOLVED, that the County of Fairfax hereby agrees to pay a minimum 20 percent of the total cost for planning and design, right-of-way, and construction of this project, and that, if the County of Fairfax subsequently elects to cancel this project, the County of Fairfax hereby agrees to reimburse the Virginia Department of Transportation for the total amount of the costs expended by the Department through the date the Department is notified of such cancellation.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2013, Fairfax, Virginia

BY \_\_\_\_\_  
Edward L. Long Jr.,  
County Executive

ATTEST \_\_\_\_\_  
Catherine A. Chianese  
Clerk to the Board of Supervisors

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, January 29, 2013, at which meeting a quorum was present and voting, the following resolution was adopted.

PROJECT ENDORSEMENT RESOLUTION

WHEREAS, in accordance with Commonwealth Transportation Board construction allocation procedures, it is necessary that a request by resolution be received from the local government or state agency in order that the Virginia Department of Transportation program a Transportation Alternatives project in the County of Fairfax.

NOW, THEREFORE, BE IT RESOLVED that the County of Fairfax requests the Commonwealth Transportation Board to provide additional funding for Phase III of the Georgetown Pike Walkway

BE IT FURTHER RESOLVED, that the County of Fairfax hereby agrees to pay a minimum 20 percent of the total cost for planning and design, right-of-way, and construction of this project, and that, if the County of Fairfax subsequently elects to cancel this project, the County of Fairfax hereby agrees to reimburse the Virginia Department of Transportation for the total amount of the costs expended by the Department through the date the Department is notified of such cancellation.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2013, Fairfax, Virginia

BY \_\_\_\_\_  
Edward L. Long Jr.,  
County Executive

ATTEST \_\_\_\_\_  
Catherine A. Chianese  
Clerk to the Board of Supervisors



**Transportation Enhancements, Safe Routes to School,  
and Recreational Trails to “Transportation Alternatives”**

September 19, 2012

**Jennifer DeBruhl**

Director, Local Assistance Division

## Transportation Alternatives

### Incorporates:

- **Most of the eligible activities from the Transportation Enhancement Program**
- **Recreational Trails Program**
- **Safe Routes to School Program**

### and a new one:

- **“Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.” (This category has not as yet been fully defined by FHWA)**

# Eliminated Eligibilities

4 Previously Eligible Activities not included in MAP-21

1. Pedestrian and bicycle safety and education

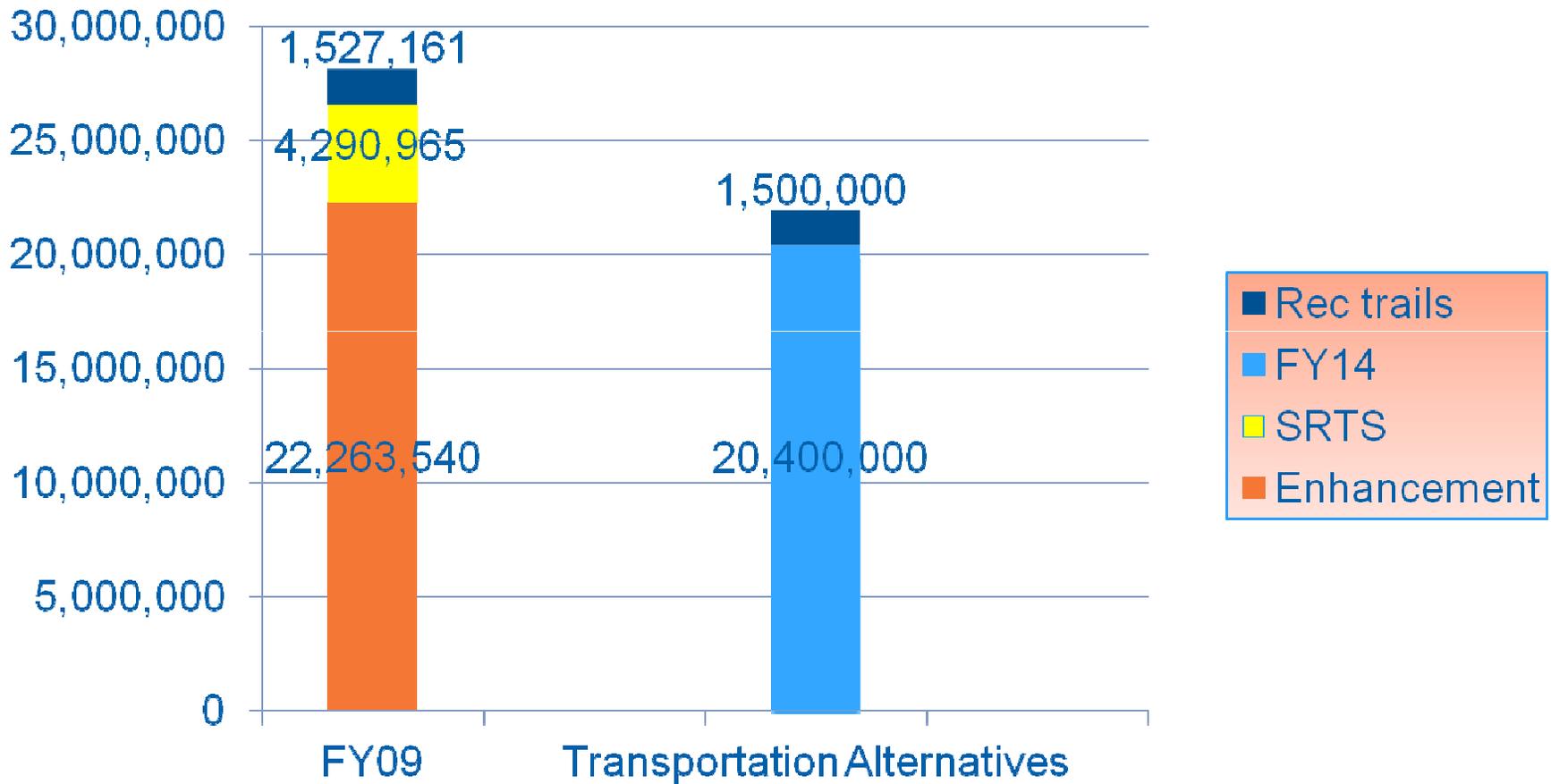
2. Acquisition of scenic or historic easements and sites

3. Scenic or historic highway programs

4. Transportation museums



# SAFETEA-LU vs. MAP-21 Virginia Example





## TA Sub-allocation of Funds Virginia Example

FY14 – approx. \$22M

Rec Trails - approx. \$1.5M

50/50 distribution- approx \$20.5M

\$10.25M

\$10.25M

- Allocated based on population
- \$6.4M – 4 TMAs
- \$3.85M – Other areas of the state based on population

- Allocated to any area of the state
- These are funds CTB Policy will govern distribution of
- Can all or in part be transferred to other Highway Programs

## Eligible Activities

**#1 Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation.**

**#2 Construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers.**

**(Includes Safe Routes to Schools)**

**#3 Conversion and use of abandoned railroad corridors for trails**



## Eligible Activities

**#4 Construction of turn-outs, overlooks, and viewing areas**

**#5 Inventory, control, or removal of outdoor advertising.**

**#6 Historic preservation and rehabilitation of historic transportation facilities.**

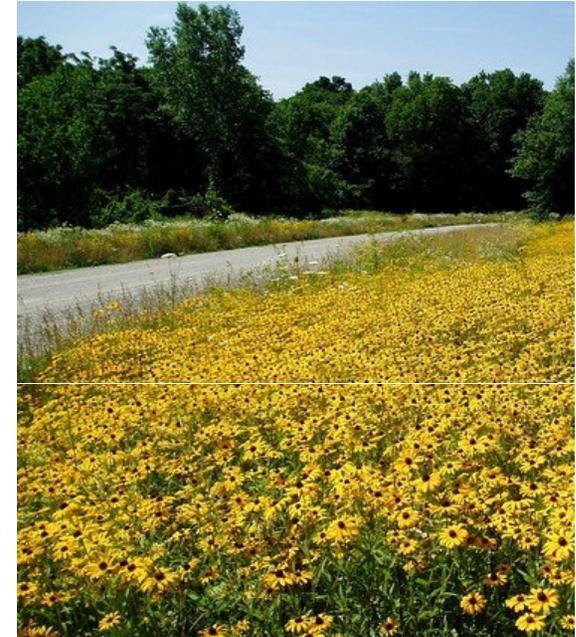


## Eligible Activities

**#7 Vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control.**

**#8 Archaeological activities relating to impacts from implementation of a transportation project eligible under this title.**

**#9 Any environmental mitigation activity, including prevention and abatement activities to address stormwater mgmt., control, and water pollution related to highway construction or due to highway runoff; or reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.**



## Eligible Entities

- **Local governments**
- **Regional transportation authorities**
- **Transit agencies**
- **Natural resource or public land agencies**
- **School districts, local education agencies, or schools**
- **Tribal governments**
- **Other local or regional governmental entity that State determines to be eligible**

## Challenges

- **Three programs combined = more activities competing for less money**
- **Transition to a different selection process**
- **Time frame – Two-Year Bill and FY13 Allocations have already been applied to projects**
- **Backlog of existing projects underway – some not eligible under MAP-21**
- **Impact of the “eligible entities” section**

## Enhancement Program – Status & Backlog

- ~\$339M allocated since 1993
- 524 - Projects Completed
- 104 - Under Construction
- 259 - In Development

<u>Next Phase Only</u>		<u>Entire Project</u>	
<b>Bristol</b>	\$1,994,601	<b>Bristol</b>	\$7,279,710
<b>Culpeper</b>	\$1,492,914	<b>Culpeper</b>	\$5,990,242
<b>Fredericksburg</b>	\$1,693,133	<b>Fredericksburg</b>	\$5,859,298
<b>Hampton Roads</b>	\$6,150,765	<b>Hampton Roads</b>	\$23,905,284
<b>Lynchburg</b>	\$6,227,645	<b>Lynchburg</b>	\$9,152,264
<b>Northern Virginia</b>	\$3,527,072	<b>Northern Virginia</b>	\$7,384,331
<b>Richmond</b>	\$4,013,057	<b>Richmond</b>	\$33,961,041
<b>Salem</b>	\$7,412,202	<b>Salem</b>	\$17,470,896
<b>Staunton</b>	\$6,887,831	<b>Staunton</b>	\$18,248,373
<b>Statewide</b>	\$955,705	<b>Statewide</b>	\$3,859,705

**Total: \$40,354,925**

**Total: \$133,111,144**

## Safe Routes to Schools

### Purpose:

- SRTS was authorized under the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (2005).
- SRTS allocates funds to state DOTs for infrastructure and non-infrastructure (education) projects that enable and encourage children K-8 to safely walk and bicycle to school.
- SRTS is 100% federally funded; agreements are for 36 months; and any cost over-runs are absorbed by the locality.

### FY-13 Activities:

- September 2012 to January 2013, SRTS is soliciting new infrastructure projects using pre MAP-21 funding.
- August to December 2012, SRTS is soliciting new non-infrastructure mini grants to encourage activities related to bicycling and walking using pre MAP-21 funding.



# Safe Routes To School Program Infrastructure Grants

<u>Active Projects 2012</u>		
<b>Bristol</b>	1	\$500,000
<b>Culpeper</b>	4	\$1,377,580
<b>Fredericksburg</b>	4	\$847,815
<b>Hampton Roads</b>	5	\$1,331,679
<b>Lynchburg</b>	3	\$376,796
<b>Northern Virginia</b>	10	\$2,114,347
<b>Richmond</b>	4	\$758,434
<b>Salem</b>	10	\$2,640,696
<b>Staunton</b>	13	\$2,265,675
<b>TOTAL</b>	<b>54</b>	<b>\$12,213,022</b>

<u>All Projects Funded 2007-2012</u>		
<b>Bristol</b>	1	\$500,000
<b>Culpeper</b>	5	\$1,389,180
<b>Fredericksburg</b>	4	\$847,815
<b>Hampton Roads</b>	5	\$1,331,679
<b>Lynchburg</b>	5	\$613,096
<b>Northern Virginia</b>	10	\$2,114,347
<b>Richmond</b>	8	\$1,686,666
<b>Salem</b>	12	\$3,233,678
<b>Staunton</b>	15	\$2,952,768
<b>TOTAL</b>	<b>65</b>	<b>\$14,669,229</b>

<u>Grant Requests 2005-2012</u>			
	<b>Appropriated</b>	<b>Requests</b>	<b>Funded</b>
<b>2005-07</b>	\$3,426,456	\$5,391,702	\$1,900,929
<b>2008</b>	\$1,941,060	\$4,244,648	\$783,615
<b>2009</b>	\$2,463,163	\$4,840,928	\$2,096,294
<b>2010</b>	\$2,470,027	\$8,062,850	\$3,968,510
<b>2011</b>	\$2,655,132	-	-
<b>2012</b>	\$2,594,600	\$7,895,345	\$5,919,881
<b>TOTAL</b>	<b>\$15,550,438</b>	<b>\$30,435,473</b>	<b>\$14,669,229</b>

## Interim FY14 CTB Policy Considerations

- **Distribution of funds given the reduced allocation**
- **Funding existing projects only for FY14**
- **Addressing transferability clause**

## Interim FY14 CTB Policy Considerations

- **VDOT recommends, based on suggestions from FHWA, that there be a consistent eligibility review, application and selection process for FY14**
  - **Establish a single application format and scoring process in coordination with the TMAs**
  - **Present interim policy to the Board in October that incorporates known MAP-21 requirements**
  - **VDOT will accept all applications initially to determine eligibility for the program and will provide a technical score for all applications**
  - **VDOT will then provide those technical scores to the TMAs and CTB members for project selection**
- **Apply FY14 allocations to existing projects only**

## Proposed FY14 Schedule (Existing Projects Only)

- **October 2012 – Work with TMAs on Proposed Application Process**
- **October 2012 – Interim FY14 Resolution to the CTB**
- **December 2012 - Solicit applications**
- **February 1, 2013 – Application Deadline**
- **March 15, 2013 – Applications and scores presented to the TMAs and CTB**
- **April 2013 – Tentative Selections**
- **April/May 2013 – SYIP Public Hearings**
- **June 2013 – CTB approval**

## Summary of Recommendations/Path Forward

### Current cycle -

- **One-year interim policy to guide the Transportation Alternatives program until complete guidance is available based on MAP-21**
- **Solicit applications later this year for FY14 Transportation Alternatives funding – focus on existing Transportation Enhancement projects only to reduce backlog**
- **Solicit applications later this year for new Safe Routes to School projects using pre-MAP-21 funding (no new allocations in FY13-14)**
- **Work with the CTB, MPOs, and other interested parties to develop a new Transportation Alternatives CTB Policy for implementation with FY-15 selections once better guidance is available to guide MAP-21 implementation**
  - **Incorporate all eligible Transportation Alternatives categories, including SRTS infrastructure projects**
  - **Reopen the program to new applicants**



**Transportation Enhancements, Safe Routes to School,  
and Recreational Trails to “Transportation Alternatives”**

September 19, 2012

**Jennifer DeBruhl**

Director, Local Assistance Division

ACTION - 3

Transfer of Ownership of Virginia Department of Transportation (VDOT) Bus Shelters

ISSUE:

Board approval is requested for the transfer of ownership and maintenance of 32 bus shelters located in Fairfax County from VDOT to the Fairfax County Department of Transportation (FCDOT). VDOT currently owns and maintains these bus shelters.

RECOMMENDATION:

The County Executive recommends that the Board approve the transfer of ownership and maintenance of the listed VDOT bus shelters, and authorize the Director, FCDOT, to execute the agreement of transfer of ownership.

TIMING:

Board action is requested on January 29, 2013, to allow FCDOT to acquire ownership and maintenance of the 32 bus shelters (see Attachment II) for inclusion into the Bus Stop Improvement Program.

BACKGROUND:

In an effort to enhance Fairfax County's Bus Stop Improvement Program, FCDOT recommends the transfer and maintenance of the 32 bus shelters from VDOT to the County. This request is due to the increased frequency of complaints from Fairfax County residents and Fairfax Connector / Metrobus riders about the condition of the shelters which are currently owned and maintained by VDOT.

After discussions with VDOT officials, FCDOT has requested that Fairfax County assume ownership of the attached list of bus shelters to ensure a more efficient and timely maintenance response.

FCDOT staff has concluded that acquisition of these bus shelters will reduce the number of complaints currently received by multiple internal and external agencies regarding shelter maintenance and safety conditions in the County.

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By adding these shelters to the County's current inventory, on-going maintenance will be provided through the County's Bus Shelter Advertising contractor. The bus shelter program and the entire community will benefit from the improved and enhanced responsiveness to complaints and by FCDOT and the contractor.

FISCAL IMPACT:

These bus shelters will be replaced and maintained by the County's new Bus Shelter Advertising contractor at no cost to the County. There will be minimal fiscal impact to Fairfax County as a result of this agreement. The transfer of the shelters will occur for the amount of \$1.00.

ENCLOSED DOCUMENTS:

Attachment I: Bargain and Sale Deed Agreement

Attachment II: VDOT Bus Shelter Listing

Attachment III: Geographic map of VDOT Fairfax County bus shelter locations

STAFF:

Robert A. Stalzer, Deputy County Executive

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

Eric Teitelman, Acting Chief, Transit Services Division, FCDOT

Heather Diez, Manager, Fleet and Facilities Fairfax Connector Section, FCDOT

**AGREEMENT FOR TRANSFER OF OWNERSHIP OF VIRGINIA DEPARTMENT OF  
TRANSPORTATION BUS SHELTERS**

**THIS AGREEMENT** is entered into by and between the Commonwealth of Virginia, acting through the Virginia Department of Transportation ("VDOT"), and the Fairfax County Board of Supervisors, acting through the Fairfax County Department of Transportation ("the County").

**WHEREAS**, VDOT and the County have constructed bus shelters at various locations throughout Fairfax County, Virginia, to provide shelter to persons using the bus transit systems; and,

**WHEREAS**, VDOT is the owner of 32 bus shelters that were erected at the locations shown on Exhibit A, attached hereto and incorporated herein by reference, and,

**WHEREAS**, VDOT currently maintains these shelters to a minimal standard; and,

**WHEREAS**, the County has initiated a program to enhance the bus stops in Fairfax County, including the replacement of and repairs to the existing bus shelters, installation of new shelters and continual maintenance and operations of all bus shelters; and,

**WHEREAS**, VDOT has determined that the County is best suited to operate and maintain the bus shelters located within the County; and,

**WHEREAS**, in accordance with Section 40 of the Virginia Administrative Code 24 VAC 30-540, and Section 33.1-12 of the Code of Virginia (1950) as amended, the Commissioner of Highways is authorized to dispose of the bus shelters if he deems it to be in the best interest of the Commonwealth.

**NOW, THEREFORE**, in consideration of the sum of one dollar (\$1.00), and other good and valuable consideration, receipt of which is hereby acknowledged, the County and VDOT agree as follows:

1. Transfer Ownership.

a. VDOT does hereby release, assign and transfer ownership to the County all of the bus shelters listed in Exhibit A, attached hereto and incorporated herein, and related improvements (hereinafter collectively "bus shelters" or "the Property"), all of which lie within the County of Fairfax, Virginia.

b. This release, assign and transfer of ownership is for the bus shelters and related improvements, including the concrete mounting pads upon which the bus shelters are placed, and does not include any interest in the right of way or real estate owned by VDOT.

c. This Agreement shall be effective on the date that it is executed by the County and VDOT ("the Effective Date"). As of the Effective Date, the County shall have all right, title

and interest in the Property and no further instrument shall be required to transfer ownership to the County. VDOT agrees to execute any documents reasonably necessary to confirm County ownership of the Property.

2. The property is being transferred on an "as is" basis, and VDOT explicitly disclaims warranties, whether express or implied, including by not limited to any warranty as to the condition of the bus shelters. However, VDOT's above warranty disclaimer does not in any way affect the terms of any applicable warranties from the manufacturer of the bus shelters.

3. The County has been given an opportunity to inspect the bus shelters, or alternately, have the bus shelters inspected. The County is accepting the bus shelters in their existing condition.

4. The County agrees to apply for a VDOT Land Use Permit for any of the bus shelters that are located on VDOT's right of way. The County further agrees to operate and maintain any such bus shelter so long as the bus shelter is used for County transit services and occupies VDOT's right of way.

5. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, and if any provision of this Agreement is ruled invalid or unenforceable by a court of proper jurisdiction, then the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6. The terms of this Agreement of transfer shall not be construed as a waiver of Fairfax County's or the Commonwealth of Virginia's sovereign immunity.

7. This Agreement of transfer shall create no interest in real property on the part of the County of Fairfax, and shall not give rise to any liability to any third party on the part of VDOT or the County.

8. This Agreement shall not be construed as creating any personal liability on the part of any officer, employee, or agent of the Parties.

9. To the extent of any financial obligations of the County under this Agreement, such obligations shall be subject to annual appropriations by the Fairfax County Board of Supervisors.

10. Nothing in this Agreement of transfer shall give rise to any rights in third parties as they may relate to any perceived and/or construed benefits of rights and obligations that exist in this Agreement.

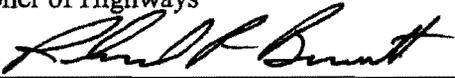
11. Notwithstanding any other provision of this Agreement, the County shall have the right to modify, remove or replace any of the bus shelters. In the event the County elects to remove or replace any of the bus shelters, the County will retain ownership of such bus shelter and any replacement for such bus shelter, which together with any and all improvements made to any removed or replacement bus shelter, shall be the property of the County.

12. Should VDOT determine that any County bus shelter operated or maintained in the VDOT right-of-way needs to be removed for purposes unrelated to the operation of such shelter, VDOT will notify the County of its intention to remove such shelter at least 60 days prior to removal and VDOT will pay the costs for such removal.

13. The County shall have exclusive authority to regulate the appearance and content of any advertising placed on the bus shelters.

COMMONWEALTH OF VIRGINIA

Commissioner of Highways

By:   
Richard R. Bennett  
State Right of Way and Utilities Director  
Virginia Department of Transportation

Dec. 12, 2012  
Date

FAIRFAX COUNTY BOARD OF SUPERVISORS

By: \_\_\_\_\_  
Tom Biesiadny  
Director  
Fairfax County Department of Transportation

\_\_\_\_\_  
Date

## EXHIBIT A

## VDOT BUS SHELTERS

Stop ID	SUPERVISOR Y DISTRICT	ON STREET	STATE ROUT E	AT STREET	TRAVEL DIRECTIO N	STOP LOCATIO N	SHELTER ID#
1382	BRADDOCK	Burke Road	652	Peppercorn Court	East	Nearside	V-11
1413	BRADDOCK	Lake Braddock Drive	5101	Cotherstone Court	East	Nearside	V-19
3678	BRADDOCK	Backlick Road	236	Lake Drive	East	Farside	V-24
4053	BRADDOCK	Braddock Road	620	Dunleigh Drive	East	Farside	V-7
4064	BRADDOCK	Braddock Road	620	Ravensworth Road	East	Near	V-8
4067	BRADDOCK	Braddock Road	620	Ferndale Street	East	Farside	V-9
4392	DRANESVILLE	Old Dominion Drive	309	Kirby Road	East	MidBlock	V-28
4424	DRANESVILLE	Dolly Madison Blvd.	123	Buchanan Street	East	Farside	V-15
1064	MASON	Little River Turnpike	236	May Hunt Court	East	Farside	V-27
2005	MASON	Columbia Pike	244	Park Entrance	North	Farside	V-13
2401	MASON	Arlington Blvd.	50	Monticello Drive	East	Midblock	No ID #
2406	MASON	Arlington Blvd.	50	Westmoreland	East	Nearside	V-4
2422	MASON	Arlington Blvd.	50	Fairmont Street	East	Midblock	No ID #
3025	MASON	Leesburg g Pike	7	Washington Drive	North	Nearside	V-22
3466	MASON	Backlick Road	617	Leewood Forest Drive	North	Midblock	V-5
3688	MASON	Little River Turnpike	236	John Mar Drive	East	Farside	No ID #
3689	MASON	Little River Turnpike	236	Hillbrook Drive	East	Nearside	No ID #
1076	MT. VERNON	Richmond Hwy	1	Cooper Road	North	Nearside	No ID #
1081	MT. VERNON	Richmond Hwy	1	Frye Road	North	Nearside	CRP-38
1096	MT. VERNON	Richmond Hwy	1	Arlington Drive	North	Farside	W-51
1097	MT. VERNON	Richmond Hwy	1	Lockheed Blvd	North	Nearside	CRP-8/CRP-31
1098	MT. VERNON	Richmond Hwy	1	Holly Hill Road	North	Midblock	CRP-7
1176	MT. VERNON	Hunt Road	629	Waynewood Blvd.	North	Nearside	V-17
1182	MT. VERNON	Hunt Road	629	Wellington Road	North	Farside	V-16
2362	PROVIDENCE	Lee Hwy	29	Graham Road	East	Nearside	V-21
2378	PROVIDENCE	Lee Hwy	29	Hilltop Road	East	Midblock	V-20
2391	PROVIDENCE	Arlington Blvd.	50	Barkly Drive.	East	Farside	V-2
2455	PROVIDENCE	Gallows Road	OTHER	Anderson Road	South	Nearside	V-18
4313	PROVIDENCE	Dolly Madison Blvd.	123	Old Meadow Road	North	Farside	V-12
4449	PROVIDENCE	Chain Bridge Road	123	Chain Bridge Road	West	Nearside	V-14
2390	PROVIDENCE	Arlington Blvd.	50	Covington Street	East	Nearside	V-1
4594	PROVIDENCE	Black Lane	655	Sugar Lane	East	Farside	V-6



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Board Agenda Item  
January 29, 2013

ACTION - 4

Authorization to Sign a Letter of Agreement with the Washington Metropolitan Area Transit Authority (WMATA) Relative to the North Kings Highway Median Improvement Project (Lee District)

ISSUE:

Authorize the County Executive to sign a Letter Agreement with WMATA for temporary use of WMATA property for construction of the North Kings Highway Median Improvement Project.

RECOMMENDATION:

The County Executive recommends that the Board authorize him to sign a Letter of Agreement substantially in the form of the attached Letter Agreement with WMATA.

TIMING:

Board authorization is requested on January 29, 2013, so that the project can proceed to construction.

BACKGROUND:

The North Kings Highway Median Improvement project provides pedestrian safety and traffic calming measures along North Kings Highway between Fort Drive and Jefferson Drive and improves pedestrian access to the Huntington Metrorail Station. The project includes installation of two pedestrian signals, a curb cut ramp, approximately 200 linear feet of chain link fence, and other miscellaneous work inside WMATA's property at the Huntington Metrorail Station. A Right-of-Entry Permit is needed from WMATA before the project can proceed to construction. Before processing the Right-of-Entry Permit, WMATA requires execution of a Letter Agreement, shown in Attachment 1, be signed by the county. The County Attorney's office reviewed the initial letter agreement and following negotiations with WMATA, has approved the Letter Agreement in its current form. The North Kings Highway Median Improvement project (2G40-028-007) is part of the approved FY13-FY17 Capital Improvement Program (CIP).

Board Agenda Item  
January 29, 2013

FISCAL IMPACT:

The North Kings Highway Median Improvement project is funded with Commercial and Industrial (C&I) Tax Revenue. The Total Project Estimate (TPE) is \$600,000. No additional funding will be required to complete the project as a result of this action.

ENCLOSED DOCUMENTS:

Attachment 1 - WMATA Letter Agreement for the referenced project

STAFF:

Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)  
Patricia McCay, Assistant County Attorney, Office of the County Attorney (OCA)  
W. Todd Minnix, Chief, Transportation Design Division, FCDOT  
Shahla Zahirieh, Project Manager, Transportation Design Division, FCDOT



November 9, 2012

Ms. Shahla Zahirieh, P.E.  
Department of Transportation  
Fairfax County  
4050 Legato Road, Suite 400  
Fairfax, Virginia 22033-2895

RE: N: Kings Highway Median Improvements, PCN 251205

Dear Ms. Zahirieh:

Reference is made to the project regarding the installation of two pedestrian traffic signals and construction of a new handicap ramp in the east sidewalk of N. Kings Highway at Farmington Drive in Fairfax County, Virginia. WMATA will support this project.

It is WMATA's policy that before WMATA will incur costs at the request of a jurisdiction for an adjacent construction project, WMATA requires a written request signed by the appropriate official of the jurisdiction. This letter agreement will serve as your request.

Execution of this letter agreement by the jurisdiction is therefore necessary for:

- WMATA to incur costs for your adjacent construction project;
- The start of WMATA general coordination and design review of your project;
- Confirmation that you, the Owner/Developer/Contractor, will comply with WMATA standards and criteria and with WMATA operational and safety requirements while working on or adjacent to WMATA property, facilities and operations, be it Metrorail or Metrobus.
- To the extent this letter agreement incorporates WMATA's Adjacent Construction Project Manual ("the Manual") any provision contained the Manual purporting to require the County to indemnify or insure WMATA shall be stricken and of no effect. The County and WMATA are each self-insured entities and each agree to bear their respective risks associated with this project. The County agrees, however, that it will include in its contract with the contractor selected by the County for performance of work on the project, language providing that the contractor must (1) indemnify WMATA and the County; (2)

**Washington  
Metropolitan Area  
Transit Authority**

600 Fifth Street, NW  
Washington, DC 20001  
202/962-1234

By Metrorail:  
Judiciary Square—Red Line  
Gallery Place-Chinatown—  
Red, Green and  
Yellow Lines  
By Metrobus:  
Routes D1, D3, D6, P6,  
70, 71, 80, X2

name WMATA as an additional insured on any general liability insurance policy that the County requires the contractor to carry in connection with this project; and (3) complete any application for a real estate permit required by WMATA and comply with all terms and conditions of any such real estate permit upon its issuance.

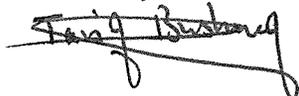
This letter agreement does not include the following support items, the costs of which, if ever applicable to your project, WMATA will charge you:

- Real Estate Permit for temporary use and entry of WMATA property. The Real Estate Permit requires insurance coverage and indemnification of WMATA. A sample permit is available upon request.
- Real Estate value for temporary or permanent use of WMATA property, if the purpose of the project is not related to transit.
- Escort and/or flagman within the Metrorail system. WMATA will provide an initial invoice for your payment in advance.
- Service changes to Metrorail or Metrobus, plus customer communications.
- Use of Metrorail work trail or other special WMATA equipment, if available.
- Nothing in this Letter Agreement, however, shall obligate the County to expend funds or incur liability for any expenditure of funds not approved in writing by the Director of Fairfax County Department of Transportation. The obligation of the County to pay compensation due WMATA is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligation.

Please have this agreement signed in the spaces provided below and submit the original signed agreement to WMATA, Joint Development an Adjacent Construction, 3500 Pennsy Drive, C-104A, Landover, Maryland 20785, ATTN: LaShawn Bost.

If you have any questions or require additional information please contact me at (301) 618-1016.

Sincerely,

 For Tom Crone

Thomas P. Crone, CCM  
Senior Program Manager  
Joint Development and Adjacent Construction

cc: JDAC – L. Bost  
JDAC – M. McNamee

**AGREED:**

Name: \_\_\_\_\_ (Print)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Organization: \_\_\_\_\_

**REVIEWED AS TO LEGAL SUFFICIENCY:**

Name: \_\_\_\_\_ (Print)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Organization: \_\_\_\_\_

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ACTION – 5

Authorization to File Comments in Response to the Federal Communications Commission Further Notice of Proposed Rulemaking to Facilitate the Deployment of Text-to-911 and Other Next Generation 911 Applications

ISSUE:

Authorization to file comments with the Federal Communications Commission (“FCC”) regarding technical and education requirements wireless carriers and interconnected text message providers must properly assume to clearly notify their customers when the ability to text-to-911 for emergency situations is not available within a geographic area.

RECOMMENDATION:

The County Executive recommends that the Board authorize staff to file comments with the FCC advocating that wireless carriers and interconnected text message providers must be mandated to instantly alert an individual who is attempting to text-to-911 that the service is not available and the text will not go through to the 9-1-1 Public Safety Answering Point (“PSAP”), and commenting on the need for public education.

TIMING:

Board action is requested on January 29, 2013, because initial comments in this rulemaking are due on January 29, 2013. The FCC accelerated the comments cycle for certain portions of this rulemaking proceeding, leaving an unusually short time for preparation and approval of these comments.

BACKGROUND:

On December 12, 2012, the FCC adopted a Further Notice of Proposed Rulemaking to facilitate the deployment of text-to-911 and other Next Generation 9-1-1 applications (the “Text-to-911 FNPRM”). Consumers are increasingly using texting as a means of communication, but only a small number of PSAPs in the United States are accepting 9-1-1 messages via text, as part of limited test trials. Fairfax County’s PSAP cannot currently accept 9-1-1 messages sent via text. Federal agencies and professional organizations such as the National Emergency Number Association are in various stages of defining requirements for Next Generation 9-1-1 (“NG9-1-1”) with the intention of developing a national design and standards framework to take the current 9-1-1 service infrastructure in the United States into the 21st-century. NG9-1-1 will enable the general public to transmit text, images, photographs, video and data to PSAPs

anywhere in the country as well as allow such information to be shared among PSAPs, law enforcement, Fire and Rescue, and emergency medical services agencies. In Virginia, the initial planning for a transition to NG9-1-1 is just beginning and staff cannot predict when a transition from current 9-1-1 to NG9-1-1 will occur.

Among other proposals, the Text-to-911 FNPRM proposes to require all wireless carriers and certain “over the top” providers of interconnected text messaging services (examples being services like Skype and Gmail Chat) to support the ability of consumers to send text messages to 9-1-1. In addition, in order to inform consumers and prevent confusion, the Text-to-911 FNPRM proposes to require all wireless carriers and interconnected text message providers to send automated “bounce back” messages to consumers attempting to text 9-1-1 when the service is not available. Currently, with some carriers, a customer can send a text to the digits 9-1-1 and the message will be accepted by the phone but the message will not actually be sent to a 9-1-1 center. For some carriers, no error message (or using the FCC term “bounce back” message) is returned to the customers informing them the text was not put through to a 9-1-1 operator for processing. This can be both confusing and potentially life threatening for the person sending the message as they may assume help is on the way when, in fact, help is not on the way.

The Text-to-911 FNPRM requested comments on several topics that are relevant to Fairfax County as well as topics that are more technical and targeted to the carriers’ capabilities. The FCC bifurcated the comment period. Comments on the “bounce back” requirement and education are due on January 29, 2013, with reply comments due on February 9, 2013. The attached draft comments address those topics. Staff is continuing to review the remainder of the FNPRM to determine whether to recommend that the County file additional comments on other aspects of text-to-911.

The attached draft comments advocate that all carriers and providers that provide software texting capabilities should be required to provide a bounce back message when service is not available. Provision of a bounce back message should not be an optional consideration by the carriers because it is in the public’s best interests to make it mandatory. The draft comments also recommend that the wording of the message be standardized and worked out with telecommunications industry associations and the carriers.

The County’s draft comments also state that the responsibility for providing materials and programs to educate the public should reside at the federal level and be funded with federal monies. The County does not have the resources to undertake such an extensive education program. The comments suggest ways to communicate messages about texting to 9-1-1 to the public.

Finally, the County's comments strongly suggest restricting the ability of individuals to send "test" text-to-911 messages to verify that their device is working. Staff believes the potential for inundating the County with numerous and frivolous tests is not necessary and that the carriers can determine another non-direct way to allow individuals to confirm that their texting capabilities to 9-1-1 are operating correctly.

FISCAL IMPACT:

None. The Text-to-911 FNPRM does not require PSAPs to accept texts, but establishes rules that impose obligations on wireless carriers and providers of "interconnected" text messaging applications.

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Comments of Fairfax County in Response to Section III.A of the Further Notice of Proposed Rulemaking to Facilitate the Deployment of Text-to-911 and Other Next Generation 911 Applications

Attachment 2: FCC Public Notice released January 9, 2013

STAFF:

David M. Rohrer, Deputy County Executive

Steve Souder, Director, Department of Public Safety Communications

Steve McMurrer, 9-1-1 Systems Administrator, Department of Public Safety Communications

Erin C. Ward, Assistant County Attorney

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Facilitating the Deployment of Text-to-911  
and Other Next Generation 911 Applications

Framework for Next Generation 911  
Deployment

PS Docket No. 11-153 and 10-255

**COMMENTS OF FAIRFAX COUNTY, VIRGINIA  
ON SECTION III.A**

The County of Fairfax, Virginia, submits these comments in response to the Further Notice of Proposed Rulemaking to Facilitate the Deployment of Text-to-911 and Other Next Generation 911 Applications (“Text-to-911 FNPRM”) adopted by the Commission on December 12, 2012. The Text-to-911 FNPRM solicited comment on proposed rules that will enable Americans to send text messages to 9-1-1 (“text-to-911”) and that will educate and inform consumers about the future availability and appropriate use of text-to-911. Fairfax County’s comments respond to Section III.A of the Text-to-911 FNPRM. Specifically, Fairfax County comments herein on (1) the Commission’s proposal to require all CMRS providers and other providers of text messaging services to send automated “bounce back” error messages to consumers attempting to text-to-911 when the service is not available and (2) public education about text-to-911 capability, particularly the questions posed by the Commission about the feasibility of allowing consumers to test the functionality of text-to-911 in their devices. Fairfax County is reviewing other elements of the Text-to-911 FNPRM and may comment separately on other aspects of text-to-911 in accordance with the filing deadlines established in the FNPRM.

## **I. Rule to Require Carriers to Provide “Bounce Back” Messages.**

Fairfax County supports the proposed rule to require CMRS providers and other third-party providers of text messaging services (including providers of interconnected text services) to always automatically notify consumers attempting to text-to-911 where text-to-911 is not supported or in other instances where the text cannot be transmitted to the 9-1-1 Public Safety Answering Point (“PSAP”). Fairfax County agrees with the Commission that the voluntary compliance of some carriers or making it a recommended Best Practice is insufficient. Notice to individuals who are attempting to send an emergency text that their message will not be received by the PSAP is critical to public safety. It is vital that people facing emergencies be immediately informed if their texts-to-911 are not answered, either because text-to-911 is unavailable or when the carrier is unable to transmit the text to the PSAP serving the texting party’s location. Valuable response time to an emergency can be wasted if a text-to-911 does not respond back to persons alerting them to seek other options to reach 9-1-1 because text-to-911 is not available where the current emergency exists. Fairfax County also supports requiring the “bounce back” message to be a consistently worded and standardized message, and encourages the Commission to work with the appropriate standards and industry associations to develop the specific wording of a concise, accurate, and meaningful “bounce back” error message.

## **II. Public Education About Text-to-911 Capability.**

Fairfax County agrees that public education about this new capability to text-to-911 is of vital importance in both the near and long term. As the Commission has observed, “9-1-1 service is a vital part of our nation's emergency response and disaster preparedness system.”<sup>1</sup> Therefore, any new proposed technology to access the 9-1-1 system requires thorough evaluation

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<sup>1</sup> FCC Encyclopedia; 9-1-1 and E9-1-1 Services, <http://www.fcc.gov/encyclopedia/9-1-1-and-e9-1-1-services> (last visited Jan. 26, 2013).

and testing to ensure that the service providers, the PSAPs, and the public are ready to use such new capability in a manner that safeguards the safety of individuals and first responders. The decision to implement this technology must be driven by the readiness of all parties involved in the public safety chain or the effort will fail due to a weak, or unready, link.

The costs of such public education efforts and the primary responsibility to conduct public education should be borne by the carriers and other providers of text-to-911 with support from the Commission or other governmental entities. Local PSAPs are already under considerable restraints on available 9-1-1 funding to meet current operational needs. Providers of text-to-911 and national public safety associations such as the National Emergency Number Association (NENA), the Association of Public-Safety Communications Officials (APCO) International, and the National Association of State 911 Administrators (NASNA) can provide meaningful input to the content and delivery mechanisms that are appropriate to reach all communities. One element of such public education could emulate the “push messages” that telecommunication providers send their customers via email, text message, and the like to alert them that their “monthly allocated usage minutes have reached 50% of their agreed plan for the month.” Using “push messages” to provide targeted and appropriately timed text-to-911 capability reminders and “helpful hints” would be a simple and effective method of educating the public in a meaningful and repeatable fashion.

### **III. “Tests” of Text-to-911 Functionality.**

Fairfax County does not support providing consumers a broad open-ended capability to test the functionality of their texting device. Rather, providers of text-to-911 should develop a testing capability that would allow consumers to test their devices by sending a test message that does not require PSAP personnel to answer each test text message. For practical, operational

considerations, the volume of text test messages might be above the level of incoming messages that most PSAPs could respond to without diverting resources away from true emergency calls. In addition, the liability considerations PSAPs apply to respond to all incoming communications present a challenge in establishing priorities and responding in a timely fashion to test messages at a lower priority. Individuals' expectations for a timely response to a test text-to-911 might not align with a PSAP directing test messages to a lower priority queue for processing which might undercut confidence in the effectiveness of text-to-911 as a viable tool for use in a real emergency.

#### **IV. Conclusion.**

The move toward implementing text-to-9-1-1 requires that the PSAPs be aware of the details of how such a service will be provided in order to plan for operational and technical changes to process such calls. Eventually, most, if not all, PSAPs will make the decision to receive text messages, at a time when their equipment is upgraded and their personnel are ready to begin processing text message calls. The PSAPs, working under current and projected funding constraints, will need additional funding from the federal level in order to upgrade their equipment and train their 9-1-1 call takers to receive text messages. We look forward to continued involvement in these endeavors and look toward opportunities to provide further input to these industry efforts.

Respectfully submitted,

---

Edward L. Long Jr.  
County Executive

Edward L. Long Jr.  
County Executive  
12000 Government Center Parkway  
Suite 552  
Fairfax, VA 22035

Steve Souder  
Director  
Department of Public Safety Communications  
4890 Alliance Drive  
Fairfax, VA 22030

David P. Bobzien, County Attorney  
Michael Long, Deputy County Attorney  
Erin C. Ward, Assistant County Attorney  
Office of the County Attorney  
Fairfax County Virginia  
12000 Government Center Pkwy, Suite 549  
Fairfax, VA 20035  
703-324-2421

January 29, 2013



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

DA 13-22

Released: January 9, 2013

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES COMMENT AND  
REPLY COMMENT DATES FOR THE FURTHER NOTICE OF PROPOSED RULEMAKING  
IN THE NEXT GENERATION 911 PROCEEDING**

**PS Docket No. 11-153, PS Docket No. 10-255**

**Section III.A Comments Due: January 29, 2013**  
**Section III.A Reply Comments Due: February 8, 2013**  
**All Other Section Comments Due: March 11, 2013**  
**All Other Section Reply Comments Due: April 9, 2013**

On December 12, 2012, the Federal Communications Commission adopted a Further Notice of Proposed Rulemaking to facilitate the deployment of Text-to-911 and other Next Generation 911 applications (*Text-to-911 FNPRM*).<sup>1</sup> The *Text-to-911 FNPRM* proposed to require all wireless carriers and certain “over the top” providers of interconnected text messaging services to support the ability of consumers to send text messages to 911. In addition, in order to inform consumers and prevent confusion, the *Text-to-911 FNPRM* proposed to require all wireless carriers and interconnected text message providers to send automated “bounce back” error messages to consumers attempting to text to 911 when the service is not available.

Section III.A of the *Text-to-911 FNPRM* proposed that when consumers attempt to text to 911 in areas where text-to-911 is not supported, or in other instances where the text cannot be transmitted to the 911 call center, they will receive an automated message saying that text-to-911 is not supported and directing them to make a 911 voice call. The *Text-to-911 FNPRM* sought comment on the appropriate timetable for implementing this bounce back capability, and recommended rapid implementation to avoid the risk of consumer confusion. Due to the important public safety consideration of reducing consumer confusion, the *Text-to-911 FNPRM* sought an expedited comment schedule for Section III.A. Accordingly, the *Text-to-911 FNPRM* set deadlines for filing comments and reply comments in Section III.A at 20 and 30 days after publication in the Federal Register. The *Text-to-911 FNPRM* set deadlines for filing comments and reply comments in all other sections of the *Text-to-911 FNPRM* at 60 and 90 days after publication in the Federal Register.

<sup>1</sup> In the Matter of Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment, PS Docket No. 11-153, PS Docket No. 10-255, *Further Notice of Proposed Rulemaking*, FCC 11-134, 26 FCC Rcd 13615 (rel. Dec. 12, 2012) (*Text-to-911 FNPRM*).

On January 9, 2013, the Federal Register published a summary of the *Text-to-911 FNPRM*.<sup>2</sup> Accordingly, comments in Section III.A must be filed on or before January 29, 2013; and reply comments must be filed on or before February 8, 2013. Comments on all other sections must be filed on or before March 11, 2013; and reply comments on other sections must be filed on or before April 9, 2013. The *Text-to-911 FNPRM* sets forth the comment filing instructions.

For further information regarding this proceeding, contact Timothy May, Policy Division, Public Safety and Homeland Security Bureau, (202) 418-1463.

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<sup>2</sup> See 78 Fed. Reg. 1799 (Jan. 9, 2013).

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ACTION – 6

Approval of a Resolution Authorizing the Virginia Department of Motor Vehicles To Issue a Fairfax County License Plate

ISSUE:

Board approval of a Resolution authorizing the Virginia Department of Motor Vehicles (DMV) to issue a Fairfax County license plate. The DMV requires authorization of the governing body to use a locality seal in the design of a special license plate.

RECOMMENDATION:

The County Executive recommends that the Board approve the attached Resolution.

TIMING:

Board authorization is requested on January 29, 2013, in order to submit the design to the DMV.

BACKGROUND:

At the meeting on January 8, 2013, the Board directed staff to draft the necessary documentation to sponsor a county license plate; draft a simple plate design; and, draft an agreement with Visit Fairfax on the collection of forms and disbursement of proceeds to the 2015 World Police and Fire Games that will be hosted by the county. Staff has evaluated DMV design and application requirements and created a plate design to comply with the DMV specifications. Among those, is that the design is restricted to only four colors, and since the county Seal is proposed to be used on the plate, that limits the design to the four colors in the county Seal. In addition to design specifications, the DMV requires formal governing body authorization for the DMV to use a locality seal in the design of the plate.

Once the plate is produced, it is DMV's requirement that 350 prepaid applications must be collected by the locality and forwarded to DMV before special plates are issued. Va. Code Ann. 46.2-749.4 permits the DMV to issue special plates for an additional \$25 per year upon receipt of a minimum 350 paid applications for such licenses. After the sale of 1000 plates, localities that make arrangements for such special plates receive \$15 from the sale of each special plate, and the state

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retains the remaining \$10. Such plates are referred to as “revenue sharing license plates” and the attached Resolution specifies this option for the Fairfax plate.

Upon endorsement of the attached Resolution, staff will submit the attached license plate design. Upon receipt of the sample plate from DMV in its’ final design form, Visit Fairfax has agreed to initiate publicity and facilitate the collection of the 350 pre-paid \$25 applications required for the Fairfax County license plate to be issued. Staff will continue to work with Visit Fairfax to formalize this arrangement.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment 1: Virginia Code Section 46.2-749.4

Attachment 2: Resolution

Attachment 3: Color mock-up of license plate design, according to DMV specifications (Separate from board package)

STAFF:

Merni Fitzgerald, Director, Office of Public Affairs

Catherine A. Chianese, Assistant County Executive and Clerk of the Board of Supervisors

## Attachment 1

§ 46.2-749.4. Special license plates bearing the seal, symbol, emblem, or logotype of counties, cities, and towns.

A. On receipt of a minimum of 350 paid applications and a design therefor, the Commissioner may develop and issue special license plates whose design incorporates the seal, symbol, emblem, or logotype of any county, city or town. If all affected localities agree as to its design, the Commissioner may develop and issue special license plates jointly for more than one locality. Each local governing body of the counties, cities, or towns involved in the design of the license plates shall agree as to the issuance fee, and shall indicate to the Commissioner in writing, whether the license plates issued shall be revenue sharing or nonrevenue sharing license plates.

B. The annual fee for plates issued pursuant to this section that are nonrevenue sharing license plates shall be \$10 plus the prescribed fee for state license plates.

C. The annual fee for plates issued pursuant to this section that are revenue sharing license plates shall be \$25 plus the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid to the locality whose seal, symbol, emblem, or logotype appears on the plate. These funds shall be paid to the affected localities annually and may be used as provided by the local governing body. For license plates issued jointly for more than one locality, these funds shall be apportioned among the affected localities as agreed to with the Commissioner prior to issue.

The provisions of subdivision B 1 of § [46.2-725](#) shall not apply to license plates issued under this section.

(1993, c. 560; 1995, c. [747](#); 1996, c. [1026](#); 1999, cc. [883](#), [907](#); 2003, c. [925](#); 2004, c. [747](#); 2005, c. [273](#).)

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## Attachment 2

### RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, January 29, 2013, at which a quorum was present and voting, the following resolution was adopted:

**WHEREAS**, Section 46.2-749.4 of the *Code of Virginia* authorizes the Commissioner of the Virginia Department of Motor Vehicles (DMV) to issue special license plates bearing the seal, symbol, emblem, or logotype of localities; and

**WHEREAS**, the DMV requires governing body authorization to use the locality seal in the design of a special license plate; and

**WHEREAS**, the Board hereby approves the proposed design including the Fairfax County Seal, according to DMV specifications; a copy of which is attached to this resolution; and

**WHEREAS**, the Board specifies that the Fairfax County plate is to be a “revenue sharing license plate”; and

**WHEREAS**, the Board designates Visit Fairfax to initiate publicity and facilitate the collection of the 350 pre-paid \$25 applications.

**NOW, THEREFORE BE IT RESOLVED** that the Board of Supervisors authorizes the DMV to use the Fairfax County Seal in the design and issuance of a special Fairfax County license plate consistent with the attached design.

A Copy Teste:

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Catherine A. Chianese  
Clerk to the Board of Supervisors



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INFORMATION - 1

Mid County Human Services Center and I-66 Transfer Station Operations Center Receive Awards of Excellence from the National Association of Industrial and Office Properties (Providence and Springfield Districts)

The National Association of Industrial and Office Properties (NAIOP), Northern Virginia Chapter, selected the Mid County Human Services Center project to receive the 2012 Award of Excellence for Best Real Estate Transaction-Building Sale, and the recently completed I-66 Transfer Station Operations Center to receive the 2012 Award of Excellence for Best Build-To-Suite Institutional Facility Under \$20 Million. Representatives from the Department of Public Works and Environmental Services (DPWES), and the Office of the County Attorney received the Awards of Excellence at the NAIOP ceremony on November 14, 2012.

In March 2012, Fairfax County and Inova Health Services, Inc. (Inova) completed a multi-phase agreement to exchange properties and to construct and provide for future maintenance of common infrastructure improvements (Agreement). Fairfax County's goals for the Agreement were to achieve the most cost effective development option for design and construction of a replacement for the existing Woodburn Mental Health Center (Woodburn Replacement) and to consolidate other Fairfax-Falls Church Community Services Board (CSB) programs that are currently being operated from various leased spaces. The County's Agreement with Inova provides the land and the infrastructure for the Woodburn Replacement and enables a highly cost effective development. The Agreement provides Inova with fee simple ownership of 21.88 acres and extends the lease for the land underlying the current Inova Fairfax Hospital complex.

The Woodburn Replacement, known as the Mid County Human Services Center facility, will be located at 8221 Willow Oaks Corporate Drive in Fairfax and will provide a 200,000 square-foot office building, including 40,000 square feet on the fourth floor that will be leased to Inova for a period of ten years, and a 690-space parking structure.

Built on the site of the closed I-66 Landfill and completed in March 2012, the I-66 Transfer Station Operations Center replaced the aging work center consisting of four trailers that were inadequate in size and infrastructure to meet the operational needs. The 10,700-square-foot facility provides for office, training, and support spaces, and was developed as a sustainable facility using the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED®) and is currently under review at USGBC for LEED® Silver Certification. The project team consisted

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of staff from the DPWES Building Design and Construction Division, the DPWES Division of Solid Waste and Resource Recovery, Ritter Architects (the design consultant), and Falls Church Construction Corporation (the construction contractor).

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

None.

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

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11:20 a.m.

Matters Presented by Board Members

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12:10 p.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. Damage to the Fairfax County Courthouse Complex (Providence District)
  - 2. *Gary Pisner v. Board of Supervisors of Fairfax County, Virginia*, Record No. 121399 (Va. Sup. Ct.) (Springfield District)
  - 3. *Christopher Wills v. Charles P. Rosenberg, Donna Marie Stephenson, John Robert Stone, Cindy Lundberg, Michael Feightner, Nathaniel McFadden, Reginald A. Johnson, Maurice Simmons, James Black, Mr. Hamed, Mr. Asib, and Hellen Fayeh [sic]*, No. 12-6690 (U. S. Ct. of Appeals for the Fourth Cir.)
  - 4. *Louise Root v. County of Fairfax*, Case No. 1:12-CV-1148 (E.D. Va.)
  - 5. *Jennifer Logan v. Fairfax County Department of Family Services*, Record No. 2608 11-4; *Kevin Logan v. Fairfax County Department of Family Services*, Record No. 2751-11-4 (Va. Ct. App.)
  - 6. *Tyrus H. Thompson v. Fairfax County Department of Family Services*, Record No. 2185-12-4 (Va. Ct. App.); *Jasmine Vanderplas v. Fairfax County Department of Family Services*, Record No. 2216-12-4 (Va. Ct. App.); *Minh-Sang Nguyen v. Fairfax County Department of Family Services*, Record No. 2217-12-4 (Va. Ct. App.); *Brielle Nguyen v. Fairfax County Department of Family Services*, Record No. 2232-12-4 (Va. Ct. App.)

7. *Beatriz Karina Roa v. Fairfax County, Chairman Sharon Bulova, David Bobzien, Oakton Fire and Rescue Department, Jason G. Pryor and Man Y. Li, Case No. CL-2011-0016728 (Fx. Co. Cir. Ct.)*
8. *ELCON Enterprises, Inc. v. County of Fairfax, Virginia and Department of Purchasing and Supply Management, and Cathy Muse, Case No. 2012-0018243 (Fx. Co. Cir. Ct.)*
9. *Lin Tran v. Lori Labarea and County of Fairfax Virginia Police Department, Case No. 2012-0018380 (Fx. Co. Cir. Ct.)*
10. *Fairfax County, Virginia v. Landamerica Property Corporation, Inc., Case No. CL-2012-0019454 (Fx. Co. Cir. Ct.) (Lee District)*
11. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. John M. Michaely, Case No. CL-2012-0008722 (Fx. Co. Cir. Ct.) (Providence District)*
12. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Tina M. Howard, Case No. CL-2011-0017608 (Fx. Co. Cir. Ct.) (Providence District)*
13. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Charilene N. Lucas, a.k.a. Christine N. Lucas, Case No. CL-2011-0012915 (Fx. Co. Cir. Ct.) (Lee District)*
14. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Robert E. Stroup, Case No. CL-2012-0000352 (Fx. Co. Cir. Ct.) (Providence District)*
15. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Walter A. Knick and Phyllis E. Knick, Case No. CL-2011-0009274 (Fx. Co. Cir. Ct.) (Hunter Mill District/Town of Vienna)*
16. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Sheldon P. Ellison and Wauleah A. Ellison, Case No. CL-2010-0017783 (Fx. Co. Cir. Ct.) (Mason District)*
17. *Eileen M. McLane, Fairfax County Zoning Administrator v. Jose Armulfo Argueta and Rosa Isabel Crick, Case No. CL-2010-0005805 (Fx. Co. Cir. Ct.) (Mason District)*

18. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Clyde E. Nishimura*, Case No. CL-2012-0005565 (Fx. Co. Cir. Ct.) (Lee District)
19. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Milagro Velasquez Romero*, Case No. CL-2012-0006600 (Fx. Co. Cir. Ct.) (Mount Vernon District)
20. *Eileen M. McLane, Fairfax County Zoning Administrator v. Carolyn A. Studds*, Case No. CL-2010-0017283 (Fx. Co. Cir. Ct.) (Dranesville District)
21. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Tavares Family Limited Partnership*, Case No. CL-2013-0000220 (Fx. Co. Cir. Ct.) (Lee District)
22. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Tavares Family Limited Partnership*, Case No. CL-2013-0000198 (Fx. Co. Cir. Ct.) (Lee District)
23. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Michael Joseph Powers*, Case No. CL-2012-0003924 (Fx. Co. Cir. Ct.) (Lee District)
24. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Duane S. Whitney, Edward N. Whitney, Arthur M. Whitney, Pamela V. Whitney, Rhonda L. Whitney, Candace Alexander, and Jeanette Alexander*, Case No. CL-2007-0005644 (Fx. Co. Cir. Ct.) (Providence District)
25. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Charles Yeh and Mary Yeh*, Case No. CL-2012-0002343 (Fx. Co. Cir. Ct.) (Dranesville District)
26. *Eileen M. McLane, Fairfax County Zoning Administrator v. Winkal Holdings, LLC, Burcin Kalendar*, Case No. CL-2011-0010764 (Fx. Co. Cir. Ct.) (Lee District)
27. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Sherry Worsham Harlow*, Case No. CL-2012-0005224 (Fx. Co. Cir. Ct.) (Springfield District/Town of Clifton)
28. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Bryce A. Schwarzmman*, Case No. 2012-0006422 (Fx. Co. Cir. Ct.) (Mason District)
29. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. John A. Parrish and Maria P. Tungol*, Case No. CL-2012-0009121 (Fx. Co. Cir. Ct.) (Lee District)

30. *Eileen M. McLane, Fairfax County Zoning Administrator v. Duc Dang*, Case No. CL-2012-0011237 (Fx. Co. Cir. Ct.) (Providence District)
31. *Eileen M. McLane, Fairfax County Zoning Administrator v. Wilder B. Montano*, Case No. CL-2012-0015051 (Fx. Co. Cir. Ct.) (Mason District)
32. *Eileen M. McLane, Fairfax County Zoning Administrator v. Osoob Farah*, Case No. CL-2012-0011473 (Fx. Co. Cir. Ct.) (Mount Vernon District)
33. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Miklos I. Bitter and Terri L. Bitter*, Case No. CL-2012-0016412 (Fx. Co. Cir. Ct.) (Hunter Mill District)
34. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Laura E. Taylor*, Case No. CL-2012-0016312 (Fx. Co. Cir. Ct.) (Lee District)
35. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Grace Y. Hurr*, Case No. CL-2012-0009757 (Fx. Co. Cir. Ct.) (Dranesville District)
36. *Eileen M. McLane, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Loren J. Thompson*, Case No. CL-2012-0008006 (Fx. Co. Cir. Ct.) (Providence District)
37. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Susy A. Ortega*, Case No. CL-2012-0016011 (Fx. Co. Cir. Ct.) (Providence District)
38. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Linh Dang Huu Vu and Linh Thao Dang Vu*, Case No. CL-2012-0016767 (Fx. Co. Cir. Ct.) (Braddock District)
39. *Eileen M. McLane, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. John V. Kearney*, Case No. CL-2012-0012916 (Fx. Co. Cir. Ct.) (Lee District)
40. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Jefferson Investment Company, L.P., d/b/a Jefferson Investment Company, LLC*, Case No. CL-2012-0014850 (Fx. Co. Cir. Ct.) (Providence District)
41. *Eileen M. McLane, Fairfax County Zoning Administrator v. Bernadette Boka and James L. Leslie*, Case No. CL-2012-004058 (Fx. Co. Cir. Ct.) (Mason District)
42. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Juan Carlos Cadima*, Case No. CL-2012-0018955 (Fx. Co. Cir. Ct.) (Mason District)

43. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Rama Sanyasi Rao Prayaga and Niraja Dorbala Prayaga*, Case No. CL-2012-0019078 (Fx. Co. Cir. Ct.) (Dranesville District)
44. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Reston Zoo, LLC*, Case No. CL-2012-0019076 (Fx. Co. Cir. Ct.) (Hunter Mill District)
45. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Kim Mai*, Case No. CL-2012-0019077 (Fx. Co. Cir. Ct.) (Providence District)
46. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Zahir Ahmed*, Case No. CL-2012-0019602 (Fx. Co. Cir. Ct.) (Mount Vernon District)
47. *Eileen M. McLane, Fairfax County Zoning Administrator v. Mariano C. Evangelista and Armida A. Evangelista*, Case No. CL-2013-000221 (Fx. Co. Cir. Ct.) (Mason District)
48. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Alex Gomez*, Case No. CL-2013-0000222 (Fx. Co. Cir. Ct.) (Mount Vernon District)
49. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ashley Nicole Le*, Case No. CL-2012-0019078 (Fx. Co. Cir. Ct.) (Lee District)
50. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Great World Plaza, LLC, and 7031 JK, Inc.*, Case No. CL-2013-0000348 (Fx. Co. Cir. Ct.) (Mason District)
51. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Carole A. LeBlanc*, Case No. CL-2013-0000242 (Fx. Co. Cir. Ct.) (Mason District)
52. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Randal S. Cordes*, Case No. CL-2013-0000441 (Fx. Co. Cir. Ct.) (Dranesville District)
53. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. M. Mehdi Rashidian and Joyce Elaine Rashidian*, Case No. GV12-027592 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
54. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Michael Ternisky*, Case No. GV12-026045 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)
55. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Melissa S. Malone*, Case No. GV12-026048 (Fx. Co. Gen. Dist. Ct.) (Lee District)

56. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Robert F. Blunt, Jr.*, Civil Case Nos. GV12-026998 and GV12-026999 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
57. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Rashid Aquil*, Case No. GV12-029079 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
58. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Harlan Y.M. Lee and Mary Jane Lee*, Case No. GV12-026231 (Fx. Co. Gen. Dist. Ct.) (Providence District)
59. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Nargis A. Lipi and Mohammed Maniruzzaman*, Case No. GV12-0027591 (Fx. Co. Gen. Dist. Ct.) (Mason District)
60. *Eileen M. McLane, Fairfax County Zoning Administrator v. Stephen P. Williams and Linda J. Williams*, Case No. GV-12-0021520 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
61. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Linh Thuy Dang and Tam Thanh Kha*, Case No. GV12-026502 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
62. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Eagle Tattoo, Ltd., Giovan V. Nguyen, and Nhat T. Nguyen*, Case No. GV12-021957 (Fx. Co. Gen. Dist. Ct.) (Mason District)
63. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Katerina Francis*, Case No. GV12-0026043 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)
64. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Daniel Bahta and Lishan Kassa*, Case No. GV12-026044 (Fx. Co. Gen. Dist. Ct.) (Lee District)
65. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Mohammad S. Choughtai, a/k/a Mohammed S. Choughtai*, Case No. GV12-027589 (Fx. Co. Gen. Dist. Ct.) (Mason District)
66. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Marcus S. Eder and Renee H. Eder*, Case No. GV12-027525 (Fx. Co. Gen. Dist. Ct.) (Braddock District)

67. *Leslie B. Johnson, Fairfax County Zoning Administrator v. James A. Steele and Kelly J. Steele*, Case Nos. GV12-025843 and GV12-025844 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)
68. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Jerry L. Coffey and Gretchen L. Coffey*, Case No. GV12-026047 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)
69. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Abdel-Hamid Mohammed Eqab*, Case No. GV12-026042 (Fx. Co. Gen. Dist. Ct.) (Lee District)
70. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Wayne F. Sandross and Lisa L. Sandross*, Case No. GV12-028906 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
71. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Mervin R. Greenwood*, Case Nos. GV12-023821 and GV12-023821 (Fx. Co. Gen. Dist. Ct.) (Sully District)
72. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Rotanna L. Mullen*, Case No. GV13-000202 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
73. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Maria A. Obando*, Case No. GV13-000261 (Fx. Co. Gen. Dist. Ct.) (Lee District)
74. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. John A. Moody, Jr., and Sonja A. Moody*, Case No. GV13-000262 (Fx. Co. Gen. Dist. Ct.) (Lee District)
75. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Hamzasb Sardarbegians*, Case No. GV13-000324 (Fx. Co. Gen. Dist. Ct.) (Mason District)
76. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Hamzasb Sardarbegians*, Case No. GV13-000324 (Fx. Co. Gen. Dist. Ct.) (Mason District)
77. *Michael R. Congleton, Property Maintenance Code Official for Fairfax County, Virginia v. Maria Perez, Leandro Andres Perez, Jenny Milena Castillo Lancheros*, Case No. GV13-000629 (Fx. Co. Gen. Dist. Ct.) (Sully District)
78. *Board of Supervisors of Fairfax County, Virginia v. Equity Homes, LLC, Ray Yancey, Trustee, and Arch Insurance Company*, Case No. CL-2012-0003600 (Fx. Co. Cir. Ct.) (Braddock District)

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3:00 p.m.

Annual Meeting of the Fairfax County Solid Waste Authority

ISSUE:

Fairfax County Solid Waste Authority annual meeting.

RECOMMENDATION:

The County Executive recommends that the Fairfax County Solid Waste Authority hold its annual meeting in accordance with the Bylaws for the Authority; appoint officers; approve the minutes of the May 22, 2012, special meeting; and approve the financial statements.

TIMING:

Immediate. The Bylaws of the Fairfax County Solid Waste Authority require the annual meeting to coincide with the time for the last regular meeting of the Board of Supervisors set in January.

BACKGROUND:

The proposed agenda of the Authority meeting is included as Attachment I. The Bylaws further require a review and approval of the minutes of the previous year's meetings (Attachment II) and that officers of the authority be appointed to serve for a one-year term.

During FY 2012, the I-95 Energy/Resource Recovery Facility (E/RRF) processed 1,058,387 tons of municipal solid waste, 13.7% above the Guaranteed Annual Tonnage (GAT) of 930,750 tons required by the Service Agreement with Covanta Fairfax, Inc. (CFI), owner and operator of the facility. County waste delivered to the facility totaled 774,145 tons. This was below the GAT level but additional waste from the District of Columbia and Prince William County accounted for the remaining tons. Solid waste disposal is down overall due to the economy and increased recycling.

The June 2012 stack test and twice-yearly ash tests documented emissions from the E/RRF that were well below regulatory and permit limits established by the U.S. Environmental Protection Agency (EPA) and the Virginia Department of Environmental Quality. The independent engineering firm of Dvirka and Bartilucci confirmed in its November 2012 report that "CFI has complied with the requirements of the Service

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Agreement, as amended, and has complied with the Facility's various environmental permit and regulatory obligations." Covanta Fairfax continues to be certified as a Virginia Extraordinary Environmental Excellence Enterprise Program (E4) participant.

The construction bonds for the facility were paid in February 2011, with a resultant reduction in the tip fee paid by the county to Covanta. The Service Agreement extension continues through February 1, 2016. Other financial information is contained in the Financial Statements (Attachment III).

County staff and the Board of Supervisors continue to explore options for handling the county's waste at the end of the agreement extension. A Request for Expressions of Interest has been issued, soliciting ideas and potential projects to handle all or a portion of the county's waste stream. Concurrently, discussions with Covanta Fairfax, Inc. to develop a contract to replace the Service Agreement have been initiated. All the options will be evaluated to determine the course of action that is in the best interests of county residents and businesses.

The reclaimed water project in cooperation with the Norman M. Cole, Jr. Pollution Control Plant reached substantial completion this year. This project benefits Fairfax County by using reclaimed water for industrial purposes instead of potable water and will help reduce the nutrient load being discharged to the Chesapeake Bay.

FISCAL IMPACT:

None

ENCLOSED DOCUMENTS:

Attachment I – Fairfax County Solid Waste Authority Meeting Agenda, January 29, 2013

Attachment II – Minutes of the May 22, 2012, Solid Waste Authority Special Meeting

Attachment III – Financial Statements and Supplemental Information

STAFF:

Robert A. Stalzer, Deputy County Executive

James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)

**FAIRFAX COUNTY SOLID WASTE AUTHORITY**

**Annual Meeting Agenda**

**January 29, 2013**

1. Call-to-Order
2. Appointment of Officers.
  - Chairman - Sharon Bulova, Chairman, Fairfax County Board of Supervisors
  - Vice-Chairman - Penelope A. Gross, Vice-Chairman, Fairfax County Board of Supervisors
  - Secretary - Catherine A. Chianese, Clerk to the Fairfax County Board of Supervisors
  - Treasurer - Victor Garcia, Director, Department of Finance
  - Attorney - David P. Bobzien, County Attorney
  - Executive Director - Edward L. Long Jr., County Executive
  - Authority Representative - Joyce M. Doughty, Director, Division of Solid Waste Disposal and Resource Recovery
3. Approval of the minutes from the May 22, 2012 meeting.
4. Approval of the financial statements for the Authority.
5. Discussion of Solid Waste Management planning.

**MINUTES OF THE SPECIAL MEETING OF THE SOLID WASTE AUTHORITY**

**May 22, 2012**

At the special meeting of the Fairfax County Solid Waste Authority held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, May 22, 2012, at 3:32 p.m., there were present:

**MEMBERS OF THE BOARD OF DIRECTORS AND OFFICERS:**

Chairman Sharon Bulova, presiding

Supervisor John C. Cook, of Braddock District

Supervisor John W. Foust, of Dranesville District

Supervisor Michael R. Frey, of Sully District

Supervisor Penelope A. Gross, of Mason District

Supervisor Patrick S. Herrity, of Springfield District

Supervisor Jeffrey C. McKay, of Lee District

Supervisor Linda Q. Smyth, of Providence District

Edward L. Long, Jr., County Executive;

Catherine A. Chianese; Authority Secretary

David P. Bobzien, County Attorney; Authority Attorney

Joyce Doughty, Director, Division of Solid Waste Disposal and Resource Recovery, Department of Public Works and Environmental Services (DPWES); Authority Representative

Supervisor Gerald W. Hyland, of Mount Vernon District, was out of the room

Supervisor Catherine M. Hudgins, of Hunter Mill District, was absent

Victor Garcia, Director, Department of Finance; Treasurer, was absent

**Meeting Minutes**  
**The Fairfax County Solid Waste Authority**  
**May 22, 2012**

Supervisor Gross moved that the Board appoint the following officer to the Fairfax County Solid Waste Authority:

**OFFICER**

Edward L. Long, Jr.  
County Executive

- Executive Director

Supervisor Smyth seconded the motion and it carried by a vote of eight, Supervisor Hyland being out of the room, Supervisor Hudgins being absent.

Supervisor Gross moved approval of the minutes from the January 24, 2012, meeting of the Solid Waste Authority. Supervisor McKay seconded the motion and it carried by a vote of eight, Supervisor Hyland being out of the room, Supervisor Hudgins being absent.

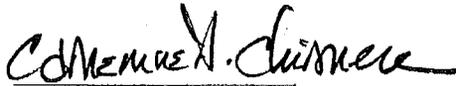
Supervisor Gross moved to adjourn the special meeting of the Fairfax County Solid Waste Authority. Supervisor Smyth seconded the motion and it carried by a vote of eight, Supervisor Hyland being out of the room, Supervisor Hudgins being absent.

At 3:33 p.m., the special meeting of the Fairfax County Solid Waste Authority was adjourned.

**Meeting Minutes**  
**The Fairfax County Solid Waste Authority**  
**May 22, 2012**

The foregoing minutes record the actions taken by the Fairfax County Solid Waste Authority at a special meeting held on Tuesday, May 22, 2012, and reflects matters discussed by the Authority. Audio or video recordings of all proceedings are available in the Office of the Clerk to the Board of Supervisors of Fairfax County, Virginia.

Respectfully submitted,



Catherine A. Chianese  
Secretary  
Solid Waste Authority

**FAIRFAX COUNTY SOLID WASTE AUTHORITY**

Financial Statements

June 30, 2012 and 2011

**FAIRFAX COUNTY SOLID WASTE AUTHORITY**

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**FAIRFAX COUNTY SOLID WASTE AUTHORITY**

Statements of Fiduciary Assets and Liabilities

June 30, 2012 and 2011

	<u>2012</u>	<u>2011</u>
<b>Assets:</b>		
Investments	<u>\$ -</u>	<u>\$ -</u>
<b>Liabilities:</b>		
Liability under reimbursement agreement	<u>\$ -</u>	<u>\$ -</u>

*See accompanying notes to financial statements.*

# FAIRFAX COUNTY SOLID WASTE AUTHORITY

## Notes to Financial Statements

June 30, 2012 and 2011

### 1. Organization

The Fairfax County Solid Waste Authority (the Authority) was formed by resolution of the Board of Supervisors of the County of Fairfax, Virginia (the County), on July 27, 1987. The Authority's board consists of the County's Board of Supervisors. Therefore, the Authority is considered a blended component unit of the County.

The Authority was formed for the purpose of constructing and overseeing the operations of a resource recovery facility (the Facility) in Lorton, Virginia, on a site that was purchased in July 2002 by the County from the United States. Prior thereto, legal title to the site was vested in the United States to the benefit of the District of Columbia; the site was leased by the District to the County, and the County assigned the leased site to the Authority. The Assignment of Site Lease to the Authority, dated as of February 1, 1988, has not been amended, terminated, rescinded, or revoked, and remains in full force and effect in accordance with its terms.

The construction of the Facility was partially financed by \$237,180,000 and \$14,900,000 of Series 1988A tax-exempt and Series 1988B taxable industrial revenue bonds, respectively, issued by the Fairfax County Economic Development Authority (EDA) during 1988. The Series 1988B Bonds were retired in February 1996. The Authority invests all bond proceeds through a trust account with a major bank. The Authority is responsible for making all investment decisions and authorizing all disbursements from the trust.

On February 1, 1988, an Installment Sales Agreement between the EDA and the Authority was executed whereby the Facility and the bond proceeds were sold to the Authority. Concurrent with this Installment Sales Agreement, the Authority entered into a Conditional Sale Agreement whereby the Facility, the bond proceeds and the Authority's leasehold interest in the site were sold to Covanta Fairfax, Inc. Under a related service agreement, Covanta designed, constructed, and operates the Facility. The Facility was completed and began commercial operations in June 1990. The County and the Authority have agreed to provide guaranteed minimum annual amounts of waste and annual tipping fees to the Facility. Under the terms of the Conditional Sale Agreement, debt service on the bonds was paid by Covanta through the Authority; solely from solid waste system revenues generated by the Facility. The bonds were not general obligations of the Authority, the County, or the EDA.

During the year ended June 30, 1995, the EDA sold, at the request of the Authority for the benefit of the Facility, a call option on the Series 1988A Bonds to a financial institution for \$10,250,000. The option, which was exercised in November 1998, required the EDA to issue new bonds to the institution at certain agreed-upon interest rates. The proceeds of the new Series 1998A Resource Recovery Revenue Refunding Bonds together with certain proceeds remaining from the Series 1988A Bonds and certain other available funds were used to refund the remaining outstanding Series 1988A Bonds in February 1999. The final principal and interest payments on the Series 1998A Resource Recovery Revenue Refunding Bonds were made on February 1, 2011. The bank accounts held with the fiscal agent, US Bank, to service the debt payments and invest the debt service reserve were closed in FY2011. As a result, there were no fiduciary assets, obligations, or transactions to record or report in FY2012.

Board Agenda Item  
January 29, 2013

3:00 p.m.

Public Hearing on PCA 86-S-083-05 (Branch Banking and Trust Company) to Amend the Proffers for RZ 86-S-083 Previously Approved for Commercial and Residential Development to Permit a Drive-In Financial Institution and Associated Modifications to Proffers and Site Design with an Overall Floor Area Ratio of 0.20, Located on Approximately 14.92 Acres of Land Zoned C-6 and WS (Sully District)

and

Public Hearing on SEA 93-Y-032 (Branch Banking and Trust Company) to Amend SE 93-Y-032 Previously Approved for a Drive-In Financial Institution to Permit an Additional Drive-In Financial Institution and Associated Modifications to Site Design and Development Conditions, Located on Approximately 14.92 Acres of Land Zoned C-6 and WS (Sully District)

This property is located in the South East quadrant of the intersection of Braddock Road and Stone Road. Tax Map 54-1 ((17) E.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 29, 2012 the Planning Commission voted unanimously to recommend to the Board of Supervisors:

- Approval of PCA 86-S-083-05, subject to the execution of proffers dated November 9, 2012,
- Approval of SEA 93-Y-032, subject to the development conditions dated November 20, 2012, with the following addition to condition 9:
  - Insert “at the southern end of the site,” after the word “institution”.
- Waiver of paragraph 6 of Section 11-203 of the Zoning Ordinance to allow a waiver of the loading space requirement in favor of the layout shown on the PCA/SEA Plat; and
- Waiver of the tree preservation target pursuant to Section 12-0508 of the Public Facilities Manual in favor of the proposed vegetation shown on the PCA/SEA Plat.

ENCLOSED DOCUMENTS:

Attachments: Verbatim excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4402062.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)

Brent Krasner, Zoning Evaluation Division, DPZ

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Planning Commission Meeting  
November 29, 2012  
Verbatim Excerpt

PCA 86-S-083-05 AND SEA 93-Y-032 – BRANCH BANKING AND TRUST COMPANY  
(Sully District)

After the Close of the Public Hearing

Chairman Murphy: Public hearing is closed. Mr. Litzenberger, please.

Commissioner Litzenberger: Thank you, Mr. Chairman. I think the applicant's request is reasonable on the lighting issue so I will add that into the amendments. But first I want to thank the staff, particularly Brent Krasner, and the applicant and his attorney, Mr. Lawrence. We have had no fewer than 20 different iterations on this parcel over the past 26 years. In fact, I was on the land use committee the first time it came up. Back in those days, we had a Planning Commissioner that was a real stickler for details so you guys have addressed all of the concerns. I believe you met with staff and the community on eight different occasions, which is why we don't have any speakers tonight so thank you very much for all your efforts. Mr. Chairman, I MOVE THE PLANNING COMMISSION RECOMMEND APPROVAL OF PCA 86-S-083-05, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED NOVEMBER 9, 2012.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve PCA 86-S-083-05, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SEA 93-Y-032, SUBJECT TO THE DEVELOPMENT CONDITIONS CONSISTENT WITH THOSE DATED NOVEMBER 20, 2012, WITH THE FOLLOWING ADDITION TO CONDITION 9: PLEASE INSERT, "AT THE SOUTHERN END OF THE SITE," AFTER THE WORD, "INSTITUTION."

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Is there a discussion of that motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SEA 93-Y-032, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: I MOVE THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF PARAGRAPH 6 OF SECTION 11-203 OF THE ZONING ORDINANCE TO ALLOW A WAIVER OF THE LOADING SPACE REQUIREMENT IN FAVOR OF THE LAYOUT SHOWN ON THE PCA/SEA PLAT.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: I MOVE THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF THE TREE PRESERVATION TARGET PURSUANT TO SECTION 12-0508 OF THE PUBLIC FACILITIES MANUAL IN FAVOR OF THE PROPOSED VEGETATION SHOWN ON THE PCA/SEA PLAT.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Litzenberger: Thank you again for all your good work on this.

Chairman Murphy: Thank you very much.

//

(The motions carried unanimously.)

JLC

Board Agenda Item  
January 29, 2013

3:30 p.m.

Public Hearing on AA 83-S-004-02 Nadine C. Vazquez, Jeffrey O. Waters, Jeremy M. Vazquez and Lee J. Vazquez, Irrevocable Trust, to Permit Renewal and Change in Ownership and Conversion of a Previously Approved Local Agricultural and Forestal District to a Statewide District, Located on Approximately 205.14 Acres of Land Zoned R-C and WS (Springfield District)

This property is located at 6200 and 6390 Newman Road, Fairfax, 22030. Tax Map 66-4 ((1)) 21Z, 75-2 ((1)) 5Z and 19Z.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, January 17, 2013, the Planning Commission voted unanimously to recommend that the Board of Supervisors amend Appendix E of the Fairfax County Code to establish the Whitehall Statewide Agricultural and Forest District, subject to the Ordinance provisions listed in Appendix 1 of the staff report dated January 3, 2013.

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim Excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4405377.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)

Brent Krasner, Zoning Evaluation Division, DPZ

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Planning Commission Meeting  
January 17, 2013  
Verbatim Excerpt

AA-83-S-004-02 – NADINE VAZQUEZ, JEFF WATERS, JEREMY VAZQUEZ, LEE J. VAZQUEZ IRREVOCABLE TRUST

After the Close of the Public Hearing

Secretary Hall: Close the public hearing and recognize Commissioner Murphy.

Commissioner Murphy: Thank you, Madam Chairman. This is an agricultural forestal named the Whitehall Local Agricultural and Forestal District and the application is to move this into the statewide program. It has gone before the Agriculture – Agricultural Forestal Advisory Committee and they have no problem with this application. And it also meets the *Code of Virginia*, the Code of Fairfax County, and is in conformance with the Comprehensive Plan. Therefore, I MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS TO AMEND APPENDIX E OF THE FAIRFAX COUNTY CODE TO ESTABLISH THE WHITEHALL STATEWIDE AGRICULTURAL AND FORESTAL DISTRICT AND APPROVE, SUBJECT TO THE ORDINANCE PROVISIONS LISTED IN APPENDIX 1 OF THE STAFF REPORT DATED JANUARY 3, 2013.

Secretary Hall: Is there a second?

Commissioner Hart: Second.

Secretary Hall: Seconded by Commissioner Hart. All in favor?

Commissioners: Aye.

Commissioner Murphy: Don't hesitate, please. You made me nervous there, for a moment.

Secretary Hall: Thank you, Mr. Chairman. Please have the gavel back.

Commissioner Murphy: Motion carries. Thank you very much.

//

(The motion carried unanimously.)

JLC

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Board Agenda Item  
January 29, 2013

3:30 p.m.

Public Hearing on PCA 92-M-038 (Paolozzi Investments, Inc.) to Amend the Proffers for RZ 92-M-038 Previously Approved for Commercial Development and Site Modifications to Permit a Car Wash with an Overall Floor Area Ratio of 0.16, Located on Approximately 1.08 Acres of Land Zoned C-5, CRD, HC and SC (Mason District)

and

Public Hearing on SE 2008-MA-019 (Paolozzi Investments, Inc.) to Permit a Car Wash and Modifications and Waivers in a Commercial Revitalization District (CRD), Located on Approximately 1.08 Acres of Land Zoned C-5, CRD, HC and SC (Mason District)

This property is located on the South Side of Columbia Pike approximately 300 Feet North of Lacy Boulevard. Tax Map 61-2 ((1)) 117.

This property is located at 5901 Columbia Pike, Falls Church, 22041. Tax Map 61-2 ((1)) 117.

PLANNING COMMISSION RECOMMENDATIONS:

On Thursday, January 17, 2013, the Planning Commission voted unanimously (Commissioner Sargeant recused) to recommend the following actions to the Board of Supervisors:

- Approval of PCA 92-M-038, subject to the execution of proffers dated January 15, 2013;
- Approval of SE 2008-MA-019, subject to the development conditions dated December 18, 2012;
- Modification of Sect. 13-301 of the Zoning Ordinance for transitional screening from the adjacent residential properties to the south and west, in favor of the plantings and barriers shown on the GDP/SE Plat;
- Waiver of the tree preservation target requirement, pursuant to Sect. 12-0508 of the Public Facilities Manual, in favor of the proposed plantings shown on the GDP/SE Plat;
- Modification of the parking requirement in a commercial revitalization district, pursuant to Paragraph 3A of Sect. A7-209 of the Zoning Ordinance, to allow 18 spaces where 22 are required; and
- Waiver of Section 7-0104 of the Public Facilities Manual for the service drive requirement along Columbia Pike, in favor of the frontage improvements shown on the GDP/SE Plat.

Board Agenda Item  
January 29, 2013

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim Excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4263851.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning  
(DPZ)

Brent Krasner, Zoning Evaluation Division, DPZ

Planning Commission Meeting  
January 17, 2013  
Verbatim Excerpt

PCA 92-M-038 AND SE 2008-MA-019 – PAOLOZZI INVESTMENTS, INC.

After the Close of the Public Hearing

Chairman Murphy: Without objection, we'll close the public hearing; recognize Commissioner Hall.

Commissioner Hall: Thank you, Mr. Chairman. This application enjoys the support of the Mason District Land Use Committee and, therefore, I have a motion to recommend approval. I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF PCA 92-M-038, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED JANUARY 15, 2013.

Commissioners Hart and Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger and Mr. Hart. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve PCA 92-M-038, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Ms. Hall.

Commissioner Hall: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SE 2008-MA-019, SUBJECT TO THE DEVELOPMENT CONDITIONS CONSISTENT WITH THOSE DATED DECEMBER 18, 2012.

Commissioners Hart and Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Hart and Mr. Litzenberger. Is there a discussion of that motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2008-MA-019, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Ms. Hall.

Commissioner Hall: I MOVE THAT THE PLANNING COMMISSION RECOMMEND A MODIFICATION OF SECTION 13-301 OF THE ZONING ORDINANCE FOR TRANSITIONAL SCREENING FROM THE ADJACENT RESIDENTIAL PROPERTIES TO THE SOUTH AND WEST, IN FAVOR OF THE PLANTINGS AND BARRIERS SHOWN ON THE PCA/SE [sic] PLAT.

Commissioners Hart and Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Hart and Mr. Litzenberger. Is there a discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hall: I MOVE THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF THE TREE PRESERVATION TARGET REQUIREMENT, PURSUANT TO SECTION 12-0508 OF THE PUBLIC FACILITIES MANUAL, IN FAVOR OF THE PROPOSED PLANTINGS SHOWN ON THE PCA/SE [sic] PLAT.

Commissioners Hart and Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Hart and Mr. Litzenberger. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hall: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND A MODIFICATION OF THE PARKING REQUIREMENT IN A COMMERCIAL REVITALIZATION DISTRICT, PURSUANT TO PARAGRAPH 3A OF SECTION A7-209 OF THE ZONING ORDINANCE, TO ALLOW 18 SPACES WHERE 22 ARE REQUIRED.

Commissioners Hart and Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Hart and Mr. Litzenberger. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hall: And finally, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND A WAIVER OF SECTION 7-0104 OF THE PUBLIC FACILITIES MANUAL FOR THE SERVICE DRIVE REQUIREMENT ALONG COLUMBIA PIKE, IN FAVOR OF THE FRONTAGE IMPROVEMENTS SHOWN ON THE PCA/SE [sic] PLAT.

Commissioners Hart and Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Hart and Mr. Litzenberger. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hall: Thank you, Mr. Chairman. I would like to thank staff. They did an outstanding job. Mr. Martin, outstanding application. I know this one was difficult. It is in a revitalization area. It has a substation on one side. It had a bombed-out building on it for years with an American flag painted on it and I'm sure we don't miss it at all. But we do look forward to your applicant and his new business. Thank you, Mr. Chairman.

Chairman Murphy: Thank you very much.

//

(The motions carried unanimously with Commissioner Sargeant having recused himself.)

JLC

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Board Agenda Item  
January 29, 2013

3:30 p.m.

Public Hearing on SEA 94-P-040-02 (Gannett Co., Inc.) to Amend SE 94-P-040 Previously Approved for an Increase in Building Height, Radio and Television Broadcasting Facilities, Microwave Facilities and Satellite Earth Stations Accessory to an Office Building; a Helistop; and Waiver of Certain Sign Regulations to Permit Modifications to Development Conditions, Located on Approximately 16.74 Acres of Land Zoned C-3 (Providence District)

This property is located at 7950 Jones Branch Drive, McLean, 22102. Tax Map 29-2 ((15)) C1.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, January 17, 2013, the Planning Commission voted unanimously to recommend the following actions to the Board of Supervisors:

- Approval of SEA 94-P-040-02, subject to the development conditions dated January 17, 2013; and
- Modification of paragraph 1B of Sect. 2-414 of the Zoning Ordinance, to permit existing structures to be located 65 feet from the Dulles International Airport Access Highway and the Dulles Toll Road.

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim Excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4405926.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)

Mary Ann Tsai, Zoning Evaluation Division, DPZ

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Planning Commission Meeting  
January 17, 2013  
Verbatim Excerpt

SEA 94-P-040-02 – GANNETT COMPANY, INC.

After the Close of the Public Hearing

Chairman Murphy: Public hearing is closed; Mr. Lawrence.

Commissioner Lawrence: Thank you, Mr. Chairman. We have here an application which I believe is a benefit to all – the building owner, the County, and the surrounding community. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SEA 94-P-040-02, SUBJECT TO THE DEVELOPMENT CONDITIONS CONSISTENT WITH THOSE DATED JANUARY 17, 2013.

Commissioner de la Fe: Second.

Chairman Murphy: Seconded by Mr. de la Fe. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SEA 94-P-040-02, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Lawrence.

Commissioner Lawrence: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF PARAGRAPH 1B OF SECTION 2-414 OF THE ZONING ORDINANCE, TO PERMIT EXISTING STRUCTURES TO BE LOCATED 65 FEET FROM THE DULLES INTERNATIONAL AIRPORT ACCESS HIGHWAY AND THE DULLES TOLL ROAD.

Commissioner de la Fe: Second.

Chairman Murphy: Seconded by Mr. de la Fe. Discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Lawrence: Thank you, Mr. Chairman. May I please commend the staff work on this application? It was, as usual, outstanding.

Chairman Murphy: All right, thank you very much.

//

(The motions carried unanimously.)

JLC

Board Agenda Item  
January 29, 2013

3:30 p.m.

Public Hearing on SE 2012-HM-009 (InSite Real Estate Investment Properties, L.L.C) to Permit Child Care Center and Nursery School with a Total Enrollment of 206 Children, Located on Approximately 1.52 Acres of Land Zoned C-5, R-1 and SC (Hunter Mill District)

This property is located in the Northwest quadrant of the intersection of Centreville Road and West Ox Road. Tax Map 25-1 ((1)) 18F.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, January 10, 2013, the Planning Commission voted 11-0-1 (Commissioner Hedetniemi abstaining) to recommend the following actions to the Board of Supervisors:

- Approval of SE 2012-HM-009, subject to the development conditions dated January 3, 2013;
- Waiver of the minimum lot area and lot width requirements for the R-1 and C-5 Districts;
- Modification of the eight-foot wide trail requirement along Centreville Road to allow the existing five-foot wide concrete sidewalk to remain;
- Modification of the interior parking lot landscaping requirement to that shown on the SE Plat and as conditioned;
- Waiver of the barrier requirement along the northern and western boundaries of the subject property;
- Waiver of the tree preservation target requirement; and
- Waiver of construction of the on-road bike lane and road improvements due to constraints on the property.

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim Excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4402640.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)

St. Clair Willaims, Department of Planning and Zoning

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Planning Commission Meeting  
January 10, 2013  
Verbatim Excerpt

SE 2012-HM-009 – INSITE REAL ESTATE INVESTMENT PROPERTIES, LLC

Decision Only During Commission Matters  
(Public Hearing held on December 5, 2012)

Chairman Murphy: Mr. de la Fe, please.

Commissioner de la Fe: Thank you, Mr. Chairman. On December 5<sup>th</sup>, 2012, we had a public hearing on Insite Real Estate Investment Properties, LLC, SE 2012-HM-009, to develop a daycare and nursery school in the Hunter Mill District. There was considerable, if not unanimous, opposition from the neighbors; primarily, if not exclusively, because of additional traffic and safety concerns that were perceived to come from this use. We deferred the decision so that we could get the applicant's studies and analyses related to the traffic concerns and how VDOT and FDOT had worked with the applicant to lead to a decision to recommending approval by the staff. They have mitigated, I believe, to the best possible way the traffic concerns that would result from this development. If you will recall, this is a site located at an intersection which is already traffic-challenged, primarily because of its location on a major road next to a fire station and with a nearby elementary school. Most of the traffic concerns that were raised – I mean, there are many traffic concerns already-related to the school that exists and what might happen with the fire station if the fire engines had to go out at the same time children were going into the daycare and so on and so forth. I believe that this is a situation which exists wherever there is a fire station and there are a number of fire stations and schools located near daycare centers. This site is also unique in the sense that it is zoned C-5 and R-1. Given the impact of the traffic and safety concerns expressed by the neighbors, they would have preferred that this site be developed a residential site, which would lead to two houses. Given its location, and frankly it's – all the inquiries over the years that we have had on this site – it is doubtful, if not highly improbable, that two residences would ever be built on this site. I realize that this is difficult for anyone that lives along this street and the neighborhood farther down, but under the C-5 regulations you could have a use here that could be, in my opinion, from traffic and community concerns, much worse than a nursery and daycare. Nursery and daycare facilities are much needed throughout the County and I believe that this would be the best use for this site, despite the possible additional traffic that it might bring. The – all the studies that we have and the mitigating circumstances that have been agreed to by the developer would, I believe, not necessarily improve the situation, but will not make it any worse than it already is. Therefore, Mr. Chairman, I WOULD LIKE TO MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE 2012-HM-009, SUBJECT TO THE DEVELOPMENT CONDITIONS NOW DATED JANUARY 3, 2013.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2012-HM-009, say aye.

Commissioners: Aye.

Commissioner Hedetniemi: Abstain.

Chairman Murphy: Opposed? Motion carries. Ms. Hedetniemi abstains. She also, for the record, abstained on the last motion to defer decision on the Sully case.

Commissioner de la Fe: And she will probably abstain from – I have a series of other motions related to this case.

Chairman Murphy: Go ahead.

Commissioner de la Fe: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A WAIVER OF THE MINIMUM LOT AREA AND MINIMUM LOT WIDTH REQUIREMENTS FOR THE R-1 AND C-5 DISTRICTS.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Commissioner Hedetniemi: Abstain.

Chairman Murphy: Opposed? Same abstention.

Commissioner de la Fe: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF THE EIGHT-FOOT WIDE TRAIL REQUIREMENT ALONG CENTREVILLE ROAD TO ALLOW THE EXISTING FIVE-FOOT WIDE CONCRETE SIDEWALK TO REMAIN.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Commissioner Hedetniemi: Abstain.

Chairman Murphy: Opposed? Motion carries; same abstention.

Commissioner de la Fe: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION

OF THE INTERIOR PARKING LOT LANDSCAPING REQUIREMENT TO THAT SHOWN ON THE SE PLAT AND AS CONDITIONED.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Commissioner Hedetniemi: Abstain.

Chairman Murphy: Opposed? Motion carries; same abstention.

Commissioner de la Fe: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A WAIVER OF THE BARRIER REQUIREMENT ALONG THE NORTHERN AND WESTERN BOUNDARIES OF THE SUBJECT PROPERTY.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor, say aye.

Commissioners: Aye.

Commissioner Hedetniemi: Abstain.

Chairman Murphy: Opposed? Motion carries; same abstention.

Commissioner de la Fe: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A WAIVER OF THE TREE PRESERVATION TARGET REQUIREMENT.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Commissioner Hedetniemi: Abstain.

Chairman Murphy: Opposed? Motion carries; same abstention.

Commissioner de la Fe: And finally, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A WAIVER OF THE CONSTRUCTION OF THE ON-ROAD BIKE LANE AND ROAD IMPROVEMENTS, DUE TO CONSTRAINTS ON THE PROPERTY.

Commissioner Hart: Second.

Commissioner Hedetniemi: Abstain.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries; same abstention.

Commissioner de la Fe: Thank you, Mr. Chairman. And I thank all the neighbors that came out. I realize that this is not what you wanted, but I believe that in the end this is the best use for this land. Thank you.

//

(The motions carried by votes of 11-0-1 with Commissioner Hedetniemi abstaining.)

JLC

Board Agenda Item  
January 29, 2013

4:00 p.m.

Public Hearing on RZ 2010-PR-019 (Kettler Sandburg, LLC) to Rezone from R-1 to PDH-3 to Permit Residential Development with an Overall Density of 2.64 and Approval of the Conceptual Development Plans, Located on Approximately 2.28 Acres of Land (Providence District)

This property is located on the West side of Sandburg Street, South of Elm Place and North of Idylwood Road. Tax Map 39-4 ((1)) 46 and 47.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, September 13, 2012, the Planning Commission voted 8-0-1 (Commissioner Migliaccio abstaining; Commissioner Alcorn not present for the votes; Commissioners Donahue and Flanagan absent from the meeting) to recommend to the Board of Supervisors approval of the following actions pertinent to the subject application:

- 1) Approval of RZ 2010-PR-019 and the associated Conceptual Development Plan, subject to the execution of proffers consistent with those dated September 11, 2012;
- 2) Deviation of the tree preservation target requirement in favor of that shown on the CDP/FDP;
- 3) Waiver of Section 11-302 (1) of the Zoning Ordinance that private streets within a development be limited to those which are not designed to provide access to adjacent developments.

The Commission also voted 8-0-1 (Commissioner Migliaccio abstaining; Commissioner Alcorn not present for the vote; Commissioners Donahue and Flanagan absent from the meeting) to approve FDP 2010-PR-019, subject to the development conditions dated August 30, 2012, and the Board's approval of the associated Rezoning and Conceptual Development Plan.

ENCLOSED DOCUMENTS:

Attachment 1: Verbatim Excerpt

Staff Report previously furnished and available online at:

<http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdfw/4390054.PDF>

STAFF:

Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)

William Mayland, Department of Planning and Zoning

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Planning Commission Meeting  
September 13, 2012  
Verbatim Excerpt

RZ/FDP 2010-PR-019 – KETTLER SANDBURG, LLC

Decision Only During Commission Matters  
(Public Hearing held on July 12, 2012)

Commissioner Lawrence: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2010-PR-019 AND THE ASSOCIATED CONCEPTUAL DEVELOPMENT PLAN, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE NOW DATED SEPTEMBER 11<sup>TH</sup>, 2012.

Commissioner de la Fe: Second.

Chairman Murphy: Seconded by Mr. de la Fe. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2010-PR-019, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Migliaccio: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Migliaccio: I abstain; not present for the public hearing.

Chairman Murphy: All right. Mr. Migliaccio abstains; not present for the public hearing. Mr. Lawrence.

Commissioner Lawrence: I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2010-PR-019, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED AUGUST 30<sup>TH</sup>, 2012, AND THE BOARD'S APPROVAL OF THE ASSOCIATED REZONING AND CONCEPTUAL DEVELOPMENT PLAN.

Commissioner de la Fe: Second.

Chairman Murphy: Seconded by Mr. de la Fe. Is there a discussion of that motion? All those in favor of the motion to approve FDP 2010-PR-019, subject to the Board's approval of the Rezoning and Conceptual Development Plan, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Lawrence: I move that the Planning –

Chairman Murphy: Same abstention.

Commissioner Lawrence: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A DEVIATION OF THE TREE PRESERVATION TARGET REQUIREMENT IN FAVOR OF THAT SHOWN ON THE CDP/FDP.

Commissioner de la Fe: Second.

Chairman Murphy: Seconded by Mr. de la Fe. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstention.

Commissioner Lawrence: And last, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A WAIVER OF SECTION 11-302 (1) OF THE ZONING ORDINANCE REQUIREMENT THAT PRIVATE STREETS WITHIN A DEVELOPMENT BE LIMITED TO THOSE WHICH ARE NOT DESIGNED TO PROVIDE ACCESS TO ADJACENT DEVELOPMENTS.

Commissioner de la Fe: Second.

Chairman Murphy: Seconded by Mr. de la Fe. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

//

(The motions carried by votes of 8-0-1 with Commissioner Migliaccio abstaining; Commissioner Alcorn not present for the votes; Commissioners Donahue and Flanagan absent from the meeting.)

JN

Board Agenda Item  
January 29, 2013

4:00 p.m.

Public Hearing on RZ 2012-SU-010 (Northern Virginia Health Investors, LLC) to Rezone from I-5 to PRM to Permit a Primary Use of Age-Restricted Multi-Family Residential and Secondary Uses of a Medical Care Facility; Approval of the Conceptual Development Plan; and a Waiver to Permit the Location of Underground Storm Water Management Facilities in a Residential Area, Located on a Total of 8.46 Acres of Land (Sully District)

**The Planning Commission public hearing was held on Wednesday, December 5, 2013, and decision was deferred until Thursday, February 7, 2013.**

**This public hearing is to be deferred to February 26, 2013 at 3:30 p.m.**

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4:00 p.m.

Public Hearing to Consider Changes to *The Code of the County of Fairfax, Virginia*, Chapter 82, Motor Vehicles and Traffic, Article 5, Sections 32 through 32.2 and Chapter 10, Consumer Protection

ISSUE:

Public hearing to consider changes to Sections 82-5-32 through 32.2, Removal immobilization, and disposition of vehicles unlawfully parked on private or County property, and Chapter 10, Consumer Protection, of *The Code of the County of Fairfax, Virginia*.

RECOMMENDATION:

The County Executive recommends the Board approve the proposed changes of Sections 82-5-32 through 32.2 and Chapter 10.

TIMING:

On January 8, 2013, the Board authorized the advertisement of the public hearing scheduled on January 29, 2013, 4:00 p.m. Upon a decision by the Board of Supervisors, the approved changes to Sections 82-5-32 through 32.2 and Chapter 10 will become effective upon adoption.

BACKGROUND:

Code of Virginia § 46.2-1232 enables the County to regulate the removal or immobilization of trespassing vehicles. (Attachment 1)

Paragraph A. of this section states if a vehicle is towed from one locality to another, the laws of the locality from which the vehicle was towed shall apply.

During the 2012 Virginia Legislative Session, paragraph D. was added to this section to allow localities to issue permits to trespass tow companies, provide grounds for the revocation, suspension, and appeal of permits, and establish a fee system to support the locality's issuance and administration of permits.

Staff worked with and coordinated suggested changes to Sections 82-5-32 through 32.2 and Chapter 10 of County's Code with representatives from all stakeholder groups. Several changes are also proposed to facilitate the ease of understanding, use, and enforcement of the changes adopted in January of 2012.

A summary of the recommended changes is as follows:

Sections 82-5-32 through 82-5-32.2 (Attachment 2)

1. Changed the current requirement for towed vehicles to remain within Fairfax County to allow vehicles to be towed outside of Fairfax County, but remain in Virginia and be stored no more than 10 miles from the origin of the tow.
2. Established a Locality Permit and fee system for tow operators towing vehicles to storage lots outside of the County.
3. Added definitions for clarity and to improve readability.
4. Established denial, suspension, revocation, notification, and appeal procedures.
5. Established the Consumer Protection Commission as the responsible governing body for hearing appeals.
6. Established penalties and remedies.
7. Established procedures for trespass towing from unmarked properties.
8. Clarified that once off private property, trespassing vehicles will be towed directly to the tow operator's storage lot and not be temporarily stored at any intermediate location for later relocation to a tow operator's storage lot.
9. Clarified immobilization procedures and requirements.
10. Updated code due to state government organization responsibility changes.

Chapter 10 (Attachment 3)

1. Incorporated changes to update Chapter 10.
2. Added Sections 82-5-32 through 32.2 to powers and duties of the Consumer Protection Commission.

Impact on the public:

1. Vehicle owners may have a shorter travel distance to retrieve a towed vehicle.
2. Property owners will have an increased number of towers from which to select services.
3. Consumer Protection Commission will provide an objective review of tower appeals of actions taken by County staff.

The Consumer Protection Commission (CPC) voted to support the recommended changes on December 18, 2012.

The Tenant-Landlord Commission (TLC) voted to support the recommended changes on December 20, 2012.

The Trespass Towing Advisory Board (TTAB) supported the recommended changes on January 4, 2013.

Board Agenda Item  
January 29, 2013

ENCLOSED DOCUMENTS:

Attachment 1 – Virginia Code § 46.2-1232. Localities may regulate removal or immobilization of trespassing vehicles.

Attachment 2 – Proposed draft Fairfax County Code Sections 82-5-32 through 82-5-32.2.

Attachment 3 – Proposed draft of Fairfax County Code Chapter 10.

Attachment 4 – Staff Report.

STAFF:

Michael S. Liberman, Director, Department of Cable and Consumer Services

John W. Burton, Assistant County Attorney, Office of the County Attorney

David R. Reidenbach, Towing Analyst, Department of Cable and Consumer Services

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**Code of Virginia**

1 § 46.2-1232. Localities may regulate removal or immobilization of trespassing vehicles.

2  
3 A. The governing body of any county, city, or town may by ordinance regulate the  
4 removal of trespassing vehicles from property by or at the direction of the owner,  
5 operator, lessee, or authorized agent in charge of the property. In the event that a  
6 vehicle is towed from one locality and stored in or released from a location in another  
7 locality, the local ordinance, if any, of the locality from which the vehicle was towed shall  
8 apply.

9  
10 B. No local ordinance adopted under authority of this section shall require that any  
11 towing and recovery business also operate as or provide services as a vehicle repair  
12 facility or body shop, filling station, or any business other than a towing and recovery  
13 business.

14  
15 C. Any such local ordinance may also require towing and recovery operators to (i)  
16 obtain and retain photographs or other documentary evidence substantiating the reason  
17 for the removal; (ii) post signs at their main place of business and at any other location  
18 where towed vehicles may be reclaimed conspicuously indicating (a) the maximum  
19 charges allowed by local ordinance, if any, for all their fees for towing, recovery, and  
20 storage services and (b) the name and business telephone number of the local official, if  
21 any, responsible for handling consumer complaints; (iii) obtain at the time the vehicle is  
22 towed, verbal approval of an agent designated in the local ordinance who is available at  
23 all times; and (iv) obtain, at the time the vehicle is towed, if such towing is performed  
24 during the normal business hours of the owner of the property from which the vehicle is  
25 being towed, the written authorization of the owner of the property from which the  
26 vehicle is towed, or his agent. Such written authorization, if required, shall be in addition  
27 to any written contract between the towing and recovery operator and the owner of the  
28 property or his agent. For the purposes of this subsection, "agent" shall not include any  
29 person who either (a) is related by blood or marriage to the towing and recovery  
30 operator or (b) has a financial interest in the towing and recovery operator's business.

31  
32 *D. Any such ordinance adopted by a locality within Planning District 8 may require*  
33 *towing companies that tow vehicles from the county, city, or town adopting the*  
34 *ordinance to other localities, provided that the stored or released location is within the*  
35 *Commonwealth of Virginia and within 10 miles of the point of origin of the actual towing,*  
36 *(i) to obtain from the locality from which such vehicles are towed a permit to do so and*  
37 *(ii) to submit to an inspection of such towing company's facilities to ensure that the*  
38 *company meets all the locality's requirements, regardless of whether such facilities are*  
39 *located within the locality or elsewhere. The locality may impose and collect reasonable*  
40 *fees for the issuance and administration of permits as provided for in this subsection.*  
41 *Such ordinance may also provide grounds for revocation, suspension, or modification of*  
42 *any permit issued under this subsection, subject to notice to the permittee of the*  
43 *revocation, suspension, or modification and an opportunity for the permittee to have a*

44 *hearing before the governing body of the locality or its designated agent to challenge*  
45 *the revocation, suspension, or modification. Nothing in this subsection shall be*  
46 *applicable to public safety towing.*

47

48 (Code 1950, § 46-541; 1952, c. 352; 1954, c. 435; 1958, c. 541, § 46.1-551; 1978, cc.  
49 202, 335; 1979, c. 132; 1983, c. 34; 1985, c. 375; 1989, cc. 17, 727; 1990, cc. 502, 573;  
50 2006, cc. 874, 891; 2009, cc. 186, 544; 2012, cc. 149, 812.)

51

AN ORDINANCE TO AMEND AND REENACT SECTIONS 32 THROUGH 32.2, ARTICLE 5 OF CHAPTER 82 REGARDING: (i) THE REMOVAL, IMMOBILIZATION, AND DISPOSITION OF VEHICLES UNLAWFULLY PARKED ON PRIVATE OR COUNTY PROPERTY; (ii) THE DUTIES OF THE TRESPASS TOWING ADVISORY BOARD; (iii) THE DUTIES OF THE CONSUMER PROTECTION COMMISSION; AND (iv) THE DUTIES OF THE FAIRFAX COUNTY DEPARTMENT OF CABLE AND CONSUMER SERVICES RELATED TO TRESPASS TOWING.

1. Be it ordained by the Board of Supervisors of Fairfax County that Sections 32 through 32.2, Article 5, Chapter 82 of the Code of the County of Fairfax is hereby amended and reacted as follows:

**CODE  
COUNTY OF FAIRFAX**

**CHAPTER 82 – Motor Vehicles and Traffic.**

**Article 5. – Stopping, Standing and Parking.**

Section 82-5-32. – Removal, immobilization, and disposition of Vehicles unlawfully parked on private or County property.

(A) Applicability.

Sections 82-5-32 through 32.2 establishes the minimum requirements for all trespass towing initiated in Fairfax County. Fairfax County Code shall also apply to a trespassing Vehicle towed from Fairfax County and stored outside the County.

(AB) Definitions.

The following words and phrases shall have the meanings respectively ascribed to them in this Section:

“Advisory Board” or “TTAB” means the Fairfax County Trespass Towing Advisory Board;

“Board” means the Fairfax County Board of Supervisors;

~~“BTRO” means the Virginia Board of Towing and Recovery Operators.~~

“Commission” means the Fairfax County Consumer Protection Commission.

“County” means the County of Fairfax, Virginia.

“Department” or “DCCS” means the Fairfax County Department of Cable and Consumer Services.

“Director” means the Director of the Fairfax County Department of Cable and Consumer Services or delegee.

"Driver" means a person who drives or is in actual physical control of a Tow Truck. A Driver shall have obtained all required an authorization documents issued by the ~~BTRO~~State in order to operate a Tow Truck while providing Towing services.

“Drop Fee” means a fee that is charged a Vehicle Owner for disconnecting a Tow Truck from a Vehicle prior to leaving private property.

44  
45 "Equipment" means any Tow Truck, Vehicle or related machinery or tools used to  
46 provide Towing.

47  
48 "Immobilize" means a procedure or piece of Equipment, such as a boot, used to  
49 prevent a Vehicle from moving. Immobilization does not include attachment to a  
50 tow truck.

51  
52 "Law-Enforcement Officer" means any officer authorized by law to direct or  
53 regulate traffic or to make arrests for violations of the Code of Virginia or local  
54 ordinances.

55  
56 "Locality" means the geographical area of control of a county, city, or town.

57  
58 "Locality Permit" means a document indicating an Operator has been approved  
59 to Immobilize or trespass Tow Vehicles in Fairfax County and store Vehicles  
60 either inside or outside of Fairfax County.

61  
62 "Operator" or "Towing and Recovery Operator" means any person, including a  
63 business, corporation, or sole proprietor, offering services involving the use of a  
64 Tow Truck and services incidental to the use of a Tow Truck.

65  
66 "Personal Property" means any property in a Vehicle which is not attached to or  
67 considered to be necessary for the proper operation of the Vehicle.

68  
69 "Private Property Tow" or "Trespass Tow" means requests for Towing services  
70 made by the owner, manager, or lessee of private property, or the authorized  
71 agent thereof, or under contract between such person and a Towing and  
72 Recovery Operator that specifies what Tows are to be made from the property  
73 when a Vehicle is on the property in violation of law or rules promulgated by the  
74 owner, manager, or lessee of the private property.

75  
76 "Property Owner" means the owner, operator, authorized agent, or lessee of any  
77 land, space, or area used for parking, including any county, city, or Town, or  
78 authorized agent of the person having control of such premises.

79  
80 "Registration Certificate" means a document indicating an Operator has been  
81 approved to trespass Tow and store Vehicles within Fairfax County.

82  
83 "State" means the Commonwealth of Virginia.

84  
85 "Storage Site" means a location where Vehicles are taken until the owner  
86 reclaims the Vehicle or it is sold. The location must meet all requirements  
87 specified in this Section.

88

89 "Tow" or "Towed" means when the Tow Truck has engaged a Vehicle by a  
90 physical or mechanical means that causes the Towed Vehicle to be removed  
91 from private property.  
92

93 "Tow Truck" or "Truck" means a motor Vehicle for hire (i) designed to lift, pull, or  
94 carry another Vehicle by means of a hoist or other mechanical apparatus and (ii)  
95 having a manufacturer's gross Vehicle weight rating of at least 10,000 pounds.  
96 "Tow truck" also includes Vehicles designed with a ramp on wheels and a  
97 hydraulic lift with a capacity to haul or Tow another Vehicle, commonly referred to  
98 as "rollbacks."  
99

100 "Vehicle" means every device in, on or by which any person or property is or may  
101 be transported or drawn on a highway, except devices moved by human power  
102 or used exclusively on stationary rails or tracks.  
103

104 "Vehicle Owner" means the owner, operator, authorized agent, or lessee of a  
105 Vehicle.  
106

107 **(BC) Exclusions.**  
108

109 (1) This ~~s~~Section shall not apply to:  
110

111 (a) Federal, State, or local public service Vehicles.  
112

113 (b) Vehicle repossession activities.  
114

115 (c) Vehicles Towed, moved, or stored at the request of a Law-  
116 Enforcement officer.  
117

118 (2) The provisions of this Section shall not be construed to prohibit  
119 Vehicles from being Towed when such Towing is otherwise permitted by  
120 law.  
121

122 **(CD) Signs.**  
123

124 (1) Permanent signs, clearly visible during daytime and nighttime hours,  
125 shall be posted at all entrances to the parking area that conspicuously  
126 disclose that such Vehicle ~~will~~shall be Towed or Immobilized.  
127

128 (2) Such signs, at a minimum, shall: (all measurements are approximate)  
129

130 (a) Be made of metal.  
131

132 (b) Be 18 inches high and 12 inches wide.  
133

134 (c) Contain reflective red letters and red reflective graphics on a  
135 reflective white background with a 3/8 inch reflective red trim strip  
136 3/8 inch in from the entire outer edge of the sign.

137  
138 (d) Contain the international Towing symbol that is at least 5  
139 inches high by 11 inches wide as found in the Federal Highway  
140 Administration, "*Manual on Uniform Traffic Control Devices*".

141  
142 (e) Use Series B or Clearview lettering found in the Federal  
143 Highway Administration, "*Manual on Uniform Traffic Control*  
144 *Devices*".

145  
146 (f) Contain "Towing Enforced" in a font size of 2 inch letters.

147  
148 (g) Contain "If Towed Call 703-691-2131" in a font size of 1 inch  
149 letters, which is the Fairfax County Department of Public Safety  
150 Communications' (DPSC) telephone number. However, if the Tow  
151 originated in the Town of Vienna, the sign shall contain, "If Towed  
152 Call 703-255-6366" and if the Tow originated in the Town of  
153 Herndon, the sign shall contain, "If Towed Call 703-435-6846".

154  
155 (h) Paragraphs (2)(a) through (2)(~~ef~~) willshall be effective January  
156 1, 2015.

157  
158 (3) Signs posted in a government road right-of-way must meet Virginia  
159 Department of Transportation standards and all applicable Virginia laws to  
160 include the bottom of the sign mounted at least 7 feet above the ground.  
161 Signs posted on private property are not required to meet this height  
162 requirement as long as they are clearly visible.

163  
164 (4) Sign contents may also include additional information such as, but not  
165 limited to, the name of the property or name and telephone number of the  
166 designated Operator in a font size of 19/32 inch letters.

167  
168 (5) In addition to the mandatory entrance signs, other area signs may be  
169 used to specify any other requirements for parking.

170  
171 (6) The requirement for signs shall not apply to single-family residence or  
172 ~~two-family residence~~ properties not subject to common interest community  
173 regulations (as defined in Virginia Code Section 55-528).

174  
175 (7) No signage of the type required in this ~~s~~Section shall be required to  
176 effect the Towing of a Vehicle unlawfully parked in a spot reserved for  
177 persons with disabilities or in a "Fire Lane" that is approved and marked in  
178 accordance with County and state requirements.

179

180 (8) Trespassing Vehicle on property not marked by signs.

181  
182 (a) Business properties

183  
184 (i) A notice must be conspicuously affixed to a trespassing  
185 Vehicle with a warning the Vehicle is liable to be towed 48  
186 hours after such notice is posted.

187  
188 (ii) The notice must contain the date and time of posting.

189  
190 (iii) A vehicle found to be trespassing a second time on the  
191 same unmarked property may be Towed immediately. A  
192 warning notice is not required.

193  
194 (b) Vehicles trespassing on single-family residence properties not  
195 subject to common interest community regulations may be  
196 towed immediately. No notice is required.

197 **(DE) Property Owner.**

198  
199  
200 (1) A Property Owner may have a Vehicle Towed to a Storage Site or  
201 Immobilized without the permission of the Vehicle Owner if the Vehicle is  
202 occupying property without permission of the Property Owner, and if  
203 conditions set forth in this ~~s~~Section are met.

204  
205 (a) The Property Owner must give written approval for the Tow or  
206 Immobilization of a Vehicle parked in violation of the Property  
207 Owner's parking policy.

208  
209 (b) Copies of such written approvals shall be retained for three  
210 years after the date of the last Tow or Immobilization approved by  
211 the agreement.

212  
213 (2) In lieu of having such Vehicle Towed or Immobilized, the Property  
214 Owner on which the Vehicle is located may request a Law Enforcement  
215 Officer issue, on the premises, a citation to the Vehicle Owner.

216  
217 **(EF) Operator.**

218  
219 Trespass Tow Operators must comply with all requirements of this Section.

220  
221 (1) Registration Certificate.

222  
223 (a) All Operators engaged in immobilizing or Towing Vehicles  
224 without the consent of the Vehicle Owner in Fairfax County must  
225 shall register with the Department of Cable and Consumer Services

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prior to the initiation of any such operations and ~~during~~by January 31 of each subsequent year.

(b) To obtain a ~~R~~egistration ~~C~~ertificate, the following information and documents must be provided to the Department:

(i) Name, address and telephone number of the business engaged in immobilizing or Towing;

(ii) Name and telephone number of the business owner or chief executive officer (CEO);

(iii) Copy of the ~~Operator's business' Fairfax County B~~usiness, ~~Professional and Occupational L~~icense (BPOL);

(iv) Address, telephone number, and Vehicle storage capacity of each Storage Site to which Vehicles will be Towed;

(v) Copy of each office and Storage Site Non-Residential Use Permit (~~Non-RUP~~); and,

(vi) Number of Tow Trucks to be operated in Fairfax County.

(vii) Proof of insurance as required by Virginia Code 46.2-2143 and shall include provisions for notice by the insurance carrier to the Director prior to termination of such coverage.

(c) The Department must be notified of any changes to information previously provided by the Operator within 30 calendar days of the change.

(2) Locality Permit.

(a) All Operators engaged in Towing Vehicles without the consent of the Vehicle Owner in Fairfax County and storing those vehicles outside of Fairfax County must obtain an approved Locality Permit prior to the initiation of any such operations and by January 31 of each subsequent year.

(i) The initial application and annual renewal fee for each Operator shall be \$150.00.

(ii) The initial inspection fee for each Storage Site outside of Fairfax County shall be \$450.00.

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(b) An Operator identified on the non-residential use permit of a Storage Site shall be responsible for application and inspection fees.

(3) Registration Certificates and Locality Permits.

(a) It shall be unlawful for any person to procure, or assist another to procure, through theft, fraud, or other illegal means, a Registration Certificate or Locality Permit from the Department. Any violation of any provision of this Section shall be punishable as a Class 2 misdemeanor.

(b) Any person or entity other than the Department that sells, gives, or distributes, or attempts to sell, give or distribute any document purporting to be a Registration Certificate or Locality Permit to conduct a trespass towing business in Fairfax County is guilty of a Class 1 misdemeanor.

(24) Operational Requirements.

(a) The Operator ~~will~~shall be open for business 24 hours a day and seven days per week unless the Operator has no ~~cars~~ vehicles Immobilized or in his possession.

(b) All Tow Truck safety devices must be operational, used, and comply with local, state, and federal laws and regulations.

(c) An Operator shall not Tow a Vehicle from private property or Immobilize a Vehicle on private property unless the Vehicle is parked in violation as specified by the Property Owner.

(d) All Tow Trucks shall have the following identifying markings of a contrasting color to the truck body on both sides of each Tow Truck:

- (i) The Operator's business name as registered with the Department in a font not less than three inches in height.
- (ii) The Operator's telephone number in a font not less than three inches in height.
- (iii) Truck number in a font not less than four inches in height.

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(e) Each ~~€Tow vehicle~~ Truck, while trespass towing, shall have a copy of the current Fairfax County Trespass Towing ~~€Registration~~ €Certificate or Locality Permit in the Tow Truck.

(f) Each Immobilization device ~~will~~ shall have a label, clearly visible while the device is in position Immobilizing a Vehicle, that lists the Operator's name and telephone number, Immobilization fee, and the Department's name and telephone number.

(g) The Fairfax County Department of Public Safety Communications (DPSC) ~~will~~ shall be notified no later than 30 minutes after initiating the Immobilization or Towing of a Vehicle. However, whenever a Vehicle is Towed or Immobilized from sites within the Town of Herndon or the Town of Vienna, the Operator, shall notify the law enforcement agency in those ~~jurisdictions~~ localities as applicable.

(h) Such notification shall include the:

(i) Operator name and Driver employee number who Towed or Immobilized the Vehicle;

(ii) Make, model, color, year, vehicle identification number of the Towed or Immobilized Vehicle;

(iii) License plate type (such as passenger car, truck, dealer, taxi, disabled), number, state, and year of license of the Towed or Immobilized Vehicle;

(iv) Address where the Vehicle was Towed or Immobilized from;

(v) Reason for the Tow or Immobilization;

(vi) Time such Tow or Immobilization was initiated; and

(vii) Storage Site address where the Vehicle is located and the Operator's telephone number.

(i) It shall be unlawful to fail to report a Tow or Immobilization as required by this ~~€Section~~ Section. Violation of the reporting requirements of this ~~€Section~~ Section shall constitute an invalid Tow resulting in no charge to the owner for the release of the Vehicle.

(j) Upon leaving private property, aAn Operator Driver must Tow each Vehicle directly to a Storage Site registered with the

363 Department located within the boundaries of Fairfax County.  
364 Changing the Towing Vehicle shall not be permitted unless the  
365 original Towing Vehicle becomes non-operational.  
366

367 (i) The vehicle must remain in that lot for 30 calendar days if  
368 the owner fails to claim the vehicle.

369  
370 (ii) A vehicle towed outside of Fairfax County may not be  
371 towed more than ten miles from the origin of the tow and  
372 must remain in the Commonwealth. The straight line 10-mile  
373 radius from a Storage Site outside of Fairfax County shall be  
374 determined by the Director using the Fairfax County GIS &  
375 Mapping Services Branch data.  
376

377 (k) Photographic evidence clearly substantiating the Vehicle's  
378 condition, location, and reason for the Vehicle's Tow or  
379 Immobilization must be made prior to connecting the Tow Truck to  
380 the Vehicle.

381  
382 ~~(l) Once an Operator connects to a vehicle violating parking rules~~  
383 ~~and Tows a Vehicle from private property, the Vehicle must be~~  
384 ~~taken directly to a Tow Storage Site registered with the~~  
385 ~~Department. Changing the Towing Vehicle shall not be permitted~~  
386 ~~unless the original Towing Vehicle becomes non-operational.~~  
387

388 (l~~m~~) While being Towed, Vehicles shall be properly secured in  
389 accordance with all laws, regulations, and Tow Truck Vehicle  
390 manufacturer recommendations.

391  
392 (m~~n~~) Nothing in this s~~e~~ction shall release the Tower from liability  
393 for failure to use reasonable care to prevent the load from shifting  
394 or falling.

395  
396 (n~~o~~) Records.

397  
398 An Operator shall maintain written and electronic records for each  
399 Towed or Immobilized Vehicle for a period of three years after such  
400 Tow or Immobilization. Records to be retained shall include;

401  
402 (i) A record of the Property Owner's approval;

403  
404 (ii) The information required to be provided to the DPSC and  
405 other local law enforcement agencies pursuant to this  
406 Section;  
407

408 (iii) A legible copy of the receipt provided to Vehicle Owner;  
409 and

410  
411 (iv) Photographs and any other documentation supporting  
412 the tow.

413  
414 (35) Storage Site Requirements.

415  
416 (a) Every site to which Trespassing Vehicles are Towed, stored,  
417 and available for return to the Vehicle Owner shall comply with the  
418 following requirements:

419  
420 (i) An Operator must Tow each Vehicle to a properly zoned  
421 Storage Site ~~located~~registered ~~within the boundaries of~~  
422 ~~Fairfax County Department.~~

423  
424 (ii) A Storage Site shall be lighted during the hours of  
425 darkness to afford clear visibility to all portions of the Storage  
426 Site.

427  
428 (iii) A Towed Vehicle shall not be stored more than a  
429 reasonable walking distance from the area where Towing  
430 and storage fee payments are received.

431  
432 (iv) The Operator shall exercise reasonable care to keep the  
433 Towed Vehicle and its contents safe and secure at all times,  
434 which shall include appropriate permanent fencing.

435  
436 (v) No Operator may take a Vehicle to a Storage Site which  
437 does not meet these standards and all other applicable  
438 ordinances and regulations:

439  
440 (A) A clearly visible sign must be posted at the  
441 entrance of the Storage Site that provides instructions  
442 and a local telephone number for obtaining release of  
443 a Vehicle; and

444  
445 (B) The telephone for the posted number shall be  
446 answered 24 hours a day.

447  
448 (C) A clearly visible sign with a list of all of the  
449 Operator's fees for trespass Immobilization, Towing  
450 and storage services, and the Operator's contact  
451 information.

452

453 (D) A clearly visible sign available from the  
454 Department of Cable and Consumer Services, listing  
455 the Department's Web site, office address, and  
456 telephone number.

457  
458 (46) Personal Property.

459  
460 (a) Nothing shall be removed from the Vehicle without the express  
461 consent of the Vehicle Owner

462  
463 (b) Personal Property must be released immediately upon the  
464 Vehicle Owner's request without charge, and it shall be the duty of  
465 the Operator to return it to the Vehicle Owner if the Vehicle Owner  
466 claims the items prior to auction. Any lien created under this  
467 sSection shall not extend to any Personal Property.

468  
469 (57) Vehicle Release.

470  
471 (a) If the Vehicle Owner of the Vehicle is present and removes the  
472 Vehicle from the property or corrects the violation before the  
473 Vehicle is connected to the Towing Vehicle, no fee ~~will~~shall be  
474 charged the Vehicle Owner;

475  
476 (b) If the Vehicle has been connected to the Towing Vehicle and  
477 has not yet left private property, the Vehicle shall not be Towed  
478 upon request of the Vehicle Owner. The Vehicle Owner shall be  
479 liable for a Drop Fee, as set forth in this Section, in lieu of Towing,  
480 provided that the Vehicle Owner or representative is present and  
481 ready, willing, and able to pay the required Drop Fee and removes  
482 the Vehicle from the property or corrects the violation.

483  
484 (c) An Immobilized or a Towed Vehicle moved to a Storage Site  
485 shall be immediately available for release at the request of the  
486 Vehicle Owner.

487  
488 (d) The Operator shall accept the following forms of payment for  
489 any trespass Towing services:

490  
491 (i) Cash;

492  
493 (ii) Two major national credit cards;

494  
495 (iii) MasterCard or Visa debit cards; and

496  
497 (iv) Personal checks shall be accepted when credit/debit  
498 card machines are not available or are inoperable.

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(e) In all cases when a Vehicle is Immobilized, Towed, or fees charged, the Operator ~~will~~shall provide the Vehicle Owner with a receipt that bears the:

- (i) Complete name, address, and telephone number of the Operator that Towed the Vehicle;
- (ii) Time the Vehicle was Towed;
- (iii) Address from which the Vehicle was Towed;
- (iv) Authority for the Tow (Entity or person authorizing the tow);
- (v) Reason for the Tow;
- (vi) Driver employee number; (the corresponding Driver's name shall be provided to the Fairfax County Police Department (FCPD) and/or the Director upon request)
- (vii) Time the Vehicle was released;
- (viii) An itemized list of all fees assessed in the Immobilization, Towing, storage, and/or release of the Vehicle;
- (ix) The printed name of the person to whom the Vehicle was released; and
- (x) The Department contact information.

(f) If any requirements of this Section are not met, for such Immobilization or Tow, no fee shall be charged.

**(68) Compliance.**

(a) The Operator ~~will~~shall provide to the Vehicle Owner upon request, a copy of the authority for the Tow; including, without limitation, photographs and other documentation supporting the tow.

(b) Right of Entry. Whenever it is necessary for the purposes of this Section, the duly authorized agent of the Director may enter any trespass Towing business, business establishment, or Storage

544 Site property to obtain information, conduct surveys, audits,  
545 compliance reviews, or investigations.

546  
547 **(FG) Rates and Charges.**

548  
549 (1) Change to Rates and Charges.

550  
551 (a) Changes in rates and charges for trespass Towing services  
552 rendered by Operators shall be approved by the Board.

553  
554 (b) The Board may consider changes in rates or charges upon  
555 recommendation of the Director or the Advisory Board.

556  
557 (c) The Director shall conduct a review of rates every two years.

558  
559 (d) Any review of rate changes as well as any recommended  
560 change to any rule, regulation, or practice thereto shall come before  
561 the Advisory Board pursuant to a public hearing, which shall be  
562 scheduled as soon as analysis, investigation, and administration  
563 permit allow. All recommendations of the Advisory Board and the  
564 Director shall be conveyed to the Board for its consideration and  
565 determination.

566  
567 (e) Whenever the Director or Advisory Board determines a rate  
568 change is warranted, all registered Operators shall provide notice to  
569 the public of proposed changes in rates and charges thereto, by  
570 means of a sign posted in a clearly visible place at each of their  
571 fixed places of business in Fairfax County. Such notice shall be on  
572 a document no smaller than 8.5 by 11.0 inches, printed in no  
573 smaller than 12-point type, and shall contain substantially the  
574 following information:

575  
576 Notice of Proposed Rate Change  
577 (Insert the Name of the trespass Tower)

578  
579 A proposed change in trespass Towing rates is under  
580 consideration by the Fairfax County government. The  
581 proposed rates are: (Insert description of the proposed  
582 changes).

583  
584 The proposed trespass Towing rate change ~~will~~shall be  
585 considered by the Trespass Towing Advisory Board at a  
586 public hearing. The date, time and location of the public  
587 hearing may be obtained by calling the Department of Cable  
588 and Consumer Services. Any interested person may appear  
589 before the Advisory Board to be heard on this proposed

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change. Persons who wish to be placed on the speakers' list or who wish further information should call the Department of Cable and Consumer Services at 703-324-5966.

(f) Notices with respect to a proposed rate change shall be posted within ten days of the staff report for such change and shall remain posted until the change in rates is denied or becomes effective.

(2) Rates and Charges.

(a) It shall be unlawful for an Operator to charge any fees exceeding the fees set forth in this Section.

(i) Immobilization. An Operator may charge a Vehicle Owner a maximum fee of \$75.00 for the release of a Vehicle when it is Immobilized. No other fee of any type may be charged.

(ii) Drop Fee. An Operator may charge a Vehicle Owner a maximum fee of \$50.00 for the release of a Vehicle prior to Towing the Vehicle from private property. No other fee of any type may be charged.

(iii) Hookup and initial Towing fee shall not exceed:

A. \$125.00 for Vehicles with a gross vehicle weight rating (GVWR) of 7,500 pounds or less.

B. \$250.00 for Vehicles with a GVWR of 7,501 pounds through 10,000 pounds.

C. \$500.00 for Vehicles with a GVWR greater than 10,000 pounds.

D. For towing a vehicle between seven o'clock p.m. and eight o'clock a.m. or on any Saturday, Sunday, or holiday, a maximum additional fee of \$25 per instance may be charged; however, in no event shall more than two such fees be charged for towing any such vehicle.

E. No other fees or charges shall be imposed during the first 24 hour period.

(iv) Storage fee for the safekeeping of Vehicles:

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A. No charge shall be made for storage and safekeeping of a Vehicle for the first 24 hours the Vehicle is on the Storage Site.

B. After the Vehicle is on the Storage Site for more than 24 hours, a Vehicle storage fee may be charged for each subsequent 24-hour period, or any portion thereof, at a rate not to exceed:

1. \$50.00 for any Vehicle 22 feet long or less.

2. \$5.00 per foot for any Vehicle over 22 feet in length.

(v) If an administrative fee for notification of lien holder, owner, agent or other interested party is charged, it shall not exceed \$75.00. This fee may only apply after the Vehicle is on the Storage Site over three full business days. If an administrative fee is charged, a copy of the Virginia Department of Motor Vehicles report will/shall be attached to the receipt given to the Vehicle Owner.

(vi) No other administrative fees will/shall be charged, or any other charges unless expressly set forth herein.

(b) Upon Vehicle release, the Operator will/shall give the Vehicle Owner a receipt itemizing all charges.

(c) An Operator shall not require a Vehicle Owner to sign any waiver of the Vehicle Owner's right to receive compensation for damages to the owner's Vehicle as a condition of the owner retrieving the Towed Vehicle.

**(GH) Penalties and Remedies for Violations.**

(1) All Trespass Towing.

(a) It shall be unlawful for any person to violate any of the provisions of this Section, or any regulation adopted pursuant to this Section. Unless otherwise stated, these violations shall constitute traffic infractions punishable by a fine of not more than that provided for a Class 4 misdemeanor.

(b) It shall be unlawful for any person to make or cause to be made any false statement in writing for the purpose of procuring a Registration Certificate or Locality Permit, or to make any false

681 statements or entry on records required to be kept by this  
682 Section. These violations are a violation of Virginia Code  
683 Section 18.2-498.3.

684 (c) An Operator shall be suspended if the Operator's insurance is  
685 no longer in effect. Suspension shall be in accordance with  
686 Section 82-5-32.(H)(2)(b) and (d).

687  
688 (2) Locality Permit Operators.

689  
690 (a) Denial.

691  
692 (i) The Director may deny an Operator's Locality Permit  
693 application to conduct a trespass towing business in  
694 Fairfax County if the Operator:

695  
696 A Does not have an approved Storage Site; or

697  
698 B Does not possess a valid business license; or

699  
700 C Is not properly licensed by the State; or

701  
702 D Provides false information on the application.

703  
704 (ii) The Operator may reapply after application deficiencies  
705 are corrected. If the denial is based on 82-5-  
706 32.(H)(2)(a)(i)D., the denial shall remain in force for one  
707 year from the date of denial.

708  
709 (b) Suspension.

710  
711 (i) The Director may suspend an Operator's Fairfax  
712 County Locality Permit for a period of one to 60 days  
713 and/or until proof of compliance is provided to the  
714 satisfaction of the Director for any of the following reasons,  
715 but not limited to:

716  
717 A Operating a tow vehicle that fails to meet federal,  
718 State, and local codes.

719  
720 B Any violations of this Section which regulate  
721 conduct, reporting, and record-keeping.

722  
723 C Occurrence of any of the grounds for denial of a  
724 registration application or Locality Permit, listed in  
725 Section 82-5-32.(H)(2)(a).  
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- D. Failure to maintain the Storage Site(s) and/or operation(s) in good order and repair.
- E. Failure to pay all fees and taxes imposed insofar as such fees relate to operation of a trespass towing business.
- F. Failure to maintain proper insurance.
- G. Valid consumer complaints regarding trespass towing operation.

(ii) The suspension will become effective 45 days after the Operator receives the suspension notice unless an appeal is filed in accordance paragraph (e) below.

(iii) However, any suspension for a violation of Sections 82-5-32.(H)(2)(b)(i)A and F shall become effective upon the date of any such violation without notification pursuant to paragraph (d) below.

(c) Revocation.

- (i) An Operator's Locality Permit may be revoked by the Director for, but not limited to, any of the following reasons:
  - A. If an Operator fails to correct deficiencies for which the Operator was suspended.
  - B. The Operator makes or causes or allows to be made any false statement in writing for the purpose of procuring a Locality Permit; or
  - C. If an Operator makes or causes or allows to be made any false statement or entry on records required to be kept by this Section; or
  - D. Conducts operations in the County while under suspension; or
  - E. At the discretion of the Director for multiple violations by the Locality Permit holder of any of the provisions of this Section within a twelve-month period.

773 (ii). The revocation will become effective 45 days after the  
774 Operator receives the revocation notice unless an appeal  
775 is filed in accordance paragraph (e) below.

776  
777 (d) Notification.  
778

779 (i) Written notice of any denial, suspension, or revocation  
780 under the above provisions of this Section shall be given  
781 by the Director to the Operator in person, or by email,  
782 and by certified mail. Such suspension or revocation  
783 shall be effective seven calendar days after the deposit of  
784 such notice in the US mail unless otherwise specified in  
785 this Section.  
786

787 NOTE: It shall be unlawful for an Operator to conduct a  
788 trespass towing business in the County when the Locality  
789 Permit under which the trespass towing operation was  
790 placed in service is under suspension or revocation.  
791

792 (ii) Locality Permits that have been suspended or revoked  
793 shall be returned to the Director within seven calendar  
794 days from the effective date of the suspension or  
795 revocation.  
796

797 (e) Appeal  
798

799 Procedure for appeal of action by the Director.  
800

801 i. If the Director denies, suspends or revokes any  
802 Operator's Locality Permit, any party aggrieved  
803 thereby may appeal such decision to the Commission.  
804

805 ii. An appeal shall be filed with the Department of Cable  
806 and Consumer Services by the appellant or by the  
807 legal representative of the appellant. Appeals shall be  
808 in writing, and appeals shall include a brief statement  
809 of the reasons thereof. Appeals shall be filed within 45  
810 calendar days of receipt of the notice of denial,  
811 suspension, or revocation, and signed by the  
812 appellant or the legal representative of the appellant.  
813

814 iii. Upon receipt of notice of appeal, the Commission  
815 shall set a time and place for such hearing and shall  
816 give the appellant or legal representative and the  
817 Director reasonable notice thereof. All hearings on  
818 appeals shall be scheduled and determined as

819 promptly as practicable and in no event more than 60  
820 calendar days from the date the notice of appeal is  
821 filed.

822  
823 iv. An appeal may be withdrawn at any time by the  
824 appellant or his agent prior to the Commission  
825 meeting by giving written notice to the Director.

826  
827 v. An appeal may also be administratively withdrawn by  
828 the Director if it is determined that the appeal was the  
829 result of an error.

830  
831 vi. The Commission shall consider the case record as  
832 well as the statements offered by any interested party  
833 and shall consider the matter *de novo*, and the  
834 Commission shall, upon the basis of the record before  
835 it, affirm, modify or reverse the decision of the  
836 Director.

837  
838 vii. If the Commission affirms the decision of the Director  
839 to suspend or revoke an Operator's Certificate or  
840 Locality Permit, then the suspension or revocation  
841 shall be effective from the date of the Commissioner's  
842 order.

843  
844 viii. If the Commission reverses the decision of the  
845 Director, the Director shall issue or restore the  
846 Operator's permit, in accordance with its order.

847  
848 ix. Except as otherwise provided in this Section, an  
849 appeal of the decision of the Director to suspend or  
850 revoke a Operator's Locality Permit shall stay the  
851 effective date of the suspension or revocation.

852  
853 x. However, if any suspension or revocation of an  
854 Operator's Locality Permit is based on failure to follow  
855 appropriate safety procedures or falsifying  
856 documents, then the order of the Director shall remain  
857 in effect until the Commission has rendered its  
858 decision on the appeal.

859  
860 (f) The provisions of this Section are not exclusive and do not  
861 relieve the parties or the contracts subject thereto from  
862 compliance with all other applicable provisions of law.

863  
864 **(H) Code or Regulatory Conflict.**

865  
866 In the event of a conflict between an action of the ~~BTR~~State and the County,  
867 the County ordinance shall be controlling, provided such provisions are no less  
868 stringent than requirements imposed by action of the ~~BTR~~State.  
869

870 **Section 82-5-32.1. – Trespass Towing Advisory Board.**

871  
872 (A) Definitions.

873  
874 “Citizen Member” means a Member who has no direct or indirect interest,  
875 other than as a consumer, in or relating to the Towing and recovery  
876 industry.

877  
878 “Law-Enforcement Member” means a member who is a Fairfax County  
879 police officer and appointed by the Fairfax County Chief of Police to the  
880 Advisory Board.

881  
882 “Member” means a Fairfax County resident appointed or confirmed by the  
883 Board of Supervisors to the Trespass Towing Advisory Board.

884  
885 “Towing Member” means an individual who, prior to appointment, and  
886 throughout the appointment term, shall be an Operator of a Towing  
887 business in Fairfax County.

888  
889 (B) Members; Staff; and Meetings

890  
891 (1) There shall be a Trespass Towing Advisory Board ("Advisory Board").  
892 The Advisory Board shall be composed of five members, two of whom  
893 shall represent, two of whom shall represent local law-enforcement  
894 agencies, and one of whom shall represent the community at large. All  
895 members shall be residents of Fairfax County, Virginia. Members of the  
896 Advisory Board shall be appointed or confirmed by the Board of  
897 Supervisors for terms of three years each. The terms shall be staggered  
898 with no more than two terms and no less than one term to commence in  
899 any one year. Vacancies shall be filled by the Board of Supervisors as  
900 they arise. A Chairperson shall be elected by the Trespass Towing  
901 Advisory Board from among the members of the Advisory Board. The  
902 Advisory Board may adopt bylaws and rules and regulations governing the  
903 conduct of its responsibilities and duties hereinunder.

904  
905 (2) The Advisory Board shall meet at the call of the Chairperson, or two  
906 members of the Advisory Board after notice to all Members, or upon  
907 request of the Board of Supervisors, or upon the request of the Director.  
908 The staff of the Advisory Board shall be from the Department of Cable and  
909 Consumer Services. The Director of the Department of Cable and

910 Consumer Services, or the Director's designee, shall attend all meetings  
911 of the Advisory Board.

912  
913 (3) A quorum ~~will~~shall consist of a Towing Member, a Law-Enforcement  
914 Member and a Citizen Member.

915  
916 (B) Duty of the Trespass Towing Advisory Board

917  
918 The Advisory Board shall advise the Board and provide recommendation(s) to  
919 proposed changes related to the trespass Towing code.

920  
921 **Section 82-5-32.1.a. – Consumer Protection Commission duties and hearings.**

922  
923 (A) In addition to all other duties, the Commission shall act upon appeals from  
924 actions taken by the Director.

925  
926 (B) All hearings or other public proceedings conducted by the Commission in  
927 accordance with this Section shall be conducted in an informal manner. The  
928 Commission shall have the discretion to admit all evidence which may be of  
929 probative value even if that evidence is not in accord with formal rules of legal  
930 practice and procedure. Applicants and appellants may appear, either by  
931 personal appearance, legal counsel, or other representation, to present  
932 argument and evidence on their behalf. In addition, the Commission may  
933 establish rules of procedure for the conduct of hearings. Any interested party  
934 may record all public proceedings of any hearing in any manner which shall  
935 not impede the orderly conduct of the hearing.

936  
937 (C) The Commission shall report all recommendations and/or decisions in writing,  
938 and the Commission shall furnish copies of those decisions to the Director  
939 and to any applicant or appellant affected thereby.

940  
941 **Section 82-5-32.2. – Department of Cable and Consumer Services.**

942  
943 DCCS shall have the following duties:

944  
945 (A) Receive, investigate, record, and attempt to resolve Towing complaints.

946  
947 (B) Forward complaints that cannot be successfully mediated to the  
948 BTR@appropriate State agency.

949  
950 (C) Refer suspected violations of law to the proper enforcing agency.

951  
952 (D) Maintain records of Towing complaints and their disposition.

953  
954 (E) Develop programs of Towing education and information and disseminate  
955 such information.

956  
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968

(F) Provide advice and information on trespass Towing matters to judicial, legislative, administrative, and other public and private bodies.

(G) Analyze the nature of trespass Towing problems in Fairfax County and recommend to the Board legislative and administrative changes.

(H) Receive, ~~and process, and act on annual~~ Operator Registration Certificates and Locality Permit applications.

(I) Conduct reviews, inspections, and investigations of Towing ~~Storage facilities~~ Sites and operations.

---

2. THIS ORDINANCE SHALL BECOME EFFECTIVE UPON ADOPTION.

GIVEN under my hand this \_\_\_\_\_ day of January, 2013.

\_\_\_\_\_  
Catherine Chianese  
Clerk to the Board of Supervisors

AN ORDINANCE TO AMEND AND REENACT Chapter 10 REGARDING: (i) THE DUTIES OF THE CONSUMER PROTECTION COMMISSION AND (ii) THE DUTIES OF THE FAIRFAX COUNTY DEPARTMENT OF CABLE AND CONSUMER SERVICES RELATED TO TRESPASS TOWING.

1. Be it ordained by the Board of Supervisors of Fairfax County that Chapter 10 of the Code of the County of Fairfax is hereby amended and reacted as follows:

**CODE  
COUNTY OF FAIRFAX**

1 **CHAPTER 10 – Consumer Protection.**

2  
3 ARTICLE 1. - In General.

4  
5 Section 10-1-1. - Merchant defined; posting of Commission signs by merchants.

6  
7 For the purposes of this Chapter, the following word shall have the meaning ascribed to  
8 it by this Section:

9  
10 *Merchant* shall mean any person, firm, corporation, or other legal entity located within  
11 Fairfax County engaged in the sale, advertisement, or repair of merchandise, or other  
12 services or activities directed toward the public.

13  
14 Every merchant as defined in this Section shall post, in a conspicuous place in that  
15 portion of his place of business or businesses normally used for transacting the  
16 purchase, sale, or exchange of services and/or merchandise, a sign containing notice of  
17 the existence of the Consumer Protection Commission, a brief statement of its  
18 availability to assist the consumer, and the Commission's name, address and telephone  
19 number. The Commission shall provide such signs to said merchants.

20  
21 ARTICLE 2. - Department of ~~Consumer Affairs~~ Cable and Consumer Services.

22  
23 Section 10-2-1. - Department; powers and duties.

24  
25 The Department of ~~Consumer Affairs~~ Cable and Consumer Services, hereinafter  
26 referred to as the Department, shall in addition to any and all powers and duties it may  
27 now have or shall hereafter acquire, have the powers and perform the duties conferred  
28 under this ~~Chapter~~ Section, and shall have only such powers as may be necessary to  
29 perform these duties.

30  
31 Section 10-2-2. - Receive and investigate complaints.

32  
33 The Department shall receive and investigate complaints of citizens of Fairfax County  
34 concerning illegal, fraudulent, deceptive and dangerous practices against consumers.

35  
36 Section 10-2-3. - Refer complaints and action thereon.

37  
38 The Department shall refer, when appropriate, such complaints to other agencies,  
39 departments, bodies or commissions charged with enforcement of consumer laws. The  
40 Department may refer any complaint that appears to violate any provisions of Chapters  
41 2.1 (Virginia Home Solicitation Sales Act §§ 59.1-21.1 through 59.1-21.7:1) and 4  
42 (~~Misrepresentations and other offenses connected with sales §§ 59.1-42 through 59.1-~~  
43 ~~68) and 17 (Virginia Consumer Protection Act §§ 59.1-196 through 59.1-207 of Title~~

44 59.1, Va. Code Ann.) as amended, to either the Commonwealth Attorney or the County  
45 Attorney or to both for investigation. If the official to whom such a complaint is referred  
46 determines that an actionable violation has, in fact, occurred, that official may bring an  
47 action to obtain a criminal conviction, may bring an action pursuant to § 59.1-68.4 Va.  
48 Code Ann., to enjoin such violation, or may take such other action as that official deems  
49 appropriate. The Department shall coordinate the processing of complaints involving  
50 statutes or regulations administered by state agencies, where applicable, with the ~~State~~  
51 ~~Office of Consumer Affairs~~Consumer Protection Section of the Virginia Attorney  
52 General's Office.

53  
54 Section 10-2-4. - Resolve consumer complaints.

55  
56 The Department shall attempt to resolve consumer complaints by means of voluntary  
57 mediation or arbitration.

58  
59 Section 10-2-5. - Maintain records.

60  
61 The Department shall maintain records of consumer complaints and their eventual  
62 disposition, provided that records disclosing business interests of any person, trade  
63 secrets, or the names of customers shall be held confidential except to the extent that  
64 disclosures of such matters may be necessary for the enforcement of laws. A copy of all  
65 periodic reports compiled by the Department shall be filed with the ~~State Office of~~  
66 ~~Consumer Affairs~~Consumer Protection Section of the Virginia Attorney General's Office.

67  
68 Section 10-2-6. - Compile and maintain information on public utilities.

69  
70 The Department shall compile and maintain accurate and current information relative to  
71 the rates, charges and quality of service, or lack thereof, of public utilities serving the  
72 consumers of Fairfax County. Such utilities shall include, but shall not be limited to,  
73 companies providing electric power, gas, water, telephone service or transportation  
74 service of whatever mode.

75  
76 Section 10-2-7. - Consumer information and education.

77  
78 The Department shall develop programs of consumer education and information and  
79 disseminate such information.

80  
81 Section 10-2-8. - Represent consumer interests.

82  
83 The Department shall represent consumer interests before judicial, legislative,  
84 administrative and other public and private bodies.

85  
86 Section 10-2-9. - Analyze consumer problems.

87 The Department shall analyze the nature of consumer problems in Fairfax County and  
88 recommend to the Board of Supervisors legislative and administrative changes.

89

90 ARTICLE 3. - Consumer Protection Commission.

91

92 Section 10-3-1. - Commission; ~~creation~~; composition; officers.

93

94 ~~There is hereby created~~ a Consumer Protection Commission, hereinafter referred to as  
95 the Commission. ~~The Commission~~, shall be composed of thirteen (13) members, not  
96 less than seven (7) of whom shall be consumers not actively engaged in business in  
97 Fairfax County, all of whom shall be residents of Fairfax County, each appointed by the  
98 Board of Supervisors for terms of three (3) years. The terms shall be staggered with no  
99 more than four (4) original terms to commence in any one (1) year.

100

101 The Commission shall annually elect a Chairman and such other officers of the  
102 Commission, provided that the Chairman and every other officer may succeed  
103 themselves. The Commission shall meet at the call of the Chairman or a majority of the  
104 Commission or upon request of the Board of Supervisors. The Board of Supervisors  
105 may authorize such compensation to the members as it deems necessary. The staff of  
106 the Commission shall be supplied by the Department of ~~Consumer Affairs~~Cable and  
107 Consumer Services. The Director of the Department of ~~Consumer Affairs~~Cable and  
108 Consumer Services, or his designee, shall, at the pleasure of the Commission, attend  
109 all meetings of the Commission and assume such tasks and functions as may be  
110 delegated by the Commission.

111

112 ~~The existing nine (9) members of the Consumer Protection and Public Utilities~~  
113 ~~Commission, established by a Resolution of the Fairfax County Board of Supervisors,~~  
114 ~~on June 12, 1972, shall constitute the initial Consumer Protection Commission. The~~  
115 ~~existing members shall serve out their remaining terms, and the Chairman and officers~~  
116 ~~shall serve out their remaining terms as officers. (1961 Code, § 15G-10; 25-74-15G; 12-~~  
117 ~~77-10; 10-81-10; 28-87-10.)~~

118

119 Section 10-3-2. - Powers and duties of the Commission.

120

121 The Commission shall, in addition to any and all powers and duties it shall hereinafter  
122 acquire, have the following powers and perform the following duties under this Section:

123

124 The Commission shall advise the Board of Supervisors on consumer affairs and shall  
125 report periodically thereto concerning the Commission's activities.

126

127 The Commission shall advise the Department of ~~Consumer Affairs~~Cable and Consumer  
128 Services on consumer matters and on carrying out its duties and functions under this  
129 Chapter.

130

131 The Commission may hold public hearings on and publish its findings on issues of  
132 widespread public interest which deal with illegal, fraudulent, deceptive, or dangerous  
133 consumer practices. The Commission may adopt, promulgate, amend, and rescind  
134 rules and regulations, subject to the approval of the Board of Supervisors, concerning  
135 such issues.

136  
137 The Commission may refer apparent violations of any provisions of Chapter 2.1  
138 (Virginia Home Solicitation Sales Act §§ 59.1-21.1 through 59.1-21.7:1) and 17 (Virginia  
139 Consumer Protection Act §§ 59.1-196 through 59.1-207) of Title 59.1 of the Code of  
140 Virginia, as amended, to either the Commonwealth Attorney or to the County Attorney  
141 or to both for investigation. If the official to whom such a complaint is referred  
142 determines that an actionable violation has, in fact, occurred, that official may bring an  
143 action to obtain a criminal conviction, may bring an action pursuant to Virginia Code §  
144 59.1-68.4 to enjoin such violation, or may take such other action as that official deems  
145 appropriate.

146  
147 The Commission shall have all powers and perform all duties specified under Chapter  
148 28.1 (Massage Therapy, Establishments and Services), Chapter 31 (Peddlers,  
149 Solicitors, and Canvassers), Section 82-5-32 (Removal, immobilization, and disposition  
150 of Vehicles unlawfully parked on private or County property), and Chapter 84.1 (Public  
151 Transportation) of the Code of the County of Fairfax.

152  
153 The Commission may, as directed by the Board, advise and inform the Board of  
154 Supervisors on all issues relating to cable communications.

155  
156 ARTICLE 4. - Motor Vehicle Fuel Prices.

157  
158 Section 10-4-1. - Signs required above pumps; maintenance.

159  
160 (a) Every merchant engaged in the retail sale of or otherwise dispensing gasoline or  
161 other motor vehicle fuel at retail shall post and maintain on its premises above the pump  
162 or pumps from which said gasoline or fuel is dispensed a sign above each pump,  
163 readable from the dispensing side of the pump, indicating the price per gallon, including  
164 all taxes at which each type and grade of gasoline or other motor vehicle fuel is  
165 currently being offered for sale, sold or otherwise dispensed. Beginning six (6) weeks  
166 following passage of this Article by the Board of Supervisors, a merchant engaged in  
167 the retail sale of motor vehicle fuel shall advertise the price of such motor vehicle fuel  
168 consistent with the manner of dispensing; except that signs which indicate on them both  
169 the price per gallon and price per liter shall be acceptable, provided the lettering shall be  
170 as stipulated in Section 10-4-2(a).

171  
172 (b) The merchant doing business at retail shall supply, install, post and maintain the  
173 necessary frames, inserts, figures, numerals or other apparatus necessary for  
174 compliance herewith.

175  
176 Section 10-4-2. - Size and content of signs.

177  
178 (a) The signs required by this Article shall be no less than ten (10) inches or greater  
179 than fifteen (15) inches in height, and no less than ten (10) inches or greater than fifteen  
180 (15) inches in width; provided that all signs shall contain at least one hundred (100)  
181 square inches of sign area and that no sign shall extend more than fifteen (15) inches



228 Whenever more than one (1) type or grade of gasoline or other motor vehicle fuel, or a  
229 range of grades, are dispensed or sold from a single pump, whether through one (1) or  
230 more than one (1) pump hose, the sign or signs shall indicate the prices for each type  
231 and grade of fuel, except that when a range of grades is dispensed or sold from a  
232 pump, only a sign indicating the prices for regular and premium fuel shall be required.  
233

234 Section 10-4-6. - Gasoline availability flags.  
235

236 Upon a determination by the County Executive, after consultation with the chief  
237 administrative officers of such other northern Virginia jurisdictions as have adopted  
238 legislation similar to this Section, that an emergency gasoline shortage exists, and upon  
239 notification of the Board of Supervisors thereof, the following requirements shall become  
240 effective within twenty-four (24) hours of the determination by the County Executive:  
241

242 Every merchant engaged in the retail sale of gasoline shall clearly indicate his available  
243 gasoline supply by raising or placing on his premises one (1) or more of the following  
244 flags, as the circumstances may warrant, said flag or flags to be at least eighteen (18)  
245 inches square, and placed in a conspicuous location so as to be easily visible from off  
246 the premises by approaching motorists:  
247

248 Green flag—To signify all gasoline products are available.

249 Yellow flag—To signify all gasoline products except unleaded are available.

250 Red flag—To signify no gasoline is available.  
251

252 Upon making the determination reference in subparagraph (a), the County Executive  
253 shall give notice to the general public of his action through all available channels,  
254 including the news media.  
255

256 Upon a determination by the County Executive, after consultation with the chief  
257 administrative officers referenced in (a) above, that the emergency gasoline shortage  
258 has ended, and upon notification of the Board of Supervisors thereof, this Section shall  
259 become inoperative.  
260

261 Section 10-4-7. - Alternative provisions.  
262

263 Notwithstanding any provisions of this Article to the contrary, a merchant shall be  
264 excused from compliance herewith if he elects, in the alternative, to post or display fuel  
265 prices in compliance with Sections 10-4.1-1 through 10-4.1-6 of Article 4.1 of this  
266 Chapter.  
267

268 ARTICLE 4.1. - Motor Vehicle Fuel Prices.  
269

270 Section 10-4.1-1. - Sign required.  
271

272 Every merchant engaged in the retail sale of or otherwise dispensing motor vehicle fuel  
273 at retail shall continuously display and maintain on a post or pole on the premises where

274 such motor vehicle fuel is dispensed or sold one (1) sign clearly visible from the street  
275 and that faces both directions of traffic on the nearest public street or way, provided that  
276 on a corner lot there may be two (2) signs. If motor vehicle fuel is dispensed by the  
277 gallon, the sign shall clearly and legibly state the price per gallon, including all taxes. If  
278 motor vehicle fuel is dispensed by the liter, the sign shall clearly and legibly state the  
279 price per liter (of the fuel) including all taxes; except that a merchant who dispenses  
280 motor vehicle fuel by the liter shall not be prohibited from stating gallon prices on the  
281 signs required by this Article, provided that in so doing, the regulations governing liter  
282 dispensing and gallon price advertising promulgated by the Virginia Office of State  
283 Weights and Measures Office are complied with. A sign which states liter prices shall  
284 designate that the prices are per liter by displaying the words "liter" on such signs in  
285 letters not less than one-half ( $\frac{1}{2}$ ) the size of the numerals representing the price, and  
286 the height of the letters shall not be more than twice the dimension of the width.

287  
288 Such signs shall state the actual price per gallon or per liter, including taxes, of no less  
289 than two (2) but no more than three (3) kinds of motor vehicle fuel currently being  
290 offered for sale; except that where only one (1) kind of motor vehicle fuel is currently  
291 being offered for sale, the price of only one (1) kind of motor vehicle fuel need be stated  
292 on the sign.

293  
294 The merchant doing business at retail shall supply, install, post and maintain the  
295 necessary frames, inserts, figures, numbers or other apparatus necessary for  
296 compliance herewith.

297  
298 Section 10-4.1-2. - Size and content of signs.

299  
300 All signs required by this Article shall meet the following specifications:

301  
302 The area of the sign identifying motor vehicle fuel prices shall not exceed a maximum  
303 area of twenty (20) square feet.

304  
305 The sign may be located on an existing freestanding sign, existing light standard or new  
306 post or pole; but in no event shall the sign exceed a height of eight (8) feet. Any new  
307 sign structure shall, in no instance, project beyond any property line nor be within five  
308 (5) feet of any curblin of any service drive, travel lane or adjoining street. No such sign  
309 shall be a portable sign as defined in the Zoning Ordinance.

310  
311 A sign permit and annual inspection of freestanding signs shall be required as provided  
312 for in the Zoning Ordinance, except that there shall be no fees for such permit or annual  
313 inspections.

314  
315 Arabic numerals shall be used to express the minimum retail price, and the numerals  
316 shall be of uniform size and at least eight (8) inches high. The height of such numerals  
317 shall not be more than twice the dimension of the width. Whenever an advertised price  
318 includes a fraction of a cent, the numerals expressing the fraction shall be immediately

319 adjacent to, of the same general design and style as, and at least one-half ( $\frac{1}{2}$ ) the  
320 height and width of the numerals representing the whole cent (i.e., 29 8/10 or 129<sup>8</sup>).  
321

322 The designation of the kind of motor vehicle fuel shall be positioned on the sign so as to  
323 be adjacent to the current price for the particular kind of motor vehicle fuel. The letters  
324 shall be at least one-fourth ( $\frac{1}{4}$ ) the size of the numerals representing the price, and the  
325 height of these letters shall not be more than twice the dimension of the width. When  
326 more than one (1) kind of motor vehicle fuel is named on the sign, the price for leaded  
327 regular motor vehicle fuel shall appear first on the sign, followed by the price for  
328 unleaded regular motor vehicle fuel sold on the premises. The sign shall also state  
329 whether its prices are for full-service or self-service in letters at least one-half ( $\frac{1}{2}$ ) the  
330 size of the numerals representing the price, and the height of the letter shall not be  
331 more than twice the dimension of the width.  
332

333 The colors of the Arabic numerals, letters, decimal points and periods shall contrast with  
334 the field of the sign to provide maximum visibility and legibility. The field of the sign shall  
335 be a solid color. All numerals and letters which are a part of the signs referred to in this  
336 Article shall have a medium or heavy type face or stroke and shall be plainly visible.  
337

338 The signs required by this Article shall not block sight distance for persons entering and  
339 exiting the premises, nor shall the sign mislead a consumer or constitute a fraud upon a  
340 consumer.  
341

342 Nothing in this Article is intended to preclude the placement of other pertinent  
343 information regarding the sale of motor vehicle fuel, such as hours of operation, on the  
344 signs required by this Article, provided that any letters, figures or numerals used shall  
345 not be larger than the letters used to indicate the kind of motor vehicle fuel being  
346 dispensed.  
347

348 Section 10-4.1-3. - Sale on the basis of the metric system.  
349

350 Whenever a motor vehicle fuel is dispensed and advertised for sale on the basis of the  
351 metric system, i.e., price per liter rather than price per gallon, there shall be posted on  
352 the premises in a place open and convenient to the public a conversion table which  
353 contains equivalent liter-to-gallon comparisons and price-per-liter to price-per-gallon  
354 comparisons, as specified in Appendix A.  
355

356 Section 10-4.1-4. - Enforcement and violations.  
357

358 The Director of the Department of ~~Consumer Affairs~~Cable and Consumer Services and  
359 the Zoning Administrator of Fairfax County and their authorized designees shall be  
360 responsible for the administration of this Article.  
361

362 Any person who violates a provision of this Article, upon conviction, may be subjected to  
363 the punishment prescribed for a Class 4 misdemeanor. Each day that a violation is  
364 allowed to continue shall constitute a separate and distinct offense.

365  
366 Section 10-4.1-5. - Effective date of Article.

367  
368 This Article shall become effective ninety (90) days after the date of its enactment  
369 [February 22, 1982].

370  
371 Section 10-4.1-6. - Gasoline availability flags.

372  
373 Upon a determination by the County Executive, after consultation with the chief  
374 administrative officers of such other northern Virginia jurisdictions as have adopted  
375 legislation similar to this Section, that an emergency gasoline shortage exists, and upon  
376 notification of the Board of Supervisors thereof, the following requirements shall become  
377 effective within twenty-four (24) hours of the determination by the County Executive:

378  
379 Every merchant engaged in the retail sale of gasoline shall clearly indicate his available  
380 gasoline supply by raising or placing on his premises one (1) or more of the following  
381 flags, as the circumstances may warrant, said flag or flags to be at least eighteen (18)  
382 inches square and placed in a conspicuous location so as to be easily visible from off  
383 the premises by approaching motorists:

384  
385 Green flag—To signify all gasoline products are available.

386 Yellow flag—To signify all gasoline products except unleaded are available.

387 Red flag—To signify no gasoline is available.

388  
389 Upon making the determination referenced in subparagraph (a), the County Executive  
390 shall give notice to the general public of his action through all available channels,  
391 including the news media.

392  
393 Upon a determination by the County Executive, after consultation with the chief  
394 administrative officers referenced in (a) above, that the emergency gasoline shortage  
395 has ended, and upon notification of the Board of Supervisors thereof, this section shall  
396 become inoperative.

397  
398 Section 10-4.1-7. - Alternative provisions.

399 Notwithstanding any provisions of this Article to the contrary, a merchant shall be  
400 excused from compliance herewith if he elects, in the alternative, to post or display fuel  
401 prices in compliance with the provisions of Sections 10-4-1 through 10-4-6 of Article 4 of  
402 this Chapter.

403  
404 ~~ARTICLE 5.—Disclosure Bill of Particulars for New Home Buyers.~~

405  
406

---

3. THIS ORDINANCE SHALL BECOME EFFECTIVE UPON ADOPTION.

GIVEN under my hand this \_\_\_\_\_ day of January, 2013.

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Catherine Chianese  
Clerk to the Board of Supervisors

## STAFF REPORT

### **Background**

The Code of Virginia Section 46.2-1232 enables the County to regulate the removal or immobilization of trespassing vehicles. Fairfax County regulates trespass towing in Sections 82-5-32 through 32.2 of the County Code.

On June 26, 2006, the Fairfax County Board of Supervisors approved the addition of Section 82-5-32.1 to the Fairfax County Code establishing and specifying duties of the Fairfax County Trespass Towing Advisory Board (TTAB) as required by the Code of Virginia Section 46.2-1233.2.

Section 82-5-32.2 of the Fairfax County Code was approved at the same time specifying certain staff duties of the Department of Cable and Consumer Services (DCCS).

Changes to the Virginia Code addressing towing regulation at the state level and towing across locality boundaries were passed during the 2012 Virginia state legislative session. These changes reorganized and modified how the state government regulated trespass towing, and enabled the County to establish a permit and fee process for trespass towers towing vehicles outside of the County.

Towers, citizens, property owners/managers, insurance companies, and public safety officials were contacted to understand their considerations and needs for allowing vehicles to be towed outside of the County. Staff developed suggested changes to the County's trespass towing code with input from all stakeholders.

The TTAB played a key role in the review, providing a forum for public comments, and suggesting changes to the proposed draft. Staff provided in process review and final briefings to the TTAB, Consumer Protection Commission (CPC), and Tenant-Landlord Commission (TLC) throughout the ordinance drafting process with each organization supporting the recommended changes.

A summary and discussion of the changes follow.

## **Recommended Changes to Fairfax Code**

### **Section 82-5-32**

#### **Section 82-5-32(A)**

Addition of an applicability subsection.

#### **Reason for change:**

An applicability subsection will provide a practical description of subsections 82-5-32 through 32.2.

#### **Section 82-5-32(B)**

The addition and revision of terms and their meanings used while reading these subsections.

#### **Reason for change:**

The addition of certain terms will standardize the intent of terms. References to the Board of Towing and Recovery Operators (BTRO) have been removed because this organization ceased to exist on January 1, 2013.

#### **Section 82-5-32(D)**

Additional procedures added for trespass towing from unmarked business and single family properties.

#### **Reason for change:**

In instances where trespassing vehicles are on properties that do not have signs posted warning of towing enforcement, the proposed changes will allow business property owners to have trespassing vehicles removed after a warning notice is affixed to the vehicle for 48 hours. These additions will also allow single family property owners to have vehicles immediately removed from their property without notice. These new procedures will allow property owners to ensure the safety and security of their property while establishing rates allowed to be charged to the vehicle owner consistent with other trespass towing fees.

#### **Section 82-5-32(F)(1)**

All tow operators shall provide proof of insurance to DCCS during each registration process indicating that the insurance carrier will notify DCCS prior to terminating the tow operator's insurance.

#### **Reason for change:**

The current code requires tow operators to register with the County before beginning trespass towing operations and annually thereafter. During the period between

registrations, the tow operator's insurance might be terminated. The recommended change will provide an extra layer of protection to all stakeholders involved in trespass towing operations following the dissolution of the BTRO.

**Section 82-5-32(F)(2)**

This subsection establishes Locality Permit requirements and fees for trespass tow operators storing vehicles outside of Fairfax County. In addition to the no cost Registration Certificate required of all trespass towers operating in the County, towers removing vehicles from the County must also obtain a Locality Permit prior to the start of operations and annually thereafter. Towers obtaining a Locality Permit would be charged a permit fee of \$150.00 for the initial and subsequent annual Locality Permits and an initial storage lot inspection fee of \$450.00 for each lot outside of the County.

The Locality Permit is a new process; there is no similar data in similar jurisdictions with which to compare fees being proposed for the trespass tow operators permit or initial storage site inspection.

**Reason for change:**

The changes to the County's Code result from the 2012 amendments to Virginia Code Section 46.2-1232.D that allows the County to impose and collect reasonable fees for the issuance and administration of permits.

**Section 82-5-32(F)(3)**

Establish penalties for the procurement of Registration Certificates or Locality Permits by illegal means and the wrongful distribution of Registration Certificates or Locality Permits.

**Reason for change:**

The penalties are similar to those established by Virginia's Department of Motor Vehicles for like actions in order to discourage such actions.

**Section 82-5-32(F)(4)(i)**

Clarify wording that a trespass towed vehicle, once off private property, must be taken directly to a storage lot registered with DCCS and not temporarily stored in an intermediate site. Wording in this subsection is also included to limit the distance a vehicle may be towed outside of the County.

**Reason for change:**

Changes are a result of stakeholders' requests to clarify when a vehicle must be taken directly to a storage site and 2012 amendments to Code of Virginia Section 46.2-1232.D. Tow operators have previously relocated trespassing vehicles off of the parking violation site property at temporary storage sites, and then returned to the parking area one or more times to repeat the process of relocating other trespassing

vehicles. These temporary storage locations are not registered with DCCS, not inspected by FCPD, not secure, frequently not lighted, and often are unlawful parking locations themselves. This short term storage increases the possibility of the towed vehicle being stolen or damaged, delays the owner from reclaiming the vehicle, and slows down the reporting of the vehicle being reported to the DPSC after the tow was initiated.

Further, changes establish a maximum distance of 10 miles from the spot of the tow if the storage site is outside of the County. The storage site must be within the Commonwealth. The County's GIS & Mapping Services Branch will determine the 10 mile line-of-sight measurement. Upon application for a Locality Permit, staff will provide each tow operator having a storage site outside of the County a map specifying the 10 mile limitations from that storage site.

**Section 82-5-32(F)(7)(b)**

Wording is added to clarify the drop fee payment process.

Reason for change:

Adding who can make payment and when payment must be made will standardize actions taken by towers during the drop fee process.

**Section 82-5-32(H)(1)(b)**

This subsection establishes penalties for making false statements or entries when applying for a Registration Certificate or Locality Permit.

Reason for change:

The proposed change will provide a means for the County to ensure appropriate tow operator activities.

**Section 82-5-32(H)(1)(c)**

Proposes a suspension by the Director of the tow operator's Registration Certificate should an operator continue towing operations without having the proper insurance in effect.

Reason for change:

The proposed change will provide a means for the County to ensure appropriate tow operator activities and protect all stakeholders.

**Section 82-5-32(H)(2)**

A stepped approach be established to standardize the denial of an application or the suspension or revocation of a Locality Permit should the tow operator fail to comply with requirements.

Reason for change:

Establishment of the Locality Permit requires that possible courses of action be established if tow operators do not follow the requirements of the code. This subsection will provide a mechanism for the Director, at all stages of the application and permit process, to take action in the event the code requirements are not followed by tow operators that tow vehicles outside of the County.

**Section 82-5-32(H)(2)(d)**

The subsection details how notifications are to be made by the Director once a decision is made to deny, suspend, or revoke a permit.

Reason for change:

The notification process ensures that notification requirements are in place should they be needed and that all operators will be treated equally.

**Section 82-5-32(H)(2)(e)**

Establishes a process to give operators an opportunity to appeal decisions made by the Director.

Reason for change:

The subsection, by establishing requirements for operators to follow in order to file an appeal of the Director's decisions, provides tow operators with an opportunity to make their position known to a body that can make an unbiased decision.

**Section 82-5-32.1.a**

**Section 82-5-32.1.a**

This subsection adds responsibilities for the Consumer Protection Commission (CPC) to hear appeals resulting from actions taken by the Director.

Reason for change:

The State Code does not enable the TTAB to have hearing authority. Also, if the TTAB were to hear an appeal, it is entirely possible a conflict of interest could arise between the tower appealing a decision and a tower on the TTAB hearing the appeal. The CPC is empowered to hear appeals in other consumer issues such as the taxicab and massage industries. Having the CPC hear appeals provides an independent body to review actions taken by the Director while ensuring consumers are being effectively protected.

## **Section 82-5-32.2**

### **Section 82-5-32.2**

Appropriate updates to this section were made to conform with 2012 state legislative activity.

## **Chapter 10**

### **Section 10-3-2**

Adds Section 82-5-32. Removal, immobilization, and disposition of Vehicles unlawfully parked on private or County property, to Powers and Duties of the Commission.

#### **Reason for change:**

Changes are needed to provide authority for the CPC to hear appeal cases if they arise.

### **Chapter 10**

Changes references to past agency names and references, both state and local, to reflect appropriate current references.

## **Recommendations**

The recommended changes to the towing ordinance will improve the towing industry in Fairfax County.

1. Staff recommends Section 82-5-32 through 32.2 and Chapter 10 be revised in conformance with the proposal. Specifically, the:
  - a. Unmarked property trespass towing procedures.
  - b. Establishment of the Locality Permit.
  - c. Establishment of the Locality Permit fee registration be \$150.00 and the storage lot outside of the County inspection fee be \$450.00.
  - d. Establishment of the trespass towing penalty and appeal processes.
  - e. Addition of Consumer Protection Commission responsibilities to Section 82-5-32.1.a.
  - f. Addition of Consumer Protection Commission responsibilities to Chapter 10.
2. Staff recommends that other proposed revisions to Sections 82-5-32, 82-5-32.1, 82-5-32.1.a, and 82.5.32.2 and Chapter 10 of the Fairfax County Code pertaining to trespass towing regulation, as attached hereto, be approved.
3. Staff further recommends the changes to Sections 82-5-32, 82-5-32.1, 82-5-32.1.a, 82-5-32.2, and Chapter 10 become effective upon adoption.